

NO. 04-16220-A

Denny C. Cormier v. Maria Green, et al.

CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

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Circuit

STATEMENT REGARDING ORAL ARGUMENT

Defendants/Appellees assert that this matter is adequately addressed in this brief, and hence, oral argument is not requested.

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STATEMENT REGARDING ADOPTION
OF BRIEFS OF OTHER PARTIES

Defendants/Appellees do not adopt the brief of any other party.

STATEMENT OF JURISDICTION

This Court has appellate jurisdiction from the final judgment in the District Court pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether the District Court correctly dismissed the lawsuit based upon Younger abstention and the domestic relations exception.
2. Whether Cormier should be admonished for his failure to notify the Court that his divorce proceeding has been remanded to superior court.

STATEMENT OF THE CASE

(i) Course of Proceedings and disposition in the court below.

Denny C. Cormier (Cormier) filed this Complaint on April 22, 2004 (R1-1) and a Motion to Dismiss was filed by Defendants on May 26, 2004. (R1-2). After a response by Cormier (R1-4), the District Court granted said Motion on August 10, 2004 (R1-10) and judgment was entered the next day. (R1-11). Cormier filed a Motion for Reconsideration on August 19, 2004 (R1-12) to which a response was filed by the Defendants. (R1-13). Judge Lawson denied the Motion for Reconsideration on November 1, 2004, and the Notice of Appeal was filed on November 26, 2004. (R1-15).

(ii) Statement of Facts

On October 21, 2003, Nancy D. Cormier initiated divorce proceedings against Denny C. Cormier which were presided over by the Honorable H. Arthur McLane, Colquitt County Superior Court. (R1-1-18). Plaintiff claims that the Colquitt County Superior Court is invading and intruding upon his intimate details that are protected by the "privacy protected zone" of his marriage. (R1-1-18). In addition thereto, Plaintiff claims that the Colquitt County Superior Court will reassign the property rights between Denny and Nancy Cormier and that the Colquitt County

Superior Court is forcing the Plaintiff to pay alimony to Nancy.
(R1-1-19).

Rather than pursue his legal avenues in superior court, Cormier brought this action in federal court challenging the constitutionality of the Georgia statutes relating to alimony contending that O.C.G.A. §§ 19-6-1 through 35 violate his right to privacy (R1-1-19); infringe upon his equal protection rights (R1-1-20); impermissibly infringe upon his Thirteenth Amendment rights (R1-1-21); impermissibly infringe upon his Fourteenth Amendment right to privacy, Fourteen Amendment Equal Protection and Thirteenth Amendment as a 42 U.S.C. § 1983 claim (R1-1-23); impermissibly infringe on the Georgia constitutional guaranteed right to privacy (R1-1-24); impermissibly infringe on the life, liberty and property clause under the Georgia Constitution (R1-1-26); impermissibly infringe upon the equal protection clause under the Georgia Constitution (R1-1-27); impermissibly infringe upon the protection of citizens' full enjoyment of their rights under the Georgia Constitution (R1-1-30); impermissibly infringe upon the prohibition against involuntary servitude under the Georgia Constitution (R1-1-31); and impermissibly infringe upon the status of a citizen clause under the Georgia Constitution (R1-1-32).

When the Defendants filed their Motion to Dismiss on May 26, 2004 based upon Younger abstention, each and every one of Cormier's issues could be addressed by the Colquitt County Superior Court. But Cormier, apparently believing that he could avoid the dictates of the *Younger* doctrine, later removed his divorce proceeding from Colquitt Superior Court to federal court. However, Cormier failed to notify Judge Lawson of the removal. In fact, the first time Judge Lawson became aware of the removal was after the motion to dismiss was granted and Cormier filed a Motion for Reconsideration on August 10, 2004 and alerted the Judge to that fact. (R1-12). What our clever Plaintiff has failed to mention to this Court however is that the Honorable W. Louis Sands, Judge, United States District Court, remanded the divorce proceeding back to Colquitt County on November 15, 2004. (See PACER, Cormier v. Cormier, Civil Action No. 6:04-CV-0030-WLS). Hence, Cormier's divorce proceeding is currently ongoing in Colquitt County Superior Court and his attempt to circumvent *Younger* has been thwarted.

(iii) Statement of the Standard of Review

The standard of review concerning the propriety of a declaratory judgment action is an abuse of discretion and not de novo. Leslie Wilton v. Seven Falls Co., 515 U.S. 277, 115 S.Ct. 2137 (1995).

SUMMARY OF THE ARGUMENT

At the time Cormier filed this lawsuit concerning the constitutionality of Georgia's alimony statute, he was in Colquitt Superior Court in the middle of a divorce proceeding. The Defendant correctly notified the District Court of this fact and suggested that the Court should abstain based upon the Younger doctrine since the Colquitt County Superior Court could hear and decide all of the issues raised by Cormier. The District Court agreed with this proposition and dismissed the case.

After the District Court dismissed the case, Cormier notified the Court that he had removed his divorce action from Colquitt County Superior Court to federal court even though this was legally impermissible. The District Court denied the motion for reconsideration in part because of the domestic relations exception to federal court jurisdiction under Ankenbrandt v. Richards, 504 U.S. 689 (1992) and because the Court was of the opinion that Cormier was harassing the parties in this and related proceedings. Further, Cormier has failed to mention to this Court that his removed divorce action has now been remanded to the Superior Court of Colquitt County prior to the filing of his brief in this Court. Hence, Colquitt County can properly

handle all issues raised by Cormier and the District Court was correct in dismissing this lawsuit.

ARGUMENT AND CITATIONS OF AUTHORITY

A. THE DISTRICT COURT CORRECTLY
CONCLUDED THAT ABSTENTION WAS
PROPER UNDER THE YOUNGER DOCTRINE

With respect to Cormier's request for a declaratory judgment, the Supreme Court in Wilton v. Seven Falls Co., 515 U.S. 277, 115 S.Ct. 2137 (1995) set forth the standard for the courts to apply. The Court stated at pp. 282-3 as follows:

Brillhart makes clear that 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. Although *Brillhart* did not set out an exclusive list of factors governing the district court's exercise of this discretion, it did provide some useful guidance in that regard. The Court indicated, for example, that in deciding whether to enter a stay, a district court should examine the 'the scope of the pending state court proceeding and the nature of defenses open there.' *Ibid.* This inquiry, in turn, entails consideration of 'whether the claims of all parties and 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.' *Ibid.* Other cases, the Court noted, might shed light on additional factors governing a district court's decision to stay or to dismiss the declaratory judgment action at the outset. See *Ibid.* But *Brillhart* indicated that, at least where another suit involving the same parties and presenting opportunities for ventilation of the same state law issues is

pending in state court, a district court might be indulging in 'gratuitous interference,' *Ibid.*, if it permitted the federal declaratory action to proceed.

As noted by the District Court in its order, Georgia superior courts have the ability to adjudicate constitutional challenges to Georgia's alimony statute, *Sims v. Sims*, 253 S.E.2d 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 (Ga. 1979) (affirming award of temporary alimony payments but holding the temporary alimony section of alimony statutes violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution). (R1-10-5).

Perhaps the most significant aspect of the Declaratory Judgment Act is the fact that it is discretionary in nature authorizing the District Court to exercise its discretion as to whether to inject itself into pending litigation. As the Supreme Court stated in *Seven Falls*, *supra* at pp. 286-7:

Since its inception, the Declaratory Judgment Act has been understood to confer on federal court's unique and substantial discretion in deciding whether to declare the rights of litigants. On its face, the statute provides that a court 'may declare the rights and other legal relations of any interested party seeking such declaration,'

28 U.S.C. § 2201(a) The statute's textual commitment to discretion, and the breadth of leeway we have always understood it to suggest, distinguish the declaratory judgment context from other areas of the law in which concepts of discretion surface. . . . when all is said and done, we have concluded, 'the propriety of declaratory relief in a particular case will depend upon a circumspect sense of its fitness informed by the teachings and experience concerning the functions and extent of federal judicial power.'

In the case at bar, the District Court had discretion to entertain a declaratory judgment action wherein the same action was pending in the Superior Court of Colquitt County concerning a common divorce. Since the District Court understood that it might be "indulging in gratuitous interference" with the state proceeding, it declined to do so recognizing the strong admonition to avoid suits for divorce. This "domestic relations exception" initiated from Barber v. Barber, 64 U.S. 582, 21 How 592 (1858) with the admonition that federal courts have no jurisdiction over suits for divorce or the allowance of alimony even in diversity actions. As stated by the Supreme Court in Ankenbrandt v. Richards, 504 U.S. 689, 112 S.Ct. 2206 (1992) at p. 703:

In Re: Burrus technically did not involve a construction of the diversity statute, as we understand *Barber* to have done, it's statement that "the whole subject of the domestic relations of husband and wife,

parent and child, belongs to the laws of the States and not to the laws of the United States," *id.* at 593-594, has been interpreted by the federal courts to apply with equal vigor in suits brought pursuant to diversity jurisdiction. . . . This application is consistent with *Barber's* directive to limit federal court's exercise of diversity jurisdiction over suits of divorce and alimony. . . . We conclude, therefore, that the domestic relations exception, as articulated by this Court since *Barber*, divest the federal courts of power to issue divorce, alimony, and child custody decrees. Given the long passage of time without any expression of congressional dissatisfaction, we have no trouble today reaffirming the validity of the exception as it pertains to divorce and alimony decrees and child custody orders.

With the strong admonition to leave divorce and alimony decisions to the state courts with the domestic relations exception, it was completely appropriate for the District Court to dismiss this lawsuit.

Cormier brought this cause of action for declaratory judgment and injunctive relief, but failed to reveal to this Court that at the time he filed this lawsuit and at the time he filed his brief with this Court that his divorce proceeding was ongoing in Colquitt Superior Court and being presided over by the Honorable H. Arthur McLane. The reason Cormier attempted to keep this knowledge from this Court is his attempt to circumvent *Younger* abstention and have the federal forum decide his case

rather than the superior court that had already issued rulings adverse to Cormier.

When Cormier was faced with the Younger abstention in the Defendant's Motion to Dismiss, he quickly and improperly removed his superior court divorce proceeding to the federal forum to circumvent this doctrine. The District Court, however, saw through this ruse and chastised Cormier by stating:

. . . the court is strongly of the opinion that Plaintiff's actions had been undertaken for the purpose of harassing the parties in this or related proceedings and to cause unnecessary delay and, as such, should be sanctioned rather than rewarded. Plaintiff, who is proceeding pro se, is directed to familiarize himself with Rule 11 of the Federal Rules of Civil Procedure. Furthermore, Plaintiff is advised that similar future conduct occurring within the jurisdiction of the undersigned judge will result in sanctions.

(R1-14-5).

Not only did Judge Lawson recognize the impropriety of the removal, Judge W. Louis Sands remanded the divorce proceeding back to Colquitt County Superior Court with the recognition that "Defendant has made no allegations that the state court would be ineffective to vindicate any alleged deprivation of pro se Defendant's federal rights." Cormier v. Cormier, United States District Court, Middle District of Georgia, Thomasville

Division, Civil Action No. 6:04-CV-30 (WLS) (Order, November 15, 2004, p. 1).

The other reason for Cormier's desire to get this matter to federal court is revealed in Judge Sands' order since the superior court had already found Cormier to be in willful contempt for failure to pay temporary alimony. That order in Case No. 6:04-CV-30 (WLS) stated at page 2:

The Clerk of the Court of the United States District Court for the Middle District of Georgia is DIRECTED to forward this order and all post-remand pleadings filed herein by pro se Defendant to the Superior Court of Colquitt County, Georgia, as the superior court has original jurisdiction in Civil Action No. 03-CVD-2211, captioned as Nancy B. Cormier v. Denny C. Cormier, and specifically over pro se Defendant's contempt order for the willful contempt of the superior court's temporary order and for the willful and intentional failure to pay temporary alimony to Plaintiff as set forth in the superior court's temporary order.

Contrary to Cormier's assertions, under both the declaratory judgment action and standards for injunctive relief, *Younger* abstention is appropriate. In *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746 (1971), the United States Supreme Court held that the "federal courts should not intervene in an ongoing state criminal prosecution when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." The abstention doctrine in *Younger* creates a

strong presumption "against federal court interference with pending state judicial proceedings absent extraordinary circumstances." Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423, 431, 109 S.Ct. 2515, 2521 (1982). The abstention doctrine applies if the state proceedings are judicial in nature, involve important state interests, and provide an adequate opportunity to assert federal constitutional claims. Howard v. Miller, 870 F. Supp. 340 (N.D. Ga. 1994) (citing Bettencourt v. Board of Regents in Medicine, 904 F.2d 772, 784-85 (1st Cir. 1990). Abstention in the civil context is based on the premise that exercise of federal judicial power would disregard the comity between the States and National Government. First Alabama Bank of Montgomery v. Parsons Steel, 825 F.2d 1475, 1482 (11th Cir. 1987) (collecting cases); Penzoil Co. v. Texaco, Inc., 481 U.S. 1, 11 107 S.Ct. 1519, 1526 (1987) (state interest in execution of state judgments); Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc., 477 U.S. 619, 628, 106 S.Ct. 2718, 2723 (1986) (state civil rights commission action to vindicate state interest in elimination of sex discrimination); Moore v. Sims, 442 U.S. 415, 423, 99 S.Ct. 2371, 2377 (1979) (child custody proceedings in aid of and closely related to criminal statutes); Juidice v. Vail, 430 U.S. 327, 333-36, 97 S.Ct. 1211, 1217

(1977) (vital state concern in enforcement of contempt proceedings); Trainor v. Hernandez, 431 U.S. 434, 444, 97 S.Ct. 1911, 1918 (1977) (suit and accompanying writ of attachment brought by state to vindicate important state policies such as safeguarding the fiscal integrity of public assistance programs); Huffman v. Pursue Ltd., 420 U.S. 592, 609, 95 S.Ct. 1200, 1210 (1975) (proceeding pursuant to state nuisance statute in aid of closely related criminal statutes).

In Pompey v. Broward Co., 95 F.3d 1543 (11th Cir. 1996), the district court dismissed the action against the judges based on Younger abstention grounds, and the appellate court upheld the decision. The Younger doctrine reaffirms the "basic doctrine of equity jurisprudence that courts of equity should not act . . . when the moving party has an adequate remedy at law, and will not suffer irreparable injury if denied equitable relief." Pompey, 95 F.3d at 1546 (quoting Younger, 401 U.S. at 43-44). The vital consideration behind the Younger doctrine "lay in the notion of 'comity', that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate State governments, and a continuance of the belief that the National Government will fair best if the States and their institutions are left free to

perform their separate functions in their separate ways."

Juidice v. Vail, 430 U.S. 327, 334 (1997) (citations omitted).

According to the Supreme Court, "[w]hen the balance of judicial economy [convenience, fairness, and comity] indicates that a case properly belongs in state court, as when the federal-law claims have dropped out of the lawsuit in its early stages and only the state law claims remain, federal courts should decline the exercise of jurisdiction by dismissing the case without prejudice." Carnegie-Mellon University v. Cohill, 484 U.S. 343, 350 (1988); see also United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966).

Although the Supreme Court's statement in Cohill was not intended to "establish a mandatory rule to be applied inflexibly in all cases," it did establish a general rule to be applied in all but extraordinary cases. Cohill, 484 U.S. at 350, n.7. The primary virtues of this rule are that it allows federal courts to better respect the sovereignty of the States, and to better promote justice, by avoiding unnecessary interpretations of State law. See Gibbs, 383 U.S. at 726 (warning that "needless decisions of state law should be avoided both as a matter of comity and to promote justice between parties, by procuring for them a surer-footed reading of applicable law.") Simply put, it is preferable for the courts of Georgia to make rulings on

issues of Georgia law rather than to have federal courts do so, even when those federal courts are in Georgia.

Here, Cormier does not allege irreparable injury and, in fact, does not even allege any harm whatsoever for the superior court to handle each and every issue raised in this proceeding. He simply does not care for Georgia's alimony laws or the current orders he is receiving from the superior court and wishes them overturned.

B. CORMIER SHOULD BE ADMONISHED FOR HIS
FAILURE TO REVEAL HIS DIVORCE
PROCEEDING HAS BEEN REMANDED

In his brief to this Court, Cormier contends that the District Court should have entertained his lawsuit since *Younger* did not apply since he had no pending suit in superior court at the time the motion to dismiss was decided. While that may be technically true, the District Court Judge had no notice of the removal of the superior court case, and thus the Court ruled correctly. But even if the Court had notice, the decision would have remained the same based upon the domestic relations exception under Ankenbrandt, supra, and the abstention doctrine. What is disturbing, however, is the fact that Cormier argues that abstention is improper with the removal to federal court of his divorce action, but intentionally keeps from this Court the

fact that his divorce action has been remanded meaning that Younger should now apply. Such conduct appears to be consistent with Judge Lawson's assessment when he opined that "the Court is strongly of the opinion that Plaintiff's actions have been undertaken for the purpose of harassing the parties in this or related proceedings and to cause unnecessary delay. . ." (R1-14-5). Sanctions should now be imposed on Cormier for his actions.

