

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. VAZZO, LMFT, individually
and on behalf of his patients, DAVID H.
PICKUP, LMFT, individually and on
behalf of his patients, and SOLI DEO
GLORIA INTERNATIONAL, INC.
d/b/a NEW HEARTS OUTREACH
TAMPA BAY, individually and on behalf
of its members, constituents and clients,

Case No. 8:17-cv-02896-T-02AAS

Plaintiffs,

v.

CITY OF TAMPA, FLORIDA,

Defendant.

**DEFENDANT, CITY OF TAMPA'S, MOTION TO STAY DISCOVERY
AND PRETRIAL DEADLINES PENDING FINAL RESOLUTION OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION, AND
INCORPORATED MEMORANDUM OF LAW**

The City of Tampa (the "City") hereby moves this Court to stay all discovery and pretrial deadlines pending the final resolution of Plaintiffs' Motion for Preliminary Injunction, including the District Judge's acceptance, rejection, or modification of the findings and recommendations made by the Magistrate Judge (Doc. 149), and the exhaustion of all appellate remedies in connection therewith up to and including any review that may be sought from the Supreme Court.

In support thereof, the City states as follows:

1. On January 30, 2019, the Magistrate Judge issued a Report and Recommendation on the Motion to Dismiss Amended Complaint (Doc. 148), and a Report and Recommendation on the Motion for Preliminary Injunction. (Doc. 149.)

2. On January 31, 2019, the District Judge entered an endorsed Order setting deadlines as follows: “Any objections to the Report and Recommendations at Doc. 148 and Doc. 149 must be filed no later than February 16, 2019. Any response to those objections must be filed no later than March 3, 2019.” (Doc. 151.)

3. The parties have previously represented to the Court, in a Joint Motion to Stay Discovery and Scheduling of Trial Deadlines Pending Final Resolution of Plaintiffs’ Motion for Preliminary Injunction, that:

Irrespective of the outcome on Plaintiffs’ Motion for Preliminary Injunction in this Court, the parties agree that, given the significance of the issues presented, the adversely affected side is likely to avail itself of the right to interlocutory appeal under 28 U.S.C. section 1292(a)(1) and may well seek to exhaust all appellate remedies, up to and including a petition for certiorari review by the Supreme Court.

(Doc. 49, p. 2.)

4. In addition, the parties have previously represented to the Court that “any appeals taken by either party, may substantially alter the scope of discovery or otherwise help frame any discovery, and may significantly impact and alter the course and conduct of this litigation, including shaping the First Amendment and statutory questions presented in this action.” (Doc. 49, p.1.)

5. Consistent with the foregoing, in the parties’ Joint Motion to Stay Discovery and Scheduling of Trial Deadlines Pending Final Resolution of Plaintiffs’ Motion for Preliminary Injunction, the parties requested, *inter alia*, to “stay all discovery pending final resolution of plaintiffs’ motion for preliminary injunction, including any appeals if taken by either party and any review that may be sought from the United States Supreme Court. . .” (Doc. 49, p. 3.)¹

¹ Although the Court, on April 11, 2018, denied the parties’ joint motion to stay discovery, the Court also stated that “[t]o the extent that the parties seek to stay proceedings while an appeal is pending, the parties may file a new motion at the appropriate time.” (Doc. 61, p. 8.)

6. This Court has expressly stated, moreover, in a telephonic hearing on September 13, 2018, that “I fully expect there to be an interlocutory appeal, **I expect the case to be stayed pending that interlocutory appeal.**” (Doc. 125-1, p. 44.) (Emphasis supplied.)

7. The City would further note that there is a related action captioned *Otto et al v. City of Boca Raton, Florida, and County of Palm Beach, Florida*, Civil Action No. 9:18-cv-80771-RLR, pending in the United States District Court for the Southern District of Florida, which is extremely similar in nature to this case because it challenges the constitutionality and validity of a Palm Beach County Ordinance, and a City of Boca Raton Ordinance, addressing conversion therapy; and the Plaintiffs’ counsel in the *Otto* case are the same counsel representing the Plaintiffs in this action.² The *Otto* case was also the subject of a hearing on a motion to dismiss and a motion for preliminary injunction. On February 13, 2019, the Court in the *Otto* case issued an Order denying the motion for preliminary injunction, and on the same date Plaintiffs filed a notice of appeal in that matter. Plaintiffs’ counsel have previously represented that they would like any appeal in the *Otto* case to be joined with any appeal in this case to the United States Court of Appeals for the Eleventh Circuit. In that regard, any ruling(s) by the Eleventh Circuit in the *Otto* case may also significantly impact and alter the course and conduct of this litigation.

8. It is further significant, and relevant to this case, that in *Otto*, while the motion for preliminary injunction was pending, on December 3, 2018, the District Court stayed discovery and all pretrial deadlines. (Doc. 135.) Then, after the District Court issued its ruling on the motion for preliminary injunction, the Court entered its Order on February 20, 2019, staying the entire case pending the appeal. (Doc. 145.)

² The City has previously filed a Notice of Pendency of Related Action in the *Otto* case. (Doc. 89.)

9. As a matter of law, moreover, the United States District Court for the Middle District of Florida, and the Southern District of Florida, have recognized the propriety of abating or staying a case, and staying discovery, pending the resolution of an interlocutory appeal. For example, in *Café 207, Inc. v. St John's County*, District Judge Hodges stated that: “the Plaintiff also suggested that the case be abated pending the appeal from the denial of preliminary injunctive relief. That was done. Then, when the case returned from the Court of Appeals, the Court allowed some limited discovery before taking under submission the pending cross motions for summary judgment.” 856 F. Supp. 641 n.5 (M.D. Fla. 1994) *aff'd* 66 F.3d 272 (11th Cir. 1995) *cert. den.* 116 S. Ct. 1544 (1996). Similarly, in *Danner Construction Co., Inc. v. Hillsborough County*, District Judge Kovachevich held that “[i]t is well established that district courts have inherent authority to issue stays in many circumstances,” and that “the district court has broad discretion to stay proceeding and can authorize a stay simply as a means of controlling the district court’s docket and of managing cases before the court.” 2009 WL 3055315 at * 1 (M.D. Fla. 2009) (citing *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (discussing district court’s “broad discretion to stay proceedings as an incident to its power to control its own docket”)). “In the interest of judicial economy, and avoidance of unnecessary discovery and litigation expenses, a stay is warranted pending the appeal.” 2009 WL 3055315 at *2. In *H.A.L. v. Foltz*, 2008 WL 591927 (M.D. Fla. 2008), District Judge Covington granted the defendants’ motion to stay discovery pending resolution of their interlocutory appeal. In *Caban v. Smartpay Leasing LLC*, 2018 WL 4604315 (M.D. Fla. 2018), District Judge Honeywell granted the defendant’s motion for stay pending appeal and, in doing so, relied on *Green Leaf Nursery v. E. I Dupont De Nemours & Co.*, 341 F.3d 1292, 1309 (11th Cir. 2003) for the legal principle that “[t]he filing of a notice of appeal confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the

appeal.” Finally, and perhaps most apposite, in the *Otto* case, which involves the same eight count Complaint concerning conversion therapy which is at issue before this Court, District Judge Rosenberg stayed the discovery and all pretrial deadlines pending the District Court’s ruling on the motion for preliminary injunction, and thereafter stayed the entire case pending the appeal. In *Otto*, Judge Rosenberg noted that the Court’s Order on the Motion for Preliminary Injunction addressed substantial threshold questions of First Amendment law that will inevitably have significant effects on the rest of the case. (Case No. 9:18-cv-80771-RLR; Doc. 145, p. 2.) The same analysis applies to the case at bar.

10. Last, there will be no prejudice to any party if the requested stay is granted pending the resolution of the appeal. As the Court represented to the parties in *Otto*, the stay of this case “will not affect the merits of any party’s claims or defenses.” (Case No. 9:18-cv-80771-RLR; Doc. 145, p. 2.)

11. Consistent with the foregoing, and in the interest of judicial economy and to avoid wasting precious litigant and taxpayer resources, and avoiding unnecessary litigation expenses at this time, it is respectfully requested that this Court grant the within Motion and stay all discovery and pretrial deadlines pending final resolution of Plaintiffs’ Motion for Preliminary Injunction, including the exhaustion of all appellate remedies in connection therewith.

Wherefore, it is respectfully requested that this Honorable Court grant the within Motion, and stay all discovery and pretrial deadlines pending the final resolution of Plaintiffs’ Motion for Preliminary Injunction including the District Judge’s acceptance, rejection, or modification of the findings and recommendations made by the Magistrate Judge (Doc. 149), and the exhaustion of

all appellate remedies in connection therewith up to and including any review that may be sought from the Supreme Court.

LOCAL RULE 3.01(g) CERTIFICATION

Counsel for Defendant City of Tampa hereby certifies that counsel conferred with counsel for Plaintiffs, who advised that Plaintiffs' position is as follows: Plaintiffs do not agree with all of the grounds asserted by the City, but agree in principle that, if there is an interlocutory appeal from this Court's forthcoming preliminary injunction ruling, this matter should be stayed in this court pending that appeal. If there is no interlocutory appeal in this case, the case should not be stayed. The City's motion is thus premature at this point. Plaintiffs request to be further heard on this issue at the March 5, 2019 hearing.

Respectfully submitted,

/s/ Robert V. Williams

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March, 2019, I caused a true and correct copy of the foregoing to be served via electronic mail on counsel for Plaintiff, Horatio G. Mihet (hmihet@lc.org), Roger Gannam (rgannam@lc.org), and Daniel J. Schmid (dscmid@lc.org).

/s/ Robert V. Williams

Attorney