

IN THE FLORIDA SUPREME COURT
STATE OF FLORIDA

KEITH R.E. JOHNSON and
KREJ LEASING, INC.

CASE # 2021-715

PETITIONERS,
v.

CIRCUIT CT. CASE 2015-CA-1414

AKEEFE GARRETT,

RESPONDENT.

MOTION FOR REHEARING

**TO: HONORABLE CHIEF JUSTICE CHARLES T. CANADY
HONORABLE JUSTICE RICKY POLSTON
HONORABLE JUSTICE JORGE LABARGA
HONORABLE JUSTICE ALAN LAWSON
HONORABLE JUSTICE CARLOS G. MUNIZ
HONORABLE JUSTICE JOHN D. COURIEL
HONORABLE JUSTICE JAMIE R. GROSSHANS
SUPREME COURT OF FLORIDA
500 S. DUVAL STREET
TALLAHASSEE, FL 32339-1925**

The petitioners, Keith R.E. Johnson and KREJ, Leasing, Inc., pursuant to Rule 9.330, Fla.R.App.P., request reconsideration of this court's order of transfer dated May 26, 2021 and, as grounds, states as follows:

1. In its order dated May 26 the court states, "Not final until time expires to file rehearing motion and, if filed, determined".
2. In this court's transmittal to Florida Fifth District Court of Appeal

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the order references whether the petition is titled properly and follows with an intimation of jurisdiction.

3. Form, at least in the American system, never steps on the head of substance. This court has so stated:

(c) REMEDY. If a party seeks an improper remedy, the cause shall be treated as if the proper remedy has been sought, provided that it shall not be the responsibility of the court to seek the proper remedy.

(d) Amendment. At any time in the interest of justice, the court may permit any part of the proceeding to be amended so that it may be disposed of on the merits. In the absence of amendment, the court may disregard any procedural error or defect that does not adversely affect the substantial rights of the parties.

Rule 9.040(c) and (d), Fla.R.App.P. See also, the committee notes to the 1977 amendment to rule 9.040, specifically paragraph 2 which addresses its history and purpose.

4. Here, it is clear that the petitioners are requesting that this court amend the order(s) entered (and relied upon by the trial court, e.g. AOSC 20-23, 20-32) that restrict access to the Orange County courthouse and prohibit live attendance at hearings. The juxtaposition, the imagery is stark, a citizen can walk into the local Walmart and fill his pantry but his lawyer is prohibited from walking into the county courthouse (despite being fully vaccinated) to advocate on questions of constitutional importance and property issues. This does not engender felicity or fidelity in the system.

5. The exposition phrase of the petition for mandamus makes reference to an “alternative writ”. If this court is entrenched, unwilling to modify its administrative order(s) allowing this attorney to appear “live” at hearings, then so be it. What more can be done? We live in a representative democracy and we operate under the umbrella of Article V of the Florida Constitution.

6. Transferring this case to the Fifth District Court of Appeal, who has no authority to amend this court’s orders is probably a waste of time. A waste of a filing fee. Perhaps this court was taken astride by the language in the petition – perhaps it was considered strong – but that does not change the constitutional and scientific conditions that currently exist. Students at Florida public universities are attending class in person yet lawyers are prohibited from entering the courtroom to advance their clients’ cause?

7. Respectfully, if the court is unwilling to amend its orders even in a limited capacity to allow in person attendance at hearings, there is nothing more to do. Mandamus has always been considered a proper remedy to force a hearing. See e.g., *Dicolla v. State*, 1286 So.2d 1286 (Fla. 5th DCA 2000); *Thompson v. State*, 985 So.2d 1177 (Fla. 3rd DCA 2008). For instance, the Florida state court system would collapse absent hearings on motions. The docket is simply too large to require a judge to independently

review every motion, every file, and every response (if one is even filed) without hearings. If the court wishes to maintain a permissive use of audio or digital technology in the future, then that digital technology should be permissive – it should not be mandated. The prohibition against lawyers appearing in person neuters the profession. The profession has always been formal, austere, it should remain so. The Covid-19 restrictions have negatively affected all professions, all trades, and all vocations. It has been documented that students do not learn as well over a computer as they do with live, in-person instruction. The same logic applies to this situation. This is plain.

8. Respectfully, the court should reconsider its order of transfer and decide this case on its merits, i.e., it should amend its orders on this matter or it should deny the position.

9. Further, this attorney, the petitioners respectfully request that this court consider this motion as an amendment to his petition, a request to the court to modify the administrative orders at issue.

Respectfully submitted this 27th day of May 2021.

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May 2021 the following was electronically filed with the Clerk of Court via the E-portal, with notice of

electronic filing to the following: Shyamie Dixit, Esq. and Robert Vessel, Esq., Dixit Law Firm, 3030 N. Rocky Point Drive West, Suite 260, Tampa, FL 33607, (813) 252-3999, sdixit@dixitlaw.com and rvessel@dixitlaw.com; and Jeremy K. Markman, Esq., King & Markman, P.A., 941 Lake Baldwin Lane, Suite 101, Orlando, Florida 32814, markman@kingmarkman.com; and to the Honorable Vincent Falcone, III, Orange County Circuit Court Judge, Orange County Courthouse, 425 N. Orange Avenue, Orlando, FL 32801, 39orange@ninthcircuit.org.

s/Steven G. Mason
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