

NOV 28 2007

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Leonard Green
Clerk

~~DEPT. OF JUSTICE~~
www.ca6.uscourts.gov

Filed: November 26, 2007

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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LEONARD GREEN, Clerk

JOHN B., et al.,)
)
Plaintiffs-Appellees,)
)
v.)
)
M. D. GOETZ, JR., Commissioner, Tennessee)
Department of Finance and Administration;)
DARIN GORDON, Assistant Commissioner,)
Bureau of TennCare; VIOLA P. MILLER,)
Commissioner, Tennessee Department of)
Children's Services,)
)
Defendants-Appellants.)

ORDER

Before: DAUGHTREY, GILMAN, and COOK, Circuit Judges.

Before the court is the defendants' emergency motion for a stay pending appeal and/or a petition for a writ of mandamus. The plaintiffs respond in opposition. The defendants have replied in support of their request.

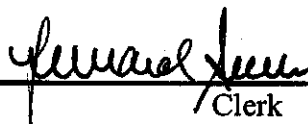
The defendants appeal two orders entered by the district court. The first directs the plaintiffs' computer expert and the court-appointed monitor to inspect the state's computer system and the computers of 50 key custodians to ascertain whether any production of information has been impaired or compromised. The second order denies reconsideration of the first and directs that the prior order be executed forthwith. As a result of these orders and meetings between the parties and the court monitor, a process of forensic copying of computer hard drives is ready to commence.

The plaintiffs raise questions with respect to this court's jurisdiction. While an order granting or denying discovery generally is not immediately appealable, the nature of this order is extraordinary. Further, the defendants invoke this court's authority in mandamus. *See In re Lott*, 424 F.3d 446, 449 (6th Cir. 2005); *Chesher v. Allen*, 122 Fed. Appx. 184 (6th Cir. 2005); *In re Perrigo Co.*, 128 F.3d 430 (6th Cir. 1997).

The filings and record in this case are voluminous, and the issues presented are complex. Accordingly, a brief stay shall issue to permit a reasoned consideration of the matter. Further, the request for relief in mandamus requires that we afford any respondents an opportunity for a response. Fed. R. App. P. 21(b). Although the plaintiffs have filed a response, they did so in expedited fashion. Further, the request for mandamus relief has also been directed to the district court.

Therefore, the district court's orders are **STAYED** pending further order of the court. This stay shall be of limited duration. The district court may respond, should it so chose, but it is not required to do so. The plaintiffs may supplement their response, not to exceed 15 pages, to address in particular the request for relief in mandamus. Any response should be filed by Tuesday, December 4. The designated panel of this court intends to further consider this matter at its previously scheduled motions panel conference on Thursday, December 6.

ENTERED BY ORDER OF THE COURT


Clerk

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425 Fifth Avenue, N.
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Nashville, TN 37202-0207

Re: No. 07-6373, *John B., et al v. M. Goetz, Jr., et al*
Originating Case No. 98-00168

Dear Counsel,

The Court issued the enclosed (Order/Opinion) today in this appeal.

Sincerely yours,

s/Diane Schnur
Case Manager
Direct Dial No. 513-564-7037
Fax No. 513-564-7094
CA06-Team3@ca6.uscourts.gov

cc: Honorable William J. Haynes Jr.
Mr. Keith Throckmorton

Enclosure

UNITED STATES COURT OF APPEALS
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LEONARD GREEN, Clerk

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M. D. GOETZ, JR., Commissioner, Tennessee)
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Bureau of TennCare; VIOLA P. MILLER,)
Commissioner, Tennessee Department of)
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