

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

DENNY C. CORMIER,  
  
Plaintiff,

v.

MARIA GREEN, et al.,  
  
Defendants.

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CIVIL ACTION  
NO. 6:04-CV-19 (HL)

BRIEF IN SUPPORT OF MOTION TO DISMISS  
BASED UPON ABSTENTION

I. FACTUAL STATEMENT

As set forth in Plaintiff's thirty-seven page Complaint, Denny C. Cormier (Plaintiff) is married to Nancy B. Cormier and they are presently in the process of divorce proceedings. (Complaint, ¶¶ 86 and 87). No final judgment of divorce has yet to be entered (Complaint, ¶ 88) and the matter is presently in the Colquitt County Superior Court before The Honorable H. Arthur McLane, Chief Judge, Southern Judicial Circuit). (Complaint, ¶ 118). In this divorce proceeding, Plaintiff has not presented the claims he is contending in this lawsuit nor has he had them adjudicated in that court. (Complaint, ¶ 95).

Specifically, Plaintiff challenges the Georgia statutes dealing with alimony claiming that they impermissibly infringe upon his right to privacy under the Fourteenth Amendment to the United States Constitution; infringe upon Plaintiff's equal

protection rights; infringe upon his rights under the Thirteenth Amendment; infringe upon his right to privacy; infringe upon his right in the privacy protected zone of personal decisions; infringe upon the Georgia Constitution under the life, liberty, and property clause; impermissibly infringe to the protection of person and property under the equal protection clause; infringe upon the right of full enjoyment of privileges and immunities; infringe upon the prohibition against involuntary servitude; and infringe upon the status of a citizen clause of the Georgia Constitution. (Complaint, Counts I through X). However, since all of these issues can be properly raised in Plaintiff's divorce proceeding, abstention is appropriate here.

## II. ARGUMENT AND CITATIONS OF AUTHORITY

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.

In the case at bar, there is nothing unusual or extraordinary about this case. Plaintiff is going through a routine divorce just as many Georgians do on a daily basis. Wherein Plaintiff may not like the fact that alimony may be awarded, all of the challenges that he is making in this Court can be made in the Superior Court of Colquitt County and should be made there so that the Georgia courts can decide the issue.

There is absolutely no reason for this Court to interject its decisions in a pending divorce action in a Georgia court.


CONCLUSION

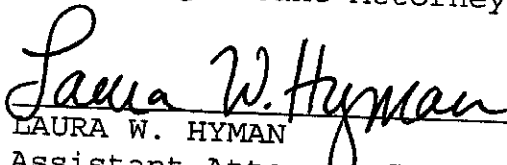
Based upon the foregoing, Defendants urge this Court to dismiss this matter against them.

Respectfully submitted,

THURBERT E. BAKER 033887  
Attorney General

KATHLEEN M. PACIOUS 558555  
Deputy Attorney General

  
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JOHN C. JONES 401250  
Senior Assistant Attorney General

  
\_\_\_\_\_  
LAURA W. HYMAN 681655  
Assistant Attorney General

Please Address All  
Communications To:


JOHN C. JONES  
LAURA W. HYMAN  
Department of Law  
40 Capitol Square, S.W.  
Atlanta, Georgia 30334-1300  
PH: (404) 463-8850  
FAX: (404) 651-5304

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the within and foregoing **MOTION TO DISMISS BASED UPON ABSTENTION AND BRIEF IN SUPPORT**, prior to filing the same, by depositing a copy thereof, postage prepaid, in the United States Mail, properly addressed upon:

Danny C. Cormier  
1000 Mallery Street #38  
St. Simons Island, Georgia 31522

This 24<sup>th</sup> day of May, 2004.



JOHN C. JONES  
Senior Assistant Attorney General