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DISTRICT IV/III

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You are hereby notified that the Court has entered the following order:

2021AP1321-LV County of Dane v. PSC of Wisconsin (L.C. # 2019CV3418)

Before Stark, P.J.

Michael Huebsch has filed a petition for leave to appeal an oral ruling denying his motion for a protective order to quash a non-party deposition subpoena requiring him to appear and produce, among other items, his cellphone and related records. In the alternative, Huebsch seeks a supervisory writ of mandamus seeking to compel the court to grant his motion to quash the deposition subpoena. Huebsch states that he has also filed a notice of appeal from the same order, which has not yet been transmitted to this court. Finally, Huebsch has also filed a motion for an “emergency” stay of the deposition subpoena.

The underlying case in which the deposition subpoena was issued is venued in Dane County, but Huebsch has designated District III of the Court of Appeals as the venue for the leave, mandamus action, and stay. Pursuant to Huebsch’s designation, the clerk of this court has

docketed the petition for leave to appeal in District III as No. 2021AP1321-LV.¹ However, the clerk of this court has docketed the alternative writ petition in District IV as No. 2021AP1322-W, because that is an original action.

For the purpose of this order, we construe Huebsch's request for an emergency stay as a motion for temporary relief pending the disposition of the petition for leave to appeal.² WIS. STAT. RULE 809.52. We conclude it is appropriate to grant a stay on a temporary ex parte basis in order to preserve the status quo while we await responses to the petition for leave to appeal. We direct that any responses filed to the petition for leave to appeal and accompanying motion for a stay should also address: (1) whether the proper mechanism for review of an order denying a motion to quash a nonparty deposition subpoena is by an appeal of right, interlocutory appeal, or mandamus petition; and (2) whether this matter is properly venued in District III. Huebsch shall have ten days to file a reply on both issues. In addition, Huebsch should provide this court with copies of the circuit court's written order and any additional relevant transcripts as soon as they are available.

¹ We do not address in this order whether the venue designation is proper under WIS. STAT. § 752.21(2), when Huebsch is not a party to the underlying case and it is unclear whether the application for a protective order is a special proceeding.

² To the extent that the motion for an emergency stay could alternatively be construed as a motion for relief pending appeal under WIS. STAT. § 808.07 and WIS. STAT. RULE 809.12, the question of continuing relief can be addressed once the notice of appeal has been transmitted to this court and the other parties have had an opportunity to respond.

In the interest of full disclosure, we also advise the parties that Judge Lisa Stark has in the past made nominal contributions of less than \$100 to the Wisconsin Wildlife Federation.

Upon the foregoing,

IT IS ORDERED that the deposition subpoena requiring Michael Huebsch to appear and produce, among other things, his personal cellphone and related records, is temporarily stayed in its entirety until further order of this court.

Sheila T. Reiff
Clerk of Court of Appeals