

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

Appellate Case No.: 4D18-0762
LT Case No: 502009CA040800XXXXMB AG

JEFFREY EPSTEIN,

Petitioner/Plaintiff,

v.

SCOTT ROTHSTEIN, individually, and
BRADLEY J. EDWARDS, individually,

Respondents/Defendants.

**PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT
BRADLEY J. EDWARDS' MOTION FOR PARTIAL RELIEF FROM STAY**

Petitioner, Jeffrey Epstein (“Epstein”), pursuant to Florida Rule of Appellate Procedure 9.300, responds in opposition to the Motion for Partial Relief from Stay filed by Respondent, Bradley J. Edwards (“Edwards”)¹, on March 12, 2018, and states:

Introduction and Overview of Arguments

Edwards seeks to impose piecemeal constraints on the reasonable and temporary appellate protection conferred by this Court while it undertakes its important work in evaluating both the Petition for a Writ of Mandamus and related

¹ Epstein will be responding separately to the “Joinder by Victims in Edwards’ Motion for Partial Relief from Stay with Request for Expedited Consideration” filed on March 13, 2018, at 5:01 p.m.

Petition for a Writ of Certiorari (Case No. 4D18-0787) filed by Epstein. Edwards provides no legal authority and cites to nothing in the factual record that would justify his extraordinary request. To the contrary, with the assistance of Epstein's counsel, the interests that Edwards claims he seeks to protect have already been amply safeguarded.

Edwards argues that it is necessary for this Court to modify its stay because there were additional unresolved pre-trial matters upon which rulings from the trial court are required. (Mot. p. 3). However, Edwards fails to identify a single motion that if it is not heard until this Court finishes its work will result in prejudice.

Edwards additionally urges this Court to modify its stay because "there may be a need for Edwards or the Intervenors² . . . to seek further relief in the trial court to protect their confidential information." (Mot. p. 4). This argument lacks merit because the exhibits are temporarily sealed by agreed court order.

First, due to Epstein's proactive handling and stipulations, the exhibits forming the basis for Edwards' request are fully protected during this Court's stay. As evidenced by the documents included in Epstein's Appendix to this Response, even before the March 8, 2018, hearing Epstein's counsel filed a notice of "no

² Paul Cassell never submitted an order to the trial court on his unopposed pro hac vice motion and the agreed motion to intervene for limited purposes of temporary sealing the exhibits.

objection” to a temporary sealing (**App. A**), again verbally stipulated at the March 8, 2018, hearing (**App. D-1, 4:19-5:1; App. D-2, 62:20-63:2**), and then fully cooperated by helping draft an “Agreed Order” over the weekend to be entered Monday morning directing the circuit court clerk to seal the two docket entries at issue *nunc pro tunc* (**App. E**). Without being required to do so, Epstein’s counsel served a Notice of Service of Court’s March 8, 2018 Hearing Transcripts and Compliance with Court’s Rulings, reflecting the temporary protection of the documents. (**App. D**.) Based on the above record evidence and stipulations, the partial and expedited relief from stay Edwards seeks is wholly unwarranted and moot.

Second, the alleged eight-year-old “confidential” information to which Edwards refers is 47³ exhibits comprised of a series of communications between Edwards and other attorneys that fatally undermine critical allegations in Edwards’ case against Epstein. None of the 47 exhibits were identified on Edwards’ deficient privilege log as communications between attorney and client and, facially, they all demonstrate obvious defects in Edwards’ claims of work product. Edwards inaccurately represents to this Court that the trial court determined that

³ Edwards identified 49 emails he alleged were privileged from Epstein’s Clerk’s Trial Exhibit List, however, two of those emails were pages within another exhibit and the total number of alleged privileged exhibits is 47.

Epstein's possession of those communications was unauthorized and asserts as a matter of fact that those communications were attorney-client privileged or work product protected. However, the trial court never made any of these determinations. Rather, the trial court refused to evaluate these issues, choosing instead to exclude the communications on the basis of what the Court believed was Epstein's untimely request to identify them on his Exhibit List.

Edwards has provided not a single reason why this Court should expedite its careful review and enforce the mandate of Florida Rule of Civil Procedure 1.440 (Petition for Writ of Mandamus) and determine if the severance of the interrelated and dependent actions should continue to one jury trial - as stipulated by the parties in their Joint Pretrial Stipulation (Petition for Writ of Certiorari). Epstein, therefore, opposes any modification of this Court's stay or relinquishment – even partial – from the appellate protection afforded by it.

Epstein looks forward to remand, but in due course so that the now *sealed* 47 exhibits (that total less than 100 pages) identified by Edwards on a privilege log in February 2011⁴, some of which are communications between Edwards and

⁴In a May 7, 2012, Order a predecessor trial judge, the Honorable David Crow, found the privilege log to be insufficient on its face and not in compliance with the requirements of Fla. R. Civ. P. 1.280(v)(5) and *Tigg Ins. Corp. v. Johnson*, 799 So. 2d 339 (Fla. 4th DCA 2001). Although that Order was vacated without prejudice on August 17, 2012, the trial court still required a proper privilege log as referenced in

convicted Ponzi schemer Scott Rothstein (just days before he fled to Morocco), and communications between Edwards and Paul Cassell, can be appropriately and thoughtfully reviewed *in camera* by the trial court. This necessary procedure will occur after Epstein presents a specific request for a review and analysis of whether work product protection was ever applicable and, if it was, whether it was waived by sharing with third parties, by issue injection or an attorney's misapplication of this protection. *Parrott v. Wilson*, 707 F.2d 1262, 1271 (11th Cir. 1983) (“in some circumstances, a lawyer's unprofessional conduct may vitiate the work product privilege.”). This Court should deny Edwards’ request for partial relief from stay.

No Partial Relief from Stay is Warranted

Edwards makes the inaccurate representation that the trial court “determined that Epstein’s possession of those documents was unauthorized.” (Mot. p. 3). This “determination” never happened. In addition, the “determination” that the 47 exhibits are attorney-client privileged or work product has never happened either. In 2011, Edwards raised relevancy objections, work product and attorney-client privilege. Edwards seems to have abandoned his relevancy objection and is now focused solely on work product and attorney-client privilege. None of Edwards’ objections were ever ruled on by the trial court below. Edwards’ objections are

the May 7, 2012, Order, but a new privilege log has never been filed.

defied by the documents themselves. In addition, the privilege log identifies documents as to from/to attorneys, not clients. At this time, a factual issue still exists as to whether the privilege log is legally sufficient and whether the documents were ever protected, and if so, if that protection has been waived. Finally, Edwards mischaracterizes the trial court’s ruling of sealing the docket entries as “remedy[ing] that misconduct” because no such finding was ever made nor could it be made. In fact, the trial court specifically found that Epstein’s counsel did not engage in misconduct when it brought those 47 exhibits to the trial court’s attention: “So I again want to make clear that I’m finding absolutely no fault with Mr. Link, Miss Rockenbach, Miss Campbell or anyone else from the Link and Rockenbach firm in terms of what they did. . .” (**App. D-2, 61:15-18.**)

Indisputably, it was Epstein who – even before the hearing – agreed to seal the documents by filing a Notice of No Objection to Edwards Moving to Seal Court Records Until the Court Makes a Determination of How the Documents Shall be Treated. (**App. A.**) At the hearing, Epstein’s counsel again verbally stipulated to sealing the two docket entries at issue. (**App. D-1, 4:19-5:1; App. D-2, 62:20-63:2**). Moreover, it was Epstein’s counsel, without being required to do so, who served a Notice of Service of Court’s March 8, 2018 Hearing Transcripts and *Compliance* with Court’s Rulings. (**App. D.**) Finally, because Edwards failed

to bring a proposed written Order to the trial judge at the March 8, 2018, hearing, in order for the clerk to seal the two docket entries before this Court granted the emergency stay of proceedings, it was Epstein's counsel who worked with opposing counsel over the weekend and appeared at 8:30 a.m. before Judge Hafele in order to enter an Agreed Order *nunc pro tunc* so the clerk could seal the records temporarily. (**App. E.**)

To be clear, Epstein wants a full *in camera* review of the "materials" and hearing before the trial court to present law on the trial court's duty to perform the review and analyze whether any privilege or protection existed in the first place or was waived. Epstein and his counsel will wait until this Court renders its determination of the "at issue" appeal and the "bifurcation" appeal to seek the revelation and shine the public light on the *truth* located in the now sealed 47 exhibits. Until that time, the trial court's oral ruling – pursuant to Epstein's stipulation - regarding sealing has been honored by Epstein and his counsel and no "partial relief from stay" is warranted.

No Expedited Consideration is Necessary

As the only basis for this unusual request, Edwards presents this Court with a vague reference to "new information on that subject is being obtained daily, and there are some current disagreements" requiring relief from the trial court. (Mot. p.

2). Edwards has not specified any “disagreement” that cannot wait until this case is back before the trial court. Obviously, this Court’s determination of whether it will let stand the legal gymnastics to sever the case at the eleventh hour to avoid the mandates of Rule 1.440 is necessary before any additional pre-trial rulings can be made. Edwards also wrongly represents in his appellate filing that the “materials” were “improperly obtained by Epstein’s counsel.” (Mot. p. 1). No such judicial determination has been made. Edwards’ singular and almost desperate focus on how the documents were obtained seems calculated to divert attention from the material facts contained in them and the truth that the evidence entirely eviscerate Edwards’ malicious prosecution claim against Epstein. In fact, the trial court recognized after getting a “flavor” for some of the documents– “...they are detrimental to the position taken by Mr. Edwards and that they are helpful to the position taken by Mr. Epstein.” (**App. D-2, 51:23-52:5**). Upon remand, the trial court will be expressly asked to perform its obligation to review the 47 exhibits *in camera*.

Edwards’ false accusation of improper behavior against Link & Rockenbach, PA, resulted in undersigned counsel immediately and clearly setting out in two affidavits (1) the chain of custody which irrefutably establish that Link & Rockenbach, PA properly obtained the “materials” from Fowler White,

Epstein's prior counsel (**App. C**) and (2) an opinion by ethics expert, Tim Chinaris, who had authored thousands of ethics opinions for over a decade for the Florida Bar as Ethics Director, that Mr. Link and Ms. Rockenbach "acted in an ethically proper manner in this case regarding the documents in question" and "acted in an ethically proper manner by bringing the documents in question to the court's attention." (**App. B, ¶¶ 29, 31.**)

Importantly, it was *Epstein* who acted with alacrity once Edwards raised a potential "privilege" as to the eight-year-old documents. Epstein served a "Notice of No Objection" to "Seal Court Records" until the trial judge had an opportunity to determine if, in fact, *any* attorney-client privilege or work product protection existed as to the 47 exhibits. It was *Epstein* and his undersigned counsel who, at the outset, redacted the names of Edwards' three clients in the court filing despite Edwards' naming them on his witness list and filing a deposition transcript of one of them without protection of their anonymity. It was *Epstein* and his undersigned counsel who expressly stipulated "no objection" at the March 8, 2018, hearing to allowing the clerk to temporarily seal the two docket entries at issue. (**App. D-1, 4:19-5:1; App. D-2, 62:20-63:2**). Finally, because there was no written order and the hearing contained multiple aspects, it was *Epstein* and his undersigned counsel who, though no court ruling required it, served a Notice of Service of the March 8,

2018 Hearing Transcript and *Compliance* with Court's Rulings. (**App. D**).

Edwards' claim of urgency rings hollow. Notwithstanding, it is *Epstein* and his undersigned counsel who serve this response in far less than the ten days allowed by appellate rules. Epstein and his counsel want this Court to grant the necessary writs of certiorari and mandamus, order the trial court to follow the mandatory compliance with Rule 1.440, and proceed with one jury trial for Epstein's action and Edwards' counterclaim. Epstein looks forward to the *in camera* review he will seek from the trial court of the 47 exhibits under temporary seal. A party's legal right to shine the light on the truth and obtain justice should always outweigh the urgency to finish a pending case.

Conclusion

Edwards has not presented a legitimate reason to modify this Court's stay and relinquish partial jurisdiction while this Court considers the significant and case-changing legal issues.

WHEREFORE, Petitioner, Jeffrey Epstein, respectfully requests that Respondent's Motion be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this request was furnished **via email** this 14th day of March, 2018:

<p><u>VIA U.S. MAIL</u> The Honorable Donald W. Hafele Palm Beach County Courthouse 205 N. Dixie Highway, Room 10.1216 West Palm Beach, FL 33401</p>	<p>Paul G. Cassell S.J. Quinney College of Law at the University of Utah 383 S. University St. Salt Lake City, UT 84112 cassellp@law.utah.edu <i>Co-Counsel for Intervenors E.W., [REDACTED] and Jane Doe</i></p>
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