

June 8, 2010

Paul Neumann
24243 Lebern Dr.
North Olmsted, Ohio 44070
Re: Case No. 10 CV 722398

Dear Sir,

Please find the *Motion to Dismiss* enclosed.

Thanks,

A handwritten signature in black ink, appearing to read 'Pamela S. Neumann', with a decorative flourish at the end.

Pamela S. Neumann

FILED

2010 JUN -8 A 11: 27

IN THE COURT OF COMMON PLEAS
CLERK OF COURTS
CUYAHOGA COUNTY, OHIO

PAUL NEUMANN)

Plaintiff)

vs.)

THE STATE OF OHIO ET AL.,)

Defendants)

CASE NO. 10 CV 722398

JUDGE TIMOTHY MCCORMICK

MOTION TO DISMISS BY
DEFENDANT PAMELA NEUMANN

Defendant Pamela Neumann respectfully moves this Honorable Court, pursuant to Rule 12(B)(1) and/or 12(B)(6) for an order that dismisses Plaintiff's Complaint and this matter in its entirety. This Court lacks subject matter jurisdiction and/or the Complaint fails to state a claim upon which relief may be granted.

This Motion is more fully supported by the Brief attached hereto and incorporated and if rewritten herein.

Respectfully submitted,



Pamela Neumann
27668 B Caroline Circle
Westlake, Ohio 44145
Tel: (confidential)

CERTIFICATE OF SERVICE

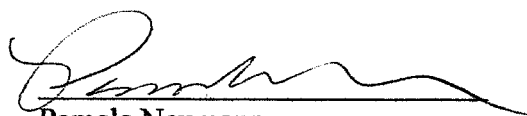
A true and accurate copy of the foregoing has been sent via regular U.S. mail to the following on this 8th day of June, 2010:

Paul Neumann
24243 Lebern Drive
North Olmsted, Ohio 44070
Plaintiff

Richard Cordray, Esq.
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3428
Counsel for Defendant the State of Ohio

Charles E. Hannan, Esq.,
Assistant Prosecuting Attorney
The Justice Center, Courts Tower, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
*Counsel for Defendants Cuyahoga County Common Pleas Court,
Judge Cheryl S. Karner and Cuyahoga County CSEA*

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


Pamela Neumann

BRIEF

The General Division of this Court has no jurisdiction to issue a declaratory judgment in this matter and lacks subject matter jurisdiction to hear this case. This is because the Cuyahoga County Domestic Relations Court has yet to enter a final judgment with respect to issues pending in said Court which concern the substantially the same parties. “The jurisdictional priority rule provides that, when two state courts have concurrent jurisdiction, the court whose power is first invoked by the commencement of the proper proceedings acquires jurisdiction, to the exclusion of all other courts, to adjudicate the whole issue and decide the parties rights.” *S/O ex rel., LTV Steel Co. Inc. V. Cuyahoga County Child Support Enforcement* (Apr. 30, 1998), 8th Dist. No. 73318, unreported (citing to *State ex rel. Red Head Brass, Inc. V. Holmes Cty. Court of Common Pleas* (1997), 80 Ohio St.3d 149, 151, 1997 Ohio 143, 684 N.E.2d 1234 (citations omitted)).

There are clearly cases pending in two different courts of concurrent jurisdiction involving substantially the same parties. The jurisdiction of the Domestic Relations Court was invoked first. Plaintiff now improperly seeks to have this court interfere with the jurisdiction of the Domestic Relations court to determine the parties’ divorce proceedings.

In *Dzina v. Avera Intl. Corp.*, 8th Dist. App. No. 86583, 2006-Ohio-1363, the appellate court observed that “Once a court acquires jurisdiction of a cause of action, its authority continues until the matter is completely and finally disposed of. Thus a court of concurrent jurisdiction is not at liberty to interfere with the first court’s proceedings.”

Accordingly, this case should be dismissed for lack of subject matter jurisdiction *Dzina v. Avera Intl. Corp.*, supra.

In the alternative, the complaint should be dismissed for failure to state a claim on which relief can be granted. There is no justiciable issue between Mr. Neumann and the Defendants

herein. Mr. Neumann is seeking only to have a constitutional challenge addressed. The declaratory judgment sought by Plaintiff will not resolve the entire domestic relations case or controversy. There is no need for this court to decide matters that are clearly within the jurisdiction of the Domestic Relations Court.

A complaint for declaratory judgment may be dismissed if there is no justiciable controversy between the parties requiring speedy relief and/or if the declaratory judgment sought would not terminate the supposed uncertainty or controversy. See *In re Defense of Deer v. Cleveland Metroparks* (2000), 138 Ohio App.3d 153, 162, 740 N.E.2d 714.

Because Plaintiff's complaint does not state any plausible claim for relief against the Defendants, the complaint should be dismissed pursuant to Civ. R. 12(B)(6).

In summary, Defendant, Pamela Neumann respectfully requests that Plaintiff's Complaint be dismissed pursuant to Rule 12(B)(1) and/or 12(B)(6).

Respectfully submitted,



Pamela Neumann
27668 B Caroline Circle
Westlake, Ohio 44145
Tel: (confidential)