

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CINCINNATI, OHIO**

RAY R. LAUTENSCHLAGER)	
PLAINTIFF)	
VS.)	CASE NO. 5:08 CV 2188
)	
SUMMIT COURT)	JUDGE SARA LIOI
OF COMMON PLEAS,)	
NANCY H. ROGERS, ATTORNEY GENERAL,)	
STATE OF OHIO,)	
JUDGE JOHN QUINN,)	
MAGISTRATE TRACI STONER,)	
PAMELA BAYLOR (fka LAUTENSCHLAGER)	
WILLIAM HOWARD, ESQ)	
DEFENDANTS)	

**APPEAL OF DECISION OF JUDGE LIOI,
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION-AKRON DISTRICT**

Plaintiff

Ray R. Lautenschlager
Pro Se
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Defendants

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209 S. High Street
Akron, OH 44308

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Judge John Quinn
Summit County Court of Common Pleas
Domestic Relations Court
209 S. High Street
Akron, OH 44308

Magistrate Traci Stoner
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209 S. High Street
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History and Background

1. This case was originally filed on September 12, 2008 as a tort under US Title 42, United States Code §§ 1983 for damages due to application of Ohio Revised Code 3109.04, Ohio Revised Code 3109.04 and Civil Rule 75N and where the damages exceed \$75,000 in value and seeking a Declaratory Judgment that the proceeding Ohio laws and Civil rules are Unconstitutional.
2. This case and complaint has a sorted history thanks to Judge Lioi playing fast and loose with Federal Rules of Civil Procedure and her failure to **read the complaint** instead of interpreting this complaint in the manner she chooses. Judge Lioi has played fast and loose with the Federal Rules of Civil Procedure by taking extraordinary amounts of time to respond to properly filed *in forma pauperis* motions and this complaint. Judge Lioi has clearly indicated by her actions that she has no desire to see justice or to play by and respect the Plaintiff's right to be heard by this Court.
3. Plaintiff Ray R. Lautenschlager and Defendant Pamela Baylor were married in December of 1989 and divorced in April of 1994. They had one son (Kevan R. Lautenschlager, born June of 1990) as a result of that marriage. Throughout the marriage both parents had and maintained equal legal and physical custody and were equally a part of Kevan's life.
4. Upon their divorce, the Plaintiff and the Defendant entered into an agreed entry with the Summit County Court in which both parents maintained equal legal and physical custody of their son. This agreement continued for nine years until the Defendant, Pamela S. Baylor, and her Legal Council, William Howard, filed a motion for a change of custody with the Summit County Domestic Relations Court. A temporary change of custody order was issued by Magistrate Tracy Stoner and signed off on by Judge John Quinn on or about November 2003 despite the fact that Mr. Howard admitted to the court that he had not made service upon the Plaintiff.
5. On or about October of 2004, Judge Quinn issued an order terminating all of the Plaintiff's parental rights and declaring him to be a **companion** to the child that he had raised on an equal basis for over 14 years. This order was issued **without** a finding of unfitness of either parent and with only an opinion that the father was lying to the court. This despite the fact that the Defendant Baylor admitted under oath that she had perjured herself and submitted

false documents to the Court.

6. This case was originally filed with the Northern District Court, Akron District on September 12, 2008 and assigned to Judge Lioi.
7. As noted in the court's dismissal, a previous complaint was filed on March 4, 2008 which was dismissed erroneously by Judge Lioi citing that there was no case in controversy. Judge Lioi held the *in forma pauperis* motion and the complaint for over 90 days before dismissing the case. Judge Lioi improperly cited Rooker-Feldman as the time for State Court Appeals had expired and the Plaintiff's son had become emancipated. A request for Reconsideration was filed with the Court but dismissed for timeliness. A proper and timely Notice of Appeal was filed. That Notice of Appeal was voluntarily withdrawn by the Plaintiff and a NEW case was filed with the court with additional case law to support having this complaint heard by this court.
8. Judge Lioi did not respond until December 17, 2008 clearly outside of the Federal Rule stating that a Motion *in forma pauperis* must be ruled on within 30 days.
9. The Motion *in forma pauperis* was granted by Judge Lioi on December 17, 2008; over 60 plus days from the time that the original petition was filed in the Akron District Court. The case was then dismissed by Judge Lioi on December 17, 2008 again citing Rooker-Feldman stating that no case of controversy could exist. Again, **NO** state case exists so the Rooker-Feldman abstention does not apply.

JURISDICTIONAL STATEMENT AND MEMORANDUM IN SUPPORT OF APPEAL

10. Petitioner Ray Lautenschlager respectfully appeals the order of Judge Lioi's decision to dismiss this case and the petitioner's *in forma pauperis* application pursuant to Fed.R.App. 40 where the December 17, 2008 DECISION conflicts with the doctrine of "Complete Pre-emption" pursuant to decisions of the United States Supreme Court and the Sixth Circuit Court's holding of *Catz v. Chalker*, 142 F.3d 279 (6th Cir. 1998) and *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983). Petitioner asserts that complete preemption in the adjudication of parental rights is a jurisdictional preemption {see 15 Moore's Federal Practice § 103.45[1], at 103-78} and that declaratory judgment will completely construe the due process

requirements mandated by decisions of the United States Supreme Court pursuant to strict scrutiny of Ohio law. The procedures expressly written on the face of ORC 3109.04 must comport with the due process requirements established by precedent holdings of the United States Supreme Court.

11. “The county originally sought a declaratory judgment that the state statute conflicted with the federal act and was therefore invalid under the Supremacy Clause. The Federal District Court entered a declaratory judgment in favor of the county. *Lawrence County v. South Dakota*, 513 F. Supp. 1040 (SD 1981). The Court of Appeals for the Eighth Circuit vacated that judgment, however, concluding that the county's invocation of the Supremacy Clause did not convert the action into one arising under federal law for purposes of federal jurisdiction under 28 U.S.C. 1331. 668 F.2d 27 (1982). This ruling was erroneous. *In Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), we granted declaratory relief to a party challenging a state statute on pre-emption grounds, reaffirming the general rule that '[a] plaintiff who seeks injunctive relief from state regulation, on the ground that such regulation is pre-empted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail, thus presents a federal question which the federal courts have jurisdiction under 28 U.S.C. 1331 to resolve.' *Id.*, at 96, n. 14.” *Lawrence City v. Lead-Deadwood School Dist.*, 469 U.S. 256 @FN 6 (1985). [Emphasis added.]
12. Even if Congress has not expressly pre-empted state law in a given area, a state statute may nevertheless be invalid under the Supremacy Clause if it conflicts with federal law. Cf. *Lawrence City v. Lead-Deadwood School Dist.*, 469 U.S. 256 (1985); *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984); *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Currently, O.R.C. §3109.04 procedures are vague, and the discretionary “best interests” factors are so unequivocally overbroad that Ohio’s evidentiary standard provides no real guidance to the state court judge where inconsistent results are to be expected when personal biases and habits are factored into the mix. Of course, another problem with the “**best interests**” standard is that the statute provides no guidance whatsoever for future behavior.
13. Judge Lioi has not addressed that the lack of express due process requirements on the face of ORC 3109.04 completely pre-empted the Plaintiff’s constitutional rights, and therefore, complete pre-emption by virtue of the Supremacy clause meets the requirement of an actual

case or controversy which the federal court has jurisdiction to resolve. “We have no doubt that federal courts have jurisdiction under §1331 to entertain such a suit.” [Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96 \(1983\)](#).

14. Plaintiff Lautenschlager seeks relief... “on the ground that such regulation is pre-empted by [*due process procedures mandated by decisions of the USSC*] which, by virtue of the Supremacy Clause of the Constitution, must prevail”, and [Petitioner’s] claim ‘thus presents a federal question which the federal courts have jurisdiction under 28 U.S.C. §1331 to resolve.” Shaw, id. @ 96.
15. In Catz, id., the Sixth Circuit concluded that a declaration of Catz’s due-process claim “would not prevent the Pima County Court from coming to the same conclusion under constitutional procedures.”
16. Instead, Catz asks the court to examine whether certain judicial proceedings, which happened to involve a divorce, comported with the federal constitutional guarantee of due process. This is a sphere in which the federal courts may claim an expertise at least equal to that of the state courts.
17. Judge Lioi’s assertion that the decision of Judge Magistrate Merz in Galluzzo v. Champaign should apply and that this is a matter for a state court is erroneous. One need only refer to Evans v. State of Ohio, et al (08CVH 1115756) in which the State of Ohio motioned immediately for dismissal of the case, indicating that they have no desire to hear or decide this issue.

ISSUES PRESENTED FOR APPEAL

18. Plaintiff Lautenschlager maintains an actual case or controversy pursuant to the deprivation of parental rights where express procedures in ORC 3109.04, ORC 3109.043 and Civil Rule 75N completely preempt federal due process requirements which by virtue of the Supremacy Clause must prevail; and where ORC 3109.04 is capable of repetition and continuously evades meritorious review.
19. The Plaintiff has filed a Complaint under Title 28 U.S.C. §1331 pursuant to the case or controversy requirements of Article III in the U.S. Constitution challenging ORC 3109.04.

Plaintiff is seeking declaratory relief and damages under 28 U.S.C. §2201 asserting that Ohio law is wholly discretionary, vague, and where the statute provides the state court judge no guidance to determine the rights of both parents to raise their children; and where the statute lacks express due process procedures, including the determination of parental rights pursuant to the raising, rearing, and decision-making of the children at issue. The arbitrary application of current procedures on the face of Ohio's statutory scheme deprive(s) Petitioner, and all Ohio parents, of fundamental liberty rights, concurrently denying equal protection to similarly situated suitable parents.

- a. Petitioner sought adjudication through declaration of his legal rights where the lack of due process procedures mandated by the U.S. Constitution and interpreted by the United States Supreme Court, directly caused an actual deprivation, *i.e.*, an injury-in-fact, pursuant to the express language and application of procedures in O.R.C. §3109.04. The lack of federal due process requirements on the face of Ohio's statute *completely pre-empts* Petitioner's ability (and every Ohio parent under the jurisdiction of §3109.04) to protect their parental rights and achieve a constitutional outcome *under any set of circumstances*. And it is the denial of due process that is the critical link in the procedural chain that dictates Petitioner's current non-custodial status.

20. Squarely on point with the declaratory request in *Lautenschlager v. Summit County, et al.*, the Sixth Circuit Court in [Catz v. Chalker, 142 F.3d 279 \(6th Cir. 1998\)](#) held that *Catz* was entitled to declaration of due process procedures leading up to the deprivation.

- i. "Our disagreement with the district court comes down to the question of whether *Catz's* action is a "core" domestic relations case, seeking a declaration of marital or parental status, or a constitutional claim in which it is incidental that the underlying dispute involves a divorce. We conclude that the case is best described as the latter. True, the remedy *Catz* seeks - a declaration that the Pima County divorce decree is void as a violation of due process - would seem to "directly impact the marriage status and rights between the husband Plaintiff and his wife." On the other hand, if the divorce judgment were unconstitutionally obtained, it should be regarded as a nullity, see [Phoenix Metals Corp. v. Roth, 284 P.2d 645, 648 \(Ariz. 1955\)](#), and any decree so stating would change nothing at all."*Catz, id.* @ A addressing the Domestic Relations Exception. [Emphasis added.]

21. Plaintiff did not ask for a review of his state custody case as all avenues of appeal were exhausted in this case and further litigation would have been meaningless within state court because of the time lines involved. Therefore *Rooker-Feldman* does not apply. With no challenge being presented to this court to the findings of the state, the *Rooker-Feldman*

Doctrines **cannot** and does not apply. Plaintiff's State remedies are completely exhausted and **moot** now as his son has turned eighteen years of age, is emancipated, yet the collateral damages still exist.

22. Plaintiff will clearly show this court that his Due Process Rights were violated by all of the named Defendants. Plaintiff is seeking damages for the deprivation of his rights and is not seeking an inappropriate appeal of a state court decision.
23. Plaintiff stated clearly that ORC 3109.04, ORC 3109.043 and Civ. Rule 75N are unconstitutional on their face and he is seeking this court's jurisdiction for damages from the laws and procedural rules of the State of Ohio and the actions of state agents and actors under the color of law.
24. Plaintiff had standing to bring this Constitutional challenge Under Article III of the United States Constitution when he originally filed this complaint. The Plaintiff is still and will always be subject to this law and civil rule so long as he is a citizen of the State of Ohio as the situation falls under the Repeatability Doctrines. One need look no further that Franklin County and the current case of *Davis v. Evans, 2007 DR 0355, Franklin County, Ohio*. Mr. Evans has once again been subjected to ORC 3901.04 and the continued lack of due process within the laws and procedures of the State of Ohio. Previously having been deprived of his fundamental custody right with his child, Mr. Evans is currently being deprived of this same right to the custody and care of another child WITHOUT the benefits of due process protections and a full evidentiary hearing for over two (2) years. The failure of the courts to respect his rights and the rights of all Ohio parents to equality under the Fourteenth Amendment of the United States Constitution continues unabated in Ohio.
25. Plaintiff has standing to bring this Constitutional challenge now because of repeatability and the unequal application of the laws of the State of Ohio and its Rules of Civil Procedure. In reality, the Plaintiff could be named as the father of a child (without his knowledge or any knowledge of the naming party) and be deprived by the State of Ohio of his personal property without any hearing and be coerced under the threat of incarceration or the loss of privileges, professional and sportsman's licenses as Plaintiff has already suffered at the hands of the named Defendants of this case.
26. Plaintiff has standing to bring this case before that court as a ***Certified Constitutional***

Question as to the Constitutionality of ORC 3109.04 and Civil Rule 75N issued by Judge Magistrate Merz on Aug. 12, 2002 in Dayton Federal Court. The question has never been answered by the Federal Court System (or any other court system). (See Galluzzo v. Champaign County Court, et al, C3-01-174.) (See Exhibit D) Judge Magistrate Michael Merz found the questions he raised about the lack of due process and equalities within Ohio law to be so controversial the he issued a **Certificate of Constitutional Question** to the Ohio Attorney General, yet, the question was never answered. Plaintiff Ray R. Lautenschlager is again raising this question due to the deprivation of his rights by the Defendants and is seeking damages.

27. Plaintiff prays that God will guide this court to see that this is a case of controversy and that this issue is within the jurisdiction of this Court to hear. Plaintiff also prays that this court will reverse the decision of Judge Lioi to dismiss this case and reinstate the Plaintiff's *in forma pauperis* motion and immediately allow this case of controversy to move forward.
28. Plaintiff prays that this Court of Appeals will remand this complaint back to the Akron Federal Court for jury trial as originally requested.
29. Plaintiff raised questions of the Constitutionality of ORC 3109.04 and Civil Rule 75N during his trial and all proceedings with Summit County Domestic Relations Court by written and oral motion and all motions were dismissed without hearing. If the state court will not address these motions and questions of law, and the federal courts does not want to address these questions of law, then **WHO** will address these questions of law?
30. Plaintiff prays that this Court of Appeals replace Judge Lioi with a judge that clearly believes in proper Due Process of Law.
31. Plaintiff prays that God will guide this court to reinstate the original complaint and the *in forma pauperis* so that this issue can finally be decided by a court of competent jurisdiction
32. Plaintiff prays that God will guide this court will order that the Certified Question of Law issued by Judge Magistrate Merz in Galluzzo v. Champaign County be answered by the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND ACCURATE COPY OF THE FOREGOING COMPLAINT WAS SERVED UPON DEFENDANTS ON THE ___th DAY OF _____, 2008.

Ray R. Lautenschlager, Plaintiff

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