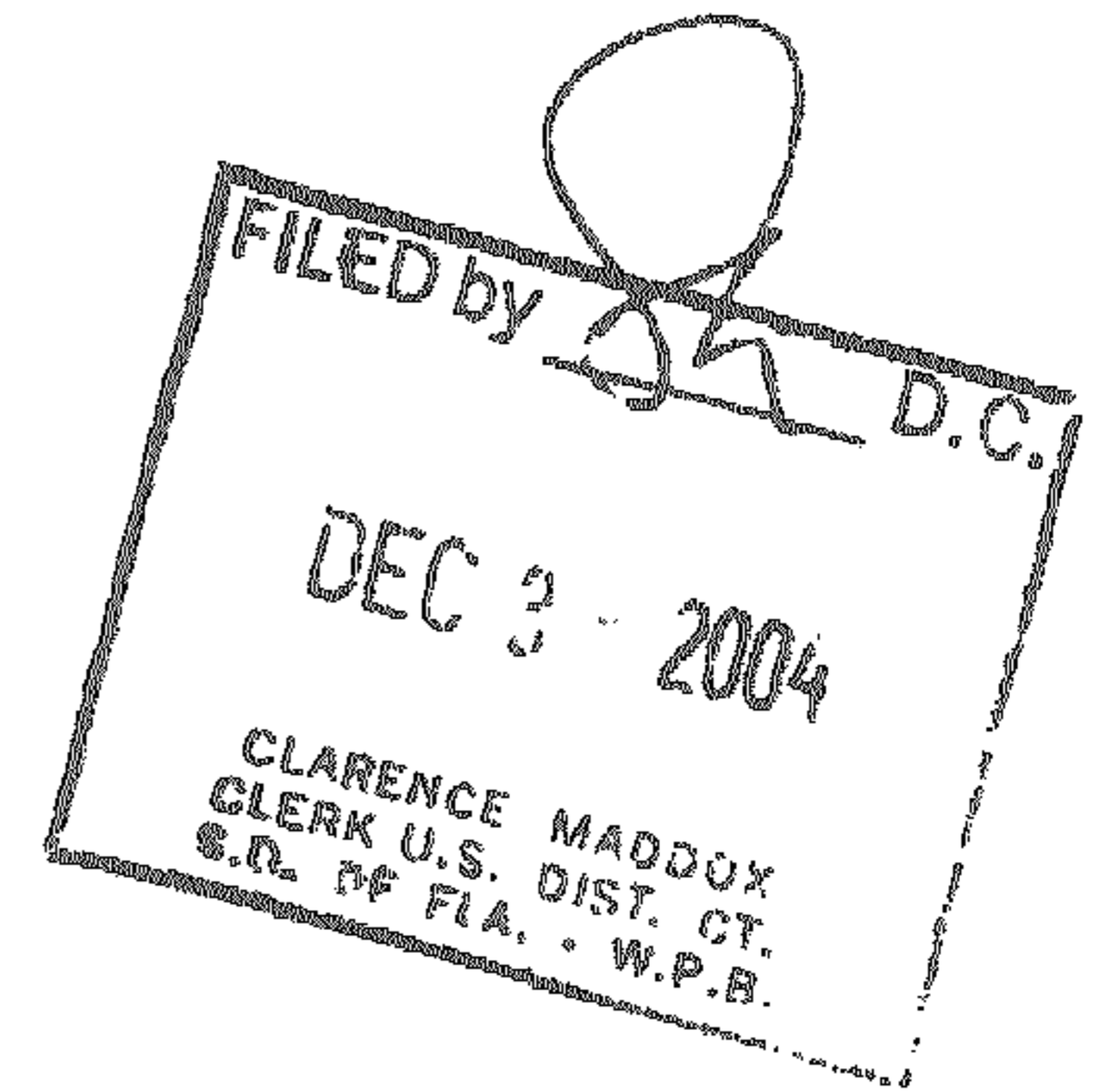


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH

Case No. 04-80443-CIV-RYSKAMP/VITUNAC



STEWART GREENBERG,

Plaintiff,

v.

JAMES ZINGALE, *et al.*,

Defendants.

CLOSED CASE

OMNIBUS ORDER

THIS CAUSE comes upon the Report and Recommendation [DE 24] issued by Chief Magistrate Judge Vitunac on November 5, 2004. Magistrate Judge Vitunac ordered that the parties could file objections to the report within ten (10) days after being served. Plaintiff filed an Objection to Magistrate's Report and Recommendation and a Motion for Partial Summary Judgment on November 17, 2004 [DE 25, 26].

This is an action challenging the constitutionality of Florida's alimony statute, Fla. Stat. § 61.08 *et seq.* Plaintiff's procedural due process and involuntary servitude claims were dismissed, pursuant to its Order Adopting in Part Report and Recommendation and Requesting Additional Report and Recommendation [DE 23] of August 31, 2004. In this second Report and Recommendation [DE 24], Magistrate Judge Vitunac recommends that Plaintiff's substantive due process claim be dismissed because the Florida alimony statutes "do not in any way prohibit marriage nor do they interfere with personal decisions relating to marriage... These statutes do not prevent a person from dissolving his or her marriage; the statutes do not interfere with a person's decision to exit a marriage." Report and Recommendation [DE 24], at 4.

31a

The Court disagrees with Magistrate Judge Vitunac's report only to the extent that it concludes that the alimony statutes do not interfere with an individual's right to privacy whatsoever. The alimony statutes do interfere with one's decision to exit a marriage; however, such interference does not rise to the level of a constitutional violation.

The Supreme Court has "long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Zablocki v. Redhail*, 434 U.S. 374, 384-85 (1978) (citing *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-40 (1974)). See also *Griswold v. Conn.*, 381 U.S. 479, 486 (1965); *Carey v. Population Servs. Int'l*, 431 U.S. 678, 684-85 (1971). Moreover, adjustments to the marital relationship, such as divorce and separation, are naturally included within the umbrella of protection accorded to the right of privacy. *Littlejohn v. Rose*, 768 F.2d 765, 768 (6th Cir. 1985) (citing *Zablocki*, 434 U.S. at 385).

Not every interference into the marital relationship, however, rises to the level of constitutional deprivation. To avoid infringement of a constitutional right, the exercise of a state's police powers must be confined to those acts which may reasonably be construed as expedient for the protection of the public safety, welfare and health or morals. *E.g.*, *Pacheco v. Pacheco*, 246 So. 2d 778, 781 (Fla. 1970) (upholding Florida statute denying alimony to an adulterous wife). See also *Sosna v. Iowa*, 419 U.S. 393, 406-09 (upholding constitutionality of Iowa's one-year residency requirement for divorce, where the statute could "reasonably be justified" by the State's interests in not becoming "a divorce mill for unhappy spouses" and in "insulat[ing its] divorce decrees from the likelihood of collateral attack"); *Murillo v. Bambrick*, 681 F.2d 898, 905-11 (upholding New Jersey statute imposing a \$50 fee for divorces under

rational basis standard of scrutiny, where state had legitimate interest to defray costs of matrimonial judicial systems).

Long-established principles of federalism dictate that this court defer to the Florida legislature's judgment in enacting Section 61.08, which allows the state court to award permanent or rehabilitative alimony to either party in a divorce. Further, this Court finds that statute can be reasonably justified by the legislature's purposes of providing support to a former spouse, balancing inequities, and establishing the capacity for self-support by a former spouse. Namely, the permanent alimony furthers the purpose of providing for the needs and the necessities of life to a former spouse as they have been established by the marriage of the parties. *Canakaris v. Canakaris*, 382 So. 2d 1197, 1201 (Fla. 1980). It also serves the purpose of balancing such inequities as might result from the allocation of income-generating properties acquired during the marriage. *Id.* at 1202. The principal of rehabilitative alimony, on the other hand, is to establish the capacity for self-support of the receiving spouse, either through the redevelopment of previous skills or provision of the training necessary to develop potential supportive skills. *Id.* Accordingly, the alimony statute does not violate Plaintiff's right to privacy in an unconstitutional manner.

The Court concurs with Magistrate Judge's Report and Recommendation relating to Plaintiff's equal protection claim. Accordingly, the Court has considered the Report and Recommendation and the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that:

(1) The Report and Recommendation [DE 24] be, and the same hereby is, RATIFIED, AFFIRMED and APPROVED in part, as set forth in this order;

(2) Defendants' Joint Motion to Dismiss Verified Complaint [DE 13] is GRANTED;

(3) Plaintiff's Motion to Deny Motion to Dismiss [DE 16] is DENIED;

(4) The remaining counts of the Complaint [DE 1] are DISMISSED WITHOUT PREJUDICE;

(5) Plaintiff's Motion for Partial Summary Judgment [DE 26] is DENIED as MOOT; and

(5) The Clerk of Court shall CLOSE the case and DENY any pending motions as MOOT.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 30 day of December, 2004.


KENNETH L. RYSKAMP
UNITED STATES DISTRICT JUDGE

Copies provided:
The Honorable Ann Vitunac
Stewart Greenberg, *pro se*
Valerie Martin, Esq.