

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed December 2, 2020.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D20-580  
Lower Tribunal No. 17-16674

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**Arlene Delgado,**  
Petitioner,

vs.

**Jason Miller,**  
Respondent.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Ivonne Cuesta, Judge.

Egoavil Klug Salas & Veloso PLLC, and Laline Concepcion-Veloso, for petitioner.

Sandy T. Fox, P.A., and Sandy T. Fox, for respondent.

Before EMAS, C.J., and FERNANDEZ and HENDON, JJ.

EMAS, C.J.

## **INTRODUCTION**

Petitioner Arlene Delgado (the Mother) and Respondent Jason Miller (the Father) are the parents of W.L.D., born in July of 2017. What began as a paternity action and progressed to remaining issues of timesharing and child support, has devolved into escalating rounds of pugilistic litigation. Given the antagonism displayed over the course of the proceedings below, we can only be sympathetic to the sincere efforts of the trial court and general magistrate to reduce the level of discord. There are, however, limits to the exercise of the trial court's broad discretion.

## **BACKGROUND**

The Mother has filed a petition for writ of certiorari, challenging a portion of the trial court's February 27, 2020 order which adopted *in toto* a recommended order of the general magistrate. Specifically, the Mother contends that paragraphs 13-15 of the general magistrate's recommended order constitute a prior restraint, violating her free speech rights without adequate findings and accompanying safeguards. We agree.

The order at issue arose in the context of the Mother's motion to compel production of certain documentation from the Father in advance of a scheduled final hearing. Although the recommended order (and the trial court's order adopting same) essentially granted the Mother the relief she requested, the general magistrate

included three paragraphs at the end of the recommended order which are the subject of this petition:

13. Neither party shall disclose or reveal to any 3rd party, directly or indirectly, through any social media or otherwise, the details of any financial information, including but not limited to income or employment information, of any nature, of the other party.

14. Neither party shall contact, directly or indirectly, the other party's existing clients and/or employers and/or contractors or potential clients and/or employers and/or contractors, other than through the legitimate discovery process provided by the Rules of Civil and Family Procedure.

15. Neither party shall engage in any social media of any nature which comments, directly or indirectly, on the other party's emotional or mental health or personal behavior.

### **DISCUSSION AND ANALYSIS**

Paragraph fifteen, in particular, commonly referred to as a gag order, represents a classic example of a prior restraint on speech: one that prohibits free speech before it is spoken. Vrasic v. Leibel, 106 So. 3d 485, 487 (Fla. 4th DCA 2013) (holding: “Prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.” (quoting Neb. Press Ass’n v. Stuart, 427 U.S. 539, 559 (1976))); Fox v. Hamptons at Metrowest Condo. Ass’n, Inc., 223 So. 3d 453, 456 (Fla. 5th DCA 2017) (noting: “Temporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints” (quoting Alexander v. United States, 509 U.S. 544, 550 (1993))). See also Krapacs v. Bacchus, 301 So. 3d

976 (Fla. 4th DCA 2020) (holding that court orders that forbid speech activities on social media are “classic examples of prior restraints”).

Importantly, and as the Florida Supreme Court has admonished: “Any form of prior restraint of expression comes to a reviewing court bearing a heavy presumption against its constitutional validity; therefore, the party who seeks to have such a restraint upheld carries a heavy burden of showing justification for the imposition of such a restraint.” State v. McIntosh, 340 So. 2d 904, 908 (Fla. 1976). See also Gagliardo v. Branam Children, 32 So. 3d 673, 674 (Fla. 3d DCA 2010) (holding that prior restraints on speech and publication are presumed unconstitutional).

Where a trial court imposes such restrictions on a party’s free speech rights, it must make findings that support the need for these limitations, and the order must be “narrowly tailored to preclude only extra-judicial statements which are substantially likely to materially prejudice the trial.” Rodriguez v. Feinstein, 734 So. 2d 1162, 1164 (Fla. 3d DCA 1999) (holding: “In Florida, the limitations imposed by the court on communications between the media and lawyers and/or litigants must be for good cause to assure fair trials”). See also Dippolito v. State, 225 So. 3d 233, 242 (Fla. 4th DCA 2017) (holding that a “gag order must be narrowly tailored to achieve the objective sought, namely, a fair trial”); E.I. Du Pont de Nemours & Co. v. Aquamar, S.A., 33 So. 3d 839, 841 (Fla. 4th DCA 2010) (holding that “a gag order

should be supported by evidence and findings that any extrajudicial statements made by counsel or the parties pose a substantial or imminent threat to a fair trial”).

Neither the trial court nor the general magistrate made findings of necessity, nor did they engage in any tailoring to narrow or limit the scope to those extrajudicial statements substantially likely to materially prejudice the trial. Indeed, paragraph fifteen of the order, which purports to prohibit either party from “engag[ing] in any social media of any nature which comments, directly or indirectly, on the other party’s emotional or mental health or personal behavior,” is so overbroad as to render its boundaries indiscernible.

Paragraphs thirteen and fourteen, though less sweeping in degree than paragraph fifteen, and arguably less onerous in their resulting burden on free-speech rights, nevertheless suffer infirmities similar in kind to paragraph fifteen. These paragraphs also contain terms that are vague and undefined, creating confusion in their meaning and the potential for inconsistent or arbitrary enforcement. Further, the restrictions contained in all three paragraphs were imposed sua sponte by the general magistrate in its recommended order, and adopted thereafter by the trial court without a hearing. Neither party moved for the imposition of such restrictions, and while the general magistrate informally raised the topic and inquired whether the parties might consent to such restrictions, no such consent was given, nor were the parties placed on notice before the hearing that the imposition of such restrictions

would be considered in addressing the merits of the Mother's motion to compel production of documents.

### **CONCLUSION**

Under the circumstances presented, the inclusion of paragraphs thirteen, fourteen and fifteen in the trial court's order constitutes a departure from the essential requirements of law, causing material injury which will continue throughout the remainder of the proceedings, for which there is no adequate remedy on appeal. See Citizens Prop. Ins. Corp. v. San Perdido Ass'n, Inc., 104 So. 3d 344 (Fla. 2012); Rodriguez, 734 So. 2d 1163 (noting: "We have jurisdiction to review this matter as the order implicates a violation of the parties' constitutional rights which cannot be remedied on plenary review.")

We therefore grant the petition, issue the writ of certiorari, quash the trial court's February 27, 2020 order, and remand with instructions for the trial court to enter an order adopting all paragraphs of the general magistrate's recommended order except paragraphs thirteen, fourteen and fifteen.

Petition granted. Order quashed and remanded with instructions.