

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-80069-CIV-MARRA/JOHNSON

JANE DOE NO. 1, by and through
JANE DOE's FATHER as parent and natural
guardian, and JANE DOE's FATHER, and
JANE DOE's STEPMOTHER, individually,

Plaintiffs,

vs.

JEFFREY EPSTEIN,

Defendant.

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION
TO MOTION TO STAY PROCEEDINGS PENDING
JANE DOE NO. 1 REACHING AGE OF MAJORITY**

Plaintiffs, Jane Doe No. 1, by and through Jane Doe's Father as parent and natural guardian, and Jane Doe's Father and Jane Doe's Stepmother, individually, submit this Memorandum of Law in Opposition to Motion to Stay Proceedings Pending Jane Doe No. 1 Reaching Age of Majority, as follows:

I. Introduction

This action alleges the sexual assault of Plaintiff Jane Doe No. 1 ("Jane Doe") by the Defendant when she was 14 years old. The Motion to Stay Proceedings filed by Jane Doe's Mother is without basis and should be stricken or denied for the following reasons:

1. It fails to include or be accompanied by a memorandum of law, in violation of ██████████ 7.1(A)(1). This failure is particularly glaring here, as there is no obvious or apparent legal basis for the stay sought by Jane Doe's Mother, and in preparing this Memorandum of Law in Opposition, Plaintiff is left to guess at the authorities relied upon by Jane Doe's Mother.

2. The Motion to Stay was not served on all parties as shown on the Motion's Certificate of Service. Only Plaintiff's counsel was served with the Motion. As a result, notice of the relief sought by Jane Doe's Mother is fatally defective.

3. Jane Doe's Father, by Court Order, was awarded full custody of the Minor Plaintiff, and is thus her sole natural guardian. Jane Doe's Mother is not Jane Doe's natural guardian under Florida law, and thus has no standing to seek a stay of this action on behalf of Jane Doe.

4. A stay would serve no constructive purpose or function in this litigation, but would only unnecessarily delay this case.

Based on any or all of the foregoing grounds, as further discussed below, the Motion to Stay should be denied.

II. Argument

THE MOTION TO STAY IS PROCEDURALLY AND SUBSTANTIVELY DEFECTIVE

A. The Motion to Stay Violates the Local Rules and Was Served Without Sufficient Notice

Under [REDACTED] 7.1(A)(1), "[e]very motion when filed shall include or be accompanied by a memorandum of law citing supporting authorities. . . ."¹ No such memorandum of law was filed with the Motion to Stay. Plaintiff is prejudiced by this omission because he has had no notice of what authorities Jane Doe's Mother relies upon for the relief sought in her Motion. As a result, the Motion to Stay is defective and should be stricken.

The Motion to Stay also raises due process concerns because it was not served on all parties according to the Certificate of Service accompanying the Motion. The Defendant has not yet filed an appearance in the case, and his response to the Complaint is not yet due. The Motion to Stay is

¹The stated exceptions to Rule 7.1(A)(1) are inapplicable here.

therefore premature and defective for lack of notice.

B. Jane Doe's Mother is Not Jane Doe's Natural Guardian, and Therefore Has No Standing to Seek a Stay on Her Behalf

The Motion to Stay and supporting Affidavit of Jane Doe's Mother contain the following false and misleading statements:

- a. "Jane Doe No. 1 is a minor child . . . *who is under the joint control of her parents and natural guardians, Jane Doe's Father and Jane Doe's Mother*, who are divorced." (Motion to Stay Proceedings, ¶ 1) (emphasis supplied).
- b. "I am the mother *and natural guardian* for Jane Doe No. 1. . . ." (Affidavit of [REDACTED], Exh. "A" to Motion to Stay, ¶ 1) (emphasis supplied).

Jane Doe's Mother does not have "joint control" or legal custody of Jane Doe, and is not her natural guardian under Florida law. Jane Doe's Mother and Jane Doe's Father entered into a Custodial Parent Modification dated March 28, 2006. This Modification was granted by Court Order dated April 25, 2006. (A copy of the Custodial Parent Modification and the Order Granting Custodial Parent Modification are attached hereto as Composite Exhibit "A").² The Custodial Parent Modification states as follows: "**Full Parental Custody of both minor children shall be granted to former husband [Jane Does' Father].**" (Custodial Parent Modification, ¶ 3) (emphasis supplied).

Under Florida statutory law, in the case of a dissolved marriage, only the parent awarded custody can be the natural guardian of the minor child: "If the marriage between the parents is dissolved, *the natural guardianship belongs to the parent to whom custody of the child is awarded.*" §744.301(1), Fla. Stat. (emphasis supplied). It is therefore abundantly clear that Jane

² The names of Jane Doe and Jane Doe's Father are redacted from Exhibit "A" hereto to protect the Minor Plaintiff's anonymity. (See Complaint ¶ 4).

Doe's Father, as the custodial parent, is *the* natural guardian, and *the only* natural guardian, of Jane Doe. As the natural guardian, Jane Doe's Father may sue on behalf of Jane Doe. See Fed.R.Civ.P. 17(b) (providing that capacity to sue or be sued shall be determined by the law of the state in which the district court is held). Because Jane Doe's Father, as her natural guardian, represents her interests in this lawsuit, there is no legal basis for Jane Doe's Mother to assert the right to represent Jane Doe. Jane Doe's Mother lacks standing to seek a stay or other relief from this Court on behalf of Jane Doe.

C. There Is No Legal Basis for a Stay

A stay of proceedings may be appropriate in a situation where it will avoid piecemeal litigation, conserve judicial resources, aid in the comprehensive disposition of the litigation, or serve as a means of controlling the district court's docket. See American Manufacturers Mutual Ins. Co. v. Edward Stone Jr. & Assoc., 743 F.2d 1519 (11th Cir. 1984). For example, a stay may be considered in a case where there is another pending lawsuit or administrative proceeding addressing the identical issues. See Ortega Trujillo v. Converg & Co. Communications, Inc., 225 F.3d 1262 (11th Cir. 2000). Even then, a case in federal court should not be stayed absent "exceptional circumstances." American Manufacturers, 743 F.2d at 1524-1525. Here, the only conceivable purpose that would be served by a stay is delay, which would be to Jane Doe's prejudice. A stay would not be in the interests of judicial economy and efficiency, and would not aid in a resolution of this litigation. Because there is no legitimate argument for a stay in this case, the Motion should be denied.

III. Conclusion

Based on the foregoing, the Motion to Stay is defective, deficient and meritless. Denial of the Motion is appropriate on multiple, alternative grounds. Plaintiffs therefore respectfully request that the Motion to Stay be denied.

Dated: February 13, 2008

Respectfully submitted,

By: s/ Jeffrey M. Herman
Jeffrey M. Herman (FL Bar No. 521647)
[Redacted]
Stuart S. Mermelstein (FL Bar No. 947245)
[Redacted]
Adam [Redacted] Horowitz (FL Bar No. 376980)
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HERMAN & MERMELSTEIN, P.A.
Attorneys for Plaintiffs Jane Doe et al.
18205 Biscayne Blvd., Suite 2218
Miami, Florida 33160
Tel: [Redacted]
Fax: [Redacted]

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on the following, via transmission of Notices of Electronic Filing generated by CM/ECF:

Theodore Jon Leopold
[Redacted]

[Redacted]

IN THE CIRCUIT COURT
OF THE FIFTEENTH JUDICIAL
COURT IN AND FOR PALM
BEACH COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. [REDACTED]

2006 APR 20 PM 1:18

IN RE: THE FORMER MARRIAGE OF

[REDACTED]

Petitioner/Former Wife,

vs.

[REDACTED]

Respondent/Former Husband

_____ /

CUSTODIAL PARENT MODIFICATION

THIS AGREEMENT is made in Palm Beach County, Florida between [REDACTED]

[REDACTED] hereinafter referred to as the "Former Wife" and [REDACTED]

[REDACTED] hereinafter referred to as "Former Husband".

In consideration of the mutual undertakings herein contained, the parties agree as follows:

1. STATUS OF PARTIES:

The parties were divorced on June 18, 1991.

The custodial parent circumstances of the parties have changed, they desire to adjust their responsibilities for custodial parent of their minor children.

[Handwritten signature]
[REDACTED]
332



[Handwritten signature]
[REDACTED]

██████████ and ██████████
Case No. ██████████

2. PURPOSE OF AGREEMENT AND CONSIDERATION:

The purpose of this Agreement is to effect a complete settlement, with reference to the parties's obligations with respect to the visitation and parental responsibility of the two minor children, ██████████ and ██████████

3. CUSTODY OF MINOR CHILDREN:

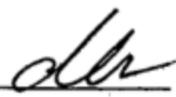
Full Parental Custody of both minor children shall be granted to Former Husband. Both minor children shall reside with Former Husband in Florida.

4. VISITATION:

Former Wife shall be entitled to open communication between herself and minor children. Former Wife shall receive visitation as often as children desire but shall be at minimum once a year. All plane fare for said visitation shall be at the expense of Former Wife except in such case Former Husband shall for any reason need children to commute to Former Wife in Georgia for personal, emergency, or necessary reasons then Former Husband shall pay for said plane fare.

5. FINANCIAL RESPONSIBILITY:

Former Husband shall hold complete financial responsibility for both minor children including but not limited to all medical, dental, vision, etc. care and or insurance. Former Husband shall be granted both Florida Prepaid College Programs for both minor children and be responsible for college tuition, etc. payments. Former Husband shall claim both minor children on his personal income taxes beginning 2006 tax year.

██████████ 

██████████ 

[REDACTED] and [REDACTED]
Case No. [REDACTED]

6. AGREEMENT BINDING:

This Agreement and all the obligations and covenants hereunder shall bind the parties hereto, their heirs, executors, administrators, legal representatives and assigns.

7. REPRESENTATIONS:

The parties represent to each other that:

A. The parties fully understand the facts as to their legal rights and obligations. Each is signing the Agreement freely and voluntarily, intending to be bound by it.

B. The laws of Florida shall govern the validity, construction, interpretation and effect of this Agreement.

C. Neither party is represented by legal counsel.

8. PARAGRAPH HEADINGS:

Paragraph headings are provided for convenience in locating paragraphs and are not intended to add or detract anything from language of the paragraphs.

[REDACTED] 

[REDACTED] 

Case No. [redacted] and [redacted]

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this 28th day of ~~April~~ ^{March}, 2006, personally appeared [redacted] who is personally known to me or has provided a valid Georgia Driver's License , and who after being duly sworn, deposes and says that she is Former Wife in the above and foregoing Agreement; that she has read the foregoing Agreement and that she has executed the same freely and voluntarily for the purposes therein expressed.



Tammy S Parker

Notary Public
My Commission Expires:

BEFORE ME, the undersigned authority, this 28th day of ~~April~~ ^{March}, 2006, personally appeared [redacted] who is personally known to me or has provided a valid Florida Driver's License , and who after being duly sworn, deposes and says that he is Former husband in the above and foregoing Agreement; that he has read the foregoing Agreement and that he has executed the same freely and voluntarily for the purposes therein expressed.

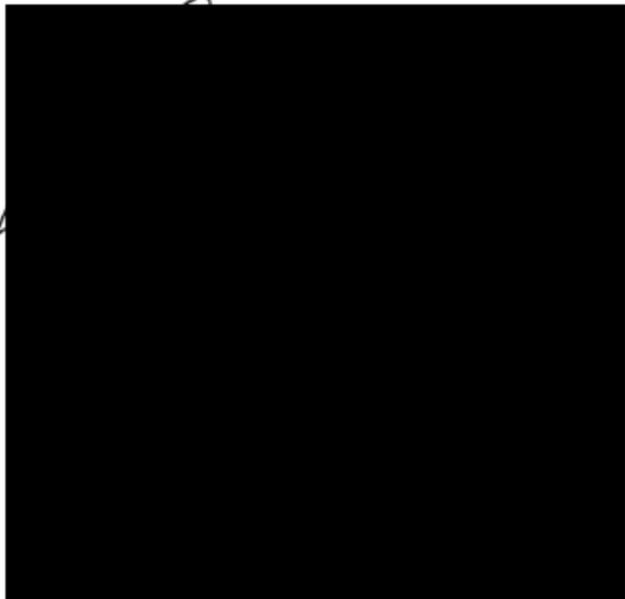
Yvette Sosa

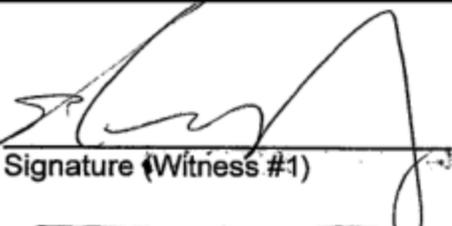
Notary Public
My Commission Expires: 5.4.07

YVETTE SOSA
NOTARY PUBLIC
COMMISSION NO. DD209030

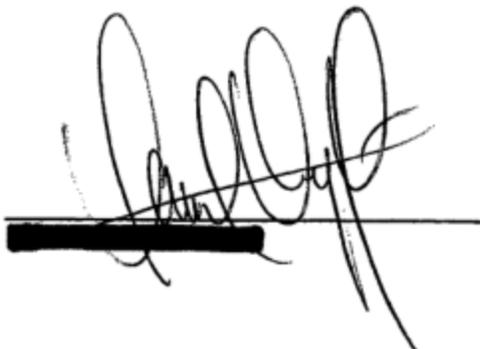
LAVOGUE-SANDBERG and [REDACTED]
Case No. [REDACTED]

IN WITNESS WHEREOF, the parties hereto have signed and acknowledged this Agreement in the presence of the witnesses signing below on this 28 day of ~~April~~ MARCH April, 2006.




Signature (Witness #1)

[REDACTED]
(Print) (Witness #1)


[REDACTED]

[REDACTED]

(Print) (Witness #2)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: THE FORMER MARRIAGE OF

[REDACTED]

Petitioner/Former Wife,

and

[REDACTED]

Respondent/Former Husband

FAMILY DIVISION
CASE NO. [REDACTED]

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ORDER GRANTING CUSTODIAL PARENT MODIFICATION

COMES NOW before the court the CUTODIAL PARENT MODIFICATION and the court having been advised that the parties are in agreement, it is:

ORDERED and ADJUDGED that said Custodial Parent Modification be GRANTED.

DONE AND ORDERED in chambers this 25th day of April, 2006.



CIRCUIT COURT JUDGE

WILLIAM J. BERGER

cc:

[REDACTED]

[REDACTED]

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MLP