

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 04-80443-Civ-Ryskamp/Vituanc

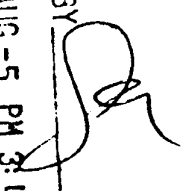
STEWART GREENBERG

Plaintiff

vs.

JAMES ZINGALE, et al.

Defendants.

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REPORT AND RECOMMENDATION

THIS CAUSE is before the Court on Order of Reference (DE 4) from United States District Judge Kenneth L. Ryskamp "for all pre-trial matters." Pending before the Court is the Defendants' Joint Motion to Dismiss Verified Complaint (DE 13), filed June 24, 2004. Plaintiff filed his Motion to Deny Motion to Dismiss (DE 16) and his Memorandum of Law to Deny Motion to Dismiss (DE 17), on July 13, 2004. This matter is now ripe for review.

Plaintiff's Complaint

Plaintiff, in his 30 page complaint, alleges that Florida's dissolution of marriage statute (Fla. Stat. ch. 61.08.) violates the: Due Process (Right to Privacy) and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution; the Thirteenth Amendment of the United States Constitution; the Privacy Amendment found in Article 1, Section 23 of the Florida Constitution; the Equal Protection Clause found in the Article 1, Section 2 of the Florida Constitution; the inalienable basic rights found in Article 1, Section 2 of the Florida Constitution; and the Florida Supreme Court's ruling in Connor v. Southwest Fla. Reg'l Med. Ctr., Inc., 668 So. 2d 175 (Fla. 1995).

Plaintiff alleges that "[t]his action arises because the Plaintiff has suffered an injury in fact; i.e., his titled property and monies have been assigned to his former spouse by the Defendants, because of the challenged 'Dissolution of Marriage' statute alimony provisions § 61.08, et al." (Pl.'s Compl. at



2.) Plaintiff further alleges that “because of the challenged statutes, he has been held in contempt, with threat of imprisonment, by the Defendants for failure to fully comply with the challenged statutes.”

(Id.) Plaintiff also “presents a general challenge to the constitutionality of Florida Statutes Chapter 61 “Dissolution of Marriage” alimony provisions (§61.08 et al.).” (Pl. ’s Compl. at 4.) Plaintiff attaches to his complaint: Florida Statutes §61.08 and 61.09 (Exhibit 1); Final Judgment of Dissolution of Marriage, Greenberg v. Greenberg, CD 98-9754 FY; and Final Judgment on Remand, Greenberg v. Greenberg, CD 98-9754 FY.

Plaintiff states that he “is not requesting a divorce decree, alimony, child custody or other family law decision from this court” and “is not requesting that a state court judgment be overturned, altered, modified, or entered by the court.” (Id. at 4.) Instead, Plaintiff seeks declaratory relief and asks the Court to find that Fla. Stat. ch. 61.08 violates his constitutional rights as set forth above. Plaintiff, despite being pro se, states that he has incurred attorney’s fees and costs in bringing this action and also seeks to recover those fees and costs.

Defendant’s Motion

Defendants argue Plaintiff has failed to state a cause of action upon which relief can be granted under either 28 U.S.C. § 2201 or 28 U.S.C. § 1331 and argues Plaintiff’s action should thus be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). Alternatively, Defendants argue the Court lacks subject matter jurisdiction pursuant to the Rooker-Feldman doctrine and argues the Court should abstain from determining this matter under both the Younger Abstention Doctrine and the Domestic Relations Exception. Lastly, Defendants argue that the Fifteenth Judicial Circuit Court is not a proper party to this litigation as it is not the entity charged with enforcing Fla. Stat. ch. 61.08.

Plaintiff’s Response

In response, Plaintiff argues that he has adequately pled all elements and has stated a cause of action upon which declaratory relief may be granted. Plaintiff argues that the Rooker-Fledman

Doctrine is inapplicable because of the “general constitutional challenge raised in this lawsuit.” (Pl. Resp. at 1.) Plaintiff next argues that the Younger Abstention Doctrine is inapplicable because a final order has been entered in the state court and there are no ongoing proceedings in state court. Plaintiff further argues the Domestic Relations Exception is not applicable because he is raising a federal question and is not asking for the Court to issue a divorce, alimony, or custody decree. Plaintiff also argues that sovereign immunity does not protect the Fifteenth Judicial Circuit Court from suit.

Discussion

A court should grant a motion to dismiss only if the plaintiff fails to allege any facts that would entitle the plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 78 S. Ct. 99 (1957). When ruling on such a motion, a court must view the complaint in the light most favorable to the plaintiff and accept the plaintiff's well-pleaded facts as true. Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683 (1974); St. Joseph's Hospital, Inc. v. Hospital Corp. of America, 795 F.2d 948 (11th Cir.1986). Furthermore, “[p]ro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed.” Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir.1998) (per curiam). However, “this leniency does not give a court license to serve as *de facto* counsel for a party . . . or to rewrite an otherwise deficient pleading in order to sustain an action.” GJR Investments, Inc. v. County of Escambia, Fla., 132 F.3d 1359, 1369 (11th Cir.1998) (internal citations omitted). With these standards in mind, this Court has considered the Defendant’s Motion to Dismiss.

Subject Matter Jurisdiction: Rooker-Feldman Doctrine

The Supreme Court has ruled that lower federal courts do not have subject matter jurisdiction to affect rulings in state court proceedings. See Rooker v. Fidelity Trust Co., 263 U.S. 413, 416, 44 S. Ct. 149, 150 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486, 103 S. Ct. 1303, 1317 (1983) (“[United States District Courts] do not have jurisdiction . . . over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges

allege that the state court's action was unconstitutional.”). This doctrine prohibits federal courts from entertaining suits if the constitutional claims presented therein are inextricably intertwined with an earlier state court decision. Feldman, 460 U.S. at 483-84 n.16, 103 S. Ct. at 1316 .16; see Blue Cross and Blue Shield of Maryland v. Weiner, 868 F.2d 1550 (11th Cir. 1989). Specifically, “[a] federal claim is inextricably intertwined with a state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.” Goodman v. Goodman, 259 F.3d 1327, 1332 (11th Cir. 2001) (citations and quotations omitted).

If the claims are inextricably intertwined, the claim may only be brought in federal court if the plaintiff did not have a “reasonable opportunity” to present the claim in the state court proceeding. Powell v. Powell, 80 F.3d 464, 467 (11th Cir. 1996). Though this means that the district court will usually not have jurisdiction to hear a plaintiff’s “as applied” challenge to a statute, federal courts retain jurisdiction over general constitutional challenges as these are not inextricably intertwined with prior state court judgments. See Feldman, 460 U.S. at 482-83 & 486, 103 S. Ct. at 1315-16 & 1317 (finding that “United States District Courts, therefore, have subject matter jurisdiction over general challenges to state [statutes] . . . which do not require review of a final state court judgment in a particular case.”).

Here, Plaintiff raises both a general and an “as applied” challenge to Fla. Stat. ch. 61.08. (Pl.’s Compl. at 4.) Plaintiff’s claim that the alimony statute is unconstitutional as it was applied to him is inextricably intertwined with a state court judgment, and the Plaintiff had a reasonable opportunity to challenge the statute’s constitutionality during that state case. Accordingly, this Court does not have subject matter jurisdiction to review the constitutionality of the statute as it was applied to the Plaintiff.

However, this Court does have jurisdiction to hear a general challenge to the alimony statute. This general challenge is not “inextricably intertwined” because this claim does not succeed only to the extent that the state court wrongly decided the issues before it. Even if the state court correctly

applied the statute to the Plaintiff, this Court could nevertheless find the statute unconstitutional on its face. Accordingly, the Rooker-Feldman doctrine does not preclude the Court from reviewing the Plaintiff's general challenge to Fla. Stat. ch. 61.08.

Abstention

Alternatively, Defendants argue that the Court should abstain pursuant to either the Younger abstention doctrine or the domestic relations exception. However, the domestic relations exception "encompasses only cases involving the issuance of a divorce, alimony, or child custody decree" Ankenbrandt v. Richards, 504 U.S. 689, 704, 112 S. Ct. 2206, 2215 (1992). Here, Plaintiff is not asking this Court to issue an alimony decree. Additionally, for Younger to apply, state proceedings must be pending. Id. at 705, 112 S. Ct. at 2216. Here, the state court has issued a final ruling and the Plaintiff has exhausted his state appeals; there are no pending state proceedings. Therefore, these abstention doctrines do not apply to this case.

Failure to State a Cause of Action

Even though this Court has subject matter jurisdiction to review the Plaintiff's general challenge to the alimony statute, the Court finds the complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) because the Plaintiff has failed to state a cause of action upon which relief may be granted.

1. Due Process (Right to Privacy)

The Due Process Clause of the Fourteenth Amendment provides that no "State [shall] deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. This amendment provides two types of constitutional protection: substantive due process and procedural due process. McKinney v. Pate, 20 F.3d 1550, 1555 (11th Cir. 1994).

Substantive Due Process protects those rights that are considered "fundamental" or "implicit in the concept of ordered liberty." Id. at 1556 (quotation omitted). A violation of substantive due

process “is complete when it occurs . . . the availability *vel non* of an adequate post-deprivation state remedy is irrelevant.” Id. at 1557. Such fundamental rights are “protected against certain government actions regardless of the fairness of the procedures used to implement them.” Id. (quotation omitted).

Though the Constitution does not explicitly mention a right to privacy, the Supreme Court “has recognized that one aspect of the ‘liberty’ protected by the Due Process Clause of the Fourteenth Amendment is ‘a right of personal privacy, or a guarantee of certain areas or zones of privacy.’” Carey v. Population Services Int’l, 431 U.S. 678, 684, 97 S. Ct. 2010, 2016 (1977) (citation omitted). Specifically, the Supreme Court has found that the government may not unjustly interfere with personal decisions relating to marriage. Id. (citing Loving v. Virginia, 388 U.S. 1, 12, 87 S. Ct. 1817, 1823 (1967) (finding a state ban on interracial marriages unconstitutional)). Unlike the statute in Loving which prohibited marriage between certain people, the Florida alimony statute does not in anyway prohibit marriage or interfere with an individual’s decision to marry. Therefore, Plaintiff has failed to state a substantive due process claim.

In contrast to substantive due process, “a procedural due process violation is not complete unless and until the State fails to provide due process.” McKinney, 20 F.3d at 1557 (citation and quotation omitted). A procedural due process violation only arises when the state fails to provide a process to adequately remedy the procedural deprivation. Id. Even assuming a procedural deprivation occurred here, the state provided adequate procedures to cure any such deprivation. The Plaintiff availed himself of the appellate rights available to him and even admits that all appeals are complete. (Pl.’s Compl. at 18.) Accordingly, Plaintiff has failed to state a procedural due process claim.

2. Equal Protection

For a plaintiff to prevail on a claim that the defendants unequally applied a facially neutral statute, the plaintiff must show that: (1) the persons treated unequally were similarly situated; and (2) the defendants engaged in intentional or purposeful discrimination. E & T Realty v. Strickland, 830

F.2d 1107, 1112-13 (11th Cir. 1987). Here, Plaintiff claims that Fla. Stat. ch. 61.08 is “applied in a court of chancery with a standard of equity by a judiciary given wide discretion such that similarly situated Floridians could not conceivably be equally treated under the alimony provision.” (Pl.’s Compl. at 20.) Though Plaintiff alleges that Floridians treated unequally under the statute are similarly situated, Plaintiff makes only a conclusory statement and does not provide any facts to support that statement. Moreover, Plaintiff has not even alleged let alone included facts to show that the Defendants engaged in intentional or purposeful discrimination. Accordingly, Plaintiff has failed to state an equal protection claim.

3. Involuntary Servitude

Plaintiff cites United States v. Kozminski, 487 U.S. 931, 108 S. Ct. 2751 (1988), in support of his allegation that Fla. Stat. ch. 61.08 amounts to involuntary servitude in violation of the Thirteenth Amendment. The Thirteenth Amendment provides that “[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” U.S. Const. amend. XIII, § 1.

In Kozminski, several defendants who used physical and verbal abuse to force two mentally handicapped men to work on their farm 7 days a week, 17 hours a day, without pay, were charged with violating 18 U.S.C. § 241 which prohibits “conspiracy to interfere with an individual’s Thirteenth Amendment right to be free from ‘involuntary servitude.’” Kozminski, 487 U.S. at 934, 108 S. Ct. at 2755. The Court noted that “[t]he primary purpose of the [Thirteenth] Amendment was to abolish the institution of African slavery as it had existed in the United States at the time of the Civil War” Id. at 942, 108 S. Ct. at 2759. After reviewing the precedent in this area, the Court noted that “in every case in which this Court has found a condition of involuntary servitude, the victim had no available choice but to work or be subject to legal sanction.” Id. at 943, 108 S. Ct. at 2760. The Court found that in order to prove a conspiracy under § 241, the Government had to prove “that the conspiracy

involved the use or threatened use of physical or legal coercion.” Id. at 944, 108 S. Ct. at 2761.

Here, Plaintiff has clearly failed to state a cause of action under the Thirteenth Amendment. This is not the type of subject matter the Thirteenth Amendment was designed to address. The Florida alimony statute does not employ the use or threatened use of physical or legal coercion to force people into involuntary servitude. Though Floridians who are required to pay alimony must do so or face consequences such as being held in contempt of court, this simply does not amount to involuntary servitude.

Viewing the complaint in the light most favorable to Plaintiff and accepting Plaintiff's well-pleaded facts as true, Plaintiff has failed to allege a federal cause of action. Accordingly, Plaintiff's complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

Proper Defendants

Defendants argue the complaint against the Fifteenth Judicial Circuit Court should be dismissed with prejudice because the court is not a proper party to this litigation. (Defs.' Mot. at 14.) Plaintiff himself quotes American Civil Liberties Union v. Florida Bar, 999 F.2d 1486, 1490, as stating that, “[u]nder United States Supreme Court precedent, when a plaintiff challenges the constitutionality of a rule of law, it is the state official designated to enforce the rule who is the proper defendant, even when that party has made no attempt to enforce the rule.” (See Pl.'s Compl. at 7.) According to Fla. Stat. chs. 61.046(4) and 61.14, the Florida Department of Revenue is responsible for enforcing the alimony statute. Because the Fifteenth Judicial Circuit Court and The Honorable Edward Fine are not the officials designated to enforce Fla. Stat. ch. 61.08, they are not proper parties to this action, and the complaint against them should be dismissed with prejudice.

Recommendation

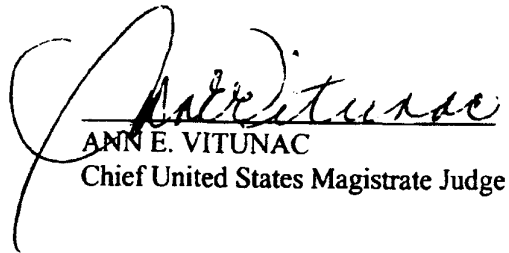
For the foregoing reasons, this Court RECOMMENDS that:

- (1) Defendants' Joint Motion to Dismiss Verified Complaint (DE 13) be GRANTED.

- (2) The Complaint against Defendant James Zingale be dismissed without prejudice.
- (3) The Complaint against the Fifteenth Judicial Circuit Court and The Honorable Edward Fine be dismissed with prejudice.

Any party may serve and file written objections to this Report and Recommendation with the Honorable Kenneth L. Ryskamp, within ten (10) days after being served with a copy. See 28 U.S.C. § 636(b)(1)(C). Failure to file timely objections may limit the scope of appellate review of factual findings contained herein. See United States v. Warren, 687 F.2d 347, 348 (11th Cir.1982) cert. denied, 460 U.S. 1087 (1983).

DONE and RECOMMENDED in Chambers at West Palm Beach in the Southern District of Florida, this 5 day of August 2004.


ANN E. VITUNAC
Chief United States Magistrate Judge

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Valerie J. Martin, Esq.

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