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In Propria Persona Appellant

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Brian A. Wilkins, Appellant, vs. Maricopa County; Joseph M. Arpaio, in his individual and official capacity as Maricopa County Sheriff; Darren Dauch, in his individual and official capacity; Appellees.	9th Cir. Case No. Originating Court Case No. CV: 09-01380-PHX-LOA **EMERGENCY MOTION FOR STAY OF ORDER FROM THE DISTRICT OF ARIZONA**

Appellant hereby moves the Court to issue an emergency stay of an order issued by the U.S. District Court of Arizona on June 2, 2010 in the above referenced case (Doc # 117). Appellant moved the trial court to stay said order, but was denied on June 3, 2010 (see attached Exhibit A). No reasons for the denial were given by the trial court.

Appellant believes that the trial court erred on the following grounds: 1) by ordering the Appellant's medical providers to disclose to Appellee Maricopa

County mental health records when the medical issues being tried in this case involve only blood pressure medication and a broken bone in his hand; 2) by overstepping its duties as an impartial decision maker; and 3) not fully considering the Appellant's motion for sanctions.

BACKGROUND AND LEGAL ARGUMENT

This case arises from a 58 day period, from July 22, 2008 – September 17, 2008 that the Appellant was incarcerated in the Maricopa County Jail. At the time, the Appellant had a broken right hand and was taking daily, doctor-prescribed blood pressure medication called Benicar. While incarcerated, Maricopa County failed to provide the Appellant a splint for said broken hand and failed to provide the Appellant's doctor-prescribed blood pressure medication.

Since the case survived the Appellees' motion to dismiss, Maricopa County has relentlessly attempted to obtain the Appellant entire 35-year medical history, which is obviously beyond the scope of this case and contrary to federal law and U.S. Supreme Court precedent. See *45 CFR 164.502(b)* and *164.514(d); United States v. Comprehensive Drug Testing, Inc.,* 513 F.3d 1085 (9th Cir. 2008); *Doe v. Attorney General*, 941 F.2d 780, 795 (9th Cir. 1991) (quoting *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977)).

On April 14, 2010, Appellee Maricopa County filed a motion to compel the Appellant to sign authorizations for disclosure of all of his medical records, even

though the Appellant had already authorized disclosure of pertinent records for this case. Appellant responded and also filed a motion for sanctions against the Appellees on April 20, 2010. The trial court, on May 5, 2010, ordered that Maricopa County's motion did not comply with local rules, and that it must file a supplemental brief which provides legal authority which they relied upon to request medical records beyond the scope of the case, or the motion would be summarily denied. Though Maricopa County filed said supplemental brief, it contained no legal authority that gave the Appellees the legal right to the Appellant's medical records beyond the scope of the case. Though the trial court acknowledges in the June 2, 2010 order that Maricopa County failed to provide any legally binding authority which gave them the right to further medical records, it still partially granted Maricopa County access to non-pertinent mental health records.

Earlier in the case, the pro-se Appellant attempted to discover documents from the Appellees, but did so without knowing he could not before the Rule 16 conference, pursuant to rules of civil procedure. In its January 26, 2010 order denying the Appellant's motion for discovery, the trial court basically scolded the Appellant because:

> "the Court expressly advises him that the United States Supreme Court has made clear that federal "judges have no obligation to act as counsel or

> paralegal to *pro se* litigants" because requiring trial judges to explain the details of federal procedure or act as the *pro se's* counsel "would undermine [federal] judges' role as impartial decision makers." *Pliler v. Ford*, 542 U.S. 225, 226-227 (2004). A *pro se* litigant "does not have a constitutional right to receive personal instruction from the trial judge on courtroom procedure" and that "the Constitution [does not] require judges to take over chores for a *pro se* [litigant] that would normally be attended to by trained counsel as a matter of course." *Id*. (citing *Martinez v. Court of Appeal of Cal., Fourth Appellate Dist*., 528 U.S. 152, 162 (2000)).

See Doc. #46. It would only be reasonable to assume that these rules also apply to parties who are in fact represented by counsel. The court reasoned, in its June 2, 2010 order that, "The patient-physician privilege does not exist at federal common law and the Ninth Circuit has not recognized a physician-patient privilege . . . ." *Soto v. City of Concord*, 162 F.R.D. 603, 618 (N.D.Cal. 1995). This reasoning is non-binding, as the case which the trial court cited was decided before the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 104-191, 110 Stat.1936 (1996). Further, the trial court made several preemptive assumptions as to Appellee Maricopa County's reasoning for wanting medical records beyond the scope of this case, which obviously "undermine[s the] [federal] judges' role as impartial decision maker. See *Pliler*, supra. Again, the trial ordered Appellee Maricopa County to provide its own legal reasoning to compel the Appellant to disclose medical records beyond the scope of this case. Instead, the trial court provided said authority for the Appellee. However, again, Appellant

believes the authority which the trial court relies on was rendered non-binding after the HIPAA of 1996.

It also needs to be noted that the Appellant brought four reasons to the trial court why Maricopa County should be sanctioned for its conduct (Doc. #101). The trial court, however, only ruled on one of these reasons, and completely discounted the others. "When one party seeks sanctions against another, the Court must determine whether any provisions of Rule 11 have been violated. *Fed. R. Civ. P. 11(b)(1) and (b)(2); Warren v. Guelker,* 29 F.3d 1386, 1388, 1389 (9th Cir. 1994). The trial court ruled that Maricopa County's motion to compel was not legally frivolous and thus summarily denied the other grounds for sanctions brought by the Plaintiff.

CONCLUSION

The Appellant requests expedited review of this motion, as the trial court has ordered open access to the Appellant medical records, contrary to federal law. Further, Appellant requests this Court stay the trial court's June 2, 2010 order, and further stay all proceedings in this case, pending the appeal of said order.

Respectfully submitted on this 4th day of June, 2010.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on June 4, 2010, I faxed the foregoing document and exhibit to the Clerk's Office for the Ninth Circuit Court of Appeals at 415-355-8561, and electronically served the attorneys for Appellees, at the following addresses:

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Brian A. Wilkins

CERTIFICATE OF COMPLIANCE

I hereby certify that the Motion for Emergency Stay complies with the provisions for filing motions in the appellate courts, pursuant to Fed. R. App. P. 27.

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Brian A. Wilkins