

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

MICHAEL A. GALLUZZO,	}	
Plaintiff,	}	CASE NO. C 3 01 - 174
	}	
v.	}	JUDGE WALTER HERBERT RICE
	}	
CHAMPAIGN COUNTY COURT OF	}	ANSWER OF DEFENDANTS
COMMON PLEAS, ET AL.	}	CHAMPAIGN COUNTY COURT OF
Defendants.	}	COMMON PLEAS AND
	}	JUDGE ROGER B. WILSON

Now come Defendants Champaign County Court of Common Pleas and Judge Roger B. Wilson (hereinafter Defendants) in the above-captioned case, and for their Answer state:

JURISDICTION

1. To the extent the averments in Paragraph 1 of Plaintiff's Complaint allege jurisdiction for an injunction to issue against Defendant and to the extent the Plaintiff alleges violations of the United States Constitution and laws of the United States, pursuant to 42 U.S.C. § 1983, Defendants admit jurisdiction. However, to the extent that damages are sought, this Court lacks jurisdiction under the Eleventh Amendment to the United States Constitution as the Court of Common Pleas is an agency or arm of the State of Ohio and Judge Roger Wilson is acting at all times as an agent of the State of Ohio.

2. Plaintiff does not identify what section of the United States Code grants jurisdiction for the averments in Paragraph 2 of Plaintiffs Complaint. The language in said

paragraph appears to come from 28 U.S.C. § 1332, which is the statute that grants jurisdiction to United States District Courts where there is diversity of citizenship and the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00). However, Plaintiff has failed to allege diversity of citizenship and Defendants deny any diversity of citizenship among the parties named. In fact, Paragraphs 16 through 21 of the Plaintiff's Complaint aver that all parties are residents of the State of Ohio. Therefore Defendants deny that this Court has jurisdiction as alleged in Paragraph 2 of the Plaintiff's Complaint.

3. If the Plaintiff has otherwise raised a valid cause of action, to the extent that his claims rely on interpretations of the United States Constitution or laws of the United States, Defendants admit jurisdiction of this Court pursuant to 28 U.S.C. § 1331.

4. Defendants deny that 28 U.S.C. § 2201 confers jurisdiction on this Court. Section 2201 provides a remedy for the district courts where jurisdiction can otherwise be established on other bases, but does not of itself provide for jurisdiction. To the extent Plaintiff claims jurisdiction under "the provisions of applicable sections of the U.S. Code that are not specifically asserted and/or are inadvertently omitted in this action . . . ,” Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments, and therefore deny that any unnamed section of the U.S. Code confers jurisdiction upon this Court.

5. As Paragraphs 5 through 15 of the Plaintiffs Complaint appear to be allegations of fact in support of jurisdiction alleged in Paragraphs 1 through 4 of the Complaint, Defendants will admit jurisdiction only to the extent so admitted in Paragraphs 1 through 4 of this Answer, but otherwise deny averments of fact or statements of law and deny any other bases for jurisdiction for reasons already stated.

PARTIES

6. Defendants admit the averments in Paragraphs 16 through 19 of Plaintiff's Complaint, based on the knowledge obtained from the pleadings, motions, and hearings in the case to date.

7. Defendants admit the Attorney General of the State of Ohio has not been named as a party and that the address of the Attorney General is as stated, but otherwise deny any other statements or inferences made in Paragraph 21 of the Plaintiff's Complaint.

RELEVANT STATE LAWS AND RULES

8. Defendants admit that there exists an Ohio Rule of Civil procedure 75(N), but deny Plaintiff's interpretation thereof and all other averments in Paragraph 22 of the Plaintiff's Complaint. Defendants affirmatively state that the rule must not only be read *in pari materia* with Ohio Rev. Code § 3109.04, but also with all other statutes relating to domestic relations and provision for the best interests of children, all other rules of procedure, and all case law interpreting said rule and its relationship to other rules and statutes. Defendants further affirmatively state that the rule applies only to temporary orders prior to the trial on the merits and does not effect the manner in which evidence is obtained and used in the issuing of final divorce decrees and related parenting orders.

9. Defendants admit that there exists a statute designated Ohio Revised Code § 3109.04, but denies Plaintiff's interpretation thereof and all other averments in Paragraph 23 of the Plaintiff's Complaint.

Relevant “Facts” as Alleged by Plaintiff

10. Defendants admit the averment of Paragraph 24 of the Plaintiff’s Complaint.

11. Defendants are without information or knowledge sufficient to form a belief as to the truth of the averments of Paragraph 25 of the Plaintiff’s Complaint, and therefore deny same.

12. Defendants admit the averment in Paragraph 26 of the Plaintiff’s Complaint.

13. Defendants admit the averment in Paragraph 27 of the Plaintiff’s Complaint that Ronald Thompkins represented Teresa Cook in all motions beginning from August 11, 1995, to the current date, but deny that he represented her prior to August 11, 1995.

14. As to the averment in Paragraph 28 of the Plaintiff’s Complaint, Defendants affirmatively state that Roger B. Wilson is the only Judge of the General Division (which includes the Domestic Relations Division) in Champaign County, Ohio, and therefore has presided over the divorce action entitled “Teresa A. Galluzzo v. Michael A. Galluzzo,” Case No. 93 DR 247 from its inception to date.

15. As to the averment in Paragraph 29 of the Plaintiff’s Complaint, Defendants affirmatively state that the Champaign County Court of Common Pleas has, by Ohio law, original jurisdiction over the case described in Paragraph 14 of this Answer.

16. As to the averment in Paragraph 30 of the Plaintiff’s Complaint, Defendants affirmative state that the Champaign County Court of Common Pleas, after a formal hearing, designated Teresa Galluzzo (nka Cook) as temporary legal custodian and residential parent in December of 1993.

17. Defendants deny all the averments in Paragraphs 31 and 32 of the Plaintiff’s Complaint.

18. Defendants admit the averment in Paragraph 33 of the Plaintiff's complaint, but affirmatively state that parental fitness is only one factor of many in determining parental custody, where the primary principle is the best interest of the child.

19. Defendants deny the averments of Paragraphs 34 through 36 and affirmatively state that Plaintiff (defendant in the divorce action) made no motion regarding temporary custody.

20. As to the averments in Paragraphs 37 through 40 of the Plaintiff's Complaint, the Defendants affirmatively state that the Champaign County Court of Common Pleas, pursuant to two formal hearings and upon written findings of fact, designated Teresa Galluzzo (nka Cook) as the legal custodian and residential parent, and otherwise denies all other facts asserted or implied by the averments in said paragraphs.

COUNT I: REQUEST FOR DECLARATORY RELIEF

21. As to the averments in Paragraph 41 of the Plaintiff's Complaint, Defendants reassert each and every admission, denial, and affirmative statement as it applies to Plaintiff's previous averments.

22. Paragraphs 42 through 46, 50 through 75, and 77 and 78 of Plaintiff's Complaint are demands for judgment for declaratory relief and will be addressed generally in Defendants' prayer at the end of this Answer.

23. Defendants deny the averments in Paragraphs 47 through 49 and Paragraph 76 of Plaintiff's Complaint.

COUNT II: REQUEST FOR INJUNCTIVE RELIEF

24. As to the averments in Paragraph 79 of the Plaintiff's Complaint, Defendants reassert each and every admission, denial, and affirmative statement as it applies to Plaintiff's previous averments.

25. Defendants deny the averments in Paragraph 80 of the Plaintiff's Complaint.

26. Paragraph 81 of Plaintiff's Complaint is a demands for judgment for injunctive relief and will be addressed generally in Defendants' prayer at the end of this Answer.

COUNT III: REQUEST FOR DAMAGES

27. As to the averments in Paragraph 82 of the Plaintiff's Complaint, Defendants reassert each and every admission, denial, and affirmative statement as it applies to Plaintiff's previous averments.

28. Paragraphs 83 and 84 of Plaintiff's Complaint are demands for judgment for damages and will be addressed generally in Defendants' prayer at the end of this Answer.

PLAINTIFF'S FINAL DEMAND FOR RELIEF

29. Paragraph 85 of Plaintiff's Complaint encompasses all of Plaintiff's demands for judgment for injunctive relief and will be addressed generally in Defendants' prayer at the end of this Answer.

DEFENDANT'S AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Both the Champaign County Court of Common Pleas and Judge Roger B. Wilson are absolutely immune from all the causes of action alleged in Plaintiff's Complaint,

whether for damages, declaratory judgment, or injunctive relief, under any section of the United States Code.

SECOND AFFIRMATIVE DEFENSE

Both the Champaign County Court of Common Pleas and Judge Roger B. Wilson enjoy qualified immunity from all the causes of action alleged in Plaintiff's Complaint, whether for damages, declaratory judgment, or injunctive relief, under any section of the United States Code.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has waived any right to assert his claims under the equitable doctrines of laches, estoppel, and waiver.

FIFTH AFFIRMATIVE DEFENSE

As to his claims for injunctive relief, Plaintiff has adequate remedies at law, under Ohio law.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to exhaust his remedies under Ohio law.

SEVENTH AFFIRMATIVE DEFENSE

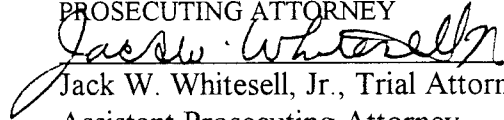
All or a portion of the Plaintiff's claims are barred by the applicable statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff failed to raise any issue arising under the United States Constitution or federal law in the state courts in a timely manner and therefore has waived the right to raise the issues herein.

WHEREFORE, Defendants Champaign County Court of Common Pleas and Judge Roger B. Wilson pray this honorable Court to dismiss all claims against Defendants, or in the alternative, enter judgment in favor of Defendants and against Plaintiff, assess court costs and attorney fees against Plaintiff, award such other relief in favor of Defendants as may be determined to be just.

NICK A. SELVAGGIO, CHAMPAIGN COUNTY
PROSECUTING ATTORNEY



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Assistant Prosecuting Attorney

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(937) 652-1555

Attorney for Defendants Champaign County

Court of Common Pleas and Judge Roger B. Wilson

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of Defendants Champaign County Court of Common Pleas and Judge Roger B. Wilson was served on the following by via ordinary U. S. Mail on May 21, 2001:

Plaintiff:

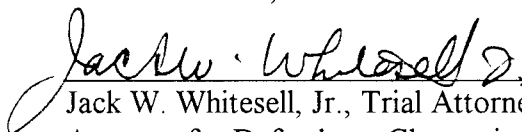
Michael A. Galluzzo
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