

IN THE CLARK COUNTY SUPERIOR COURT NO. 2
STATE OF INDIANA

CONSTANCE MILLS (now HAESELEY)
Petitioner

V. Cause Number 10D02-0508-OR-132

DALE WAYNE MILLS,
Respondent

RESPONDENT'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO
STAY PROCEEDINGS

Comes now the Respondent, *pro se*, and moves this court to dismiss this filed action or in the alternative to stay proceedings pending ruling by the United States District Court for South Carolina, Charleston Division on the judicial review of the federal magistrate judge's order of remand of the original South Carolina state court case which the Respondent is arguing in federal court as an invalid remand order.

The Respondent has acted in good faith before this court and has not willfully misrepresented the course of federal proceedings. If anything, the Respondent is merely guilty of failing to carefully and fully articulate his legal argument that the remand order entered in federal court was improper and thus invalid. As such, the South Carolina state court lacked jurisdiction to proceed until "proper" remand. In support he offers,

1. South Carolina Ninth Judicial Circuit Court Case Number 95-DR-10-4755 was removed to the United States District Court for South Carolina, Charleston Division on December 16, 2004 and is in the federal Court now as Case Number 2:04-23286-DCN-GCK.

2. On June 16, 2005 the federal district court magistrate judge, without authority to review the case and without authority to enter a remand order, entered an order of remand of the removed case.
3. On July 5, 2005 Respondent timely filed a Motion to Object to the Report and Recommendation of the Honorable George C. Kosko United States Magistrate Judge (Copy of pleading attached)
4. The Petitioner (in this court) did not file any response pleading to the Motion to Object to the Report and Recommendation of the federal magistrate.
5. Because the federal remand order to the South Carolina state court is under federal district court review and may not be valid it is proper for this court to either not entertain this action or if it does entertain the action to stay proceedings until a ruling by the Federal District Court on the validity of the remand order entered there.
6. Petitioner in this court has not pled any prejudice if this court dismisses. Therefore failure to plead prejudice by dismissal would indicate she likewise would not be prejudiced by a stay of proceedings.
7. Harm to the Respondent can occur if this court entertains this proceeding or does not stay this proceeding.
8. The Respondent is likely to prevail on his request for review of the magistrate remand order in federal court.
9. If the remand order is invalid then all filing in this court are invalid until and if remand is entered into the South Carolina state court.

10. Pursuant to 28 U.S.C. § 1446 a state court has no jurisdiction over this case until it is “properly” remanded by the federal court.
11. The South Carolina court would lack jurisdiction to entertain any activity in this case until “proper” remand. The Indiana court would also lack similar jurisdiction if any proceedings in the South Carolina state court transpired while the case was removed prior to “proper” remand.
12. The Respondent repeats his defense that the South Carolina alimony statutes, (S.C. § 20-3-120, 130 et al), which this Indiana court is now asked to enforce impermissibly infringe the South Carolina state constitution right of privacy in the privacy protected zone of a personal decision relating to marriage, i.e. to divorce.
13. The Respondent repeats his defense that the South Carolina alimony statutes, (S.C. § 20-3-120,130 et al), which this Indiana court is now asked to enforce impermissibly infringe the Indiana Constitutional Right of Privacy in the privacy protected zone of a personal decision relating to marriage, i.e. to divorce.
14. The Respondent repeats his defense that the South Carolina alimony statutes, S.C. § 20-3-120 and S.C. § 20-3-130, which this Indiana court is now asked to enforce violate Indiana public policy and are not due full faith and credit.

Respectfully submitted,

Dale Wayne Mills
701 Summit Parkway
Borden, IN. 47106
Telephone: 812-246-0651
Fax: 812-246-0652
Email: terratrq@aol.com

DATED this 14th day of November, 2005

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing motion has been served via U.S. mail this 14th day of November, 2005 to

The Honorable Henry McMaster,
Attorney General South Carolina
P.O. Box 11549,
Columbia, S.C. 29211,

Steven A. James, Esq.
Attorney for Constance Mills Haeseley
792 Folly Road - Suite 9
Charleston, South Carolina 29412

Jonie L. Grayson, I.D. 17350-10
Attorney For Constance Mills Haeseley
505 East Seventh Street
P.O. Box 701
Jeffersonville, IN. 47131-0701

The Honorable Steve Carter
Attorney General of Indiana
Office of the Indiana Attorney General
Indiana Government Center South
302 W. Washington St.
Indianapolis, IN 46204