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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: SN-2023-CV-000422
PII COMPLIANT



Court: Shawnee County District Court
Case Number: SN-2023-CV-000422
Case Title: State of Kansas vs. David Harper Director of Vehicles, et al
Type: ORD: Order Originated by Judge Order on Motion for Sanctions

SO ORDERED,

Thomas G. Luedke

/s/ Thomas G. Luedke, Honorable District Court Judge

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION SIX**

STATE OF KANSAS)
Plaintiff,)
vs.) Case Number SN-2023-CV-422
DAVID HARPER)
DIRECTOR OF VEHICLES, et al)
Defendant.)

)

ORDER ON MOTION FOR SANCTIONS

I. PROCEDURAL HISTORY

This matter is currently before the Court on a motion for sanctions filed by Respondents, David Harper, Director of Vehicles, Kansas Department of Revenue, and Mark Burghart, Secretary of Revenue (hereinafter collectively KDOR). KDOR requests the Court levy sanctions against Kansas Attorney General Kris Kobach and Kansas Solicitor General Anthony Powell (hereinafter, Petitioners).

The case was previously before the district court on Petitioners' motion for a temporary restraining order and a temporary injunction filed on July 7, 2023. On March 11, 2024, the district court issued an order granting Petitioners' request for a

temporary injunction. On March 15, 2024, an interlocutory appeal from this order was filed by the Respondents with the Kansas Court of Appeals (KCOA). On June 13, 2025, the KCOA issued a judgment that reversed the district court's decision granting injunctive relief. Thereafter, Petitioners petitioned the Kansas Supreme Court for review of the KCOA's reversal of the district court. On September 29, 2025, the Kansas Supreme Court denied review. On October 6, 2025, Petitioners filed their motion for *KDOR Respondents to Maintain a Record of Changes to Driver's Licenses* and requesting a delay in lifting the temporary injunction. On October 8, 2025, the KCOA issued its mandate reversing the order of the district court. On October 20, 2025, the Intervenors filed *Intervenors' Response in Opposition to Petitioner's Motion for KDOR Respondents to Maintain a Record of Changes to Driver's Licenses*. Also on October 20, 2025, Respondents filed *KDOR's Response to Motion to Maintain Driver's License Records and Delay Lifting of the Injunction*. On October 23, 2025, Respondents filed *KDOR's Motion for Sanctions*. In this order, the Court will address the Respondents' *Motion for Sanctions* and Petitioners' motion for *KDOR Respondents to Maintain a Record of Changes to Driver's Licenses*.

II. MOTION FOR SANCTIONS

The request for sanctions is in response to a motion filed by the Petitioners. This motion was titled *Motion for KDOR Respondents to Maintain a Record of Changes to Driver's Licenses*. The motion made the following requests:

Accordingly, the State requests that this Court order the KDOR Respondents to keep a detailed, individualized, and personally identifiable record of driver's license changes, as well as newly issued or reissued licenses that do not reflect the licensee's biological sex as defined by SB 180, from today's date through the conclusion of this litigation....

Additionally, the State requests that the Court temporarily delay the lifting of the temporary injunction until it decides this motion, so that the KDOR Respondents do not make driver's license changes or issue new and renewed licenses without maintaining adequate documentation.

(Petitioner's Motion, p. 3.)

Respondents seek sanctions against Petitioners contending that the motion was presented for an improper purpose, needlessly increased the cost of litigation, was contrary to the law, and essentially requested the Court disregard the mandate of the KCOA.

In considering Respondents' motion for sanctions two facts are apparent. First, Petitioners filed their *Motion for KDOR Respondents to Maintain a Record of Changes to Driver's Licenses* at a time when the district court was jurisdictionally powerless to address it. Second, the content of the motion itself clearly invited the district court to sidestep, even if temporarily, the mandate of the KCOA. Had this

motion been filed with the KCOA, which had jurisdiction at the time, it was unlikely to receive a favorable review.

The question then arises as to whether the district court should consider sanctions for a motion filed at a time when it had no jurisdiction to consider the substance of the motion. Generally, a motion filed with a court that has no subject matter jurisdiction is a nullity. *State v. Walker*, 50 Kan. App. 2d 900, 904, 334 P.3d 901, (2014). The most expedient resolution would be for the Court to dismiss Petitioner's motion and sanction the Petitioners for filing such an obviously jurisdictionally bereft motion.

Respondents identified this issue in their motion for sanctions:

Petitioner noted at the time it filed its motion that the mandate has not yet been issued. *Id.* at 2. This is equally shocking: how can Petitioner file a motion in a court that has not yet had jurisdiction returned to it via the mandate? ...

How could the court even rule on Petitioner's motion until the mandate was issued? And once the mandate issued, the injunction would be lifted, so how is there any basis for asking this court to not lift the injunction pending resolution of a motion filed before the court regained jurisdiction? There simply was no legal basis supporting Petitioner's requested relief to delay lifting of the injunction.

(*KDOR's Motion for Sanctions*, pp. 2, 4-5.) Had Respondents filed a motion to dismiss Petitioner's motion for lack of jurisdiction, it must surely have been granted by the Court. Of course, this is an issue the Court itself can raise at any time. *State v. Sales*, 290 Kan. 130, 135, 224 P.3d 546 (2010). If the district court had no jurisdiction at the time the motion was filed, the only way it could obtain jurisdiction

would be to have the same motion refiled when jurisdiction was returned via the issuance of the appellate mandate. This did not happen. As the Respondents pointed out, if Petitioners had waited for the KCOA's mandate that returned jurisdiction to the district court, there would have been no temporary injunction to delay. The Respondents have filed a motion for sanctions based on the content of a motion the district court had no power to decide. The district court's jurisdiction is suspended from the time an appellate docketing statement is filed until the appeal is complete and a mandate is issued, *Carson v. Eberth*, 3 Kan. App. 2d 183, 185, 592 P.2d 113 (1979), at which point jurisdiction returns to the district court to carry out the appellate court's directions, *State v. Soto*, 310 Kan. 242, 250-251, 445 P.3d 1161 (2019). In the Petitioners view: "To sanction a party for a request that is now moot is extreme, to say the least." (*Response in Opposition to Motion for Sanction*, p. 7.) The question in this case becomes whether it is extreme to sanction a party for making a request the Court has no jurisdictional power to grant.

The Petitioners' argument that their motion fell outside the mandate rule because it raised "an entirely new issue" is not persuasive. Both requests made by the Petitioners were unmistakably addressed by the KCOA in its opinion. The motion requested KDOR keep specific additional records in spite of the KCOA language that allowed KDOR to proceed as they had since at least 2007. As for the request to delay the lifting of the temporary injunction the KCOA found: "The State

failed to meet its burden to establish the invocation of this extraordinary remedy."

State ex rel. Kobach v. Harper, 65 Kan. App. 2d 680, 725-726, 571 P.3d 6 (2025). A district court "must implement both the letter and spirit of the mandate, taking into account the appellate court's opinion and the circumstances it embraces." *Building Erection Services Company, Inc. v. Walton Construction Company, Inc.*, 312 Kan. 432, 442, 312 P.3d 1231 (2020) (citation omitted).

What is more, even if it were a new issue, the motion violated the December 9, 2024, order of the KCOA, which stayed the proceedings in the district court pending the resolution of the appeal. The Petitioners' motion ran afoul of three different legal principles; it was filed in contravention of the mandate rule, it was filed with the district court at a time when the district court plainly had no jurisdiction, and it was filed in violation of the stay of the district court proceedings issued by the KCOA. Given all of these considerations, there is scant possibility that Petitioners' motion would move the district court in the direction of granting their request.

Petitioners also argue that: "If [Respondents] already keep the requested records, formally agreeing to continue to do so would not have harmed them, and such agreement would have made any further time and expense litigating the request completely unnecessary." (*Response in Opposition to Motion for Sanctions*, p. 8.) Petitioners fail to consider that if Respondents were already keeping the information,

entering an order requiring retention would be “completely unnecessary.” In fact, there would be no controversy.

The filing of this motion was a self-inflicted wound. The Petitioners’ arguments in support of a legal basis do not serve to deflect the aim that inflicted the wound. Pursuant to K.S.A. 60-211(b)(2) the legal claims made by Petitioners were not warranted by existing law. The Court can divine no legal support for the motion. However, there was never any danger of the Petitioners’ motion getting any traction. The Court has little or no disagreement with the legal principles asserted by Respondent in their motion for sanctions.

Respondents request a monetary sanction of one dollar, an order from the Court directing Petitioners to engage in remedial civil procedure training and an “admonition to Attorney General Kris Kobach and Solicitor General Anthony Powell for their unfounded request that this court ‘temporarily delay the lifting of the temporary injunction until it decides this motion.’” (*KDOR’s Motion for Sanctions*, p. 2.) The imposition of sanctions and the choice of sanction to be imposed is discretionary with the trial court. *Wood v Groh*, 269 Kan. 420, 431, 7 P.3d 1163 (2000). K.S.A. 60-211 enumerates certain factors to be considered in determining an appropriate sanction. First of all, the Court would note the specific sanctions requested by Respondents were relatively magnanimous. In consideration

of the factors contained in section 60-211, the Court finds that the admonishments contained in this order should be sufficient to remedy the issues in this case.

The Court would make one further admonishment to the Petitioners. This is a good faith dispute over the meaning of a statute. The case will be decided based upon the evidence and the legal principles involved. It will not be decided on the ethical besmirchment of the advocates on either side. Petitioners' response to Respondents' motion for sanctions seems to follow the philosophy that the best defense is a good offense. Quoting DCR 3.113.4 Petitioners allude to Respondents' attorneys: “[a] lawyer shall avoid making ill-considered accusations of unethical conduct towards an opponent.” Additionally, quoting DCR 3.113.7: “[a] lawyer shall not seek sanctions against or disqualification of another attorney unless necessary for the protection of a client and fully justified by the circumstances, not for the mere purpose of obtaining a tactical advantage.” (*Response in Opposition to Motion for Sanctions*, p. 4.) The Court would presume that the quotation of these local rules was intended to impugn the Respondents' request for sanctions. There is no way to sugar coat it, Petitioners' motion was wrong on legal principles. In the Court's view the main factor saving Petitioners from adopting the Respondents' request for sanctions in toto was the fact that the Court had no jurisdiction from the very start to grant the relief requested. The Court admonishes Petitioners to focus on completely expositing the legal issues and principles associated with this case,

and refrain from “ill-considered accusations.” It may turn out that Petitioners are correct in their position ... it may turn out they are incorrect. Whatever the resolution, it will be made based on the facts and the legal principles appertaining to those facts. It will, in no event, be based on random ethical allegations against the advocates. The fact that reasonable minds might differ as to the outcome is not an indictment of the motives of either party.

III. CONCLUSION

Petitioners' Motion for KDOR Respondents to Maintain a Record of Changes to Driver's Licenses is hereby dismissed for lack of subject matter jurisdiction. Respondents' *Motion for Sanctions* is hereby granted in part. The Petitioners Kris Kobach and his attorney Anthony J. Powell shall be monetarily sanctioned \$1.00 apiece for filing a motion that they knew, or should have known, the district court lacked jurisdiction to consider, and admonished as set forth in this order. Payment shall be made to the Clerk of the District Court.

This Order is effective on the date and time shown on the electronic file stamp.

IT IS SO ORDERED.

**HON. THOMAS LUEDKE
DISTRICT COURT JUDGE**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was filed electronically, and placed in the U.S. mail if needed on the date stamped on the ***ORDER ON MOTION FOR SANCTIONS***, providing notice to the following:

Kris Kobach – *Attorney for Plaintiff*

Anthony Powell – *Attorney for Plaintiff*

Pedro Irigonegaray – *Attorney for Respondent*

Douglas Dalgleish – *Attorney for Intervenor*

Monica Bennett - *Attorney for Intervenor*

/s/ KJ Taylor
Administrative Assistant