IN THE SUPREME COURT OF ALABAMA
March 10, 2015

1140460

Ex parte State of Alabama ex rel. Alabama Policy Institute, Alabama Citizens Action Program, and John E. Enslen, in his official capacity as Judge of Probate for Elmore County.

ORDER

In an opinion issued on March 3, 2015, this Court ordered Judge Don Davis, the Probate Judge for Mobile County,

> "to advise this Court, by letter brief, no later than 5:00 p.m. on Thursday, March 5, 2015, as to whether he is bound by any existing federal court order regarding the issuance of any marriage license other than the four marriage licenses he was ordered to issue in Strawser [v. Strange (Civil Action No. 14-0424-CG-C, Jan. 26, 2015)].[1]"

On March 5, Judge Davis filed a motion seeking an 11-day extension of time, until March 16, 2015, to comply with this Court's order. On March 9, Judge Davis filed a "Response to Show Cause Order" in which he asserts that he should not be included in this Court's March 3 order out of concern that doing so would require him to violate the federal district

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[1]The decision of the federal district court in Strawser was premised on its earlier decision in Searcy v. Strange, [Civil Action No. 14-0208-CG-N, Jan. 23, 2015] ___ F. Supp. 3d ___ (S.D. Ala. 2015).

court order previously entered in Strawser.[2] Because we find Judge Davis's concern to be without merit, and for the additional reasons discussed below, Judge Davis's motion for extension is denied, and he is added as a respondent to this mandamus proceeding and is enjoined from issuing any further marriage licenses contrary to Alabama law.

Judge Davis asks for the 11-day extension to respond to this Court's question because he has asked for a "ruling" as to that question from the Alabama Judicial Inquiry Commission ("the JIC"):

> "As grounds for this Motion, Judge Davis sets out as follows:
>
> "....
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> "2. Judge Davis has sought instruction today from the Alabama Judicial Inquiry Commission.
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> "3. Proper response to this Court is best made after [United States District Court] Judge Granade rules and/or after the Alabama Judicial Inquiry Commission rules."

(Emphasis added.) Our inquiry to Judge Davis was intended as a factual one. We fail to see what knowledge the JIC might have as to the facts regarding whether Judge Davis is bound by

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[2]A "corrected" copy of Judge Davis's response has since been filed with this Court.

an order in any case other than Strawser v. Strange (Civil Action No. 14-0424-CG-C, Jan. 26, 2015), or the fact of what the Strawser order says. As to the latter, the task of reading the order in Strawser and understanding what it says is the task of this Court, not the JIC.[3]

Judge Davis also notes that he has asked the federal district court "for a stay" of its order in Strawser. The fact of this request offers no basis for delay here; indeed, the prospect of such a stay by the federal court is compatible with the action of this Court. Further, Judge Davis has made no showing that the federal court order for which he seeks a stay is one that has not already been executed, i.e., one that concerns any license other than those already issued to the plaintiffs in that case.

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[3]The latter task is to read the Strawser order and to consider the import, if any, of that order as a decision by a court in a coordinate judicial system. The JIC is a tribunal commissioned solely for the investigation and prosecution of "complaints" against judges regarding violation of the Canons of Judicial Ethics and the physical and mental ability of judges to perform their duties. Ala. Const. 1901, § 156. It is not a court of law, and it has no authority -- and no role to play -- in the performance by this Court of its constitutional duties as a court of law to decide the cases brought before it.

Our opinion of March 3 serves as binding statewide precedent. To ensure compliance with that precedent, we also entered on that date and as part of our opinion an order specifically directing Alabama probate judges not to issue marriage licenses contrary to that precedent. Davis has made no showing that he was, or is, the subject of any previously entered federal court order other than the one issued in Strawser, and he makes no showing that that order has any continuing, binding effect on him as to any marriage-license applicants beyond the four couples who were the plaintiffs in that case and who already have received the relief they requested. The inapplicability of the federal court order to any other couple is evident from the terms of the order itself:

> "Probate Judge Don Davis is hereby ENJOINED from refusing to issue marriage licenses to plaintiffs due to the Alabama laws which prohibit same-sex marriage. If Plaintiffs take all steps that are required in the normal course of business as a prerequisite to issuing a marriage license to opposite-sex couples, Judge Davis may not deny them a license on the ground that Plaintiffs constitute same-sex couples or because it is prohibited by the Sanctity of Marriage Amendment[, Ala. Const. 1901, § 36.03,] and the Alabama Marriage Protection Act[, Ala. Code 1975, § 30-1-19,] or by any other Alabama law or Order pertaining to same-sex marriage."

(Capitalization in original; emphasis added.)

In his motion, Judge Davis himself places emphasis on the same passages we have emphasized above. In the absence of a showing otherwise, we are left to read this language in accordance with its plain meaning: It grants injunctive relief against Judge Davis only as "to [the] plaintiffs" in Strawser. Our reading of this plain language is confirmed by the fact that the plaintiffs in Strawser sought relief only on their own behalf, not on behalf of any others, and by the fact that federal jurisprudence contemplates that a federal court decides only the case before it, see Ex parte State ex rel. Alabama Policy Institute, [Ms. 1140460, March 3, 2015] ___ So. 3d ___, ___ (Part II.C.) (Ala. 2015),[4] in turn binding the

[4]As we noted in Part II.C., "'"[a] decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case,"'" ___ So. 3d at ___ (quoting Camreta v. Greene, ___ U.S. ___, ___ n.7, 131 S. Ct. 2020, 2033 n.7 (2011), quoting in turn 18 J. Moore et al., Moore's Federal Practice § 134.02[1][d], pp. 134-26 (3d ed. 2011)), much less upon a defendant sued by new plaintiffs in a different case. The principle quoted above from the United States Supreme Court decision in Camreta was manifestly reflected in orders entered on this date by the United States District Court for the Middle District of Alabama, in which that court chose to stay its consideration of a case similar to Strawser and stated that "[t]his court is not bound by Searcy." Hard v. Bentley (Case No. 2:13-cv-00922-WKW;

parties before them only with respect to the other parties in the case.[5]

Notwithstanding the plain description of the activity enjoined by the quoted language in the federal court order requiring Judge Davis to issue licenses "to [the] plaintiffs" in the Strawser case, Judge Davis questions whether the following language somehow was intended to enjoin him in relation to persons other than the four couples who sued and obtained a judgment against him for their personal benefit:

March 10, 2015) (M.D. Ala.).

[5]In Brenner v. Scott (No. 4:14cv107, Jan. 1, 2015) (N.D. Fla.), a case similar in many respects to the present one, the court explained that "[t]he Clerk has acknowledged that the preliminary injunction requires her to issue a marriage license to the two unmarried plaintiffs," but that, in "the absence of any request by any other plaintiff for a license," "[t]he preliminary injunction now in effect does not require the Clerk to issue licenses to other applicants." See also Vikram David Amar, Justia-Verdict, February 13, 2015; https://verdict.justia.com/2015/02/13/ just-lawless-alabama-state-court-judges-refusing-issue-sex-marriage-licenses (explaining that generally a federal district court can enjoin a defendant only with respect to the defendant's treatment of plaintiffs actually before the court and that the remedial limitation on federal district courts is defined by the identity of the plaintiffs, not just the identity of the defendants) (last visited March 10, 2015; a copy of the Web page containing this information is available in the case file of the clerk of the Alabama Supreme Court).

> "This injunction binds Judge Don Davis and all his officers, agents, servants and employees, and others in active concert or participation with any of them, who would seek to enforce the marriage laws of Alabama which prohibit or fail to recognize same-sex marriage."

The apparent purpose of this latter passage was to clarify who is bound by the federal court's order, not what action that order requires of those persons. The question of "what" is the subject of the clear statement in the previous paragraph quoted above, i.e., that the enjoined parties are directed to issue marriage licenses specifically "to [the] plaintiffs." The subsequent reference to persons who "would seek to enforce the marriage laws of Alabama" is in reference to Judge Davis and his agents, employees, etc., to the extent that they would seek to enforce the marriage laws of Alabama as "to [the] plaintiffs." We are further confirmed in our reading of the federal court's order by our understanding, as discussed in notes 4 and 5, supra, that federal court jurisprudence contemplates that a federal district court adjudicates the obligations, if any, of a defendant or defendants only with respect to the plaintiff or plaintiffs in the case before the court. See also Meinhold v. United States Dep't of Defense, 34 F.3d 1469, 1480 (9th Cir. 1994) ("An

injunction 'should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.' Califano v. Yamasaki, 442 U.S. 682, 702, 99 S. Ct. 2545, 2558, 61 L. Ed. 2d 176 (1979). ... This is not a class action, and Meinhold sought only to have his discharge voided and to be reinstated. ... Beyond reinstatement ..., DOD should not be constrained from applying its regulations to Meinhold and all other military personnel." (emphasis added)); Zepeda v. United States Immig. & Naturalization Serv., 753 F.2d 719, 727 (9th Cir. 1983) ("A federal court ... may not attempt to determine the rights of persons not before the court."); Hollon v. Mathis Indep. Sch. Dist., 491 F.2d 92, 93 (5th Cir. 1974) (holding that "the injunction against the School District from enforcing its regulation against anyone other than [the plaintiff] reaches further than is necessary" (emphasis added)).

As we explained in our March 3 opinion, this Court has acted to ensure statewide compliance with Alabama law in an orderly and uniform manner. We have before us in this case a petitioner in the form of the State that has an interest in and standing as to the actions of every probate judge in the

State. Moreover, as we noted in the opinion, Alabama's probate judges took a variety of different positions in the wake of the federal district court's decisions, and no single circuit court has jurisdiction over all probate judges to enable it to address that disarray. The inclusion of Judge Davis, along with all the other probate judges in this State, as a respondent subject to this Court's March 3 order as to future marriage-license applicants is necessary and appropriate to the end of achieving order and uniformity in the application of Alabama's marriage laws.

Based on the foregoing, Judge Davis is added to this mandamus proceeding as a respondent and is subject to this Court's order of March 3, 2015. Section 30-1-9, Ala. Code 1975, provides that Judge Davis "may" issue "marriage licenses." To the extent he exercises this authority, he must issue those licenses in accordance with the meaning of the term "marriage" in that Code section and in accordance with other provisions of Alabama law, as discussed in our March 3 opinion.

Stuart, Parker, Murdock, Main, Wise, and Bryan, JJ., concur.

Shaw, J., dissents.

SHAW, Justice (dissenting).

As explained in my dissent in Ex parte State ex rel. Alabama Policy Institute, [Ms. 1140460, March 3, 2015] ___ So. 3d ___, ___ (Ala. 2015), I do not believe that this Court has jurisdiction in this case; therefore, I dissent.