

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

JANE DOE, et al.,)	
)	
Plaintiffs,)	Case No: 4:23cv114
)	
v.)	Tallahassee, Florida
)	May 1, 2023
JOSEPH A. LADAPO, et al.,)	
)	1:01 PM
Defendants.)	
)	

**TRANSCRIPT OF TELEPHONIC PROCEEDING
BEFORE THE HONORABLE ROBERT L. HINKLE
UNITED STATES DISTRICT JUDGE
(Pages 1 through 20)**

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*Proceedings reported by stenotype reporter.
Transcript produced by Computer-Aided Transcription.*

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P R O C E E D I N G S

1
2 (Call to Order of the Court at 1:01 PM on Monday, May 01,
3 2023.)

4 THE COURT: Good morning -- or good afternoon, I
5 suppose. This is Judge Hinkle.

6 The main topic today is the schedule. There were a
7 couple of other things. There are motions for leave to proceed
8 under pseudonyms.

9 Tell me who is going to speak for the defense and
10 whether you have any objection to that.

11 MR. JAZIL: Your Honor, this is Mohammad Jazil. We
12 have no objection to that.

13 THE COURT: All right. I will grant that. I'm
14 generally slow to allow people to proceed under pseudonyms. I
15 think it's important for it to be a public court system and for
16 the names of the litigants to be part of the record. There is a
17 long line of important civil rights decisions in the history of
18 the federal courts, and most are known by the names of the
19 actual people involved. This case involves children and some
20 complicating issues that make it appropriate for their identity
21 to be protected, and so I'll grant the motion to proceed under
22 pseudonyms.

23 The other specific question I asked in the notice was
24 whether notice had been given to the government of this case and
25 the related Dekker case. I note that in the case now pending in

1 the Eleventh Circuit, the government has intervened and had a
2 significant part in the case. The government has not appeared
3 or sought to intervene in the Dekker case.

4 My question was have the plaintiffs given notice of
5 the case, either here or in Dekker, to the Department of
6 Justice?

7 MS. CHRISS: Yes, Your Honor. This is Simone Chriss
8 representing plaintiffs.

9 We have given notice to the United States in both this
10 case and Dekker.

11 THE COURT: All right. And then let's turn to the
12 main event for the day, and that's the schedule going forward.
13 Let me start on the plaintiff's side.

14 Ms. Chriss, or whoever else is going to speak for the
15 plaintiffs, tell me what you want the schedule to be.

16 MS. CHRISS: Yes, thank you, Your Honor. This is
17 Simone Chriss again.

18 We were able to meet and confer with counsel for
19 defendants, and we proposed that -- that based on their -- under
20 the local rules, their response to our motion for preliminary
21 injunction would be due May 9th, and we would seek leave to file
22 a reply within 72 hours, so by May 12th. And then we would
23 propose to have the oral argument as soon as possible
24 thereafter.

25 Given that all parties here -- not all parties, but

1 there are attorneys on both sides that are also part of the
2 Dekker trial, you know, that will be before you. We would be
3 willing to waive the oral argument if the Court were inclined to
4 rule on the papers, just given the timing of all of this.

5 THE COURT: All right. And, as you say, you'll be in
6 town anyway.

7 MS. CHRISS: Correct.

8 Defendants had not consented to that position or
9 necessarily agree with that position, but I'll let them speak to
10 their proposal for timing.

11 THE COURT: All right. Mr. Jazil.

12 MR. JAZIL: Thank you, Your Honor.

13 I would propose 30 days from the end of the Dekker
14 case for us to get our papers on file because there is overlap
15 between -- at least with the equal protection issues in this
16 case with the equal protection issues in the Dekker case, and
17 perhaps we'll get a decision from the Eleventh Circuit in the
18 *Eknes-Tucker* case which may guide the Court's review of the
19 matter.

20 And, secondly, Your Honor, as a practical matter I
21 would just ask for additional time so that I can put together
22 good papers for the Court to review in this case.

23 So I would propose 30 days from the end of the Dekker
24 trial.

25 MS. CHRISS: If I may, Your Honor?

1 THE COURT: Yeah. Tell me -- tell me what's going on
2 right now with the plaintiffs.

3 MS. CHRISS: Yes, Your Honor.

4 At this time we have two plaintiffs, Lisa Lowe and
5 Susan Doe, who are in imminent need of beginning blockers. And
6 as you are aware through the briefing in this case and Dekker,
7 this is a timely issue. And if they don't receive the
8 puberty-blocking medication in a timely manner, then the
9 benefits that accrue from that medication they will not receive,
10 and they will begin to develop secondary sex characteristics and
11 that will cause irreparable and immediate harm.

12 And both Susan Doe and Lisa -- or Susan Doe and
13 Gavin Doe have treating providers' affidavits or letters stating
14 the medical necessity and urgency of them receiving this
15 treatment, and they simply cannot wait until 30 days after the
16 Dekker trial. It's just simply not -- not possible here. The
17 harm that they will suffer is immediate and imminent.

18 THE COURT: Let me tell you something of how this
19 impacts my handling of the case, and then, Mr. Jazil, we can
20 talk some more about your schedule.

21 I will, of course, be focused on these issues during
22 the trial. We'll all be here, and everybody will be focused on
23 these issues. Now, I understand there are some differences, but
24 there are a lot of overlaps between Dekker and this case.

25 Here's what I usually tell people in bench trials, not

1 always, but usually. I try to get to the issues and make a
2 ruling very promptly. I'll give you an example of two recent
3 cases.

4 I've had two recent, fairly complicated commercial
5 cases, both, coincidentally, leftovers from the hurricane. One
6 the parties asked to submit post-trial briefs. They wanted, I
7 think, 30 days. I don't remember exactly. That case is still
8 under submission, and I'm working on it. It's been a
9 few months.

10 When I finish that kind of case and take 30 days off,
11 I don't spend the 30 days keeping in touch with the case and
12 going back over it. I work on other things. So after 30 days I
13 pick it back up and I go back to the testimony, and I don't
14 start all over, but there's a lot of getting back up to speed.

15 The other one of my recent trials, I ruled from the
16 bench at the end of the trial. That case is over. I think if
17 you went and asked the lawyers, the ones that asked for the
18 30 days, that case isn't any better presented. It's just gotten
19 older. They did a lot more work; I'm doing a lot more work, and
20 it's all taking longer. That benefits absolutely nobody.

21 Now, that's the case where it's just money and
22 commercial -- commercial dispute. We didn't have the issue like
23 Ms. Chriss is talking about, effects on individuals. But even
24 there in a case like those, it would have been better to do it
25 sooner. Here, with the additional issues, it's even that much

1 more important to do it sooner.

2 So we are not going to wait until 30 days after the
3 trial to file more briefs. We are just not going to do it that
4 way.

5 I am a little worried about saying a response is due
6 on the 9th. Mr. Jazil is busy. As you all know, as busy as a
7 lawyer ever gets is the week before trial starts. There's a lot
8 of work to be done. I get that.

9 MS. LEVI: Your Honor, this is Jennifer Levi --

10 (Indiscernible crosstalk.)

11 THE COURT: Wait -- wait -- just a minute.

12 Mr. Jazil, tell me -- you've been working on these
13 issues for a long time. The research is all done. What's
14 really involved in responding to the preliminary injunction
15 motion beyond the arguments you've got to make in Dekker anyway?

16 MR. JAZIL: Your Honor, two things. One, my arguments
17 may change slightly based on how you rule on some of the equal
18 protection issues in the Dekker case which overlap here. And
19 the substantive due process issues are different. I have a
20 pretty good sense of what I'm going to say on the substantive
21 due process; I just need to put pen to paper.

22 The other thing is getting a rebuttal expert report or
23 two into the record for this case, I just need to reach out to
24 the relevant experts and make sure they have availability. My
25 experts will be the same ones that you will likely hear from in

1 the Dekker case. I can get them, perhaps, to edit and amend
2 their reports. That would be easy to do, but I just haven't
3 gotten a commitment from them yet as to when and whether they
4 can do that. That's a complicating factor for me.

5 So the legal research is done, Your Honor, but I would
6 appreciate the Court's guidance on some of the equal protection
7 issues for my papers in this case, and I would like a little
8 time to work with those experts on their rebuttal reports to the
9 expert reports that have been submitted.

10 I can do my absolute best --

11 THE COURT: What --

12 MR. JAZIL: I'm sorry, Your Honor.

13 THE COURT: What due process or equal protection issue
14 exists in the new case that doesn't exist in the old case?

15 MR. JAZIL: Your Honor, I don't think there is a
16 substantive due process issue in the Dekker case. The equal
17 protection issues, I would agree, overlap almost entirely.

18 So if Your Honor says in the Dekker case that the
19 State is falling short of the mark on equal protection, that
20 makes my defense a bit easier and more complicated all at the
21 same time, and I just need to deal with that.

22 THE COURT: What do you have to do in Dekker between
23 now and next Tuesday? I mean, prepare to present and
24 cross-examine witnesses, I get. But remind me whether there is
25 anything else to be filed. The answer is probably no; isn't it?

1 MR. JAZIL: No, Your Honor, nothing left to be filed.
2 We have a hearing on the 4th where --

3 THE COURT: Right.

4 MR. JAZIL: But that's about it.

5 THE COURT: All right. Let's set the 15th as the due
6 date for your response to the preliminary injunction motion.

7 And then on the plaintiffs' side it's probably not as
8 important as you think to file a reply memorandum. You will
9 have briefed this issue and will have been in trial for four
10 days, so -- but, you know, I'll listen to it.

11 But, look, let's do this. Let's get the defense
12 response to the preliminary injunction motion in by the 15th,
13 and then we can talk about where we are. We'll all be together
14 on the 17th anyway, assuming we haven't finished the trial in
15 the four trial days the week before, and we can take stock of
16 where we are. Assuming we are all still here in that trial and
17 it hasn't finished, then probably we will spend some time
18 essentially having an oral argument on the preliminary
19 injunction.

20 We may time that after the State presents its evidence
21 in the Dekker case. I'll have heard from all the experts. And
22 defense has essentially all the same experts. I'll have heard
23 from all of them, and I'll be a lot further along than I am
24 right now, and we can have oral argument in the Doe case.

25 It would be enormously helpful if the Eleventh Circuit

1 went ahead and ruled in *Eknes-Tucker*, but, of course, I don't
2 have any more insight than any of you on when that might happen.
3 It could come any day. And this happens in these cases. You do
4 your best as it goes, and if that opinion comes out, we'll deal
5 with it.

6 I don't hear anybody saying what they want to do is
7 put any of this off, and I'm not sure I see a way that could be
8 done. I mean, if the two sides agreed that the care could go
9 forward in the meantime -- but I'm not sure the defense could
10 agree to that if they wanted to. It's a statute.

11 So I'm not sure the State is going to tell Mr. Jazil,
12 Just tell them to go ahead. So it seems to me we are probably
13 going to have to just deal with it. But if either side has
14 anything different to tell me about that, I'll be willing to
15 listen.

16 Ms. Chriss, you have any different view other than
17 just go full steam ahead and deal with *Eknes-Tucker* when it
18 comes out?

19 MS. CHRISS: No, Your Honor. That's exactly what we
20 would propose.

21 And, if I may, my colleague, Jennifer Levi, would like
22 to share a proposal that we had discussed with the defendants
23 this morning that I think would be beneficial to share with you
24 as well.

25 THE COURT: All right. Ms. Levi.

1 MS. LEVI: Thank you, Your Honor.

2 As Simone Chriss explained, the plaintiffs in this
3 case are facing very real, serious, immediate harm. I know you
4 had recognized that as a legal challenge to a ban would be
5 different than one to the Medicaid exclusion, and we have a
6 client, you know, who was turned away from an appointment
7 scheduled recently. Doctors' offices are closing down. So
8 we -- you know, the facts we think demonstrate very real,
9 serious and immediate harm.

10 We had proposed to defendants that if they would agree
11 to a preliminary injunction that we would agree to a very
12 accelerated time frame for close of discovery in this case, no
13 requirement that we would need to redepose their experts,
14 assuming they are relying on the same experts. We would make
15 any experts who would not have either presented reports or been
16 deposed already available to the defendants to depose in
17 whatever time frame they would ask for and would be prepared to
18 go to trial as, really, quickly after the close of the trial in
19 Dekker to -- as would be possible.

20 Because we understand what you are explaining in your
21 previous examples about the commercial litigation, that more
22 time is not going to be helpful. And we'd like to be able to
23 move this forward to factual findings as quickly as possible and
24 believe that by proposing what would, therefore, be a pretty
25 short period of time for preliminary injunction to be in place,

1 that it would really take advantage of potential economies of
2 scale, these two cases moving forward.

3 THE COURT: Where --

4 MS. LEVI: The harm is immediate and serious --

5 THE COURT: Where are the --

6 (Indiscernible crosstalk.)

7 THE COURT: -- plaintiffs that imminently need
8 treatment?

9 MS. CHRISS: Do you mean where geographically,
10 Your Honor?

11 THE COURT: Yes, yes. What city?

12 MS. CHRISS: Lisa Lowe is in Miami, and Nicklaus
13 Children's Hospital has stopped providing treatment because of
14 the Board of Medicine ban that we have changed here.

15 Gavin Doe is in -- I can't remember exactly where, but
16 he goes -- he was denied the ability to go to John Hopkins All
17 Children's Hospital because they also stopped seeing minor
18 transpatients because of the Board of Medicine rules.

19 And Susan Doe lives in Jacksonville and commutes to
20 the UF Health Your Gender Clinic here in Gainesville.

21 MS. LEVI: Your Honor, if I may --

22 THE COURT: Wait -- wait. Why can't --

23 MS. LEVI: The problem --

24 THE COURT: Go ahead.

25 MS. LEVI: Well, I was going to say the problem is

1 that the medical bans are creating cascading effects of doctors
2 and their institutions turning away patients. So it's not -- I
3 mean, it is correct that these individuals have been turned away
4 and have had appointments canceled. That's why we are seeking
5 the ban to be enjoined on its face, in order to ensure that they
6 can get treatment from doctors who are prohibited from providing
7 the care and the clinics that are shuttering.

8 THE COURT: What makes you think that if I enter an
9 injunction, the doctors are going to provide the care?

10 MS. LEVI: It's our view that -- it's the medical --
11 if you enjoin the medical ban, the medical board rules from
12 being enforced, then there would be no barrier to the doctors
13 providing care.

14 THE COURT: Well, let me just tell you what a lawyer
15 to one of the doctors might say, maybe not. This gets a little
16 beyond scheduling, but it affects the discussion we are having.

17 I think a lawyer for a doctor might well say, Okay,
18 we've got a district judge who has enjoined these rules.
19 There's an appellate court and there is a state that has
20 governed in more ways than one by retaliating against people who
21 opposed it. So the lawyer might tell the doctor, You can go
22 ahead, but there's no guarantee that if the Eleventh Circuit
23 takes a different view, they're not coming after your license.

24 Now, is that doctor going to provide care?

25 MS. LEVI: Your Honor --

1 MS. CHRISS: Your Honor, I think that --

2 I'm sorry. Go ahead, Jennifer.

3 MS. LEVI: Sorry to talk over you.

4 I understand that is a hypothetical possibility. On
5 the other side, I want to say that in -- the cases that have
6 challenged bans, including in Arkansas and Alabama, there have
7 been injunctions issued and medical care has been able to
8 continue and even most recently in Missouri an announcement of
9 overly restrictive rules that was challenged.

10 As you probably know, there was a TRO that was
11 granted, so we do believe that it is the bans -- that the
12 medical board bans are the immediate cause of the disruption of
13 the care and believe that with those enjoined that doctors would
14 be able to continue to provide the care.

15 THE COURT: My other question is can these patients
16 not go to Georgia or New York or somewhere else?

17 MS. LEVI: Incredible barriers for them to get to
18 out-of-state clinics at this point. And those who have reached
19 out have also heard that there are extensive wait periods,
20 potentially. It's not the case that someone from Florida can
21 just on a dime get an appointment out of state or be able to
22 make arrangements with their family to get the care out of
23 state.

24 THE COURT: Well, of course, you want -- part of the
25 medical care here is long-term treatment as opposed to just

1 treating somebody the first time you see them, so I understand
2 some of that.

3 MS. LEVI: Exactly, Your Honor.

4 And I know we are not addressing the substance, but, I
5 mean, there is a parental autonomy claim here and part of it is
6 very significantly the ability to have ongoing, appropriate
7 medical care for these parents' children. And it's not just
8 about, you know, one stop to be able to do the assessment, have
9 the ongoing monitoring and care. And there's --

10 THE COURT: All right --

11 (Indiscernible crosstalk.)

12 MS. LEVI: -- from their Florida doctors.

13 THE COURT: Mr. Jazil, we got into all that discussion
14 with my asking whether either side had any different view than
15 to keep marching in these cases and deal with *Eknes-Tucker* when
16 it comes out.

17 Do you have any different proposal?

18 MR. JAZIL: No, Your Honor.

19 I would note that the Court said that my hands are
20 tied because there is legislation. This is a rule, but
21 Your Honor, as an officer of the court, I note that there are
22 two bills in the legislature, SB 254 and HB 1421, which will
23 likely be passed this week that deal with some of the issues in
24 this case and the ones in Dekker. So I'd just note that for the
25 Court's edification.

1 THE COURT: Is the provision -- is the provision still
2 in the bill that essentially would call for the State to take
3 children away from their parents if the parents support their
4 gender-affirming care?

5 MR. JAZIL: I don't believe so, Your Honor. As
6 relevant to the Dekker case, there is a provision in the bill
7 that's making its way through that would prohibit the State from
8 providing any reimbursement for services for these treatments.
9 And then the bill -- I did a quick review this morning,
10 Your Honor -- it would essentially codify in statute what the
11 rule being challenged in the Doe case does. So I note that for
12 the Court.

13 MS. CHRISS: Your Honor, if I may provide just a
14 little additional context? This is Simone Chriss.

15 To answer your original question, the custody
16 provision does remain in SB 254, which is the version of the
17 bill that has now -- that the 1421 House Bill has been tabled,
18 and 254 is what controls now. It does maintain the custody
19 provision.

20 And also I will note that the bill has not moved since
21 the 19th and the session ends on May 5th. And so at this time
22 it's not on the schedule for -- both the Senate and the House
23 are going to need to hear it again because it has been amended
24 since they last passed it, and it's not on either of their
25 calendars.

1 So I just want to note that, you know, whether or not
2 this goes into effect is still a maybe. And then even upon
3 passing, the Governor could sign it whenever he wanted, so there
4 is no way to know how long that would take. It's effective upon
5 him signing it.

6 So, you know, I don't think we should be scheduling
7 around such nondefinitive timelines with this bill.

8 THE COURT: Well, fair enough, I suppose.

9 The parental custody provision is part of the analysis
10 on allowing the plaintiffs to proceed by pseudonyms, and there
11 it really doesn't matter whether it's actually going to be
12 adopted or not. It certainly is a basis for well-founded fear
13 and a reason to not want to disclose your identity publicly or
14 to state authorities who might try to take children away from
15 their parents.

16 I think we are where we are.

17 Mr. Jazil, file a response by the 15th.

18 MR. JAZIL: Your Honor, I have a --

19 THE COURT: I'm happy to consider evidence that's been
20 filed in Dekker by cross-reference if -- well, tell me what you
21 think of that.

22 Mr. Jazil, any reason why I shouldn't be willing to
23 look at the Dekker evidence on the preliminary injunction?

24 MR. JAZIL: Your Honor beat me to my question. I was
25 asking leave from the Court to do just that. So I see no

1 problem with that.

2 THE COURT: All right. And, Ms. Chriss, how about on
3 your side?

4 Do you have any issue with that?

5 MS. CHRISS: I don't believe so, Your Honor.

6 THE COURT: Okay. That will save everybody from
7 filing duplicate copies of things we don't need duplicate copies
8 of.

9 All right. Ms. Chriss, what else, if anything, do you
10 think we need to discuss today?

11 MS. CHRISS: I don't know that there's anything else
12 we need to discuss.

13 The plan is after they file on the 15th, we will sort
14 of just touch base around the 17th to take stock of where we are
15 and then potentially do the oral argument right after the Dekker
16 trial; is that correct?

17 THE COURT: Yes, or during the Dekker trial, whenever
18 is a convenient time to take it up depending on where things
19 are.

20 You are certainly welcome to file a reply brief if you
21 want to, but I'm not going to wait for the argument or the
22 rulings for any amount of time. So when you get this on the
23 15th, if -- depending on where you are in this trial, if you
24 want to spend the 16th and put together a reply brief, I'll
25 certainly read it.

1 MS. CHRISS: Thank you, Your Honor. We appreciate
2 that.

3 I don't think there is anything further from the
4 plaintiffs.

5 THE COURT: All right. Mr. Jazil, anything else from
6 the defense today?

7 MR. JAZIL: Nothing further, Your Honor.
8 Thank you.

9 THE COURT: Thank you, all. We are adjourned.

10 (The proceedings concluded at 1:31 PM on the 1st day of
11 May, 2023.)

12 * * * * *

13 I certify that the foregoing is a correct transcript
14 from the record of proceedings in the above-entitled matter.
15 Any redaction of personal data identifiers pursuant to the
16 Judicial Conference Policy on Privacy is noted within the
17 transcript.

18 /s/ Megan A. Hague

5/3/2023

19 Megan A. Hague, RPR, FCRR, CSR
20 Official U.S. Court Reporter

Date

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