

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

MICHAEL A. GALLUZZO,

Plaintiff,

-vs-

CHAMPAIGN COUNTY COURT  
OF COMMON PLEAS, et al.,

Defendant.

Case No. C-3-01-174

Chief Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

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**SUPPLEMENTAL REPORT AND RECOMMENDATIONS**

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FILED  
KENNETH J. MURPHY  
CLERK  
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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION  
DAYTON

This case is before the Court on Plaintiff's Motion for Temporary Restraining Order (Doc. No. 3). Plaintiff seeks to restrain the Champaign County Common Pleas Court from jailing him on civil contempt commitment pending the outcome of this case.

Plaintiff filed this action the day before he was set to be jailed. He was heard the next day and the Magistrate Judge recommended the TRO be denied because the relief sought was in the nature of habeas corpus relief and he had not exhausted his available state court remedies (Report and Recommendations, Doc. No. 6). Plaintiff has now objected to that Report (Objections, Doc. No. 8). The General Order of Reference for the Dayton location of court permits the Magistrate Judge to reconsider decisions or reports and recommendations when objections are filed.

In his Objections, Plaintiff does not indicate whether he has taken any steps to exhaust his remedy by way of appeal to the Court of Appeals for Champaign County, nor does he suggest that appeal would be in some way futile. Instead, he asserts that he is likely to prevail and forcing him to serve jail time while litigating deprives him of the very liberty interest he seeks to

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vindicate.

In a sense, what Plaintiff seeks is bail pending a decision by this Court on his constitutional issues. In the habeas corpus context, bail is referred to as “enlargement.” A district court has authority to enlarge a state prisoner pending determination of his or her petition for writ of habeas corpus under 28 U.S.C. §2254. *Aronson v. May*, (1964, US), 85 S. Ct. 3, 13 L. Ed. 2d 6. However, it is appropriate to exercise that authority only upon a showing that a petitioner's claim is both substantial and clear on the merits. *Glynn v. Donnelly*, 470 F. 2d 95 (1st Cir. 1972); *Calley v. Callaway*, 496 F. 2d 701 (5th Cir. 1974).

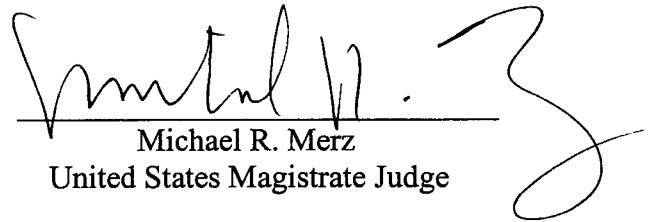
In order to receive bail pending a decision on the merits, prisoners must be able to show not only a substantial claim of law based on the facts surrounding the petition but also the existence of "some circumstance making [the motion for bail] exceptional and deserving of special treatment in the interests of justice." *Aronson v. May*, 85 S.Ct. 3, 5, 13 L.Ed.2d 6, 9 (1964) (Douglas, J., in chambers); see *Martin v. Solem*, 801 F.2d at 329-330; *Iuteri v. Nardoza*, 662 F.2d at 161. There will be few occasions where a prisoner will meet this standard.

*Dotson v. Clark*, 900 F. 2d 77, 79 (6<sup>th</sup> Cir. 1990). Plaintiff has not made such a showing. It is of particular concern to the Magistrate Judge that Plaintiff's claimed deprivation of right to the custody of his children took place many years ago, but he is seeking federal court intervention only now when the consequences of that deprivation of custody, to wit, his obligation to pay child support, are, so to speak, coming home to roost.

Furthermore, to the extent that Plaintiff seeks what amounts to bail, that remedy is also available to him in the Court of Appeals of Champaign County and there is no showing that he has yet asked that court for relief.

Accordingly, it is again respectfully recommended that Plaintiff's Motion for Temporary Restraining Order be DENIED.

May 8, 2001.

  
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Michael R. Merz  
United States Magistrate Judge

### NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by mail and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See, United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).