

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

SD OF FLA - WPB
APR 6 2004

WILLIAM A. CABANA
Former Husband, pro se

FAMILY DIV
CASE# 71-C-4137FD

Civil Case No.

04-80316

- vs -

SHARON ANN MAYO f/k/a
SHARON ANN CABANA
Former wife, Respondent

Assigned To:

CIV-PAINE

MAGISTRATE JUDGE
EDWARD FINE

And

Third Party Defendants,

The HONORABLE SANDRA McSORLEY,
Fifteenth Judicial Circuit Court of Florida,
in her official capacity and,

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FIFTEENTH JUDICIAL CIRCUIT COURT OF FLORIDA and,
The Honorable Edward Fine, Chief Judge, in his Official Capacity

APR - 6 2004

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
FAMILY DIVISION

JAMES ZINGALE, Chairman, Executive Director
Florida Department of Revenue,
in his official capacity and,

FLORIDA DEPARTMENT OF REVENUE,

NOTICE OF REMOVAL

FLORIDA STATUES CHAPTER 61 "DISSOLUTION OF MARRIAGE"

ALIMONY PROVISIONS IMPERMISSIBLY INFRINGE THE FEDERAL RIGHT

TO PRIVACY, INTER ALIA

"...it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage..." *Carey v. Population Serv. Int'l.*, 431 U.S. 678, 684-685 (1977)

William A. Cabana, pro se, hereby gives notice of removal of the civil action styled Sharon Ann Mayo v. William A. Cabana, Case No. 71-C-4137-FD, from the Fifteenth Circuit Court of Florida, Palm Beach County Florida, to this Court pursuant to 42 U.S.C. 1983, 28 U.S.C. §§ 1331, 1441, 1446. As grounds for removal, William Cabana states,

1. Sharon Ann Mayo, former wife, filed a Dissolution of Marriage Proceeding (Florida Statutes Chapter 61) in the Fifteenth Circuit Court of Florida in 1971.
2. A Final Judgment of Dissolution of Marriage was entered in the above action by the Fifteenth Judicial Circuit Court of Florida on July 28, 1972. (Attached)
3. A Contempt motion for arrearages of alimony was honored by the Honorable Sandra McSorley against William A. Cabana on February 4, 2004. (Attached)
4. This Court has subject –matter jurisdiction over William A. Cabana’s Claims pursuant to 42 U.S.C. 1983, 28 U.S.C. §§1331, 1441 (a) (b) in that the claim involves a federal question and a subsequent violation of the fundamental Federal Constitution Rights of William Cabana, Right to Privacy inter alia, which entitles him to jurisdiction of this Court under 42 U.S.C. 1983.
5. William A. Cabana is now a resident of Sarasota County, Florida.
6. Sharon Ann Mayo is now, and at the time of her filing of this lawsuit in the Fifteenth Circuit Court, a resident of Palm Beach County, Florida.
7. Third Party Defendants, The Fifteenth Circuit Court of Florida (The Honorable Edward Fine, in his official capacity as Chief Judge) and the Honorable Sandra McSorley exercised their statutorily granted enforcement authority of F.S. Chapter 61 in Palm Beach County Florida against the Defendant, WILLIAM A. CABANA.
8. Third Party Defendants the Florida Department of Revenue and James Zingale, in his official capacity as Executive Director, have been statutorily granted enforcement authority of F.S. Chapter 61 in Palm Beach County.

9. All incidents associated with this lawsuit have taken place in Palm Beach County Florida.
10. A Contempt Order and possible commitment order (arrest warrant) against William A. Cabana are imminent in this lawsuit over the application of F.S. Chapter 61 § 61.08 provisions against him.
11. The Fifteenth Judicial Circuit Court of Florida's entering contempt against William A. Cabana over § 61.08 alimony provisions is timely now under 42 U.S.C. 1983 because of his deprivation of civil rights, and the irreparable harm to him if removal is denied at this stage without a declaratory judgment on the impermissible infringement of Florida Statutes § 61.08 on U.S. Constitution 14th Amendment, Due Process Clause, Right to Privacy, inter alia, pursuant to 42 U.S.C. 1983.
12. The exercise of enforcement authority statutorily granted by Chapter 61 and exercised by Third Party Defendants The Honorable Sandra McSorley, in her official capacity, and the Fifteenth Judicial Circuit Court, the Honorable James Fine Chief Judge, in his official capacity, creates this addition claim under 42 U.S.C. 1983 originally not present at the time of filing of the Dissolution of Marriage lawsuit in the Fifteenth Judicial Court.
13. Injunctive relief is not requested.
14. Removal is for declaratory judgment purposes under 42 U.S.C. 1983 on the federal question of whether F.S. § 61.08 permanent alimony provisions impermissibly infringe U.S. Constitution 14th Amendment Due Process Right to Privacy, Right to Property and Equal protection.
15. Pursuant to 28 U.S.C. § 125 (2) and 1441 (a), The United States District Court of Florida, Southern Division is the federal court for the district and division embracing the place where the state court action is pending.

16. Pursuant to 28 U.S.C. § 1446 (d), all adverse parties are being provided with written notice of the filing of this notice of removal.
17. Pursuant to 28 U.S.C. 1446 (d), a copy of this notice of removal is being filed with the Clerk of the Fifteenth Circuit Court of Florida.

WHEREFORE, William A. Cabana hereby removes this action, now pending in the Fifteenth Circuit Court of Florida, to this Court, pursuant to 42 U.S.C. 1983, 28 U.S.C. §§ 1131, 1441, and 1446.

DATED this 2nd day of April, 2004

Respectfully submitted,

WILLIAM A. CABANA, pro se
Address
City, State, Zip
Telephone:
Fax: None
Email: