

DIVISION CLERK

11-17-06-007274

IN THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY
FLORIDA
CIVIL DIVISION

DOUGLAS K. PHILLIPS, *pro se*,

v.

Case No.:

JAMES ZINGALE, EXECUTIVE DIRECTOR,
FLORIDA DEPARTMENT OF REVENUE
(In his official capacity)

FILED
OCT 06 2006
Jeri Fuller
CLERK CIRCUIT COURT

**ACTION FOR DECLARATORY JUDGMENT and INJUNCTIVE RELIEF
§ 61.08 FLA. STAT. (ALIMONY) IMPERMISSIBLY INFRINGES
ART. I, § 23 FLA. CONST. (RIGHT OF PRIVACY)
ART. II, § 3, FLA. CONST. (SEPARATION OF POWERS),
ART I § 2, FLA. CONST. (BASIC RIGHTS)
AND CONFLICTS WITH
CONNOR V. SOUTHWEST 668 SO. 2D 175 (FLA. 1995)**

“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.” Parenthood v. Casey, 505 U.S. 833, (1992)

Comes now Douglas K. Phillips, *pro se* with assistance of counsel, seeking a declaratory judgment, temporary injunctive relief, and permanent injunctive relief, pursuant to Art. I § 23 (Right of Privacy) Fla. Const., Art. I §2 Basic Rights, Art. II § 3 (Separation of Powers) Fla. Const., and Chapter 86 (Declaratory Judgment) Fla. Stat.

The Plaintiff argues that §61.08 Fla. Stat, permanent alimony statute, impermissibly infringes Art. I § 23 (Right of Privacy) Fla. Const., Art. II § 3 (Separation of Powers) Fla. Const., Art. I §2 Basic Rights and conflicts with Connor v. Southwest,

[Handwritten signatures and stamps]
LARRY CAMPBELL, CLERK OF DUVAL COUNTY, FL

668 So. 2d 175 (Fla. 1995), i.e. abrogation of the doctrine of necessities. In support he offers:

Chapter 86 Fla. Stat. Declaratory Judgment

1. Chapter 86, Fla. Stat. provisions are to be liberally construed (§ 86.101 Fla. Stat.; Olive v. Maas, 811 So. 2d 644 (Fla. 2002)).
2. This Court has jurisdiction pursuant to § 86.011 Fla. Stat. to determine the constitutionality of Chapter 61 Fla. Stat. alimony provisions, postdissolution permanent spousal support provisions (§§ 61.011, 61.031, 61.043, 61.071, 61.08, 61.09, 61.10, 61.12, 61.1301, 61.13015, 61.13016, 61.14, 61.17, 61.18, 61.181, 61.1824 Fla. Stat.).
3. Douglas K. Phillips has standing pursuant to § 86.021 Fla. Stat. as one who claims an interest, is in doubt, has his rights, status, equitable and legal relations affected by the noted Chapter 61 Fla. Stat. provisions such that he desires and requires a declaration of rights, status, equitable and legal relations thereunder.
4. The proper defendant, pursuant to Chapter 86 Fla. Stat. provisions, the Florida Attorney General, and Florida case law, is the State official charged with enforcing Chapter 61 Fla. Stat. alimony (postdissolution permanent spousal support provisions). (See also § 61.14 Fla. Stat.)
5. Pursuant to § 86.091 Fla. Stat. notice is given to interested parties, i.e. Carrie M. Phillipa, to the Defendant as the State's enforcing agent, and to the Attorney General of the State of Florida.

Jurisdiction

6. This court has jurisdiction to hear this declaratory judgment action pursuant to Chapter 86 Fla. Stat. and Rabin v. State Dept. Of Revenue, 884 So.2d 983 (Fla.App. 4 Dist. 2004)

Alimony Statutes

7. Chapter 61 Fla. Stat. is entitled “Dissolution of Marriage: Support: Custody.”
8. Chapter 61 Fla. Stat. permanent alimony, postdissolution permanent spousal support provisions, (§§ 61.011, 61.031, 61.043, 61.071, 61.08, 61.09, 61.10, 61.12, 61.1301, 61.13015, 61.13016, 61.14, 61.17, 61.18, 61.181, 61.1824) require a former spouse to a marriage with the ability to pay to support the other former spouse with a need, for life, based on 2¹⁸ and “*any other factor to do equity between the parties*” with threat of wage garnishment, loss of professional license, contempt and imprisonment.
9. The spousal support provisions mandate that the state invade the privacy protected zone of marriage, through the judiciary, to examine, evaluate, determine and conclude the terms and nature, inter alia, of the interpersonal relationship, spousal roles, spousal conduct, parental decision making, parenting conduct, economic standard of living, occupations, education, savings, assets, charitable contributions and most importantly the intimate emotional, psychological and physical details of the parties during their marriage to apply an unbridled discretionary opinion using an equitable standard in order to implement the statutory provisions.

Florida and Federal Constitution

10. Art. I § 23 Fla. Const. restricts the government from intruding into the private life of any person.

“**Article I Section 23 Right of privacy.**--Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.”

11. Federal and Florida Constitutions and Judicial rulings have determined the existence of a right of privacy, which includes marriage and personal decisions related to marriage. (U.S. Constitution Fourteenth Amendment Due Process Clause; Griswold v. Connecticut, 381 U.S. 479 (1965); Carey v. Population Serv. Int'l., 431 U.S. 678, 684-685 (1977); Parenthood v. Casey, 505 U.S. 833, (1992); Zablocki v. Redhail, 434 US 374 (1978); Florida Constitution Article I Section 23; Winfield v. Division of Para-Mutual Wagering, 477 So. 2d 544 (Fla. 1985))
12. Divorce (“Dissolution of Marriage”) is within the umbrella of protection of the federal Right of Privacy contained within the Fourteenth Amendment U.S. Constitution. Littlejohn v. Rose, 768 F. 2d 765, 768 (6th Cir. 1985)
13. Florida Constitution Article I Section 2 states...

“**SECTION 2. Basic rights.**--All natural persons, female and male alike, ... have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property.”
14. Art. II §3 Fla. Const. Separation of Powers prohibits the Florida legislature from delegating its constitutionally exclusive law making power to the Florida judiciary.

Abrogation of Spousal Duty of Support

15. Connor v. Southwest, 268 So. 2d 175 (Fla. 1995) abrogated the doctrine of necessaries. The ruling effectively altered the policy of the state to make each party in a marriage responsible for herself/himself.

DOUGLAS K. PHILLIPS

16. Douglas K. Phillips is a resident of Jacksonville, Florida, Duval County
17. Douglas K. Phillips' marriage was dissolved by Order of the Courts of the State of Florida on December 8, 2005.(Fourth Judicial Circuit Court of Florida Case Number 16-2003-DR-009665-FM) he was ordered to pay \$2,200.00 per month alimony permanently---until he or the former wife die or she remarries!
18. Prior to issuing its December 8, 2005 Order the State, through its Court, invaded and examined the intimate details of the privacy area of the marriage of Douglas K. Phillips.
19. After its invasion and examination of the intimate details of Douglas K. Phillips' privacy area of marriage the State, through its Court reassigned the property rights between Douglas K. Phillips and Carrie M. Phillips.
20. The State, through its Court, redistributed the marital property of Douglas K. Phillips and Carrie M. Phillips pursuant to § 61.075 Fla. Stat.
21. The State, through its Court's Order of Final Judgment of Dissolution required Douglas K. Phillips to pay permanent alimony, i.e. postdissolution permanent spousal support.
22. Douglas K. Phillips is subject to arrest warrants and imprisonment because of the enforcement provisions of a Chapter 61 Final Judgment Order. Such enforcement

- is part of Chapter 61 Fla. Stat.
23. Douglas K. Phillips' Florida Constitutionally guaranteed right to privacy (Art. I § 23 Fla. Const.) and Art. I §2 Basic Rights Fla. Const. have been violated by the State's repeated contempt judicial proceedings and Final Judgment of Dissolution Order of December 8, 2005 as well as other related judicial proceedings, judicial orders, the Chapter 61 Fla. Stat. provisions and the case law those judicial actions are based upon. He has been injured and will continue to be injured by the alimony statute.
 24. Douglas K. Phillips' Florida Constitutionally guaranteed right of privacy (Art. I §23 Fla. Const. right) has been violated because the State has not proven a compelling State interest, minimally applied, which in fact furthers the interest to validate the Chapter 61 Fla. Stat. noted above which put him at risk of imprisonment, invade his privacy, and imperil his Art. § 2 Fla. Stat. basic rights. (This strict scrutiny standard is mandated. See N. Fla. Women's Health & Counseling Servs., Inc. v. State, 866 So. 2d 612, 635 (Fla. 2003)).
 25. Florida Chapter 61 post dissolution permanent spousal support provisions do not serve a State interest sufficiently compelling to override the rights of Douglas K. Phillips to his Federal and State constitutionally guaranteed Right of Privacy in the facts in this case. To the extent that the noted Chapter 61 Fla. Stat. provisions serve a compelling State interest, that interest is applied in a highly intrusive manner and is at its weakest in the facts of this case.
 26. Douglas K. Phillips' Art. I § 2 Fla. Stat. basic rights have been violated by his being denied such things as the full enjoyment of the fruits of labor and industry,

- retirement, own property, enjoy the freedom from fear of arrest and imprisonment, enjoy the freedom from the threat of having his Social Security garnished, enjoy the freedom from having adverse credit ratings, enjoy the freedom from the stigma of court proceedings, and to enjoy the remaining few days of his life on Earth, among other pursuits of happiness.
27. Douglas K. Phillips' right to equal protection has been denied him compared with single persons and many other former married persons on whom the State did not statutorily and judicially impose a duty of spousal support during their marriage or after exercising their constitutional associational and privacy rights by dissolving their marriage.
 28. Douglas K. Phillips' right to equal protection has been denied him by the State compared with single persons and many other former married persons who do not have their liberty imperiled by the threat of contempt and imprisonment related to the alimony provisions of Chapter 61 Fla. Stat.
 29. Douglas K. Phillips' right to equal protection has been denied him by the State because of the Florida Judicial System implementing an Affirmative Action Gender based bias program grounded in the Report of the Florida Supreme Court Gender Bias Study Commission (1990) and Gender Bias—Then and Now, Continuing Challenges in the Legal System, The Report of the Gender Bias Study Implementation Commission (1996).
 30. Douglas K. Phillips' constitutionally guaranteed Art. I § 2 Fla. Const. rights are violated by the State in §61.08 Fla. Stat. acting in a court of chancery, applying an unbridled judicial standard of equity in a self acknowledged Gender Bias setting

by a judiciary granted unbridled discretionary powers.

"Constitutional rights must be enforced by courts even against the legislature's powers, and privacy in particular must be enforced even against majoritarian sentiment. Shaktman. Indeed, the overarching purpose of the Florida Declaration of Rights along with its privacy provision is to "protect each individual within our borders from the unjust encroachment of state authority from whatever official source into his or her life." Traylor v. State , 596 So. 2d 957, 963 (Fla. 1992).

Count I

Declaratory and Injunctive Relief: §61.08 and its
Enforcement Provisions Impermissibly Infringe
Art. I §23 Fla. Const. Right of Privacy

31. The Plaintiff incorporates 1 to 30 above.
32. Chapter 61 Fla. Stat. alimony and enforcement provisions impermissibly infringe the Plaintiff's and all Floridians' Art. I § 23 Fla. Const. Right of Privacy in the privacy protected zone of personal decisions relating to marriage, i.e. divorce (dissolution of marriage).
33. Plaintiff pray this court declares Chapter 61 Fla. Stat. alimony and enforcement provisions impermissibly infringe the Plaintiff's and all Floridians' Art. I § 23 Fla. Const. Right of Privacy in the privacy protected zone of personal decisions relating to marriage, i.e. divorce (dissolution of marriage).
34. Plaintiff prays this court declare that Chapter 61 alimony provisions, §61.08, place an undo burden on his fundamental constitutional right and liberty interest to alter his associational interests by altering his marital status, i.e. Right of

- Privacy in the protected zone of “personal decisions relating to marriage” i.e to divorce.
35. Plaintiff prays this court declare Chapter 61 Fla. Stat. alimony statute, § 61.08 is unconstitutional, void ab initio and unenforceable as impermissibly conflicting with Art. I § 23 Fla. Const.
 36. Douglas K. Phillips has no adequate remedy at law and continues to face imminent ongoing, current, future and irreparable loss of his constitutional rights.
 37. Absent expedited consideration and prompt injunction, Douglas K. Phillips will continue to suffer substantial and irreparable harm and his rights will continue to be denied before this court can rule.
 38. Douglas K. Phillips has been, continues to be, and will be imminently further deprived of his Art. I § 23 Right of Privacy by the State of Florida through its Court system.
 39. The Plaintiff is likely to prevail on the merits.
 40. Plaintiff prays this court grant a temporary and permanent injunction against the enforcement of court orders predicated upon § 61.08 alimony provisions against the Plaintiff and all Floridians.
 41. Douglas K. Phillips has been forced to incur costs to preserve his constitutional basic rights and right of privacy. He has been forced to incur costs to prosecute this action.
 42. Douglas K. Phillips is entitled to recover all costs pursuant to § 86.081 Fla. Stat.

Count II

Declaratory and Injunctive Relief: §61.08 and its Enforcement Provisions Impermissibly Infringe Art. I § 2 Fla. Const. Basic Rights

43. The Plaintiff incorporates 1 to 30 above.
44. Chapter 61 Fla. Stat. alimony and enforcement provisions impermissibly infringe the Plaintiff's and all Floridians' Art. I §2 Fla. Const. Basic Rights, i.e. equal protection, right to enjoy the fruits of one's labor, right to property.
45. Plaintiff pray this court declares Chapter 61 Fla. Stat. alimony and enforcement provisions impermissibly infringe the Plaintiff's and all Floridians' Art. I §2 Fla. Const. Basic Rights, i.e. equal protection, right to the fruits of his labor and right to property.
46. Plaintiff prays this court declare that Chapter 61 alimony provisions, §61.08, place an undo burden on his fundamental constitutional right and liberty interest of equal protection compared with other divorcing Floridians and compared with married Floridians who have no legal obligation of spousal support.
47. Plaintiff prays this court declare Chapter 61 Fla. Stat. alimony statute, § 61.08 is unconstitutional, void ab initio and unenforceable as impermissibly conflicting with Art. I § 2 Fla. Const.
48. Douglas K. Phillips has no adequate remedy at law and continues to face imminent ongoing, current, future and irreparable loss of his constitutional rights.
49. Absent expedited consideration and prompt injunction, Douglas K. Phillips will continue to suffer substantial and irreparable harm and his rights will continue to

- be denied before this court can rule.
50. Douglas K. Phillips has been, continues to be, and will be imminently further deprived of his Art. I § 2 Basic Rights by the State of Florida through its Court system.
 51. The Plaintiff is likely to prevail on the merits.
 52. Plaintiff prays this court grant a temporary and permanent injunction against the enforcement of court orders predicated upon § 61.08 alimony provisions against the Plaintiff and all Floridians.
 53. Douglas K. Phillips has been forced to incur costs to preserve his constitutional basic rights and right of privacy. He has been forced to incur costs to prosecute this action.
 54. Douglas K. Phillips is entitled to recover all costs pursuant to § 86.081 Fla. Stat.

Count III

Declaratory and Injunctive Relief: §61.08 and its
Enforcement Provisions Impermissibly Infringe
Art. II §3 Fla. Const. Separation of Powers

55. The Plaintiff incorporates 1 to 30 above.
56. Chapter 61 Fla. Stat. alimony provisions impermissibly infringe Art. II § 3 Fla. Const. Separation of Powers because the alimony statutes, §61.08 et al are an impermissible delegation by the Florida legislature of its exclusive constitutional law making power to the Florida judiciary.
57. Plaintiff pray this court declares Chapter 61 Fla. Stat. alimony statute, § 61.08 Fla. Stat. impermissibly infringe Art. II § 3 Fla. Const. Separation of Powers.
58. Plaintiff prays this court declare Chapter 61 Fla. Stat. alimony statute, § 61.08 is

unconstitutional, void ab initio and unenforceable as impermissibly conflicting with Art. II § 3 Fla. Const.

59. Douglas K. Phillips has no adequate remedy at law and continues to face imminent ongoing, current, future and irreparable loss of his constitutional rights.
60. Absent expedited consideration and prompt injunction, Douglas K. Phillips will continue to suffer substantial and irreparable harm and his rights will continue to be denied before this court can rule.
61. Douglas K. Phillips has been, continues to be, and will be imminently further deprived of his constitutional rights provided by Art. II § 3 Fla. Const.
62. The Plaintiff is likely to prevail on the merits.
63. Plaintiff prays this court grant a temporary and permanent injunction against the enforcement of court orders predicated upon § 61.08 alimony provisions against the Plaintiff and all Floridians
64. Douglas K. Phillips has been forced to incur costs to preserve his constitutional basic rights and right of privacy. He has been forced to incur costs to prosecute this action.
65. Douglas K. Phillips is entitled to recover all costs pursuant to § 86.081 Fla. Stat.

Count IV

Declaratory and Injunctive Relief: §61.08 and its
Enforcement Provisions Impermissibly Conflict with
Connor v. Southwest, 668 So. 2d 175 (Fla. 1995)

66. The Plaintiff incorporates 1 to 30 above.
67. Chapter 61 Fla. Stat. alimony provisions impermissibly conflict with the Florida Supreme Court ruling in Connor v. Southwest, 668 So. 2d 175 (Fla. 1995).

68. The Conner at 668 So2d ruling abrogated the doctrine of necessities, which made the husband responsible to third parties for the debts of the wife.
69. The Conner at 668 So2d ruling made each party in a marriage economically responsible for herself/himself.
70. The Connor at 668 So2d ruling removed the obligation of married spouses for the economic support of each other.
71. The Florida legislature twice attempted, and failed, to reinstate a gender neutral doctrine of necessities thus firmly establishing the public policy of economic independence between married Floridians.
72. Plaintiff pray this court declares Chapter 61 Fla. Stat. alimony statute, § 61.08 Fla. Stat. impermissibly conflicts with ruling and public policy established in Connor at 668 So2d that parties in a marriage are economic independents and have no obligation of economic support to one another.
73. Plaintiff prays this court declare Chapter 61 Fla. Stat. alimony statute, § 61.08 is in valid, void ab initio and unenforceable after Conner at 668.
74. Douglas K. Phillips has no adequate remedy at law and continues to face imminent ongoing, current, future and irreparable loss of his constitutional rights.
75. Absent expedited consideration and prompt injunction, Douglas K. Phillips will continue to suffer substantial and irreparable harm and his rights will continue to be denied before this court can rule.
76. Douglas K. Phillips has been, continues to be, and will be imminently further deprived of his constitutional rights provided by Art. II § 3 Fla. Const.
77. The Plaintiff is likely to prevail on the merits.

78. Plaintiff prays this court grant a temporary and permanent injunction against the enforcement of court orders predicated upon § 61.08 alimony provisions against the Plaintiff and all Floridians.
79. Douglas K. Phillips has been forced to incur costs to preserve his constitutional basic rights and right of privacy. He has been forced to incur costs to prosecute this action.
80. Douglas K. Phillips is entitled to recover all costs pursuant to § 86.081 Fla. Stat.

VII. Jennings Reservation

Douglas K. Phillips reserves all his federal and state constitutional claims for subsequent litigation in federal court by making on the record, at this outset, a reservation as to the disposition of the entire case by the state courts to preserve access to the federal forum. Fields v. Sarasota Manatee Airport Authority, 953 F.2d 1299, 1303 (11th Cir. 1992) citing Jennings v. Caddo Parish School Bd., 531 F.2d 1331 (5th Cir. 1976).

At a fundamental level, the role of the Justices and judges of Florida is to guarantee and enforce the protection afforded by these basic rights. This is at once a judge's greatest calling and heaviest burden. It is an obligation we shoulder by our oath of office, binding ourselves to enforce individual liberty even in the face of public or official opposition. To shield the liberties of the individual from encroachment is uniquely the task of courts. In that sense, we are obliged to give sanctuary against the overreaches of government."

Justice Kogan dissenting in Krischer v McIver, 697 So.2d 97 (Fla. Jul. 17, 1997)

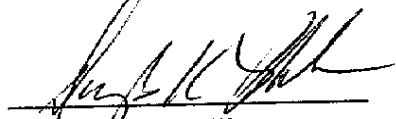
Respectfully submitted,

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August 28, 2006

At a fundamental level, the role of the Justices and judges of Florida is to guarantee and enforce the protection afforded by these basic rights. This is at once a judge's greatest calling and heaviest burden. It is an obligation we shoulder by our oath of office, binding ourselves to enforce individual liberty even in the face of public or official opposition. To shield the liberties of the individual from encroachment is uniquely the task of courts. In that sense, we are obliged to give sanctuary against the overreaches of government."
Justice Kogan dissenting in Krischer v McIver, 697 So.2d 97 (Fla. Jul. 17, 1997)

Respectfully submitted,



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October 6, 2006

Certificate of Service

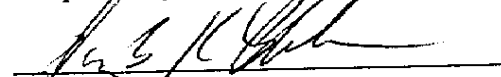
I hereby certify that on this 11th day of October 6, 2006, I caused a true and accurate copy of the foregoing to be served in the manner specified on the following:

James Zingale, Executive Director
Florida Department of Revenue
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[SERVICE OF PROCESS]

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Respectfully submitted,



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