

**THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

LITTLE ROCK FAMILY PLANNING SERVICES, *et al.*

PLAINTIFFS

v.

Case No. 4:19-cv-00449-KGB

**LESLIE RUTLEDGE, in her official capacity as Attorney
General of the State of Arkansas, *et al.***

DEFENDANTS

ORDER

Before the Court is the status of this case. The Court will hold a hearing on the motion for preliminary injunction on Friday, April 24, 2020, beginning at 9:00 a.m. CT at the Richard Sheppard Arnold United States Courthouse, 500 West Capitol, Little Rock, Arkansas 72201, Courtroom 4C, imposing the following conditions and setting forth the following deadlines.

I. Background

On April 13, 2020, Little Rock Family Planning Services and Thomas Tvedten, M.D., on behalf of himself and his patients (collectively, the “Supplemental Complaint Plaintiffs”) filed a motion for expedited leave to file a supplemental complaint and a motion for an *ex parte* temporary restraining order and/or preliminary injunction (Dkt. Nos. 132, 134). On April 14, 2020, the Court provisionally granted the Supplemental Complaint Plaintiffs’ motion for expedited leave to file a supplemental complaint and motion for an *ex parte* temporary restraining order (Dkt. No. 141). Pursuant to Federal Rule of Civil Procedure 65(b)(2), the temporary restraining order expires by its own terms on Tuesday, April 28, 2020, at 3:30 p.m. CT, unless before that time, for good cause shown and for reasons entered in the record, the Court extends it for a like period or defendants consent to a longer extension, the Court modifies it, or the Court dissolves it. In its Order, the Court committed to reconsidering these matters upon the submission of defendants’ written arguments.

The Court also took under advisement the Supplemental Complaint Plaintiffs' motion for a preliminary injunction. That same day, April 14, 2020, the Supplemental Complaint Plaintiffs filed their first supplemental complaint for injunctive and declaratory relief (Dkt. No. 142).

II. Jurisdiction

This Court recognizes that the Eighth Circuit Court of Appeals also may take action in this case that impacts this Court's temporary restraining order and jurisdiction. Defendants filed with the Eighth Circuit a petition for writ of mandamus (Dkt. No. 145). *See In re Rutledge*, No. 20-1791 (8th Cir. Apr. 15, 2020). Defendants also filed with the Eighth Circuit an emergency motion to stay *ex parte* temporary restraining order pending mandamus and for a temporary administrative stay pending consideration of its motion, and motion to expedite. To date, the Eighth Circuit has not ruled on either the petition for writ of mandamus or emergency motion to stay.

It is well-established that, absent a stay, "[t]he filing of a petition for writ of mandamus does not deprive a district court of jurisdiction." *Ginter v. Whirlpool Corp.*, No. 1:08-CV-750, 2009 WL 10664395, at *1 (W.D. Mich. Aug. 12, 2009) (citing *Woodson v. Surgitek, Inc.*, 57 F.3d 1406, 1416 (5th Cir. 1995)); *see also Ellis v. U.S. Dist. Court for W. Dist. of Wash. (Tacoma)*, 360 F.3d 1022, 1023 (9th Cir. 2004) ("[I]n the context of an extraordinary writ such as mandamus, there is no need for us to relinquish our jurisdiction to the district court because it was never deprived of jurisdiction over the underlying case. The district court does not lose jurisdiction over a case merely because a litigant files an interlocutory petition for an extraordinary writ." (citations omitted)); *Woodson*, 57 F.3d at 1416 ("[T]he Federal Rules of Civil Procedure do not provide for an automatic stay of district court proceedings while a petition for writ of mandamus is pending."); *United States v. Wilson*, No. CRIM.A. 08-450-KHV, 2011 WL 4801912, at *1 (D. Colo. Oct. 11, 2011) ("Absent a stay, the filing of a petition for mandamus does not divest the district court of

jurisdiction.” (citing *Moore v. Busby*, 92 F. App’x 699, 702 (10th Cir. 2004), and *Woodson*, 57 F.3d at 1416)).

Here, because this Court has not stayed proceedings while defendants’ petition for mandamus is pending, and because no stay has been granted by the Eighth Circuit, the Court retains jurisdiction over this matter. The Court will continue to monitor the status of these proceedings with respect to this Court’s jurisdiction.

III. Written Briefing Schedule

On its own motion, the Court shortens defendants’ time to respond to the Supplemental Complaint Plaintiffs’ motion for expedited leave to file a supplemental complaint and motion for an *ex parte* temporary restraining order and/or preliminary injunction to Tuesday, April 21, 2020, at 5:00 p.m. CT. The Court also shortens the Supplemental Complaint Plaintiffs’ time to file a reply in support of its motion for expedited leave to file a supplemental complaint and motion for an *ex parte* temporary restraining order and/or preliminary injunction to Wednesday, April 22, 2020, at 5:00 p.m. CT, or 24 hours after defendants have responded, whichever is earlier. The Court will reconsider its April 14, 2020, Order upon defendants’ submission of its written arguments to this Court.

IV. Preliminary Injunction Hearing Date And Pre-Hearing Deadlines

Pursuant to Rule 65(b)(3), the Court must set for hearing the motion for preliminary injunction at the earliest possible time. The Court has informally conferred with all counsel of record regarding such a hearing. The Court will hold a hearing on the motion for preliminary injunction on Friday, April 24, 2020, beginning at 9:00 a.m. CT at the Richard Sheppard Arnold United States Courthouse, 500 West Capitol, Little Rock, Arkansas 72201, Courtroom 4C.

The parties, counsel, and necessary witnesses, if any, will participate by video or audio teleconference, with participation information to be provided by the Court to individual participants. All other persons, including members of the public, may attend the hearing at the Courthouse, where appropriate COVID-19 precautions and social distancing requirements will be strictly enforced.

If the parties wish to file supplemental briefings with argument only following the hearing, such simultaneous briefings are due by 5:00 CT on Saturday, April 25, 2020.

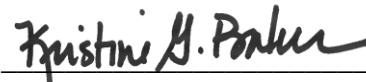
The Court has communicated informally with counsel regarding this hearing. Supplemental Complaint Plaintiffs request an evidentiary hearing in this matter, based on communication from Supplemental Complaint Plaintiffs' counsel. Although defendants "would prefer live witnesses to convey the seriousness of the threat to Arkansas's resources, [d]efendants do not believe it is in anyone's interest to require those responsible for managing the COVID-19 threat to be distracted from those duties" and "therefore suggest testimony be limited to declarations," based on communication from defendants' counsel. The Court will set by separate order an on-the-record telephone conference with all counsel of record to confer regarding whether evidence, or argument only, will be received at the hearing and regarding when the evidentiary record in this matter with respect to the pending preliminary injunction request will close.

The Court shares defendants' concern that the State of Arkansas's resources remain focused on the COVID-19 threat but seeks to balance that concern with Supplemental Complaint Plaintiffs' request to present evidence at the hearing in support of their motion. As a result, in advance of that telephone conference with the Court, the Court directs counsel for the parties to meet and confer regarding the witnesses from whom Supplemental Complaint Plaintiffs and defendants anticipate eliciting testimony, if permitted to do so by the Court; how long each

witness's testimony is likely to last; rank ordering those witnesses by importance to the party seeking such testimony; and identifying the role that witness plays, if any, in the State of Arkansas's COVID-19 response.

If any party objects to the Court's consideration of exhibits already in the record in this matter, such objections must be made in writing and filed by 9 a.m. CT on Thursday, April 23, 2020, and any responses to such objections must be made in writing and filed by 2 p.m. CT on Thursday, April 23, 2020.

It is so ordered this Wednesday, April 16, 2020.

A handwritten signature in black ink, reading "Kristine G. Baker", written over a horizontal line.

Kristine G. Baker
United States District Judge