

CUYAHOGA COUNTY COURT OF COMMON PLEAS  
DOMESTIC RELATIONS DIVISION  
CLEVELAND, OHIO

FILED

2010 JUL 30 P 12:16

Paul Neumann )  
24243 Lebern Drive )  
North Olmsted, OH 44070 )  
)  
Paul Neumann, on behalf of his minor )  
child, Grace Neumann )  
**PLAINTIFFS** )

GERALD E. FUERST  
CLERK OF COURTS  
CUYAHOGA COUNTY

vs. )

**CASE NO. CV-10-722398**  
**Judge H. F. INDERLIED JR.**  
Sitting by assignment

The State of Ohio )  
c/o Richard Cordrey, Attorney General )  
30 East Broad Street, 17<sup>th</sup> Floor )  
Columbus, Ohio 43215, )

Pamela Neumann )  
27668 B Caroline Circle )  
Westlake, OH 44145 )

Cuyahoga County Common )  
Pleas Court )  
1200 Ontario Street )  
Cleveland, Ohio 44113-1678 )

Judge Cheryl S Karner )  
c/o Cuyahoga County Common )  
Pleas Court )  
Domestic Relations Division )  
One West Lakeside Avenue )  
Cleveland, Ohio 44113 )

**OBJECTION TO DECISION**

Heather Corso )  
1220 West 6th Street, Suite 502 )  
The Bradley Building )  
Cleveland, Ohio 44113 )

Cuyahoga County CSEA )  
1640 Superior Ave. East )  
P.O. Box 93318 )  
Cleveland, Ohio 44101 )

**DEFENDANTS, et al.** )

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**OBJECTIONS TO DECISION AND MEMORANDUM IN SUPPORT**

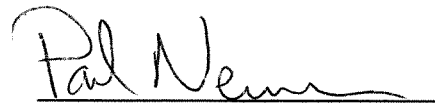
Plaintiff Paul Neumann files his Objection to the Judgment entry by Judge H. F. Inderlied, Jr. as filed with the court on July 13, 2010.

It is clear to the Plaintiff that the assigned Judge has not read the case or motions placed before this court.

The assigned Judge has not read ORC 2721.01 to determine the nature of the argument before this court and the procedures for their proper adjudication. The *carte blanche* dismissal and support of a case without good cause in an attempt to protect the State of Ohio and the above listed parties shows that this Judge is incapable of acting in accordance with Ohio Law and the Rules of Civil Procedure and without bias.

Therefore the Plaintiff in the above captioned case respectfully asks this court to strike its decision and advance this Declaratory Action properly onto the Courts Schedule.

Respectfully submitted,

 7/30/2010  
\_\_\_\_\_  
Paul Neumann

## MEMORANDUM OF LAW

A declaratory judgment action is a creature of statute. R.C. 2721.01. The procedure for obtaining a declaratory judgment must be in accordance with the civil rules. Civ.R. 57. A declaratory judgment may be commenced as set forth in R.C. 2721.03. The state common pleas court has subject matter jurisdiction to declare the rights, status, and other legal relations, e.g. constitutionality of Ohio law [R.C. § 2721.03; Am Complaint ¶s 5-7] whether or not further relief is or could be claimed. [R.C. § 2721.02; Am Complaint ¶s 1, 2].

The plain language of the statute is inapposite of the state's claim that this court lacks subject matter jurisdiction. Their allegation that the general division court and the domestic relations court would have concurrent jurisdiction is without merit. The state's argument that the tribunal whose power is first invoked...acquires jurisdiction, to the exclusion of all tribunals, to adjudicate upon the whole issue and to settle the rights of the parties would be applicable where the actionable claims are the same. However, "[I]t is a condition of the operation of the state jurisdictional priority rule that the claims or causes of action be the same in both cases". *State ex rel. Sellers v. Gerken* (1995), 72 Ohio St.3d 115, 117 quoting *State ex rel. Judson v. Spahr* (1987), 333 Ohio St. 3d 111, 113.

### **Different Causes of Action**

The actionable claim for declaratory judgment of the constitutionality of Ohio's statutory scheme in this Court is not the same cause of action for achieving a divorce decree in the domestic relations court are separate and distinct. [*Sellers, id.*] Where "it is a condition of the operation of the state jurisdictional priority rule that the claims or causes of action be the same in both cases and if the second case is not for the same cause of action, nor between the same parties, the former suit will not prevent the latter." [*Sellers, id.*] The jurisdictional priority rule does not obtain here.

### **Different Claims for Relief**

The state domestic relations court is a court of limited jurisdiction but is Division of the Court of Common Pleas and there fore does have jurisdiction to declare the constitutionality of Ohio's statutory scheme pursuant to the Declaratory Judgment Act.

Further, the causes of action and the corresponding claims for relief in the two matters are separate and distinct. As a matter of law, invoking the Declaratory Judgment Act excludes the state domestic court's ability to adjudicate the relief sought by Plaintiff as to the constitutionality of Ohio's statutory scheme.

### Different Parties

The parties must be the same in both cases. [*Sellers, id.*] In the divorce the parties are Plaintiff Pamela Neumann and Defendant Paul Neumann [captioned Neumann v Neumann in pending divorce]. In the instant declaratory action, the parties are Plaintiff Paul Neumann, Defendant State of Ohio, and as required pursuant to the Declaratory Judgment Act [R.C. 2721.12(A)] "...all persons who have or claim any interest that would be affected by the declaration **shall** be made parties to the action or proceeding." **The statute mandates that Defendant Pamela Neumann is a necessary party.** However, the parties are not the same in both cases. The State of Ohio is not a party to the divorce action. [*Sellers, id.*]

### ACTIONABLE CLAIMS FOR RELIEF

The Ohio Supreme Court has held that a declaratory judgment action is proper if:

- (1) the action is within the scope of the Declaratory Judgment Act;
- (2) a justiciable controversy exists between adverse parties;
- (3) speedy relief is necessary to preserve rights that may otherwise be impaired.

*Freedom Found v. Ohio Dept. of Liquor Control* (1997), 80 Ohio St.3d 131, 134.

There is no equally serviceable remedy available for this case. The statutory jurisdictional limitation of the state domestic relations court precludes rendering judgment of the constitutionality of Ohio's statutory scheme pursuant to the Declaratory Judgment Act, which (1) the action is within the scope of the Declaratory Judgment Act. Thus, a declaratory judgment complaint "cannot be dismissed even if the Court determines the plaintiff is wrong, rather, in such a case, the court must declare the appropriate rights." *Id.*

There is (2) a justiciable controversy between the parties, which are adverse in the underlying divorce and where the different parties are adverse in the instant matter. The controversy is whether Ohio's statutory scheme is constitutionally compliant. Defendant State of Ohio argues the same and goes on to try to divert this Court's attention from the fact that a substantive deprivation occurred without any remedy and that the remedy is to go back to the same Court that denied Plaintiff in the first place (which deprivation of rights gave rise to the instant action).

"Declaratory judgment proceedings should not be used to anticipate the trial of an issue in a court of coordinate jurisdiction and do not authorize a court to make prophecies about what another court would do for plaintiff."

26 Corpus Juris Secundum (2001), Declaratory Judgments, Section 44.

Plaintiffs **know** the full force and effect of the past year. The statutory scheme provides no constitutionally compliant remedy at law.

The instant matter is a justiciable controversy between adverse parties.

**Speedy Relief is Necessary to Preserve Fundamental Rights Impaired  
under Ohio's Statutory Scheme**

Plaintiff Paul Neumann cannot appeal an interlocutory order. Since the divorce was filed in September 2009, there has not been one evidentiary hearing. Plaintiff's parental rights were not only implicated and denied; in addition, Plaintiff's visitation was further restricted by complicity of all the Defendants named in this case. All the Defendants have participated in unconstitutional actions that have deprived the Plaintiff of his right to equality and due process of law under the United States Constitution. This decision by Judge Inderlied further exasperates the Plaintiff's guaranteed 1<sup>st</sup> Amendment associative rights in respect to her relationship with her father Plaintiff Neumann.

**Declaration will Terminate the Controversy Giving Rise to the Action in  
Which the Declaratory Relief is Sought [R.C. 2721.07]**

Declaration of the constitutionality of Ohio's statutory scheme will resolve the controversy entirely where the express language of the statutory scheme fails to mandate an evidentiary hearing prior to the deprivation of fundamental parental rights. Where Ohio's statutory scheme fails to expressly include an evidentiary standard that is constitutionally compliant under federal law, there is no ability for any party to achieve a constitutional outcome under any set of circumstances.

Defendant Pamela Neumann asserts that this Court may dismiss a declaratory judgment action pursuant to CivR 12(B)(6) where in accordance with R.C. 2721.07, the uncertainty or controversy giving rise to the proceeding would not be terminated. The fallacy of this argument in this set of circumstances is the fact that no remedy exists in the statutory scheme. The case cited is not on point with the fact set in the instant matter.

Plaintiff was expressly denied an evidentiary hearing, however, his most precious parental rights have been denied without any evidence, without a finding of fact, and without an evidentiary standard.

“Declaratory judgment proceedings usually pertain to substantive rights...”  
*Risman v. Van Sweringen Co.* (1962), 21 Ohio Op.2d 173.

The fact remains that Ohio's statutory scheme lacks essential requirements for conducting an oral hearing where the language explicitly states; “upon satisfactory proof by affidavit duly filed with the clerk of the court, the court, without oral hearing ... may make a temporary order regarding the allocation of parental rights and responsibilities for the care of the child while the action is pending.” [R.C. 3109.043 & CivR. 75(N)]

Plaintiff suggests that this trier of fact will recognize the explicit lack of basic due process principles inapposite of the process due litigants subject to the court system. “Proof by affidavit” denies an evidentiary standard and “without oral hearing” denies any remedy, not to mention cross-examination of any evidence.

Further, 10 months is not “temporary”. The Court's filed entry denying Plaintiff's filed motion requesting an evidentiary hearing [February 2010] flies in the face of jurisprudence.

Federal law requires express due process requirements in the language of the statute. Ohio's statutory scheme not only patently ignores these requirements, but also expressly denies all due process in the language of R.C. 3109.043 and CivR 75(N). To deny a parent the ability to raise their child for 9 months **without any right to an evidentiary hearing** goes against the principles of law and simple fairness. Further, Ohio's statutory scheme denies the right to cross-examination, the right to confront witnesses, and fails to use the least restrictive means to maintain the associative rights of each parent and child, et al.

The facial language of Ohio's statutory scheme lacks express due process requirements as mandated by federal law, Sixth Circuit Federal Court of Appeals, and U.S. Supreme Court decisions. The fact that Plaintiff can be denied his parental rights for 9 months without any evidentiary hearing is outrageous. And this scene plays out daily in domestic courts throughout Ohio for no parent can achieve a constitutional remedy under any set of circumstances where all Ohio parents' parental rights are implicated under Ohio's statutory scheme. Where Ohio's statutory scheme lacks the basic requirements of due process required to protect substantive rights, there is no ability to achieve a constitutional result. In comparison, Ohio's *criminal* codes offer far

more protection for the implicated, where the statutes expressly state the process due the offender facing criminal charges. The process is specific and orderly.

Plaintiff's, and all Ohio parents and children's, remedy for speedy relief is declaratory judgment of the statutory scheme that gives rise to the substantive deprivation of constitutional liberty and associative rights. The Declaratory Judgment Act provides the speedy relief necessary to "terminate the uncertainty or controversy giving rise to the action". [R.C. 2721.07] *Freedom, id.*

On March 26, 2010, Plaintiff filed a Motion to Advance the Hearing of this Action on the Trial List pursuant to CivR. 57 where time is of the essence and prompt judicial action is essential. [Am Complaint ¶s 3,4] yet no hearing on this matter has been held and the Plaintiff has been denied his relationship with his Daughter.

### **Jury Trial Endorsed Hereon**

Plaintiff Paul Neumann expressly endorsed a jury trial as a matter of right on the front of the Complaint and First Amended Complaint. As part of Plaintiff's request for speedy relief, Plaintiff reiterates his request for a jury trial pursuant to Civil Rule 38(B). The intent of the endorsement on the complaints was to notify the Court and Defendants of Plaintiff's intention to have the matters tried to a jury. [R.C. 2721.10]

**United States Court of Appeals for the Sixth Circuit Decision  
*Michael A. Galluzzo v. Champaign County Court of Common Pleas, et al.*  
(January 31, 2006) No. 04-3527 File Name: 06a0078n.06  
(*Per curiam*, unpublished)**

**"This case raises some very interesting constitutional questions about the fundamental rights of parents in child custody proceedings. The questions are so interesting in fact, that they have generated reams of arguments on the merits from a dedicated and able *pro se* plaintiff...The discussion of the constitutional issues is impressive..." ...[T]he case was simplified into a general constitutional challenge." [Galluzzo, *id.* @ pg.4-5]**

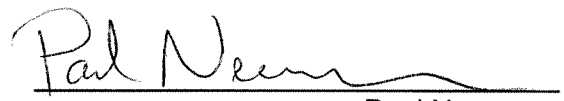
**"These [state] courts will surely provide Galluzzo with an adequate forum to argue the constitutional issues presented by this case...Because there is no "case" or "controversy" here sufficient to warrant federal court jurisdiction, we AFFIRM the district court's dismissal of this case, albeit on alternate grounds."  
[ Galluzzo *id.* @ pg. 8.]**

The federal declaratory judgment matter addressed in *Galluzzo*, the constitutional challenge to Ohio's custody statutory scheme, is now in the proper state

forum to argue the constitutional questions about the fundamental rights of parents in child custody proceedings.

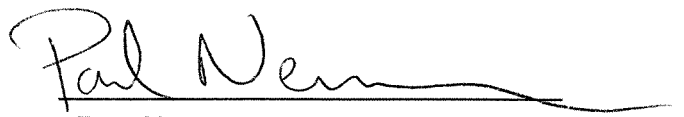
Of note also is the fact that there exists a Certified Question of Law (attached) issued in Galluzzo V Champaign County that has never been answered by the Federal Courts or by the State Courts of the State of Ohio. As it appears now that the State Of Ohio does not want to hear this issue when the Federal Courts have stated that this is the proper venue and now by and thru the current actions of Judge Inderlied and the State of Ohio. One must ask a simple question. Who is going to determine the validity of the current statutory scheme that has been brought before this court?

**WHEREFORE**, for good cause shown, *and as a matter of law*, Plaintiff respectfully requests that this court immediately strike its motion to dismiss and further suggests that Judge Inderlied ask the Ohio Supreme Court to remove himself from this case..

  
Paul Neumann

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice of Reservation was served upon all parties or their counsel at Cleveland, Ohio, on the 30 day of July 2010.

  
Paul Neumann

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

FILED  
KENNETH J. MURPHY  
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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

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION DAYTON

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CERTIFICATE OF CONSTITUTIONAL QUESTION

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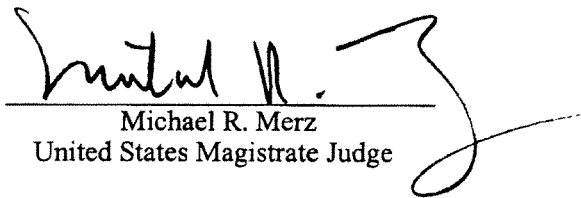
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TO: BETTY MONTGOMERY  
Attorney General of the State of Ohio  
30 East Broad Street  
Columbus, Ohio 43215

Pursuant to 28 U.S.C. §2403(b), the Court hereby gives you notice that Plaintiff has filed the above-captioned action to challenge the constitutionality of Ohio Revised Code § 3109.04 and Ohio R. Civ. P. 75(N) with respect to the asserted effect of this rule and statute to permit an Ohio domestic relations court to deprive a biological parent, in a divorce situation, of equal custodial parent status without a finding by clear and convincing evidence that the parent so deprive is an unfit parent.

Upon your request, the State of Ohio will be permitted to intervene with all the rights of a party and the liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

August 12, 2002.

  
Michael R. Merz  
United States Magistrate Judge

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