

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2005 CW 0441

RONALD WARREN

VERSUS

LINDA EASTER, R.N., SERGEANT BARNETT, DR.
CALDWELL, SERGEANT DANIELS, C.M. LENSING,
AND JOHN DOE

Judgment Rendered: September 23, 2005.

On Appeal from the
18th Judicial District Court,
in and for the Parish of Iberville
State of Louisiana
Trial Court No. 58,808

Honorable J. Robin Free, Judge Presiding

Ronald Warren

Plaintiff/Relator,
Pro Se

David A. Peterson
Baton Rouge, LA

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Linda Easter, et al.

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Assistant Attorney General
Baton Rouge, LA

Counsel for Defendant/Respondent,
State of Louisiana

BEFORE: CARTER, C.J., PETTIGREW AND MCDONALD, JJ.

Pettigrew, J. dissents with reasons by file

CARTER, C.J.

This matter comes before this court on a writ of certiorari granted to consider whether the automatic stay provision of the Prison Litigation Reform Act (PLRA), LSA-R.S. 15:1186B(2), violates plaintiff's constitutional rights. For the reasons expressed, we deny the application for supervisory writs.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Ronald Warren, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), filed the instant suit in the Nineteenth Judicial District Court in February 2001, as a petition for judicial review of a proceeding under the Corrections Administrative Remedy Procedure (CARP), LSA-R.S. 15:1171, *et seq.* Plaintiff alleged medical malpractice on the part of DPSC employees and physicians.

The suit was converted to an ordinary tort proceeding pursuant to **Pope v. State**, 99-2559 (La. 6/29/01), 792 So.2d 713, which held CARP unconstitutional in regard to prisoner tort suits. In March 2003, the matter was transferred to the Eighteenth Judicial District Court in accordance with the venue provisions of LSA-R.S. 15:1184F.

After plaintiff made several attempts to move the matter forward, defendants filed a motion to recognize and enforce the automatic stay pursuant to LSA-R.S. 15:1186B(2). The statute, as amended by 2002 La. Acts 1st Ex. Sess. No. 89, §2, imposes an automatic stay on prisoner pauper litigation until all costs or fees owed by the prisoner are paid; proceedings are deemed abandoned if costs are not paid within three years from the time when they are incurred. However, the automatic stay does not apply to

petitions for judicial review of CARP proceedings, post-conviction relief or habeas proceedings, or proceedings for injunctive relief where the inmate is in imminent danger of serious physical injury. LSA-R.S. 15:1186B(2)(d).

Plaintiff filed an objection to defendants' motion to recognize the stay, alleging the automatic stay provision violates his constitutionally protected rights. The district court granted defendants' motion and signed a judgment on May 15, 2004, ordering the matter stayed until plaintiff paid all court costs accrued after April 18, 2002, the effective date of Act 89.

Plaintiff filed an application for supervisory writs with this court, reiterating his challenge to the constitutionality of the automatic stay provision.¹ Because the district court's May 2004 judgment did not address the constitutional issues, this Court remanded the case with instructions to treat plaintiff's objection to the motion to enforce the automatic stay as a pleading challenging the constitutionality of LSA-R.S. 15:1186B(2) and to lift the stay previously imposed for the limited purpose of allowing the parties to litigate, and the court to decide, the constitutional issues raised.

At the conclusion of the November 29, 2004 hearing, the district court ruled that the challenged statute is constitutional and that the stay originally imposed was to remain in effect. Plaintiff then filed the present application for supervisory writs. We granted a writ of certiorari to consider plaintiff's constitutional arguments.

DISCUSSION

In objecting to defendants' motion to recognize and enforce the automatic stay, plaintiff argues that the PLRA's automatic stay provision

¹ **Warren v. Easter**, 04-1430 (La. App. 1 Cir. 9/23/05) (not for publication).

violates his right of access to the courts as guaranteed by LSA-Const. art. I, §22 and is contrary to the equal protection guaranteed in LSA-Const. art. I, §3. He further urges that the automatic stay should not be applied retroactively to his suit, which was filed prior to the effective date of Act 89.

We find plaintiff's claims to be without merit. The arguments raised herein were likewise raised by a similarly situated inmate in **Rhone v. Ward**, 39,701 (La. App. 2 Cir. 5/11/05), 902 So.2d 1258. The court in **Rhone** observed that the automatic stay provision does not affect any suspect class or involve any fundamental right, and is rationally related to the legitimate state interest of lessening the burdens presented by nuisance prisoner suits. The court thus found that the provision neither violates equal protection guarantees nor unconstitutionally impairs a prisoner's right of access to the courts.

We agree. We likewise agree with the **Rhone** court's conclusion that enforcing the stay as to those costs incurred after the effective date of Act 89 is appropriate and does not, as plaintiff suggests, constitute an unconstitutional retroactive application of the law.

CONCLUSION

For the reasons expressed, we agree with the district court ruling that the automatic stay provision of LSA-R.S. 15:1186B(2) does not violate plaintiff's constitutional rights as alleged and that the stay originally imposed should remain in effect. We thus deny plaintiff's application for supervisory review. This memorandum opinion is issued in compliance with Uniform Rules-Courts of Appeal, Rule 2-16.1.B.

WRIT DENIED.

RONALD WARREN

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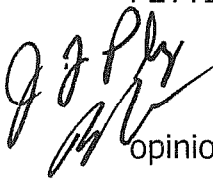
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FIRST CIRCUIT
STATE OF LOUISIANA

BEFORE: CARTER, C.J., PETTIGREW, AND McDONALD, JJ.

PETTIGREW, J., DISSENTS, AND ASSIGNS REASONS.

PETTIGREW, J., dissenting.

 I respectfully dissent from the majority and would grant this writ. I am of the opinion that the practical effect of applying the automatic stay provision of the Prison Litigation Reform Act, LSA-R.S. 15:1186B(2), in reality, deprives a prisoner of his right of access to the courts. This application, in my humble opinion, violates a prisoner's rights as guaranteed under LSA-Const. art. I, §22, which provides as follows:

All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights.