

**IN THE UNITED STATES DISTRICT COURT
IN THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION-DAYTON**

MICHAEL A. GALLUZZO
PLAINTIFF,

CASE NO. C-3-01-174

VS.

Judge Rose
Magistrate Merz

CHAMPAIGN COUNTY COURT
OF COMMON PLEAS, et al
DEFENDANT.

**PLAINTIFF MICHAEL A. GALLUZZO’S MOTION TO STRIKE THE
ATTORNEY GENERAL’S MOTION FOR LEAVE WHEREIN THE STATE WAS
DISMISSED AT THE ATTORNEY GENERAL’S EXPLICIT REQUEST AND
THEREFORE NEITHER THE STATE, NOR THE ATTORNEY GENERAL
HAVE STANDING TO PARTICIPATE AS AMICUS CURIAE AT THE TRIAL
COURT LEVEL,
and in the alternative, PLAINTIFF’S MEMO CONTRA and MOTION TO JOIN
THE CHAMPAIGN COUNTY COURT OF COMMON PLEAS AND/OR JUDGE
ROGER B. WILSON AS A PROPER PARTY DEFENDANT**

Here we go again! Step right up and get you tickets to the Attorney General’s sixth opportunity to enter this case. First, Plaintiff served her a copy of the original complaint at the outset of this case. She was served again a copy of the first amended complaint when the action was amended pursuant to 28 USC 1331. She was served the certified question by the federal court. She was served again by U.S. Marshall where the federal court ordered her into the case. She vehemently requested for herself and the state to be dismissed from the case. She now wants to participate, not as a party Defendant doing her job, but as an *amicus curiae* at the trial court level.

It is Plaintiff’s understanding that she can only participate in such *amici* capacity at the appeals court level. Plaintiff requests 2 aspirins and moves for sanctions from the federal court that the Attorney General for Ohio is totally wasting this Court’s time with

pointless and repetitive baseless arguments that have been thoroughly briefed and decided in this matter. **Plaintiff cites directly on point the precedent order of this court as a matter of law.** This court's decision addressed that a case in controversy did exist pursuant to 28 USC 1331.¹

Plaintiff has standing where he is subject to the continuing jurisdiction of the state domestic court, although if the Attorney General continues to yank Plaintiff's chain for another eight (8) years, his youngest daughter will be of majority and Plaintiff's injury-in-fact, i.e., his deprivation of his parental right to custody of his children, will then be moot, but only upon such time will the jurisdiction of the state domestic court cease to exist, therefore Plaintiff has standing to request declaratory relief of the constitutionality of the statute and procedural rule. Both R.C. 3109.04 and Civ.R 75(N) lack express due process requirements as written on the face of the statutory scheme where the procedural rule is overbroad and does not even provide for a predeprivation hearing; where the statute is vague and discretion dispensing; and where both statute *and* procedural rule lack express and mandatory due process requirements for a finding of parental unfitness by clear and convincing evidence upon implication of a parent's Fourteenth Amendment liberty right to custody of his minor children. In fact, the procedural rule provides an evidentiary standard of "*satisfactory proof by affidavit*" as constitutionally compliant to deprive a parent of their federal right to custody of their child.

What Plaintiff finds most interesting is the Ass. Attorney General's argument that "Allegations of past unconstitutional conduct are insufficient to grant standing." yet this case is not about whether Plaintiff alleged past unconstitutional conduct of the

¹ The Court will note that the A.G. conveniently excludes that this is a federal question action requesting declaratory relief.

Champaign County Court, for that civil rights action brought under 42 USC 1983 was amended to a federal question action pursuant to 28 USC 1331, **therefore the only issue now on the table is whether Ohio's statutory scheme is constitutionally written as construed under federal law.**

Plaintiff is **not challenging** whether “past” “conduct” in the domestic court’s decision was unconstitutional, for that would have been a matter for the state appellate court, and therefore, would be an impermissible appeal of a state court decision (1st tenet of Rooker-Feldman).

But...Plaintiff is challenging the constitutionality of state law (2nd tenet of Rooker-Feldman).

Plaintiff faces prospective injury where he is subject to the continuing deprivation of his protected federal right to custody of his minor children, therefore the argument as raised in *Lyons* and *O’Shea* (citations omitted-see A.G.’s Motion for Leave) are not on point. Plaintiff is subject to the prospective deprivation of his right to custody pursuant to the enforcement of R.C. 3109.04 until his children reach majority, therefore Plaintiff has a case in controversy and he has standing to bring this suit challenging Ohio law under 28 USC 1331.

The *Younger* abstention, **and all of its progeny**, as asserted by former defendant Champaign County Court of Common Pleas and the Ass. Attorney General’s chief counsels’ staff has no application and is therefore moot. As this court will recall from the transcript, a final decree was issued (entered as evidence at the oral hearing before Magistrate Merz on January 9, 2002). The Champaign County Court of Common Pleas

also asserted that the state domestic court has continuing jurisdiction of post decree matters until children reach the age of majority.

And as to issue and claim preclusion and *res judicata*, this is a federal question action and ***not a challenge to the state court decision***. Plaintiff does not have to exhaust state court remedies to bring a federal question action under 28 USC 1331.

Finally, the Sixth Circuit Court could not have ruled on the merits of the constitutionality of R.C. 3109.04, for the matter of *Charles R. Evans v. Judge Stephen Yarbrough, et al.*, 2000 U.S. App. LEXIS 33384 was dismissed pursuant to the *Younger* abstention where Mr. Evans had a pending state case {see footnote #1 of the instant Motion for Leave}. The federal appeal taken by Mr. Evans challenged the dismissal of the case, under *Younger* abstention, of a civil rights action pursuant to 42 USC 1983 {not a federal question action under 28 USC 1331}. The Sixth Circuit Court ruled that the state had important state interests in the welfare of its minor citizens in a divorce and it asserted that Mr. Evans was provided due process because he had a hearing, although the Sixth Circuit Court ***did not reach a decision of whether the law itself was unconstitutional as expressly written pursuant to 28 USC 1331***; for Mr. Evans challenged the deprivation of his parental rights under 42 USC 1983, not 28 USC 1331, asserting that state actors deprived him of his federal right.

The federal appellate court could not reach the merits of the case...for the Columbus district court did not reach the merits, and in fact, **the Evans trial court was required to abstain under *Younger*** and dismiss the case, for the Columbus district court could not accept jurisdiction. This case is not on point where the instant matter is ***not***

pending {as it was in the Evans federal action} *i.e.*, for a final decree was issued to Plaintiff in the instant matter *before* Plaintiff filed his federal action.

Speculatively...we all know how bad it will look when Plaintiff wins this case on the merits, which is why the Attorney General does not want the State of Ohio to be a voluntarily named Defendant.

This case is THE civil rights case for parents in Ohio and the state knows that if this federal court actually rules on the merits that Ohio law will be struck down.

So...the state allegedly is trying to sell this federal court that it actually wants to defend Ohio law, but in truth, all it really wants is to buy a dismissal, for the chief counsel's staff knows it will lose on the merits.

And it will lose on the merits where Ohio law is unconstitutional as expressly written...for this federal court has demonstrated that it will do the right thing, by proper application of federal law.

The stakes are huge and this case is the linchpin of parental rights.

Ironically, this landmark case is brought by a *pro se*...another sticking point for the Ass. Attorney Generals. For the past six years this *pro se* has diligently studied **all** of the issues (and read all of the cases) pertaining to federal jurisdiction, federal constitutional questions, abstention and preclusion doctrines including the second tenet of *Rooker*, construction of state law pursuant to federal law, *ad naseum*, and has properly plead the issues before they have *even been raised* in the instant matter.

Unless the federal court was to ignore the law, this case must be decided on the merits of the certified constitutional question, not bandied back and forth like a shuttlecock in a badminton match. This *pro se* has not sought the help of any attorney

and has never been in a law school class, yet he is most appalled at the ignorance of the licensed attorneys that have attempted to defend this matter. Enough commentary...

Plaintiff requests, *in the alternative*, that Champaign County Court of Common Pleas be named a proper party Defendant where they have made an admission (See Answer #1 of their Answer to Plaintiff's First Amended Complaint) that they are a proper party. Further, Plaintiff requests that Judge Roger B. Wilson, a party defendant to the original civil rights action, subsequently amended to a federal question under 28 USC 1331, be rejoined, so as not to prejudice this Plaintiff in proceeding to the merits with a proper party Defendant, for the Ass. Attorney Generals have provided this Court the precedent to join either the county court and/or Judge Wilson citing *Children's Health Care is a Legal Duty, Inc. v. Deters*, 92 F.3d 1412 (6th Cir. 1996) that "constitutional challenges to state laws are properly filed against the government officer or officers who have some "connection with the enforcement of the challenged statute."

Thus, Plaintiff would have a case that would not lack sufficient adversity since the Champaign County Domestic Court/Judge Wilson ARE the "connection with the enforcement of the challenged statute."

Finally, Plaintiff presents the novel argument, "*somewhat unusual given the posture of the case*", that to permit the Attorney General to defend this case *amicus curiae* would deny equal protection to Plaintiff where both parents are similarly situated. Both Plaintiff and Defendant Teresa Cook are citizens of the state and both are entitled to representation as to the constitutionality of Ohio law, therefore it is Plaintiff's contention that the Attorney General is arbitrarily providing representation to the custodial parent as opposed to the noncustodial parent, in desiring to participate to defend the

constitutionality of the statutory scheme, but denying the same representation as “*amicus curiae*” to Plaintiff.

WHEREFORE, Plaintiff requests that the State of Ohio, through the Attorney General, has no standing to request participation where the same office has explicitly opted out of defending Ohio law, and where, “By its instant Motion, the State, through the Attorney General, has made it abundantly clear that it does not desire to defend the constitutionality of this statute, and rule, at least in this case.” {Magistrate Merz’ Decision filed November 21, 2002.}

Plaintiff wonders how many motions to dismiss and how many bites of the apple² remain before the merits are put on trial? Plaintiff requests that the federal court stops the shenanigans of all defendants; proposed defendants; past defendants; and future defendants in this matter and deny all motions to dismiss and proceed to the merits. The repetitive requests for dismissal are intentional stalling tactics delaying the inevitable by those involved to prejudice Plaintiff and his limited legal ability to defend himself from the onslaught of baseless motions that contain no new arguments.

In the alternative, Plaintiff moves the Court to rejoin Champaign County Court of Common Pleas and/or join Judge Roger B. Wilson as proper party defendants pursuant to the argument made by the Ass. Attorney Generals aforesaid.

Finally, where Teresa Cook is a named party Defendant, Plaintiff requests that the court **ORDER** the Attorney General to immediately serve her the instant Motion For Leave where she failed to provide service of her instant motion to a named defendant in

² Plaintiff thinks that the apple core is next.

this action. {See the Attorney General's Certificate of Service attached to their instant Motion for Leave.}

Such negligence is inexcusable and further grounds for delay by Ms. Cook, *and properly so*, by asserting she had no knowledge of the proceedings pending before this Court in which she was a named defendant.

Finally, Plaintiff requests postage of \$3.70, copy costs of \$27.99, gas mileage of \$53.21, and parking fees of \$18.00 to file the memo contra at the federal court and for all of the extra copies and costs for wasting his time defending frivolous motions to dismiss from the State of Ohio.

Respectfully submitted,

Michael A. Galluzzo, Plaintiff
P.O. Box 710
St. Paris, Ohio 43072
937-663-4505

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND ACCURATE COPY OF THE FOREGOING MOTION CONTRA WAS SERVED UPON THE CHAMPAIGN COUNTY PROSECUTOR'S OFFICE, COUNSEL FOR DEFENDANT CHAMPAIGN COUNTY COURT OF COMMON PLEAS; TERESA COOK AND/OR HER COUNSEL; AND THE STATE OF OHIO ATTORNEY GENERAL'S OFFICE BY U.S. MAIL, POSTAGE PREPAID, THE 13TH DAY OF DECEMBER 2002.

Michael A. Galluzzo, Plaintiff