

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL BURNS

Plaintiff,

v.

GRACE GOCON, et al.

Defendants

Case Number: 04-C-5486

Honorable Judge Wayne Andersen
Magistrate Judge Geraldine Soat Brown

PLAINTIFF'S MOTION FOR RECONSIDERATION

NOW COMES the Plaintiff, Michael Burns, pro se, and prays this court to grant relief in the interests of justice and pursuant to Federal Rules of Civil Procedure, Rule 59(e), by reconsidering its Order of Dismissal. In support of this he offers the following:

1. Rooker-Feldman doctrine is inapplicable in this case. The District Court Order failed to consider Rooker-Feldman as clarified in the recent Exxon Mobil v. Saudi Basic Industries, 544 US ___ (2005). The cited U.S. Federal Court of Appeal, Seventh Circuit rulings are no longer valid. Exxon Mobil is now controlling authority on the application of the Rooker-Feldman doctrine in as applied cases. The complaint specifically pled that the Plaintiff did not desire a state court proceeding be overturned or altered. (Complaint # 12) Absent that relief being requested, Rooker-Feldman is inapplicable.

2. Rooker-Feldman is inapplicable to the general constitutional challenge raised in the complaint pursuant to Exxon Mobil at 544 and DC Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983).
3. The Younger abstention is inapplicable pursuant to New Orleans Pub. Serv., Inc. v. Council of the City of New Orleans, 491 U.S. 350, 109 S. Ct. 2506, 2513 (1989) (“NOPSI”). NOPSI as applied here is discussed in Wexler v. Lepore, 385 F.3d 1336, (11th Cir. 2004) citing Rogers v. Desiderio, 58 F.3d 299, 301 (7th Cir. 1995); Marks v. Stinson, 19 F.3d 873, 882 (3rd Cir. 1994); Crawley v. Hamilton County Comm’rs, 744 F.2d 28, 30 (6th Cir. 1984). Parallel state and federal court proceedings based on the same set of facts is permissible. No “undue” interference with state court proceedings will occur by this court assuming its proper jurisdiction.
4. The Ankenbrandt abstention is inapplicable pursuant to Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301, (2004) and Ankenbrandt v. Richards, 504 U. S. 689 (1992) because the complaint specifically noted that no divorce decree, alimony or child custody decree was requested. (Complaint # 12) Absent that relief being requested, Ankenbrandt at 504 is inapplicable.
5. Dismissal is improper under Quackenbush v. Allstate Ins. Co., 116 S. Ct. 1712 (1996). The District Court lacks authority to dismiss an original jurisdiction action which seeks legal relief. Here, the Plaintiff requests damages pursuant to 42 U.S.C. 1983. (Complaint, Prayer for Relief # 3)
6. This Motion for reconsideration is timely filed pursuant to Federal Rules of Civil Procedure Rule 59(e).

WHEREFORE, the Plaintiff prays that this Court deny Defendant's Motion to Dismiss and instruct all parties to proceed in this case.

Dated this 26th day of July, 2005

Respectfully submitted,

Michael Burns
1460 North Clark Avenue #1803
Chicago, IL 60610
312.951.8972

MEMORANDUM OF LAW

Introduction

This action is filed by a concerned parent who challenges Illinois statutes that mandate the “best interest of the child” standard for judicial decision-making when dealing with parental-type decisions affecting divorced or unmarried parents as to their children, when it does not do the same for parents who originate from other familial situations.

In this case, the father desires to play an active role in the life of his son, and to equitably support him without undue intrusion by the mother or the state. Such circumstances and statutes impermissibly infringing the U.S. Constitution 14th Amendment substantive due process clause Right of Privacy in the privacy protected zone of parenting.

He challenges these statutes which are enforced on a *suspect class* of citizens (non-custodial parents) who have been marginalized with unequal rights and responsibilities—even when no showing of harm exists—while these statutes support a standard of living or lifestyle preference for another class of citizens (custodial parents), who are similarly situated, when the state has no interest in supporting such a standard for all.

He challenges these statutes that mandate he (as applied) and other (general) unmarried parents spend a percent of income on their child, with the standard of best interest

of the child as impermissibly intruding upon the same liberty interest and fundamental Right of Privacy of a parent in the care, education, and maintenance of their child.

Rooker-Feldman

The District Court Order erroneously relies on traditional U.S. Federal Court of Appeals, Seventh Circuit, rulings that have been now supplanted by the U.S. Supreme Court ruling in Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 US ____ (2005). Therein the U.S. Supreme Court reiterated its original concept of a very narrow application of the Rooker Feldman doctrine.

“The Rooker-Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.”

Exxon Mobil at 544 also reiterates that general challenges to the constitutionality of state statutes is outside the scope of Rooker-Feldman.

“...Thus, the Court reasoned, 28 U. S. C. § 257 did not bar District Court proceedings addressed to the validity of the accreditation Rule itself. Feldman, 460 U. S., at 486. The Rule could be contested in federal court, this Court held, so long as plaintiffs did not seek review of the Rule application in a particular case. Ibid.”

The Plaintiff asks no review or rejection of state court judgments. He is making an as applied and a general constitutional challenge to the nature of the state “income-based” child support statutes.

In the case before this Court, the Plaintiff is challenging the Illinois “income-based” child support statutes as exceeding constitutional authority by adopting a “best interest of the child” standard instead of a “prevention of harm” standard (Troxel v. Granville, 530 U.S. 57; 120 S.Ct. 2054 (2000)) and the statutes mandating a percent of income be spent for the child

as well as the obligation being imposed on unmarried parents, but not for married parents. He alleges these standards deprive him of his liberty interest, fundamental property rights, and parenting rights.

The Plaintiff specifically pled that he does not desire this court overturn or alter a state court decision. He has sought damages and declaratory relief under his 42 U.S.C. 1983 claim. He has not sought injunctive relief.

Ankenbrandt

The District Court Order erroneously relies on Ankenbrandt v. Richards, 504 U. S. 689 (1992) to dismiss this proceeding. It overlooks the very narrow application of the Ankenbrandt abstention as noted in Ankenbrandt at 504 and as reiterated by the U.S. Supreme Court in Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301, (2004). The Defendant is not requesting any adjudication of the parties or the rights of the family parties. He is not requesting a divorce, alimony or child custody decree.

Ankenbrandt at 504 itself and as clarified again in Elk Grove at 542 is very narrow and inapplicable to this proceeding. Elk Grove at 542, Rehnquist concurring,

“The domestic relations exception is not a prudential limitation on our federal jurisdiction. It is a limiting construction of the statute defining federal diversity jurisdiction, 28 U. S. C. §332, which divests the federal courts of power to issue divorce, alimony, and child custody decrees, *Ankenbrandt*, 504 U. S., at 703.”

“...concluding that the domestic relations exception only applies when a party seeks to have a district court issue a divorce, alimony, and child custody decree, *Ankenbrandt*, 504 U. S., at 704. We further held that abstention was inappropriate because the status of the domestic relationship ha[d] been determined as a matter of state law, and in any event ha[d] no bearing on the underlying torts alleged, *id.*, at 706.” Elk Grove at 124

“As in *Ankenbrandt*, the status of the domestic relationship has been

determined as a matter of state law, and in any event has no bearing on the under-lying [constitutional violation] alleged.”

“The Court cites *Palmore v. Sidoti*, 466 U. S. 429 (1984), as an example of the exceptional case where a substantial federal question that transcends or exists apart from the family law issue” makes the exercise of our jurisdiction appropriate.”

In this proceeding as in Palmore at 466 and Elk Grove at 542, the pleadings raise a substantial federal question that transcends and exists apart from the family law issue. That is the gravamen of this proceeding—the constitutionality of a state statute impermissibly infringing a liberty interest and fundamental right of parenting.

Younger

The District Court Order has misapplied the Younger abstention doctrine. The correct application of the Younger abstention is that in New Orleans Pub. Serv., Inc. v. Council of the City of New Orleans, 491 US 350, 109 S. Ct. 2506, 2513 (1989) (“NOPSI”)

NOPSI, as applied to this case, is well discussed in Wexler v. Lepore, 385 F.3d 1336, (11th Cir. 2004) which further cites Rogers v. Desiderio, 58 F.3d 299, 301 (7th Cir. 1995); Marks v. Stinson, 19 F.3d 873, 882 (3rd Cir. 1994); Crawley v. Hamilton County Comm’rs, 744 F.2d 28, 30 (6th Cir. 1984). Wexler at 385, 1340,

“The Supreme Court’s most recent decision under Younger illustrates that the abstention doctrine is not triggered unless the federal injunction would create an “undue interference with state proceedings.” NOPSI, 109 S. Ct. at 2513 (citing Younger, 91 S. Ct. at 751). In addition, the state proceedings at issue must involve “certain orders that are uniquely in furtherance of the state courts’ ability to perform their judicial functions . . . it has never been suggested that Younger requires abstention in deference to a state judicial proceeding reviewing legislative or executive action.” Id. at 2518...

First, we find no federal authority supporting the proposition that federal claims that might be supported by the same alleged facts must be raised by state plaintiffs in cases arising under state law in state courts. Instead, we recall the Supreme Court’s reasoning from 1964: “[t]here are fundamental objections to any conclusion that a litigant who has properly invoked the jurisdiction of a Federal District Court to consider federal

constitutional claims can be compelled . . . to accept instead a state court's determination of those claims." England v. La. State Bd. of Med. Examiners, 84 S. Ct. 461, 464 (1964). We recently wrote that "generally, as between state and federal courts, the rule is that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." Ambrosia Coal & Constr. Co. v. Morales, 368 F.3d 1320, 1328 (11th Cir. 2004) (quoting Colorado River)...

Second, we have found no binding precedent requiring federal plaintiffs to raise federal claims in pending state court proceedings where they are also plaintiffs...

Third, we do not accept that the existence of a parallel state court action would warrant abstention in federal court, unless the requested federal relief would result in meticulous and burdensome federal oversight of state court or court-like functions..."

If the District Court assumes its Congressionally delegated authority to adjudicate the federal question raised here, it will not cause "undue interference" with the ongoing state court proceeding. It will not even cause interference with the state court proceeding.

Without the Defendants showing this Court's accepting jurisdiction would unduly interfere with the state court proceeding this court is not *permitted* to abdicate its responsibility.

"To determine whether Younger abstention was proper, the district court considered whether the federal action before it would interfere with the ongoing state action. See Wexler v. Lepore, 319 F. Supp. 2d 1354, 1361-63 (S.D. Fla. 2004). It answered that question in the affirmative... We conclude that this determination constituted an error of law: without showing an *undue* interference on state proceedings, abstention is not permitted. NOPSI, 109 S. Ct. at 2513 (citing Younger, 91 S. Ct. at 751); 31 Foster Children, 329 F.3d at 1276."

The District Court's reliance on Green v. Bende[n], 281 F. 3d 661,666(7th Cir.2002) (properly Benden, appeal from this Honorable Wayne R. Andersen) is misplaced. Green at 281 applies the traditional 1982 criteria set forth in Middlesex County Ethics Comm'n v. Garden State Bar Ass'n, 457 U.S. 423, 432, 436-37, 73 L. Ed. 2d 116, 102 S. Ct. 2515 (1982). A Younger analysis applying Middlesex at 457 without consideration of NOPSI is now outdated.

Quakenbush v. Allstate

Though Quackenbush v. Allstate Ins. Co., 116 S. Ct. 1712 (1996) holds that a Burford abstention is impermissible when legal damages are sought the principle is equally applicable to the Younger abstention. Here, the Plaintiff filed a 42 U.S.C. 1983 claim alleging the Defendants acting under color of state law denied him his civil rights. He requested damages as deemed appropriate by this District Court. Under Quackenbush at 116 this court may not dismiss his claims. It may stay its proceedings until a state court ruling but may not dismiss. Quackenbush at 116, 1723,

“...in cases where the relief being sought is equitable in nature or otherwise discretionary, federal courts not only have the power to stay the action based on abstention principles, but can also, in otherwise appropriate circumstances, decline to exercise jurisdiction altogether by either dismissing the suit or remanding it to state court. By contrast, while we have held that federal courts may stay actions for damages based on abstention principles, we have not held that those principles support the outright dismissal or remand of damages actions.”

Prayer for Relief

For the above states reason, the Rooker-Feldman doctrine, Ankenbradt, and Younger abstention do not apply to effect dismissal. Dismissal is not permitted here because of the legal remedy and damages being sought. This court must deny Defendants’ motion to dismiss or stay federal proceedings pending constitutional statutory challenge in state court on state law claims.

Respectfully submitted,

Michael Burns, pro se
1460 North Clark Avenue, #1803
Chicago, Illinois 60610
Telephone: 312.951.8972

CERTIFICATE OF SERVICE

I hereby certify that, on this 26th day of July, 2005, a true and complete copy of the foregoing Motion and Memorandum of Law for Reconsideration was sent by First Class Certified U.S. Mail to the parties below:

A. Marcy Newman
Attorney for Grace Gocon
205 W. Randolph Suite 2000
Chicago, Illinois 60606
By First class certified mail

William Leslie
Sr. Assistant Attorney General
160 North LaSalle Ste N1000
Chicago, Illinois 60601
By First class certified mail

Michael Burns, pro se
1460 North Clark Avenue, #1803
Chicago, Illinois 60610 312.951.8972