

UNITED STATES DISTRICT COURT
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 AT DAYTON

MICHAEL A. GALLUZZO

Plaintiff,

-vs-

Case No. C-3-01-174

CHAMPAIGN COUNTY COURT
OF COMMON PLEAS, et al.,

District Court Judge Thomas M. Rose

Defendant.

**ENTRY AND ORDER OVERRULING OBJECTIONS BY PLAINTIFF (DOC #50) AND
DEFENDANT (DOC. #51) TO SUBSTITUTE REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE (DOC. #48) DENYING DEFENDANT'S MOTION TO DISMISS CASE
GRANTING DEFENDANT'S MOTION TO DISMISS PARTY DEFENDANT CHAMPAIGN
COUNTY COMMON PLEAS COURT**

This matter comes before the Court pursuant to the Objections by Plaintiff (Doc. #50) and Defendant (Doc. #51) to the Substitute Report and Recommendations (Doc. #48) filed by the Magistrate Judge on August 19, 2002.

Plaintiff seeks declaratory judgment from this Court that the Ohio law, O.R.C. §3109.04 and/or Ohio R. Civ. P. 75 (N) are unconstitutional, permitting an award to one parent in a divorce situation without proof by clear and convincing evidence that the other parent is unfit.

Defendant, Champaign County Common Pleas Court filed a Motion to Dismiss (Doc. #26) arguing that dismissal of this case is proper based upon the abstention doctrine of Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) and the Rooker-Feldman Doctrine as pronounced in Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L. Ed 362 (1923) and Dist. Columbia Ct. of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed. 2d 206 (1983).

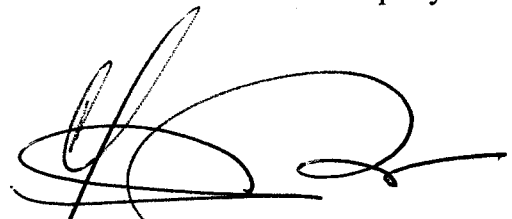
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Although the Magistrate Judge recommended that the Motion to Dismiss of this case should be denied based upon these doctrines he did find that the Defendant, Champaign County Common Pleas Court is not sufficiently invested in whether the legislation, which is the subject of this case, is constitutional and that Court is not a proper adversary to Plaintiff.

The Court conducted a de novo review of the filings and arguments and find the objections filed by Plaintiff and Defendant not well-founded and DENIES same. The Court ADOPTS in its entirety the Substituted Report and Recommendations of the Magistrate Judge filed August 19, 2002 denying the Defendant's Motion to Dismiss this case, however, GRANTING the Motion to Dismiss Defendant, Champaign County Common Pleas Court.

Defendant, Champaign County Common Pleas Court is DISMISSED as a party Defendant in this action.

IT IS SO ORDERED.



THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record