

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

	)	
JANET JENKINS, et al.,	)	
	)	
Plaintiffs,	)	Docket No. 2:12-cv-00184
	)	
v.	)	
	)	
KENNETH L. MILLER, et al.,	)	
	)	
Defendants.	)	
	)	

**RESPONSE OF DEFENDANTS  
LIBERTY COUNSEL, INC. AND RENA M. LINDEVALDSEN  
IN OPPOSITION TO  
PLAINTIFF JANET JENKINS’S MOTION TO STAY  
ALL DISCOVERY SCHEDULE/ORDER DEADLINES**

Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen file this response in opposition to Plaintiff Janet Jenkins’s Motion to Stay All Discovery Schedule/Order Deadlines (Doc. 638, the “Stay Motion”).

**INTRODUCTION**

Jenkins’s Stay Motion is misleading and unnecessary. Jenkins knew when she filed the motion that Isabella desired to dismiss all claims purportedly brought on her behalf, and that Isabella objected to Jenkins’s counsel continuing to represent Jenkins in this case. Thus, Jenkins’s Stay Motion is not about giving Isabella time to make any decisions. Nor is Jenkins’s motion necessary to protect the interests of Lisa Miller, who can assert her own interests if and when she is served with process or otherwise appears in the case. Rather, in an attempt to salvage a losing effort, Jenkins feigns ambivalence about her current counsel’s conflict of interest and about proceeding with her conflicted counsel in defiance of Isabella’s unequivocal protest, and seeks to subject Defendants to expanding discovery in perpetuity by removing discovery deadlines

indefinitely. The Court should deny the Stay Motion and hold the parties to the current discovery schedule.

1. Contrary to Jenkins’s assertion, there is no interest of Isabella’s to be served by staying discovery deadlines. The Motion to Dismiss With Prejudice (Doc. 641, and affidavits attached thereto, Docs. 641-1 to 641-3) filed by Isabella Miller on February 10 (and assented to by Jenkins the same day, Doc. 642), restates Isabella’s intention to dismiss her claims and affirms her objection to Jenkins’s conflicted counsel’s continuing to represent Jenkins. Jenkins knew about these intentions since January 29, 2021 at the latest—ten days before Jenkins filed her Stay Motion. (Doc. 635-2.) Jenkins’s counsel admitted they confirmed Isabella’s intentions with her new counsel in an e-mail dated February 5, 2021, which e-mail Jenkins attached to her Stay Motion. (Doc. 638-2 at 4.) Thus, Jenkins’s statement in her Stay Motion that Isabella’s counsel “informed Jenkins’s counsel on February 6 that [Isabella’s counsel] is still discussing with Isabella her various options, and Isabella has made no decisions” (Stay Mot. 3 ¶ 4) is at best a misleading half-truth, and at worst intentionally dishonest.<sup>1</sup> And on this false premise of Isabella’s indecision, Jenkins feigns, “After more than a decade as a missing person, Isabella should not be rushed or pressured into any decisions because of the upcoming discovery deadlines,” (Stay Mot. 3 ¶ 4), and goes so far as to assert, “Isabella’s reappearance might affect expert testimony in this case and might justify the designation of additional experts.” (Stay Mot. 3 ¶ 5.) But there is nothing left for Isabella to decide. She had already decided that her purported claims should be dismissed, with prejudice. And, as there can be no doubt about Isabella’s unequivocal desire to dismiss all claims

---

<sup>1</sup> “Half the Truth is often a great Lie.” Benjamin Franklin, *Poor Richard improved: Being an Almanack and Ephemeris . . . for the Year of our Lord 1758*, <https://founders.archives.gov/documents/Franklin/01-07-02-0146> (last visited Feb. 10, 2021).

purportedly brought on her behalf, there is no plausible justification for designating “additional experts” concerning Isabella. To be sure, the experts designated by Jenkins to date proffer only speculative opinions on damages Isabella might have suffered, none of which can have any relevance after the dismissal of Isabella’s claims. Designating new experts cannot possibly resurrect any of these claims for Jenkins, and any such attempt would be against Isabella’s expressed will.

2. Although next friend claims on behalf of minors are permitted by rule, it is undisputed that Jenkins and her counsel brought and maintained claims on Isabella’s behalf without Isabella’s consent. Now that Isabella can make her own decisions as an adult (and has), Jenkins asserts that it was unethical for another attorney to consult with Isabella because of Jenkins’s counsel’s ostensible representation of Isabella.<sup>2</sup> (Stay Mot. 2–3 ¶ 3.) Such a position, regardless of its merit, surely disqualifies Jenkins’ counsel from continuing to represent Jenkins adversely to Isabella’s expressed interests under the ethics canon forbidding representation of a client adverse to a former client without the former client’s consent. *See* Vt. R. Prof. Conduct 1.9(a) (“A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same . . . matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent . . .”). (*See also* Def. Timothy D. Miller’s Mot. to Disqualify Pls.’ Counsel, Doc. 636.) Jenkins’s assertion that her counsel formerly represented Isabella in this action precludes Jenkins’s counsel’s avoidance of the

---

<sup>2</sup> Liberty Counsel and Lindevaldsen lack sufficient factual knowledge to take a position on the propriety of Mr. Heuser’s contact with Isabella and facilitation of her affidavits (Stay Mot. 2\* ¶ 3), **which Isabella has now ratified and re-affirmed** through her successor counsel (Doc. 641). It is doubtful, however, that the mere fact of Isabella’s involuntary representation by “next friend” counsel Isabella did not choose, in and of itself, ever precluded another attorney from accepting Isabella’s voluntary engagement to terminate the involuntary representation.

plain conflict of interest resulting from SPLC's continued representation of Jenkins against Isabella's expressed wishes. Thus, having known of Isabella's wishes for ten days when she filed her Stay Motion, there is no excuse for Jenkins's continuing to delay securing new counsel. Forty-eight days remain under the current discovery schedule, and Jenkins's new counsel can make a specific and targeted request for an extension of the discovery schedule if and when necessary.

3. Jenkins's other ostensible rationale for indefinitely removing discovery deadlines—protecting the interests of Defendant Lisa Miller—likewise has not merit. As is true of Jenkins's successor counsel, Lisa Miller can raise her own interests if and when she is served with process or otherwise appears in this action. To be sure, Jenkins commenced this action in 2012 when Lisa Miller's whereabouts were unknown, and Jenkins has been content to pursue Defendants in this litigation for eight years without Lisa Miller's participation. Now that the fact discovery phase of the case is nearing completion, Jenkins wants to use Lisa Miller's voluntary surrender to law enforcement as an excuse to prolong her discovery gambit against other Defendants, because her discovery efforts have failed to substantiate her claims. But, as Jenkins herself implored the Court when she *opposed* a stay of this action due to the criminal prosecution of Defendant Zodiates:

While the indictment may put Zodiates in a difficult spot, the procedural stance of the criminal case is not determinative of whether to stay a civil case, and would not support a stay as to the entire civil case. . . . For Isabella and for Jenkins, justice delayed is justice denied.

(Doc. 175 at 5.) Liberty Counsel's, Lindevaldsen's, and other Defendants' interests in justice are no less important, and "justice delayed is justice denied" applies equally to them. Jenkins's sudden

concern for Lisa Miller’s ability to participate—which likely will not occur anytime soon<sup>3</sup>—is speculative and provides insufficient justification for removing the previously negotiated discovery deadlines. Lisa Miller can make a specific and targeted request for an extension of the discovery schedule if and when necessary, if and when she appears in the case.

4. Jenkins’s claims against Liberty Counsel and Lindevaldsen have always been about narrative, regardless of the facts. And Isabella’s Motion to Dismiss (Doc. 641) makes it clear this case is, and always has been, about what Jenkins wants, not what Isabella wants—indeed, Isabella informs the Court that since 2009 she has been happy, healthy, safe, and loved, and that she unequivocally opposes Jenkins’s action. (Doc. 641-1 ¶¶ 6–20.) Now that Jenkins’s narrative has collapsed, and Jenkins has conjured no facts supporting her conspiracy claims against Liberty Counsel and Lindevaldsen through her exhaustive, intrusive, and unceasing discovery efforts to date, Jenkins wants to indefinitely remove all discovery deadlines so that she may indefinitely detain Defendants in her ruse. Jenkins has already revealed her craving for continually expanding discovery, even insisting Liberty Counsel perform new, redundant, and fruitless searches after already producing approximately 42,000 pages. (*See* Mihet Decls., Docs. 580, 608-1, 630.) Indefinite removal of discovery deadlines—the only remaining discovery boundary for Jenkins to transgress—will unfairly prejudice Liberty Counsel, Lindevaldsen, and other Defendants who have already been subjected to Jenkins’s exhaustive discovery project which has never been justified by any material revelation.

---

<sup>3</sup> Jenkins’s Motion for Extension of Time to Serve Defendant Lisa Miller (Doc. 639) is open-ended, seeking an undefined “appropriate period” of time from the Court to effect service on Lisa Miller, and highlights the obstacles Jenkins may face in having Lisa Miller served, not to mention the possibility that any criminal prosecution of Lisa Miller may significantly delay her participation in this case. (Doc. 639 at 1, 3.)

**CONCLUSION**

For all of the foregoing reasons, Jenkins's Stay Motion should be denied.

Anthony R. Duprey  
DUPREY LAW, PLLC  
11 Main Street, Suite B110F  
Vergennes, VT 05491  
802-870-6563  
anthony@dupreylaw.com

/s/ Roger K. Gannam  
Horatio G. Mihet\*  
Roger K. Gannam\*  
Daniel J. Schmid\*  
LIBERTY COUNSEL  
P.O. Box 540774  
Orlando, FL 32854  
407-875-1776  
hmihet@LC.org  
rgannam@LC.org  
dschmid@LC.org

\*Admitted pro hac vice

*Attorneys for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen*

**CERTIFICATE OF SERVICE**

I hereby certify that on this February 11, 2021, I caused a true and correct copy of the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notice system.

/s/ Roger K. Gannam  
*Attorney for Defendants Liberty Counsel, Inc.  
and Rena M. Lindevaldsen*