

IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED
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JAMES GREEN
CLERK APPELLATE COURTS

State of Kansas, ex rel., Stephen N. Six,
Attorney General of the State of Kansas,

Petitioner,

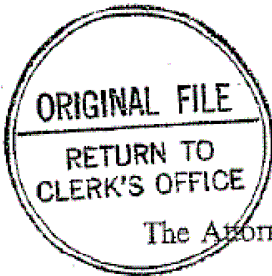
v.

The Honorable Richard Anderson,
Judge of the Third Judicial District,
Shawnee County, Kansas,

Respondent.

Case No. 99050

FILED UNDER SEAL



EMERGENCY MOTION FOR PROTECTIVE ORDER

The Attorney General's Office filed this case on August 2, 2007, to gain possession of women's medical records a former Attorney General obtained in an inquisition concerning two Kansas abortion providers. See generally *Alpha Medical Clinic v. Anderson*, 280 Kan. 903, 128 P.3d 364 (2006). The Respondent, Judge Anderson, kept a copy of those partially-redacted medical records despite the fact that the Attorney General's office had completed its investigation, closed the inquisition, and asked that the medical records be returned. To reduce the risk of further distribution of the medical records, this case was filed. The case has now been pending for eight months. This Court has issued substantive orders, and substantial briefing has been submitted. Now the documents appear to be on the move again, threatening this Court's jurisdiction.

On April 2, the undersigned counsel learned from Judge Anderson's counsel that former Attorney General Kline issued a subpoena to the Respondent Judge for that portion of the documents relating to Planned Parenthood. The subpoena was issued from the Johnson County District Court in the case of *State v. Planned Parenthood*, Johnson County Case No. 07CR02701. Kline, of course,

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is now the Johnson County District Attorney. The subpoena seeks Judge Anderson's testimony and purports to require him to produce those medical records to Kline on Monday, April 7 for a preliminary hearing. As this Court is aware, Kline already has one copy of the Planned Parenthood medical records – he took them with him when leaving office as Attorney General. The legality of that move is also pending before this Court, after expedited discovery, a five-day hearing, and substantial briefing. See *Planned Parenthood v. Kline*, Kansas Supreme Court Case No. 98747 (pending).

In the face of those pending proceedings, Kline now seeks to use the records anyway, and for them to be further distributed and publicized. If this Court intends to take action on merits of these mandamus proceedings, it must act quickly. Failure to do so will render this case meaningless.

We note that in Case No 98747, Respondent Kline has been ordered to keep a log of what happens to the records and to whom they are given or with whom they are "shared." The Court in this case has not issued a similar order, presumably because Respondent Anderson indicated he had not been subpoenaed and was keeping the records secure. Now that situation has changed.

It goes without saying that this Court has the power to take appropriate action to preserve its jurisdiction. As the Court held in another quo warranto action involving preliminary relief, "No principle of the common law is better established than that plenary power is vested in all courts to protect and preserve their jurisdiction, so that the exercise of granted functions may be made effectual[.]" *State v. Anheuser-Busch Brewing Ass'n*, 76 Kan. 184, 90 P. 777, 779 (1907). In *State v. Anheuser-Busch*, this Court issued a restraining order and appointed a receiver – prior to judgment – to take possession of the defendant's property. It did so because the defendant was transferring the property such that after a judgment the defendant could continue to unlawfully conduct business.

This is such a case. While the cases are pending, women's privacy is threatened by actions alleged to be outside the law. Absent a restraining order, those violations will continue and could result in further harm that this Court could prevent.

The Attorney General has no desire or intention to interfere with legitimate law enforcement actions that are validly undertaken, but he also is concerned about the further use and distribution of such highly sensitive records taken from his office. Accordingly, the Attorney General respectfully suggests that this Court consider taking action to protect against further distribution of the records. Such action may include:

- (1) An order quashing the subpoena issued to the Respondent and/or restraining him from producing his copy of the Planned Parenthood medical records;
- (2) An order compelling the Respondent to immediately deliver all medical records in his possession related to abortion providers to the Clerk of the Supreme Court for safekeeping throughout the pendency of this Case;
- (3) An order to the District Court of Johnson County requiring that the trial judge
 - (a) take possession of the Planned Parenthood records and maintain sole custody and control of the records throughout the pendency of the criminal proceedings,
 - (b) maintain a log of all persons to whom the records are revealed; and (c) limit disclosure of the records only to those with a need to know their contents for purposes of the pending criminal case;
- (4) An order prohibiting the Respondent from producing a copy of the records in response to the subpoena, so that there is not yet another set of the medical records available for distribution; or

- (5) Such other action as this Court sees fit.

Respectfully submitted,

OFFICE OF ATTORNEY GENERAL
STEPHEN N. SIX

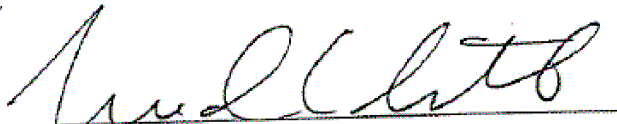


Michael C. Leitch
Deputy Attorney General, KS Bar No. 19588
120 S.W. 10th Avenue
Topeka, Kansas 66612-1597
Tel: (785) 296-2215
Fax: (785) 291-3767
Email: Michael.Leitch@ksag.org

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2008, I caused a copy of this document to be faxed to:

Wayne T. Stratton
Nathan D. Leadstrom
Goodell Stratton Edmonds & Palmer
515 S Kansas Ave.
Topeka KS 66603-3999
Fax: 785-233-8870
Counsel for Respondent



Michael C. Leitch