

IN THE UNITED STATES DISTRICT COURT
for the
DISTRICT OF SOUTH CAROLINA

Case No. 2:04-23286-18

CONSTANCE MILLS HAESELEY,
Plaintiff (Petitioner, former Wife)

v

DALE WAYNE MILLS,
Defendant, pro se (Respondent, former husband)

**DALE MILLS RESPONSE TO CONSTANCE MILLS HAESELEY'S MOTION TO
DISMISS/REMAND**

CROSS MOTION TO DENY MOTION TO DISMISS AND REMAND

“The Constitution protects individuals, men and women alike, from unjustified state interference, even when that interference is enacted into law for the benefit of their spouses.” Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 847 (1992)

DALE MILLS, pro se, moves the court to deny Ms. Haeseley's motion to dismiss and alternative motion to remand. In support he offers,

1. Removal was timely and complied with 28 U.S.C. 1446,
2. Removal was effected December 24, 2005 predicated on a state order entered December 1, 2004 that resulted from the voluntary action of Ms. Haeseley,
3. The pleadings note the federal question issues created by the state court order,
4. The court has original jurisdiction pursuant to 28 U.S.C. 1331 and 42 U.S.C. 1983,
5. A general constitutional challenge was pled therefore Rooker Feldman is inapplicable,

6. The state enforcement proceeding are separate from the original Final Judgment and therefore are not inextricably intertwined. Thus Rooker Feldman is inapplicable to the as applied state statutory constitutional challenge, Texaco Inc. v. Pennzoil Co., 784 F.2d 1133, 1143-45 (2d Cir. 1986), rev'd, 481 U.S. 1 (1987),
7. There are no concurrent state proceeding so the Younger abstention is inapplicable.

WHEREFORE Dale W. Mills prays and moves this court to deny the motion to dismiss and the alternative motion to remand.

Respectfully submitted,

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

DATED this 14th day of January, 2005

MEMORANDUM OF LAW

TO DENY MOTION TO DISMISS OR REMAND

“It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter. We have vindicated this principle before. Marriage is mentioned nowhere in the Bill of Rights... but the Court was no doubt correct in finding it to be an aspect of liberty protected against state interference by the substantive component of the Due Process Clause in Loving v. Virginia, 388 U.S. 1, 12 (1967).” Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 847 (1992)

INTRODUCTORY STATEMENT

The gravamen of this case has transformed to a civil rights and constitutional law case far removed from the original dissolution of marriage original filing.

This, now, civil rights action based on a state civil contempt order which will deny Dale Mills his liberties is one in which he seeks this court’s opinion of whether the South Carolina permanent alimony statutes violate the U.S. Constitution’s 14th Amendment Liberty interest and fundamental Right of Privacy and equal protection, 13th Amendment involuntary servitude, along with a 42 U.S.C. 1983 claim.

RESPONSE

Dale Mills, pro se, responds to Constance Haeseley’s motion to dismiss and in the alternative to remand.

Ms. Haesely moved for dismissal based upon,

A. Failure to Timely file Notice of Removal,

1. failure to timely removed based on initial state court pleading date,
2. the challenged alimony statutes were in existence prior to December 19, 1996,
3. this case concluded December 19, 1996,
4. an order of Civil contempt does not present an issue or claim statutorily removal,

5. no new removable issue is present since state court order of December 19, 1996,

B. Lack of Subject Matter Jurisdiction

1. this court cannot review (have subject matter jurisdiction over) a state court decision (Rooker-Feldman),
2. this court does not possess original jurisdiction over any issues arising in this case,
3. Mills claims here are defenses to enforcement of a state family court order and therefore federal jurisdiction is absent,
4. no party contends the divorce action or subsequent motion to compel confer original jurisdiction,
5. Fed. Rules Civil Pro. Rule (12)(h)(3) states if a party makes a suggestion of lack of subject matter jurisdiction, the court shall dismiss the action,

C. Federal Abstention Doctrine

1. Younger abstention doctrine,

D. Failure to state a claim

1. Mills is, in effect, attempting to challenge the validity of the divorce decree,
2. Mills is, in effect, attempting to circumvent state appeal through a federal suit challenging the constitutionality of the state alimony statutes.
3. Mills, is, in effect, asking this court to review and enjoin the state judgment,
4. relies on District of Columbia Court of Appeals v Feldman, 460 U.S. 462, 482 (1983) and Duby v. Moran, 901 F. Supp. 215 (1995)

Standard of Review

“Given the Federal Rules’ simplified standard for pleading, ‘[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be

proved consistent with the allegations.” Swierkiewicz v. Sorema, 534 U.S. 506, 514 (2002) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

A rule 12(b)(6) motion is disfavored and rarely granted. Clark v. Amoco Prod. Co., 794 F.2d 967, 970 (5th Cir. 1986); Sosa v. Coleman, 646 F.2d 991, 993 (5th Cir. 1981). In deciding a motion to dismiss under Rule 12(b), the court accepts as true those well pleaded factual allegations in the complaint. C.C. Port, Ltd. v. Davis-Penn Mortgage Co., 61 F.3d 288, 289 (5th Cir. 1995).

Even if it appears an almost certainty that the facts alleged cannot be proved to support the claim, the complaint cannot be dismissed so long as the complaint states a claim. Clark, 794 F.2d at 970

Accordingly, a court is bound to accept as true all factual allegations in the complaint and draw all inferences from those allegations in the light most favorable to the plaintiff. See, e.g., Scheuer v. Rhodes, 416 U.S. 232, 236(1974). This is so even if the plaintiff is unlikely ultimately to prevail. “Indeed it may appear on the face of the pleading that a recovery is very remote and unlikely but that is not the test.” Branham v. Meachum, 77 F.3d 626, 628 (2d Cir. 1996)

Justice O'Connor recently wrote that the Supreme Court "has frequently acknowledged the importance of having federal courts open to enforce and interpret federal rights." Idaho v. Coeur d'Alene Tribe of Idaho, 117 S.Ct. 2028, 2045–46 (1997) (O'Connor, J, concurring)

Pro Se Litigant

This court is supposed to more liberally construe the pleadings of the pro se litigant than if the pleadings were drafted by an attorney. (Hughes v. Rowe, 449 U.S. 5, 9 (1980)).

Timeliness of Removal

Removal was timely. A Notice of Removal was timely. Mills fully complied with 28 U.S.C. 1446.

Congress granted removal jurisdiction to this court based upon 28 U.S.C. 1441 when the procedural requirements of 28 U.S.C. 1446 are met. Removal, procedurally, here was effected based upon 28 U.S.C. 1446 (b) "...If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, *order or other paper* from which it may first be ascertained that the case is one which is or has become removable..." (emphasis added)

When Ms. Haeseley voluntarily sought enforcement of the statute and the state court entered a legally insufficient order this case metamorphosized into a constitutional law, civil rights case with the enforcement of a statute that denies Dale Mills and all South Carolinians their liberty interest, right of privacy and right of property. (Dale Mills contents the state contempt order is legally insufficient as it does not contain a citing to a record, not does the record contain, a source of assets or resources from which Dale Mills could purge the arrearages.)

This voluntary action of Ms. Haeseley resulted in a court order that triggered the first time Dale Mills could ascertain the federal question and jurisdiction in 42 U.S.C. 1983 and 28 U.S.C. 1331.

The state court's ministerial, not neutral adjudacatory, conduct to enforce a statute against Dale Mills which will deny him his federal constitutional liberty interest, Right of Privacy, Equal Protection and Right to Property, is on its face a federal question, not a defense to the enforcement.

The state ministerial order is sufficient to trigger timely removal. Yarnevic v. Brink's, Inc., 102 F.3d 753, 754 (4th Cir. 1996); S.W.S. Erectors, Inc. v. Infax, Inc., 72 F.3d 489, 494 (5th Cir. 1996); Poulos v. Naas Foods, Inc., 959 F.2d 69 (7th Cir. 1992). See also DeBry v. TransAmerica Corp., 601 F.2d 480 (10th Cir. 1979).

Also the order can be interpreted to be “other paper” to trigger the removal clock. Charles Alan Wright et al., Federal Practice and Procedure § 3732 at 300-10 (3d ed. 1998) (“The federal courts have given the reference to 'other paper' an embrasive construction...”)

Subject Mater Jurisdiction

Subject matter jurisdiction is pled as to 28 U.S.C. 1331, federal question, a constitutional challenge to a state statute infringing the U.S. Constitution 14th and 13th Amendments. (Complaint at 1, 14, 18) as well as a 42 U.S.C. 1983 federal question claim.

Federal Preclusion and Abstention Doctrine

Rooker-Feldman

general constitutional challenge

“The federal district courts do have jurisdiction ‘over general challenges to state bar rules, promulgated by state courts in nonjudicial proceedings, which do not require review of a final state court judgment in a particular case.’ District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983).

The latter portion of Plaintiff’s case comes within the distinction clearly noted in Doe v. Pringle, 550 F.2d at 599, that ‘a federal district court may exercise review of alleged federal constitutional due process or equal protection deprivations in the state’s adoption and/or administration of general rules governing admission.’ Thus in light of the general challenge by Plaintiff Johnson to the Utah Adoption laws it was error to dismiss Plaintiff’s complaint in toto since that portion of his complaint need not be construed as an attempt to appeal a particular adoption decree.” Johnson v Rodriguez et al., 226 F.3d 1103, 1108, (10th Cir. 2000)

Dale Mills Complaint at 15 contains a general constitutional challenge to S.C. sections §§ 20-3-120,130. This pleading makes Rooker-Feldman inapplicable.

as applied constitutional challenge

Dale Mills is not requesting this court to rule on the validity of the state court judgment, not amend or alter it. A Final Judgment of Dissoluion of Marriage had long since been entered.

Dale Mills specifically does not request that a state court judgment be overturned, altered, modified, or entered by this Court. (Complaint at 17)

Dale Mills does not request this court to characterize a state court as wrong. He simply wishes a judicial review of a state statute that a state court will utilize to deny him his U.S. constitutional liberty interest and fundamental rights.

The fresh constitutional claims pled are not inextricably intertwined with the underlying state court action and thus Rooker-Feldman abstention is inappropriate to this as applied challenge. Texaco Inc. v. Pennzoil Co., 784 F.2d 1133, 1143-45 (2d Cir. 1986), rev'd, 481 U.S. 1 (1987)

“The Supreme Court's reasoning in *Pennzoil* indicates that if the purpose of a federal action is ‘separable from and collateral to’ a state court judgment, then the claim is not ‘inextricably intertwined’ merely because the action necessitates *some* consideration of the merits of the state court judgment. Moreover, on its facts, *Pennzoil* demonstrates that asking a federal court to enjoin post-judgment collection procedures that allegedly violate a party's federal rights is distinguishable from asking a federal court to review the merits of the underlying judgment.” Kiowa Indian Tribe of Oklahoma v. Hoover, 150 F.3d 1163, 1170 (10th Cir. 1998) (Emphasis not added)

Further, this court has an unflagging obligation to exercise the jurisdiction given it.

"...virtually unflagging obligation of the federal courts to exercise the jurisdiction given them."

Colorado River Water Conservation District v. United States, 424 U.S. 800, 813 (1976) Further,

“[T]he courts of the United States are bound to proceed to judgment and afford redress to suitors

before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction.” Id.

In light of that mandate, “abstention . . . is the exception, not the rule.” Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 14 (1983). Indeed, abstention is “an *extraordinary* and *narrow* exception to the duty of a District Court to adjudicate a controversy properly before it.” Colorado River, 424 at 813 (emphases included). “Abstention ‘is the exception, not the rule.’” Ankenbrandt v. Richards, 504 U.S. 689, 705 (1992); “Abstention is, of course, the exception and not the rule.” City of Houston, 482 U.S. 451, 467 (1987). See also 28 U.S.C. § 1334(c).

Finally, judicial economy mitigates against abstention. If this court applies Rooker Feldman abstention, England v Medical Examiners, 375 U.S. 411 (1964) will permit the plaintiff to have his state claims adjudicated in state court and with a proper reservation of his federal claims return to this court if the state court rules adversely on his state claims. England 375, Fields v. Sarasota Manatee Airport Authority, 953 F.2d 1299, 1303 (11th Cir. 1992), Jennings v. Caddo Parish School Bd., 531 F.2d 1331 (5th Cir. 1976)

Younger abstention

The Younger abstention doctrine scope and elements are succinctly summarized in Foster Children v. Bush, 329 F. 3d 1255, 1274 (11th Cir.2003),

“The Supreme Court has said that federal courts have a “virtually unflagging obligation . . . to exercise the jurisdiction given them.” Col. River Water Conservation Dist. v. United States, 424 U.S. 800, 817, 96 S.Ct. 1236, 1246 (1976). But “virtually” is not “absolutely,” and in exceptional cases federal courts may and should withhold equitable relief to avoid interference with state proceedings. New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350, 359, 109 S.Ct. 2506, 2513 (1989). While non-abstention remains the rule, the Younger exception is an important one. It derives from “the vital consideration of comity

between the state and national governments," *Luckey v. Miller*, 976 F.2d 673, 676 (11th Cir. 1992)"

Although state interests are involved." *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432, 102 S. Ct. 2515, 2521 (1982). "Proceedings necessary for the vindication of important state policies or for the functioning of the state judicial system . . . evidence the state's substantial interest in the litigation." *Id.* "Where vital state interests are involved, a federal court should abstain unless state law Younger concerned state criminal proceedings, its principles are "fully applicable to noncriminal judicial proceedings when important clearly bars the interposition of the constitutional claims." *Id.* (citation omitted). As the Middlesex Court framed the issue, "The question . . . is threefold: first, do [the proceedings] constitute an ongoing state judicial proceeding; second, do the proceedings implicate important state interests; and third, is there an adequate opportunity in the state proceedings to raise constitutional challenges." *Id.* (emphasis omitted); see also *Old Republic Union Ins. Co. v. Tillis Trucking Co.*, 124 F.3d 1258, 1261 (11th Cir. 1997)."

All three prongs fail in this case.

The first prong. There are no concurrent or parallel state proceedings.

"Moreover, the Younger doctrine has been held to 'have little force in the absence of a pending state proceeding.' *Lake Carriers' Assn. v. MacMullan*, 406 U.S. 498, 509 (1972) (emphasis added). There are at present no proceedings of any kind pending against these [409 U.S. 109, 125] appellees." *California v. Larue*, 409, U.S. 109 (1972) Footnote 2.

The second prong . . . i.e., do the proceedings implicate important state Interests. Ms. Haeseley's motion and memorandum offer no state interest let alone an important state interest.

Further, The burden is on the state [Defendants] to establish that an important state interest is implicated. See *Trainor v. Hernandez*, 431 U.S. 434, 448 (1977) (Blackmun, J., concurring).

“Consistently with this requirement of balancing the federal and state interests, the Court in previous *Younger* cases has imposed a requirement that the State must show that it has an important interest to vindicate in its own courts before the federal court must refrain from exercising otherwise proper federal jurisdiction.”

The state of South Carolina, though noticed of this case, has failed to make an appearance. The reasonable inference is that the state does not have an important state interest to offer for the challenged statute.

The Eleventh Circuit in Rindley v. Gallagher, 929 F.2d 1552 (11th Cir. 1991) stated the scope of *Younger* application in civil cases,

“The *Younger* doctrine, based upon the principle of comity, has subsequently been extended to civil proceedings, but "has been limited to those civil actions in aid of criminal jurisdiction or involving enforcement-type proceedings in which vital interests of the state *qua* state are involved." *Cate v. Oldham*, 707 F.2d 1176, 1183 (11th Cir. 1983). See, e.g., *Pennzoil Co. v. Texaco*, 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987) (state interest in execution of state judgments); *Middlesex County Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982) (important state interest in maintaining and assuring the professional conduct of attorneys it licenses).”

The Eleventh Circuit outlined its view of what constitutes an important state interest in First Ala Bank, Montgomery v. Parsons Steel, 825 F.2d 1475, 1483 (11th Cir. 1987),

“Our consideration of this threshold inquiry leads us to conclude that *Younger* abstention is not appropriate in this case because the state court action enjoined by the district court does not implicate any important government interest of the State of Alabama. The importance of a state interest may be demonstrated by the fact that the proceedings sought to be enjoined are noncriminal proceedings bearing a close relationship to criminal proceedings or by the fact the proceedings are necessary for the vindication of important state policies or the functioning of the state judicial system. *Middlesex Ethics Comm'n*, 457 U.S. at 432, 102 S.Ct. at 2521. Alabama is not a party to the action enjoined in this case, nor was that action brought to vindicate important interests of that State. Similarly, the action does not implicate the State's ‘important interests in administering certain aspects of [its] judicial system.’ *Pennzoil*, 107 S.Ct. at 1527. The state court action involved in this case was merely a private action between private parties in which the State of Alabama had

no interest beyond "its interest as adjudicator of wholly private disputes." *Id.* at n. 12. Therefore, we find that the Younger doctrine did not require that the district court abstain from issuing the injunction against further state court proceedings."

And in *Cate v. Oldham*, 707 F.2d 1176 (11th Cir. 1983),

"Application of the Younger doctrine to ongoing state civil proceedings has been limited to those civil actions in aid of criminal jurisdiction or involving enforcement-type proceedings in which vital interests of the state *qua* state are involved. See *Middlesex County Ethics Committee v. Garden State Bar Ass'n.*, 457 U.S. 423, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982); *Moore v. Sims*, 442 U.S. 415, 99 S.Ct. 2371, 60 L.Ed.2d 994 (1979); *Juidice v. Vail*, 430 U.S. 327, 97 S.Ct. 1211, 51 L.Ed.2d 376 (1977); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975). Accord *O'Hair v. White*, 675 F.2d 680, 695 (5th Cir. 1982) (en banc); *Gresham Park Community Organization v. Howell*, 652 F.2d 1227, 1244-48 (5th Cir. 1981)."

The federal claims raised here are not matters that traditionally look to state law for their resolution. Federal questions, 42 U.S.C. 1983 claims, though capable of state legal adjudication, are traditionally purview of the Federal Courts not the state courts.

Daniel C. Norris in *The Final Frontier of Younger Abstention: The Judiciary's Abdication of the Federal Court Removal Jurisdiction Statute*, 31 Fla. St. U. Law Review 193, 229 (2003) states the error of allowing the notion of comity for states to supercede the jurisdiction granted to the federal courts by the Constitution and the U.S. Congress as well as the error of using abstention for docket clearing.

"It is entirely uncertain from the Court's extensive abstention jurisprudence why the interests of comity are constitutionally sufficient to repudiate the jurisdiction which Congress has placed upon them through the exercise of its Article III powers. This is particularly true in light of the Court's numerous observations regarding the duty of federal courts to exercise the jurisdiction that Congress has given to them. While some commentators have rejected the notion that federal courts have an absolute duty to exercise their jurisdiction, even the Court's own abstention cases make it clear that a refusal to exercise jurisdiction should not be undertaken lightly. While some extraordinary cases may

require a district court to refuse the exercise of its jurisdiction, it seems almost axiomatic that such refusals must not rise to the level of repudiating an entire area of jurisdiction that was created by a clear and unequivocal act of Congress. While many scholars have expressed great disdain for diversity jurisdiction, federal courts must not be allowed to unilaterally act to eliminate that entire area of jurisdiction for the purpose of clearing their dockets. However, this is precisely what the modern developments in the Younger abstention doctrine have done. By essentially eliminating the right of a party to remove a case to federal court on diversity grounds, and to a lesser extent on federal question grounds, the Court has substantially interfered with the Article III prerogatives of Congress.” Citing Hart & Wechsler, *The Federal Courts and the Federal System* ch. 7, § 3, at 1043 (2d ed. 1973), ch. 8, § 5, at 1257 (canvassing the Court’s decisions requiring the exercise of jurisdiction and its opinions that call for abstention and discussing the apparent contradiction of these two positions) and *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996); *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992); *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 359 (1989); *Deakins v. Monaghan*, 484 U.S. 193, 203 (1988); *Murray v. Carrier*, 477 U.S. 478, 519 (1986); *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 15 (1983); *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817-18 (1976); *England v. La. State Bd. of Med. Exam’rs*, 375 U.S. 411, 415 (1964).”

Ms. Haeseley’s argument that abstention is the rule is flawed, "abstention from the exercise of federal jurisdiction is the exception, not the rule." *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 236 (1984)

The *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 236 (1984) quote and the quote of Justice O’Connor in *Idaho v. Coeur d’Alene Tribe of Idaho*, 117 S.Ct. 2028, 2045–46 (1997) above both point to the principle that the role of abstention to dismiss a federal suit is narrowly tailored. The burden is on the movants and it is a heavy one.

All Elements of All Claims are Sufficiently Pled

14th Amendment claim

Liberty Interest, Right to Privacy

All elements are pled. (Complaint 31-36, 71-76)

The 14th Amendment Liberty Interest doctrine has been recognized in Lawrence v. Texas 123 S. Ct. 2472 (2003) and Planned Parenthood v. Casey, 505 U.S. 833, 859 (1992). The Liberty Interest coupled with the recognized Right to Privacy contained in the substantive due process clause of the 14th Amendment includes a Privacy Protected Zone of “personal decisions relating to marriage.” Carey v. Population Serv. Int’l., 431 U.S. 678, 684-685 (1977), Loving v. Virginia, 388 U.S. 1, 12, 87 S.Ct. 1817 (1967); Zablocki v. Redhail, 434 US 374 (1978)and; Planned Parenthood v. Casey, 505 U.S. 833, 859 (1992), Roe v. Wade, 410 U.S. 113, (1973); Griswold v. Connecticut, 381 U.S. 479 (1965).

The scope of the “personal decisions relating to marriage” Privacy Protected Zone is as yet undetermined. Just as the Privacy Protected Zone of procreation has two ends of its spectrum, i.e. the use and sale of contraceptives (beginning or preventing a procreation event) on one end and the termination of a procreation event (abortion) on the other so too the Zone of “personal decisions relating to marriage” has a full spectrum.

To date federal courts have only address the beginning end of the spectrum (getting married) and statutes that place an undue burden on that process. In this case the court is asked to address the termination end of the personal decision relating to marriage (dissolution) and whether the challenged statute places an undue burden on the personal decision to dissolve a marriage. A citizens wish to dissolve his marriage is as much a personal decision relating to marriage as his decision to enter a marriage. Both fall within the Privacy Protected Zone.

The U.S. Supreme Court could have chosen different terms and concepts but it repeated chose “personal decisions relating to marriage” as the Privacy Protected Zone.

Dale Mills has adequately pled the substantive due process elements related to Liberty interest and Right to Privacy to survive a motion to dismiss.

equal protection

Dale Mills has pled all the elements for an equal protections claim (Complaint 42-50, 77-83)

Deliberate intention is not a necessary element when an equal protection claim involves a fundamental constitutional right.

The Plaintiff has pled a violation of a fundamental right, i.e. Right to Privacy, and Liberty Interest. He has offered how South Carolinians dissolving their marriages are not all treated equal. The alimony statute is applied only to some of them. When applied it is applies with a 2²⁰ permutations such that it is the mathematically rare event that two are treated equally.

13th Amendment Claim

All elements for a constitutional challenge to a statue statute infringing the U.S. Constitution 13th and 14 Amendments have been sufficiently pled. (Complaint 51-55, 84-93)

Dale Mills relies on United States v. Kozminski, 487 U.S. 931, (1998) for his pled claim that the South Carolina permanent alimony statutes violate the 13th Amendment ban on involuntary servitude, “in every case in which this Court had found a condition of involuntary servitude, the victim had no available choice but to work or be subject to legal sanction.” Kozminski 487 at 943.

South Carolina Statutes § 20-3-120,130 themselves and their case law interpretation mandate that Dale Mills and all South Carolinians have no available choice but to work or be subject to legal sanction. In fact he is currently subject to legal sanction and in fact improper legal sanction by virtue of Ms. Haeseley’s threat of coercion through the law and legal process to have S.C. § 20-3-120,130 enforced against him.

Kozminski at 487 is a case wherein the U.S. Supreme Court is asked to define the concept of “involuntary servitude” as used in two criminal statutes. In the case the Court explores the historical law as to the 13th amendment and the words “involuntary servitude.”

It is important to begin with the holding of the case,

“...we hold that, for purposes of criminal prosecution under 241 or 1584, the term ‘involuntary servitude’ necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.” Kozminski 487 at 952.

“We hold only that the jury must be instructed that compulsion of services by the use or threatened use of physical or legal coercion is a necessary incident of a condition of involuntary servitude.” Kozminski 487 at 953.

The distinction of the holding is that involuntary servitude cannot exist from mere psychological, economic or social coercion, there must be the use or threat of physical coercion or of the law and the legal process.

In the case before the court now the only way Dale Mills is forced to forever work for Ms. Haeseley is by use and threat of coercion through law, i.e. South Carolina Statutes § 20-3-120,130 and the legal process. The only way Ms. Haeseley could force Dale Mills to work to maintain her in the lifestyle of the marriage is use the law, § 20-3-120,130, and then use the coercive force of the law. She did just that.

The alimony section itself is violative of the 13th amendment involuntary servitude concept. Ms. Haeseley is also subject to litigation over her use of § 20-3-120,130 to deprive Dale Mills of his property and freedom, i.e. to subject him to “involuntary servitude.”

“The primary purpose of the Amendment was to abolish the institution of African slavery as it had existed in the United States at the time of the Civil War, *but the Amendment was*

not limited to that purpose;” (Emphasis added) citing Butler v. Perry, 240 U.S. 328, 332 (1916).

Kozminski 487 at 942

The 13th amendment projected an expansive, not a restrictive, freedom.

“While the general spirit of the phrase ‘involuntary servitude’ is easily comprehended, the exact range of conditions it prohibits is harder to define. The express exception of involuntary servitude imposed as a punishment for crime provides some guidance. The fact that the drafters felt it necessary to exclude this situation indicates that they thought involuntary servitude includes at least situations in which the victim is compelled to work by law.” Id at 943.

“Looking behind the broad statements of purpose to the actual holdings, we find 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

Dale Mills must work for Ms. Haeseley or face legal sanction.

28 U.S.C 2201 Declaratory Judgment

This court has authority, and there is no bar, to its granting declaratory judgment relief because it has original, removal, federal question and supplemental jurisdiction.

Dale Mills recognized the authority/ jurisdictional limitation of 28 U.S.C. 2201 in Complaint at 20 when he stated *authority* not *jurisdiction* of this court to grant declaratory relief.

The declaratory judgment authority of 28 U.S.C. 2201 is proper under Brillhart v. Excess Ins. Co. 316 U.S. 496, (1942) ,

“The motion rested upon the claim that since another proceeding was pending in a state court in which all the matters in controversy between the parties could be fully adjudicated, a declaratory judgment in the federal court was unwarranted. The correctness of this claim was certainly relevant in determining whether the District Court should assume jurisdiction and proceed to determine the rights of the parties. Ordinarily it would be uneconomical as well as vexatious for a federal court to proceed in a declaratory judgment suit *where another suit is pending in a state court* presenting the same issues, not governed by federal law, between the same parties. Gratuitous interference with the orderly and comprehensive disposition of a state court litigation should be avoided.

Where a district court is presented with a claim such as was made here, it should ascertain whether the questions in controversy between the parties to the federal suit, and which are not foreclosed under the applicable substantive law, can better be settled in the proceeding pending in the state court.... The federal court may have to consider whether the claims of all parties in interest can satisfactorily be adjudicated in that proceeding, whether necessary parties have been joined, whether such parties are amenable to process in that proceeding, etc.”

(Emphasis added) Brillhart 316 at 495.

The Brillhart ruling has travelled through the filter of Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976) and most recently Wilton v. Seven Falls Co., 515 U.S. 277, (1995)

Wilton further clarifies the limitation of Brillhart as a case dealing with a parallel state action, “We conclude only that the District Court acted within its bounds in staying this action for declaratory relief where parallel proceedings, presenting opportunity for ventilation of the same state law issues, were underway in state court.” Wilton at 515

Dale Mills acknowledges the discretionary nature of 28 U.S.C. 2201 and believes this court, under the totality of the circumstances here, should avail itself of the remedial arrow in its quiver granted to it by congress and noted in Wilton at 515

In the exercise of its discretion, the general test is whether "the judgment will serve a useful purpose in clarifying and settling the legal relationships in issue and whether it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." Aetna Cas. & Sur. Co. v. Sunshine Corp., 74 F.3d 685, 687 (6th Cir. 1996)(internal quotes omitted). See also Complaint at 23.

In deciding whether to proceed with a declaratory judgment action, courts consider the following factors: (1) whether the declaratory action would settle the controversy; (2) whether

the declaratory action would serve a useful purpose in clarifying the legal relations in issue; (3) whether the declaratory remedy is being used merely for the purpose of "procedural fencing" or to provide an arena for a race for res judicata; (4) whether the use of the declaratory action would increase friction between federal and state courts and improperly encroach on state jurisdiction; and (5) whether there is an alternate remedy which is better or more effective. Id. (quoting Grand Truck Western R.R. Co. v. Consol. Rail Corp., 746 F.2d 323, 326 (6th Cir. 1984)). Complaint at 23.

The Complaint at 12 states the existence of an actual controversy and continuing injury to Dale Mills. The continuous nature of the injury is evidenced in the record by Ms. Haeseley's contempt hearing and the order entered against Dale Mills in state court.

28 U.S.C. 2201 contains no requirement of exhaustion of remedies.

42 U.S.C. 1983 Claim

Dale Mills has pled all necessary elements for a 41 U.S.C. 1983 Claim. (Complaint 58-60, 94-99)

§ 1983. Civil action for deprivation of rights

Every *person* who, *under color of any statute*, ordinance, regulation, custom, or usage, *of any State* or Territory or the District of Columbia, *subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws*, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. [Emphasis added]

Dale Mills has pled the highlighted elements with facts sufficient to support his claim. He is entitled to put on evidence that Ms. Haeseley's actions were under color of the challenged statute §§20-3-120, 130 and that as a result of Ms. Haeseley's actions under that statute he was deprived of his fundamental rights.

Private persons are subject to 42 U.S.C. 1983. Lugar v. Edmondson Oil, Co., 457 U.S. 922 (1982); Wyatt v. Cole, 504 U.S. 158, 162 (1992).

Ms. Haeseley is on notice adequately in the complaint as to her conduct. Her use of §§20-3-120, 130 to compel the Plaintiff to work for her benefit was an option she chose. She continued to use the threat of coercion of the law and the legal process and there was deprivation of the Dale Mills rights. His monies were taken, He was compelled to defend himself in repeated court actions. He is even now under threat of immediate incarceration .

Conclusion

“We are only at the beginning of a philosophical reaction, and of a reconsideration of the worth of doctrines which for the most part still are taken for granted without any deliberate, conscious, and systematic questioning of their grounds...

Most of the things we do, we do for no better reason than our fathers have done them or that our neighbors do them, and the same is true of a larger part that we suspect of what we think. The reason is a good one, because our short life gives us no time for a better, but it is not the best. It does not follow, because we all are compelled to take on faith at second hand most of the rules on which we base our action and our thought, that each of us may not try to set some corner of the world in the order of reason, or that all of us collectively should not aspire to carry reason as far as it will go throughout the domain.” O.W. Holmes. *The Path of the Law*. 10 Harvard Law Review 457 (1897)

Prayer for Relief

Wherefore for the above stated reasons this court must deny Ms. Haeseley's motion to dismiss and in the alternative, motion to remand because all of the elements of her argument fail

to meet the burden to prevail on dismissal. Further he prays this court find all elements for all causes of action are sufficiently pled with supporting facts, Rooker-Feldman preclusion and Younger abstention doctrines are inapplicable, removal was timely effected and this court has subject matter jurisdiction to proceed.

Respectfully submitted,

Dale Wayne Mills, pro se

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

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 January, 2005 to

PUT THE NAME OF THE ASST AG THAST REPLIED TO YOU

,
P.O. Box 11549,
Columbia, S.C. 29211,

Steven A. James, Esq.
Attorney for Constance Mills Haeseley
92 Folly Road - Suite 9
Charleston, S.C. 29412

Dale Wayne Mills, pro se

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

