

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
	}	MAGISTRATE JUDGE MICHAEL R. MERZ
CHAMPAIGN COUNTY COURT OF	}	
COMMON PLEAS	}	ANSWER OF DEFENDANT
Defendant.	}	CHAMPAIGN COUNTY COURT OF
	}	COMMON PLEAS
	}	TO FIRST AMENDED COMPLAINT

Now comes Defendant Champaign County Court of Common Pleas (hereinafter Defendant) in the above-captioned case, and for its Answer states:

JURISDICTION

1. 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, Defendant admits jurisdiction of this Court pursuant to 28 U.S.C. § 1331.

2. Defendant denies 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 . . .,” Defendant is without knowledge or information sufficient to form a belief as to the truth of

the averments, and therefore denies that any unnamed section of the U.S. Code confers jurisdiction upon this Court.

3. As Paragraphs 3 through 10 of the Plaintiffs Complaint appear to be allegations of fact in support of jurisdiction alleged in Paragraphs 1 and 2 of the Complaint, Defendant will admit jurisdiction only to the extent so admitted in Paragraphs 1 and 2 of this Answer, but otherwise denies averments of fact or statements of law and denies any other bases for jurisdiction for reasons already stated.

PARTIES

4. Defendant admits the averments in Paragraphs 16 and 17 of Plaintiff's Complaint, except that Defendant is for some purposes a political subdivision, but for other purposes an agency of the State of Ohio.

5. Defendant admits 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 denies any other statements or inferences made in Paragraph 13 of the Plaintiff's Complaint.

RELEVANT STATE LAWS AND RULES

6. Defendant admits that there exists an Ohio Rule of Civil procedure 75(N), but denies Plaintiff's interpretation thereof and all other averments in Paragraph 14 of the Plaintiff's Complaint. Defendant affirmatively states 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. Defendant further affirmatively states 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.

7. Defendant admits that there exists a statute designated Ohio Revised Code § 3109.04, but denies Plaintiff's interpretation thereof and all other averments in Paragraph 15 of the Plaintiff's Complaint.

Relevant "Facts" as Alleged by Plaintiff

8. Defendant admits the averment of Paragraph 16 of the Plaintiff's Complaint.

9. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of Paragraph 17 of the Plaintiff's Complaint, and therefore denies same.

10. Defendant admits the averment in Paragraph 18 of the Plaintiff's Complaint.

11. As to the averment in Paragraph 19 of the Plaintiff's Complaint, Defendant affirmatively states that the Champaign County Court of Common Pleas has, by Ohio law, original jurisdiction over the divorce case known as "Teresa A. Galluzzo v. Michael A. Galluzzo," Case No. 93 DR 247 of the Champaign County Court of Common Pleas, Domestic Relations Division.

12. As to the averment in Paragraph 20 of the Plaintiff's Complaint, Defendant affirmative states 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.

13. Defendant denies all the averments in Paragraphs 21 and 22 of the Plaintiff's Complaint.

14. Defendant admits the averment in Paragraph 23 of the Plaintiff's complaint, but affirmatively states that parental fitness is only one factor of many in determining parental custody, where the primary principle is the best interest of the child.

15. Defendant denies the averments of Paragraphs 24 through 26 and affirmatively states that Plaintiff (defendant in the divorce action) made no motion regarding temporary custody.

16. As to the averments in Paragraphs 27 through 30 of the Plaintiff's Complaint, the Defendant affirmatively states 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

17. As to the averments in Paragraph 31 of the Plaintiff's Complaint, Defendant reasserts each and every admission, denial, and affirmative statement as it applies to Plaintiff's previous averments.

18. Paragraphs 32 through 36, 41 through 53, 58 through 64, 66 through 71, and 73 and 74 of Plaintiff's Complaint are demands for judgment for declaratory relief and will be addressed generally in Defendant's prayer at the end of this Answer.

19. Defendant denies the averments in Paragraphs 37 through 40, 54 through 57, 65, and 72 of Plaintiff's Complaint.

PLAINTIFF'S FINAL DEMAND FOR RELIEF

20. Paragraph 75 of Plaintiff's Complaint encompasses all of Plaintiff's demands for judgment for declaratory relief and associated damages and fees, and will be addressed generally in Defendant's prayer at the end of this Answer.

DEFENDANT'S AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The District court is required to abstain from accepting jurisdiction under the principles enunciated in *Younger v. Harris*, 401 U.S. 37 (1971), as further expanded in *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982), and as specifically applied to actions such as the one brought herein by *Evans v. Yarbrough*, No. 00-3588, slip op. (6th Cir. Dec. 13, 2000).

SECOND AFFIRMATIVE DEFENSE

The Champaign County Court of Common Pleas is 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.

THIRD AFFIRMATIVE DEFENSE

The Champaign County Court of Common Pleas enjoys 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.

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to exhaust his remedies under Ohio law.

SEVENTH AFFIRMATIVE DEFENSE

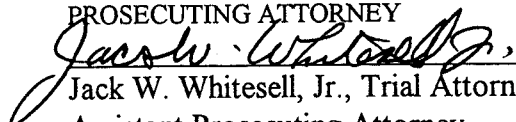
All or a portion of the Plaintiff's claims are barred by the applicable statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

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

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

NICK A. SELVAGGIO, CHAMPAIGN COUNTY
PROSECUTING ATTORNEY

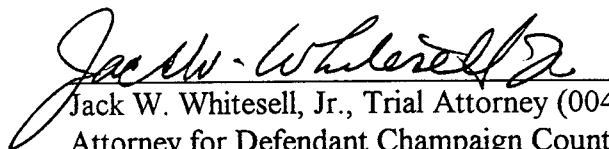

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(937) 652-1555
Attorney for Defendant Champaign County
Court of Common Pleas

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of Defendant Champaign County Court of Common Pleas was served on the following by via ordinary U. S. Mail on June 15, 2001:

Plaintiff:

Michael A. Galluzzo
P.O. Box 710
St. Paris OH 43072


Jack W. Whitesell, Jr., Trial Attorney (0041944)
Attorney for Defendant Champaign County
Court of Common Pleas and Judge Roger B. Wilson