

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

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

MICHAEL A. GALLUZZO,

Plaintiff,

-vs-

CHAMPAIGN COUNTY COURT
OF COMMON PLEAS, et al.,

Defendant.

Case No. C-3-01-174

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

**DECISION AND ORDER WITHDRAWING REPORT AND RECOMMENDATIONS
AND DENYING PLAINTIFF'S MOTIONS TO STRIKE AND FOR ORAL ARGUMENT**

This case is before the Court on Objections made by both parties (Doc. Nos. 40, 41) to the Report and Recommendations (Doc. No. 36) of the Magistrate Judge recommending dismissal for lack of subject matter jurisdiction and also on Plaintiff's Motions to Strike (Doc. Nos. 42, 44). 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.

Given that the case has been transferred to a new District Judge and the length of objections and responses by the parties, the Magistrate Judge believes a more thorough Report is necessary. Accordingly, the prior Report and Recommendations (Doc. No. 36) are WITHDRAWN.

In his two Motions, Plaintiff seeks to strike arguments injected into the proceedings by the Defendant Common Pleas Court after oral argument. Given that Plaintiff has had ample opportunity to respond to those arguments, the Motions to Strike are DENIED.

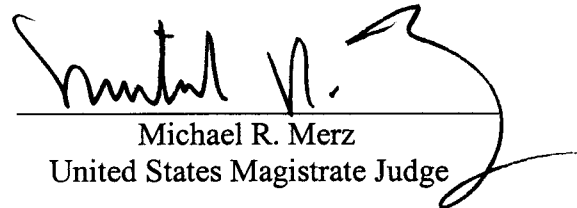
A point made by the Defendant Common Pleas Court tangentially also needs to be addressed. Said Defendant notes that it does not have an interest sufficiently adverse to Plaintiff to

44

permit this litigation to proceed with only these two parties. In the Complaint, Plaintiff alleges that both Ohio Revised Code § 3109.04 and Ohio R. Civ. P. 75(N) are unconstitutional. He originally sued Champaign County Common Pleas Judge Roger Wilson, his ex-spouse Teresa Cook, and her attorney Ronald Tompkins, but he has dismissed all of these parties voluntarily (Doc. Nos. 17, 19). While Judge Wilson in his individual capacity and Mr. Tompkins are not proper parties, Teresa Cook would be a proper party. Defendant Common Pleas Court has not sought dismissal on this basis and therefore no recommended ruling is made.

More importantly, the Court has not properly complied with 28 U.S.C. §2403(b) and certified this proceeding to the Attorney General, who does have an interest in defending the constitutionality of the state statute and rule. The Court is issuing the required certificate by separate entry and will allow the Attorney General thirty days to determine if she wishes to intervene.

August 12, 2002.


Michael R. Merz
United States Magistrate Judge