No. A-

IN THE

Supreme Court of the United States

GEOFFREY HAMILTON WOODWARD,

Applicant,

v.

SARAH EDGE WOODWARD,

Respondent.

On Application for Stay
to the Third Circuit Court for
Davidson County, Tennessee

APPLICATION TO CIRCUIT JUSTICE BRETT KAVANAUGH FOR A STAY PENDING THE FILING AND DISPOSITION OF A PETITION FOR WRIT OF CERTIORARI TO THE THIRD CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

CARTER G. PHILLIPS*
JACQUELINE G. COOPER
CODY M. AKINS
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Applicant

August 15, 2023

* Counsel of Record

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, applicant states as follows:

Applicant is Geoffrey Hamilton Woodward. Respondent is Sarah Edge Woodward. No party to this proceeding is a corporation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitution and Statutes

Rules

TABLE OF EXHIBITS

APPLICATION FOR STAY

To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Applicant Geoffrey Hamilton Woodward respectfully requests a stay of the order entered by the Third Circuit Court for Davidson County, Tennessee on March 7, 2023, that prohibits him from having any contact with his son (the "no-contact order"), pending the filing and disposition of Applicant's petition for a writ of certiorari.

OPINIONS BELOW

The judgments for which review is sought are: Order Implementing Recommendation of Agreed Upon Psychological Evaluator, *Woodward* v. *Woodward*, No. 21D-825 (Tenn. Circ. Ct. Mar. 7, 2023), a copy of which is attached as *Exhibit A*; and Order Denying Stay of March 7 Order, *Woodward* v. *Woodward*, No. 21D-825 (Tenn. Circ. Ct. Apr. 17, 2023), a copy of which is attached as *Exhibit B*.

JURISDICTION

The Tennessee Circuit Court issued the orders for which review is sought on March 7, 2023, and April 17, 2023. Those orders became final on June 5, 2023, when the Supreme Court of Tennessee denied discretionary review. For the reasons discussed below, *infra* I.A.1, those decrees would be subject to review by this Court on writ of certiorari. Accordingly, this Court has jurisdiction to enter a stay under 28 U.S.C. §§ 2101(f) and 1651, and Supreme Court Rule 23.

CONSTITUTIONAL PROVISION

The Fourteenth Amendment to the Constitution provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

Geoffrey and Sarah Woodward are engaged in a protracted divorce proceeding after having been married for over 20 years. They have three children: Two are adults; the other, W.E.W., just turned 17. The proceeding commenced in May 2021, when Sarah filed for divorce in the Third Circuit Court for Davidson County, Tennessee. This stay application is about whether Geoffrey will be able to see his son for the final year of the boy's childhood.

Custody over W.E.W. has been a point of contention from the outset of the divorce proceedings. Over several hearings, the family court learned that W.E.W. and his older siblings seemed to blame Sarah for the divorce. Upon receiving evidence that Geoffrey "allow[ed]" the children to "berate" Sarah about their concerns, the court temporarily awarded Sarah sole custody of W.E.W. while the divorce was pending.

But with more time and more evidence, the court changed its view. In particular, the court repeatedly heard that W.E.W. strongly preferred to split his time evenly between his parents. In August 2022, the trial court accepted W.E.W.'s request and implemented a temporary parenting plan under which W.E.W. would alternate between staying with his father and his mother each week. The plan was conditioned upon W.E.W. treating Sarah more respectfully, but the terms of the

court's order contemplated this arrangement lasting through the end of the divorce or W.E.W.'s emancipation.

Shortly thereafter, Sarah again sought to cut off Geoffrey's contact with W.E.W. Instead of the 50/50 plan, Sarah asked the court to order an intensive and intrusive therapy program that was recommended by a court-appointed expert, Dr. Katie Spirko. During the pendency of the therapies, Geoffrey could not contact his 17-year-old son. As cause for this drastic change, Sarah cited, among other things, a conversation that she recorded between herself and W.E.W. in which, after Sarah peppered W.E.W. with questions about changing schools, he responded, "Good golly. Just stop talking, please." *Exhibit A* at A-19. She also testified that W.E.W.—a teenager—seemed uninterested in having long conversations with her, called her "annoying, stupid, rude," and occasionally stayed with friends during Geoffrey's custody weeks, when Geoffrey briefly traveled for work or to attend his other children's out-of-town activities. *Id.* at A-16.

On March 7, 2023, the trial court granted Sarah's request for a no-contact order. The court prohibited Geoffrey from having any contact with W.E.W. The court ordered that "contact restoration" would not even be "considered" until Geoffrey underwent "individual psychotherapy with a clinician experienced with Cluster B personality disorders and parental alienation."[1] *Id.* at A-3. Other conditions for regaining contact are well outside of Geoffrey's control. For example,

[1] The court also ordered Geoffrey to complete a domestic-violence intervention program after hearing evidence that Geoffrey allegedly blocked the door to prevent Sarah from leaving during a family discussion about the divorce. That portion of the order is not at issue in this application.

the court specified that Sarah had to obtain "separate supportive extended family or community ties," and W.E.W. had to "undergo consultation with a prescribing mental health provider" to determine whether he needed "antidepressant medication." *Id.* at A-5–A-6.

Despite imposing these draconian measures, the court did not find that they were in the best interests of *anyone*. To the contrary, the court candidly acknowledged that this plan was likely "going to make things worse" between W.E.W. and Sarah, in part because W.E.W. would "blame" Sarah for losing contact with his father. *Id.* at A-17. W.E.W., after all, was "hardheaded" just like "[a]ll teenagers," so the court was "just not convinced that [Sarah's] suggest[ion] is going to turn things around." *Id.* Nor, according to the court, would mandatory psychotherapy for Geoffrey "change anything" about Sarah's relationship with W.E.W., especially because Geoffrey "doesn't want to do [therapy]." *Id.* at A-18. Nevertheless, because the court found that W.E.W.'s relationship with Sarah had not improved significantly since the divorce proceedings started, the court decided that "[i]n fairness . . . she is entitled for the Court to at least try what Dr. Spirko[] has recommended." *Id.* at A-3.

Geoffrey immediately filed a motion asking the trial court to stay the no-contact order pending appeal, returning the parties to the prior, 50/50 parenting arrangement. As relevant here, he argued that compelling him to undergo psychotherapy, at least on this record, violated his right under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to refuse

medical treatment. The trial court denied the stay, concluding that it had authority, consistent with the Due Process Clause, to order Geoffrey to undergo psychotherapy. *Exhibit B* at B-4. The court also extended the no-contact order, clarifying that it bars Geoffrey from attending W.E.W.'s school activities and sporting events even as a spectator. *Id.* at B-7–B-8.

Raising the same federal due-process claim, Geoffrey sought leave from the Tennessee Court of Appeals to take an emergency appeal of the trial court's no-contact order and sought a stay of the order. See Tenn. R. App. P. 10. That court declined to exercise discretionary jurisdiction over the appeal. See Order, *Woodward* v. *Woodward*, No. M2023-00444-COA-R10-CV (Tenn. Ct. App. Apr. 13, 2023) (attached as Exhibit C). The court also did not grant a stay. *Id.*

Geoffrey then applied to the Supreme Court of Tennessee for leave to appeal on the same due process grounds. He also requested a stay of the no-contact order. On June 5, 2023, the Tennessee Supreme Court declined review of the trial court's order. See Order, *Woodward* v. *Woodward*, No. M2023-00444-COA-R10-CV (Tenn. June 5, 2023) (attached as Exhibit D). The court also denied the request for a stay. *Id.*

Geoffrey has exhausted all avenues to appeal or seek a stay of the no-contact order in the Tennessee courts and thereby maintain his fundamental right to have contact with his son.

REASONS FOR GRANTING THE STAY

The issuance of a stay is left to this Court's discretion, guided by four factors:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. *Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton* v. *Braunskill*, 481 U.S. 770, 776 (1987)). In cases seeking a stay pending the filing and disposition of a petition for writ of certiorari, the applicant has a likelihood of success on the merits if there is "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; [and] (2) a fair prospect that a majority of the Court will vote to reverse the judgment below." *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam).

Applying these factors, the Court should grant the application and stay the Tennessee trial court's no-contact order pending a decision on Geoffrey's forthcoming petition for a writ of certiorari.

I. Geoffrey is likely to succeed on the merits.

This case presents an important question about when, consistent with the Due Process Clause, family courts may compel medical treatment as a condition of allowing a loving and fit parent to see his child. That question arises frequently, and family courts across the Nation take differing views on its answer. But the answer is clear under this Court's precedents: Without an overriding state interest and thorough consideration of reasonable alternatives, courts cannot force unwanted medical treatment on a parent, and certainly cannot do so as a condition of parental contact. When presented with a petition for a writ of certiorari, there is

a reasonable probability that four Justices will vote to review the due-process issue in this case, and a fair prospect that the Court will reverse the Tennessee trial court on the merits.

A. There is a reasonable probability that this Court will grant certiorari.

1. The Court would have jurisdiction to review the trial court's no-contact order.

This Court has certiorari jurisdiction over "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." 28 U.S.C. § 1257(a). The judgment, in other words, "must be final 'in two senses'": "It must be the final word of a final court." *Jefferson* v. *City of Tarrant*, 522 U.S. 75, 81 (1997) (quoting *Mkt. St. Ry.* v. *R.R. Comm'n of Cal.*, 324 U.S. 548, 551 (1945)). The trial court's order in this case is final in both senses.

a. The trial court's order is the Tennessee courts' "final word" on the federal due-process issue. This Court considers a state-court order final if "the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." *Cox Broad. Corp.* v. *Cohn*, 420 U.S. 469, 480 (1975). As the Court recently explained, if subsequent proceedings—such as the remainder of the marital dissolution proceedings here—will "neither alter[] [the state court's] analysis of the federal issue nor negate[] the effect of its judgment," then the state court's judgment is sufficiently final for this Court to exercise jurisdiction. *Moore* v. *Harper*, 143 S. Ct. 2065, 2078 (2023).

That is undoubtedly the case with the Tennessee trial court's no-contact order. The federal issue—whether the court could constitutionally mandate that Geoffrey undergo psychotherapy—will survive regardless of what happens in the rest of the divorce proceedings. Even if W.E.W. and Sarah comply with the remaining conditions for reconsideration of the no-contact order, Geoffrey will be denied any relationship with his son unless he sacrifices his constitutional right to be free from unwanted medical treatment. That is a choice no parent should have to make. But it is the choice Geoffrey will continue to face unless and until this Court intervenes.

It does not matter that the no-contact order is, in some sense, a *preliminary* injunction. There is no "indication that the injunction rests on a disputed question of fact that might be resolved differently upon further hearing." *Org. for a Better Austin* v. *Keefe*, 402 U.S. 415, 418 n.1 (1971) (exercising jurisdiction to review state court preliminary injunction). And the no-contact order expressly provides that it will remain in effect until Geoffrey complies with its terms, including the psychotherapy requirement. Such injunctions are "clearly final for purposes of review by this Court." *Amalgamated Foods Emps. Union Loc. 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308, 312 n.5 (1968), *abrogated on other grounds by Hudgens* v. *NLRB*, 424 U.S. 507 (1976).

b. The trial court's no-contact order and subsequent refusal to stay that order are the judgments of the "final court" on the federal issue. When a state trial court's judgment is subject to only discretionary appellate review, its decision becomes "the

highest court of the state in which a decision could be had" when the state appellate tribunals decline review. *Virginian Ry.* v. *Mullens*, 271 U.S. 220, 222 (1926); see also *Am. Ry. Express Co.* v. *Levee*, 263 U.S. 19, 20–21 (1923). Because the Tennessee Court of Appeals and Tennessee Supreme Court denied Geoffrey's applications for an emergency appeal, this Court has certiorari jurisdiction to review the Tennessee trial court's no-contact order.

2. Whether the Due Process Clause prohibits compelled mental health treatment absent compelling circumstances is an important issue.

Certiorari would be warranted to address the trial court's disregard of this Court's repeated holdings that an individual has a foundational constitutional right to refuse unwanted medical procedures.

The Due Process Clause of the Fourteenth Amendment "guarantees more than fair process, and the 'liberty' it protects includes more than the absence of physical restraint." *Washington* v. *Glucksberg*, 521 U.S. 702, 719 (1997). Among those personal liberties safeguarded by the Clause is an individual's right to be free from state-imposed medical treatment absent an "overriding" state interest and thorough consideration of "less intrusive alternatives." *Riggins* v. *Nevada*, 504 U.S. 127, 134–35 (1992). This freedom applies to all forms of medical treatment; whether physical, pharmacological, or psychiatric, the state's interest in forcing medical treatment must be extraordinary to overcome an individual's fundamental right to "the possession and control of his own person." *Union Pac. Ry.* v. *Botsford*, 141 U.S.

250, 251 (1891); see also *Vitek* v. *Jones*, 445 U.S. 480, 492 (1980) (recognizing due-process protection against mandatory behavioral modification programs).

This right has ancient roots in Anglo-American law, tracing back to the "common law" principle that "even the touching of one person by another without consent and without legal justification was a battery." *Cruzan ex rel. Cruzan* v. *Dir., Mo. Dep't of Health*, 497 U.S. 261, 269 (1990). The "notion of bodily integrity" enshrined in the common law is embodied in the doctrine of informed consent and its "logical corollary"—"the right not to consent, that is, to refuse treatment." *Id.* at 269–70. Indeed, this Court has recognized that "[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Botsford*, 141 U.S. at 251.

Robust protection of this liberty interest is particularly apt when, as here, the State has pitted a parent's right to be free from unwanted medical treatment against "perhaps the oldest of the fundamental liberty interests recognized by this Court"—parents' interest in the "care, custody, and control of their children." *Troxel* v. *Granville*, 530 U.S. 57, 65 (2000) (plurality). This interest holds firm "[e]ven when blood relationships are strained." *Santosky* v. *Kramer*, 455 U.S. 745, 753 (1982). State interference with the parent–child relationship thus requires a substantial state interest, see, *e.g.*, *Pierce* v. *Soc'y of the Sisters*, 268 U.S. 510, 534–35 (1925), proven in each case by "clear and convincing evidence," *Santosky*, 455 U.S. at 747–

48. In the eyes of the Due Process Clause, there is no difference between compelling medical treatment on pain of incarceration or on pain of terminated parental rights. Either way, the State must provide a compelling justification and explore less onerous alternatives. See *Riggins*, 504 U.S. at 134–35.

Which state interests suffice to overcome these liberty interests—and how the nebulous "best interests of the child" standard fits in—is a question faced by family courts throughout the Nation on a regular basis. This case provides a compelling opportunity to answer that question.

3. There is a conflict among the States over the circumstances under which a family court can mandate mental health treatment for a parent as a condition of contact with their child.

In addition to presenting an important constitutional question, this case provides the Court a rare opportunity to resolve a conflict of authority among state family courts as to whether, and when, they can condition parental contact on completing mental health treatment.

Some States have suggested that no circumstances justify ordering a parent to undergo medical treatment as a condition of maintaining a relationship with his child. It has long been the law of New York that a family court simply "has no power to compel . . . parents to undergo therapy treatments" as a condition of visitation. *Grado* v. *Grado*, 356 N.Y.S.2d 85, 87 (N.Y. App. Div. 1974); accord *C.B.* v. *J.U.*, 798 N.Y.S.2d 707, at *10 (N.Y. Sup. Ct. 2004) (Table) (holding it "is not permissible to compel therapy as a condition to visitation").

California law similarly holds that even if "psychiatric therapy" would "decrease the animosity" between divorced parents, that "praiseworthy motiv[e] furnish[es] no basis for requiring that [a parent] undergo involuntary psychiatric therapy of an unspecified duration." *In re Marriage of Matthews*, 161 Cal. Rptr. 879, 882–83 (Cal. Ct. App. 1980). As California courts later recognized, unless there are specific findings to "justify subjection of a party to involuntary psychiatric treatment" as a condition of visitation, court-imposed treatment "is a direct violation of [a parent's] due process rights." *Camacho* v. *Camacho*, 218 Cal. Rptr. 810, 814 (Cal. Ct. App. 1985).

In other States, by contrast, family courts order mental health treatment as a condition of child custody or visitation with little regard for the parents' liberty interest in being free from such treatment. Washington law is clear, for example, that "[a] judge in a family court proceeding can order remedial services, such as . . . treatment . . . as a condition to custody or visitation." *In re Mahaney*, 51 P.3d 776, 781 (Wash. 2002). And in West Virginia, the State's interest in "heal[ing]" the parent–child relationship justifies "direct[ing] participation in [professional] counseling" as a condition of visitation, even over the parent's objection. *Mary Ann P.* v. *William R.P., Jr.*, 475 S.E.2d 1, 8 (W. Va. 1996) (per curiam); see also *Mary D.* v. *Watt*, 438 S.E.2d 521, 528 (W. Va. 1992) ("The family law master or circuit court may condition such supervised visitation upon the offending parent seeking treatment.").

Tennessee falls into this latter group. In this case, for example, the court brushed aside, without any analysis of this Court's decisions, Geoffrey's claim that conditioning his contact with W.E.W. on mandatory psychotherapy violated due process. The court merely asserted in a conclusory fashion that it "does have the authority to order Mr. Woodward to participate" in therapy because he "has issues that need to be addressed to try to give this remaining minor child the best opportunity to have a relationship with both parents." *Exhibit B* at B-4. See also *Beyer* v. *Beyer*, 428 S.W.3d 59, 70–72 (Tenn. Ct. App. 2013) (affirming parenting plan that conditioned father's visitation on completing therapy).

When presented with an opportunity to resolve this difference of authority—which results in divergent case outcomes in different jurisdictions—there is a reasonable probability that this Court will grant certiorari.

B. There is a fair prospect that this Court will reverse the judgment below.

On the merits, this Court would likely conclude that the no-contact order infringes Geoffrey's due-process right to be free from unwanted medical treatment. State-imposed medical treatment is impermissible unless it is "necessary to accomplish an essential state policy." *Riggins*, 504 U.S. at 138. The no-contact order falls far short of this standard.

The trial court seemingly justified ordering Geoffrey to submit to psychotherapy for "Cluster B personality disorders," by citing to the best-interest-of-the-child standard. See *Exhibit A* at A-2–A-3; *Exhibit B* at B-4. But this Court has repeatedly refused to permit States to run roughshod over fundamental

constitutional rights by mechanically invoking that nebulous standard. *Troxel*, 530 U.S. at 67, for example, held that a state statute authorizing a third-party to obtain court-ordered visitation over a parent's objection—"based solely on the judge's determination of the child's best interest"—violated the parent's "fundamental" right to "make decisions concerning the care, custody, and control of their children." Similarly, *Palmore* v. *Sidoti*, 466 U.S. 429, 433–34 (1984), recognized that while "the best interests of the child is indisputably a substantial governmental interest for purposes of the Equal Protection Clause," it nonetheless could not justify terminating a mother's custody based on her having an interracial relationship. In short, a State's unadorned citation to the best-interests-of-the-child standard cannot overcome Geoffrey's fundamental right to refuse unwanted medical treatment.

In any event, even if it paid lip service to a recognized state interest, the trial court's order lacks any finding that compelled psychotherapy is medically necessary to support W.E.W.'s (or anyone else's) best interests. To the contrary, the trial court's frank assessment was that implementing Dr. Spirko's plan—including psychotherapy for Geoffrey—at best would not "change anything" between W.E.W. and his mother, and may even "make things worse." *Exhibit A* at A-17–A-18. State action that undermines its purported objective surely cannot justify infringing Geoffrey's fundamental rights. Nor can the trial court's conclusion that Sarah "in fairness" is "entitled" to "at least try" Dr. Spirko's plan. *Id.* at A-3. To be sure, the trial court was exasperated, albeit primarily with W.E.W. But exasperation is not sufficient. Only a "determination of the need" for Geoffrey's psychotherapy and a

finding that there were no "reasonable alternatives" could justify the court's order. *Riggins*, 504 U.S. at 136. Because the court's no-contact order lacks either finding, this Court would likely reverse the judgment below.

II. Geoffrey will be irreparably injured by the loss of contact with his son unless this Court grants a stay.

It is beyond dispute that Geoffrey is irreparably harmed by each day the no-contact order remains in place. Under the order, Geoffrey has a Hobson's Choice: Surrender his constitutional freedom to refuse unwanted medical treatment, or suffer another day without being able to see his son. Either path inflicts irreparable injury to constitutionally protected interests. The former because the loss of constitutional rights, "for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Cath. Diocese of Brooklyn* v. *Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam) (quoting *Elrod* v. *Burns*, 427 U.S. 347, 373 (1976) (plurality)). The latter because—as every parent recognizes—separating a parent from his child is an "excruciating" measure, one that inflicts "grave and lasting consequences." *Jacinto-Castanon de Nolasco* v. *U.S. Immigr. & Customs Enf't*, 319 F. Supp. 3d 491, 502 (D.D.C. 2018); accord *W.S.R.* v. *Sessions*, 318 F. Supp. 3d 1116, 1126 (N.D. Ill. 2018) ("Common sense would tell anyone that [family separation] . . . is causing irreparable harm, for which no other form of relief, monetary or otherwise, would be adequate.").

III. The equities favor a stay.

The equities also favor issuing a stay. A stay plainly will not injure the other party, Sarah. As the trial court found, the no-contact order will likely make her

relationship with W.E.W. *worse*. Nor would a stay harm W.E.W., who has previously expressed, and continues to express, his desire to have the freedom to have contact with both of his parents.

The public interest also supports a stay. Outside the parties, no one will be significantly affected, let alone harmed, by a stay. Indeed, the public interest generally favors contact between parents and children. And in any event, this Court has repeatedly recognized that the public interest favors protecting constitutional freedoms. See *Roman Cath. Diocese*, 141 S. Ct. at 67.

CONCLUSION

For these reasons, the Court should grant this Application and stay the Tennessee Circuit Court's no-contact order, thereby reinstating the 50/50 custody arrangement, pending the filing and disposition of Geoffrey Woodward's petition for a writ of certiorari.

Respectfully submitted,

CARTER G. PHILLIPS*
JACQUELINE G. COOPER
CODY M. AKINS
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Applicant

August 15, 2023 * Counsel of Record

CERTIFICATE OF SERVICE

A-_____

GEOFFREY HAMILTON WOODWARD,

Applicant,

v.

SARAH EDGE WOODWARD,

Respondent.

I, Carter G. Phillips, do hereby certify that, on this 15th day of August, 2023, I caused a copy and an electronic copy of the Application for A Stay in the foregoing case to be served by U.S. Mail, postage prepaid, and by email on the following party:

Helen S. Rogers
Laura S. Blum
The Wind in the Willows Mansion
2205 State Street
Nashville, TN 37203
(615) 320-0600
Helen@thewindinthewillowslaw.com
l.blum@thewindinthewillowslaw.com

/s/ *Carter G. Phillips*
CARTER G. PHILLIPS
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
cphillips@sidley.com