

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH

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

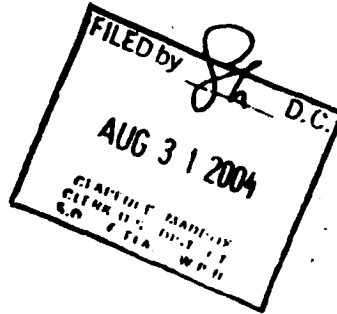
STEWART GREENBERG,

Plaintiff,

v.

JAMES ZINGALE, *et al.*,

Defendants.



**ORDER ADOPTING IN PART REPORT AND RECOMMENDATION AND  
REQUESTING ADDITIONAL REPORT AND RECOMMENDATION**

THIS CAUSE comes upon the Report and Recommendation [DE 20] issued by Chief Magistrate Judge Vitunac on August 5, 2004. Judge Vitunac ordered that the parties could file objections to the report within ten (10) days after being served. Plaintiff filed his objections [DE 21] on August 17, 2004.

This Court adopts the Report and Recommendation so far as it concludes this Court has subject matter jurisdiction over the cause, with the exception of Plaintiff's "as applied" equal protection claim. This Court also agrees that Plaintiff has failed to state procedural due process and involuntary servitude claims. In addition, the Complaint should be dismissed with prejudice as against the Fifteenth Judicial Circuit Court and the Honorable Edward Fine.

However, the Plaintiff is correct in asserting that the Report and Recommendation evaluated his substantive due process claim in the context of the right to enter into marriage, as opposed to his claim of an alleged right to exit a marriage without any undue burden imposed by the state. The Report and Recommendation also evaluates Plaintiff's equal protection claim as if it were an "as applied" claim, while this Court has jurisdiction only over the general equal protection allegation concerning the alimony statute at issue. As such, an additional report and

23  
w/c

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

recommendation addressing those areas is requested.


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 the United States Magistrate Report and Recommendation [DE 20] be, and the same hereby is, RATIFIED, AFFIRMED and APPROVED IN PART. Accordingly, it is hereby

ORDERED AND ADJUDGED that:

1. This Court does not have subject matter jurisdiction over Plaintiff's "as applied" equal protection claim, but does have subject matter jurisdiction over Plaintiff's remaining claims.
2. Defendant's Motion to Dismiss [DE 13] is GRANTED IN PART. Plaintiff's procedural due process and involuntary servitude claims are DISMISSED WITHOUT PREJUDICE.
3. The Complaint against the Fifteenth Judicial Circuit Court and the Honorable Edward Fine is DISMISSED WITH PREJUDICE.
4. The Court will reserve its finding on Defendant's Motion to Dismiss regarding Plaintiff's substantive due process and general equal protection claims until receiving an additional Report and Recommendation from the Magistrate Judge.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 31 day of August, 2004.

  
KENNETH L. RYSKAMP  
UNITED STATES DISTRICT JUDGE

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