

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION

FILED
U.S. DISTRICT COURT
THOMASVILLE, GEORGIA
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Causton
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DENNY C. CORMIER, :

Plaintiff, :

v. :

Civil Action No. 6:04-cv-19 (HL)

MARIA GREEN, Acting Director, :
Georgia Department of Human :
Resources, in her Official Capacity; :
GEORGIA DEPARTMENT OF :
HUMAN RESOURCES; BRUCE :
COOK, Chairman, Board of Human :
Resources, in his Official Capacity, :
GEORGIA BOARD OF HUMAN :
RESOURCES; and COLQUITT :
COUNTY SUPERIOR COURT, :
the Honorable H. Arthur McLane, :
Chief Judge, in his Official Capacity, :

Defendants. :

ORDER

This matter is before the Court on the Motion to Dismiss Based upon Abstention [tab 2] filed in lieu of an answer on behalf of Defendants Maria Green, Georgia Department of Human Resources, Bruce E. Cook, Georgia Board of Human Resources, and Colquitt County Superior Court. Plaintiff, Denny C. Cormier, who is proceeding *pro se*, has filed a brief in opposition to the Motion to Dismiss. The Court, having considered the arguments of the parties, grants the Motion for the reasons that follow.

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I. BACKGROUND

Denny Cormier is in the middle of divorce proceedings with his wife, Nancy Cormier. The divorce proceedings were initiated by Nancy Cormier on October 21, 2003, and are pending in the Superior Court of Colquitt County, Georgia. (Compl. ¶¶ 87, 89.) As a part of the divorce proceedings, Denny Cormier anticipates that the State of Georgia, acting through the Superior Court of Colquitt County, will scrutinize “intimate details” of his life that he contends should remain private and, relying on Georgia’s alimony statutes, will ultimately “reassign the property rights” between himself and Nancy Cormier. (Compl. ¶¶ 89, 90.) Cormier has filed the lawsuit at issue here in order to challenge the constitutionality of Georgia’s permanent alimony provisions. Cormier contends the Defendants named here are the proper defendants because they are the parties who will be called upon to enforce the challenged alimony provisions. (Compl. ¶¶ 27 - 36.)¹

Cormier brings his claims here pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2201. He seeks declaratory judgment relief, namely that this Court declare that Georgia’s permanent alimony provisions invade the right to privacy of its citizens and are not sustained by a compelling state interest; violate the equal protection clause of the United States Constitution; violate the prohibitions against involuntary servitude set forth in the Thirteenth Amendment to the United States Constitution; violate the right to privacy guaranteed by the Georgia Constitution; violate the due process provisions of the Georgia Constitution; violate the equal

¹ Cormier did not name Nancy Cormier as a Defendant but, instead, identified her as an “interested party” and provided her with notice of the lawsuit. (Compl. ¶ 28.)

protection provisions of the Georgia Constitution; violate the privileges and immunities clause of the Georgia Constitution; violate the Georgia Constitution's prohibitions on involuntary servitude; and violate the Georgia Constitution's prohibitions against legislation based on social status. As an alternative to his request for declaratory relief, Cormier requests injunctive relief pursuant to 42 U.S.C.A. § 1983. (Compl. ¶ 122.) Defendants maintain that all of Cormier's challenges can be raised in his pending divorce proceeding and, therefore, the Court should abstain from considering them here.

II. SUBJECT MATTER JURISDICTION

The Declaratory Judgment Act provides, in part, as follows:

In a case of actual controversy within its jurisdiction, . . . , any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

28 U.S.C.A. § 2201(a) (West 1994). However, "[t]he Declaratory Judgment Act is not an independent ground for jurisdiction; it permits the award of declaratory relief only when other bases for jurisdiction are present." Jones v. Alexander, 609 F.2d 778, 781 (5th Cir. 1980). Therefore, this Court must determine initially whether Cormier has an independent jurisdictional basis for proceeding in this Court.

The United States Code gives district courts "original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States." 28 U.S.C.A. § 1331 (West 1993). "Whether a claim arises under federal law for purposes of 28 U.S.C. § 1331 is generally determined by the well-pleaded complaint rule, which provides that federal jurisdiction exists

only when a federal question is presented on the face of the plaintiff's properly pleaded complaint.” Smith v. GTE Corp., 236 F.3d 1292, 1310 (11th Cir. 2001) (quoting Caterpillar, Inc. v. Williams, 482 U.S. 386, 392, 107 S. Ct. 2425, 2429 (1987)). “A well-pleaded complaint presents a federal question where it ‘establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.’” Id. (quoting Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 27-28, 103 S. Ct. 2840, 2856 (1983)).

Here, Cormier’s right to relief necessarily depends on the application and interpretation of various federal constitutional amendments. Furthermore, to the extent that Cormier’s claims are predicated on 42 U.S.C.A. § 1983, federal law creates the cause of action. Therefore, the Court finds that a federal question is presented on the face of Cormier’s complaint.

III. DECLARATORY JUDGMENT RELIEF

While concluding that Cormier’s complaint presents a federal question, the Court may, nevertheless, decline to entertain it insofar as it is brought pursuant to the Declaratory Judgment Act. As the Supreme Court of the United States has explained, “district courts possess discretion in determining whether and when to entertain an action under the Declaratory Judgment Act, even when the suit otherwise satisfies subject matter jurisdictional prerequisites.” Wilton v. Seven Falls Co., 515 U.S. 277, 282, 115 S. Ct. 2137, 2140 (1995), *clarifying* Brillhart v. Excess Ins. Co. of Am., 316 U.S. 491, 62 S. Ct. 1173 (1942). Factors which a district court should consider in determining whether to decline to entertain a declaratory judgment action include “the scope of the pending state court proceeding and the nature of defenses open

there.” Id. at 283, 115 S. Ct. at 2141 (quoting Brillhart, 316 U.S. at 495, 62 S. Ct. at 1175-76). Additionally, the court should consider “whether the claims of all parties in interest can satisfactorily be adjudicated in that proceeding, whether necessary parties have been joined, whether such parties are amenable to process in that proceeding, etc.” Id. (quoting Brillhart, 316 U.S. at 495, 62 S. Ct. at 1175-76).

In applying the Brillhart factors to this case, the Court finds that the issues raised by Cormier in this declaratory judgment action can be satisfactorily adjudicated in the divorce proceeding that is pending in the Superior Court of Colquitt County. Cormier’s claims in this Court seek to challenge the constitutionality of Georgia’s permanent alimony provisions. Constitutional challenges to Georgia’s alimony statutes can be raised in the divorce proceeding and ruled on by the superior court. *See, e.g., Sims v. Sims*, 253 S.E.2d 762, 762 (Ga. 1979) (reversing judgment of the superior court and holding section of Georgia alimony statute to be in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution); *Stitt v. Stitt*, 253 S.E.2d 764, 764 (Ga. 1979) (affirming award of temporary alimony payments but holding that temporary alimony section of alimony statutes violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution). Furthermore, as the results in Sims and Stitt show, it is not necessary that officials of the State of Georgia be named in the divorce proceeding in order for Cormier to present his challenges and, if successful, implement changes in the law. Thus, the claims of all parties in interest can be adjudicated satisfactorily in the divorce proceeding.

Apparently recognizing that Nancy Cormier can “assume the burden of the state and defend the statutes” (Pl.’s Br. Opp’n Mot. Dismiss at 4), Cormier argues that if the constitutionality of the alimony provision is presented in his divorce proceeding, he could be required to pay Nancy Cormier’s attorney fees which would, in effect, be “subsidizing the state in its ongoing defense on the issues.” (Pl.’s Br. Opp’n Mot. Dismiss at 4.) The Georgia Code does vest the superior courts with discretion to award attorney’s fees as a part of the expenses of litigation in divorce proceedings. O.C.G.A. § 19-6-2(a) (Lexis 1999). Thus, requiring Cormier to bring his challenges within the pending state court divorce proceeding could result in more expenses for him. However, the Court is of the opinion that the benefits of having Cormier’s challenges to the alimony provisions determined within the ongoing divorce proceeding outweigh the risk to Cormier of having to expend additional funds as a result of pursuing them there. Moreover, because O.C.G.A. § 19-6-2(a) requires the superior court to consider the financial circumstances of both parties in deciding the amount of attorney’s fees to be awarded, the Court is satisfied that Cormier will not be required to pay more than he can afford.

After consideration of the relevant factors, the Court is of the opinion that it should decline to entertain Cormier’s declaratory judgment action. In view of the fact that Cormier’s pending divorce proceeding provides an opportunity for determination of the issues raised here, the Court would “be indulging in ‘[g]ratuitous interference’ if it permitted the federal declaratory action to proceed.” Wilton, 515 U.S. at 283, 115 S. Ct. at 2141.

IV. INJUNCTIVE RELIEF

The relief sought by Cormier, as set forth in his complaint, is primarily declaratory in nature, in that he seeks to have this Court declare that the permanent alimony provisions are unconstitutional and that enforcement of these provisions by the named Defendants would infringe on his federal constitutional rights in such a way as to violate 42 U.S.C.A. § 1983. In fact, Cormier states repeatedly in the complaint that the only relief requested is declaratory judgment relief. (*See, e.g.*, Compl. ¶¶ 15, 19, 75, & 121.) To the extent that Cormier's complaint seeks only declaratory relief, this Court declines to entertain the complaint, as set forth in the foregoing section.

However, Cormier also states the following: "The Plaintiff asserts that if this court feels declaratory judgment relief does not apply then it may grant injunctive relief as authorized by 42 U.S.C. [§] 1983 and applicable case law." (Compl. ¶ 122.) Given Cormier's alternative request for injunctive relief, the Court finds it necessary to also address whether Cormier's claims for injunctive relief should be maintained in this Court.

In Younger v. Harris, 401 U.S. 37, 91 S. Ct. 746 (1971), the Supreme Court expressed "a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances." Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 431, 102 S. Ct. 2515, 2521 (1982). The decision in Younger dealt with a pending state criminal proceeding. In Middlesex, the Court extended the policy set forth in Younger "to noncriminal judicial proceedings when important state interests are involved." Id. at 431, 102 S. Ct. at 2521. In Middlesex, plaintiffs, who were the subject of a

New Jersey Bar disciplinary proceeding, filed a suit in federal court challenging the constitutionality of the New Jersey Bar disciplinary rules. The Supreme Court affirmed the district court's decision to abstain from deciding the case based on the principles set forth in Younger. Id. at 425, 102 S. Ct. at 2518.

In deciding Middlesex, the Court applied a three-part test for determining whether the district court's decision to abstain was correct. Under this test, a court must determine (1) whether there is an ongoing state judicial proceeding and, if so, (2) whether the ongoing proceeding implicates important state interests, and (3) whether there is an adequate opportunity in the state proceeding to raise constitutional challenges. Id. at 432, 102 S. Ct. at 2521.

Applying the Middlesex factors to this case, the Court finds that they are easily met. Cormier is presently a party to a divorce proceeding, which is certainly a state judicial proceeding. Furthermore, the divorce proceeding implicates interests, i.e., alimony awards, that are important to the state, as well as unique to the state courts. *See Ankenbrandt v. Richards*, 504 U.S. 689, 112 S. Ct. 2206 (1992) (examining Court's long-standing practice of deferring to state courts in matters involving domestic relations). Finally, and as previously noted, Cormier can raise the constitutional arguments alleged here in the state proceeding. Thus, all of the factors for abstention noted by the Court in Middlesex are present here.

In opposing Defendants' Motion, Cormier argues that because the State is not a party to the divorce proceeding and, presumably, because Nancy Cormier is not a party to this proceeding, there "is no concurrent or parallel state proceedings on the same claims between the same parties." (Pl.'s Br. Opp'n Mot. Dismiss at 3.) Cormier further argues that this Court

is not being asked to enjoin or interfere in any way with the ongoing state proceeding. He contends, therefore, that the requirements for abstention cannot be satisfied.

The Court finds Cormier's arguments to be unpersuasive. Although Cormier may not have directly asked this Court to interfere in the ongoing divorce proceeding, a ruling by this Court on the issues raised in the complaint will have an effect on the state proceeding. Cormier concedes as much in his brief: "Any order rendered by this court, if favorable to the Plaintiff, may be taken by him to the state court for application to any issue in any proceeding in which he is involved or may be involved in the future." (Pl.'s Br. Opp'n Mot. Dismiss at 8.) Despite Cormier's contentions to the contrary, a decision in this case will impact an ongoing state proceeding and, as such, the notions of comity and respect for state court functions that underlie the abstention doctrine are present here.

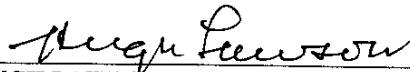
Cormier also argues that the underlying state case—his divorce proceeding—does not implicate important state interests. It may be correct to say that Cormier's divorce is no different from other divorces that have come before the superior courts of Georgia; however, in spite of the routine nature of the proceeding, it nevertheless implicates important state interests that make abstention particularly appropriate here. The state has an extremely important interest in the determination and enforcement of alimony awards—an interest over which the states have traditionally maintained control. Thus, a case that has the potential to declare the permanent alimony provisions of the State of Georgia unconstitutional, thereby disrupting an important state process, clearly implicates an important state interest and provides a basis for this Court to abstain from ruling on Cormier's claims.

In sum, the Court is persuaded that the issues raised by Cormier's complaint can and should be decided in the first instance in the state courts. Respect for the right of the State of Georgia to perform its domestic function dictates that this Court should abstain from deciding Cormier's entitlement to injunctive relief.

V. CONCLUSION

The Court chooses to exercise the discretion inherent to the district courts in Declaratory Judgment Act cases and declines to entertain those claims as to which Plaintiff seeks declaratory relief. Furthermore, the Court finds that principles of comity and respect for the functions of the state courts dictate that the Court abstain from deciding the 42 U.S.C.A. § 1983 claims for injunctive relief presented here. Therefore, the federal claims are hereby dismissed without prejudice. There being no federal basis on which this complaint should proceed, and consistent with the provisions of 28 U.S.C.A. § 1367(c), the Court also declines to exercise supplemental jurisdiction over Plaintiff's state law claims. The state law claims are also dismissed without prejudice. There being no other claims remaining, let judgment be entered accordingly.

SO ORDERED, this the 9 day of August, 2004.



HUGH LAWSON, JUDGE

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ENTERED ON DOCKET
8/11, 2004
Gregory J. Leonard, Clerk
SD Clerk
Clerk