

APPEAL, CLOSED, EAPN

**U.S. District Court
Western District of Missouri (Kansas City)
CIVIL DOCKET FOR CASE #: 4:06-cv-00752-GAF
*Internal Use Only***

Stanley v. Grate et al
Assigned to: District Judge Gary A. Fenner
Demand: \$36,000
Case in other court: 8th Circuit Court of Appeals, 07-01304
8th Circuit Court of Appeals, 07-03728
Cause: 42:1983 Civil Rights Act

Date Filed: 09/07/2006
Date Terminated: 11/13/2007
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Harold R Stanley

represented by **Harold R Stanley**
10707 E. 240th
Peculiar, MO 64078
PRO SE

V.

Defendant

Honorable Jack Grate
TERMINATED: 01/09/2007

represented by **Emily A. Dodge**
Missouri Attorney General
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Email: emily.dodge@ago.mo.gov
ATTORNEY TO BE NOTICED

Defendant

Lester Wight
TERMINATED: 01/09/2007

represented by **Daniel Edward Hamann**
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Defendant**Marcia E Stanley**

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Counter Claimant**Marcia E Stanley**

represented by **Michael Scott Dodig**
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 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Counter Defendant**Harold R Stanley**

represented by **Harold R Stanley**
 (See above for address)
 PRO SE

Date Filed	#	Page	Docket Text
09/07/2006	<u>1</u>		COMPLAINT against all defendants (Filing fee \$350 receipt number 245433) Service due by 1/5/2007, Harold R Stanley. (Attachments: # <u>1</u> Civil Cover Sheet # <u>2</u> Index # <u>3</u> Exhibit Appendix A # <u>4</u> Exhibit Appendix B # <u>5</u> Exhibit Appendix C # <u>6</u> Exhibit Appendix D # <u>7</u> Exhibit Appendix E # <u>8</u> Exhibit Appendix F)(Baldwin, Joella) (Entered: 09/07/2006)
09/07/2006	<u>2</u>		Notice of EAP Neutral (Attachments: # <u>1</u> EAP General Order)(Baldwin, Joella) (Entered: 09/07/2006)
10/04/2006	<u>3</u>		<i>Defendant Stanley's</i> ANSWER to Complaint, COUNTERCLAIM against Harold R Stanley filed by Michael Scott Dodig on behalf of Defendant Marcia E Stanley, Plaintiff Harold R Stanley.(Dodig, Michael) (Entered: 10/04/2006)
10/04/2006	<u>4</u>		<i>SEPARATE</i> ANSWER to Complaint filed by Daniel Edward Hamann on behalf of Defendant Lester Wight.(Hamann, Daniel) (Entered: 10/04/2006)
10/05/2006	<u>5</u>		Rule 16 Noticeproposed scheduling order due by 11/19/2006, rule 26 conference due by 11/9/2006, Signed by Judge Gary A. Fenner on 10/5/06. (Mitchell, Lisa) Copy mailed to Harold R Stanley, 10707 E. 240th, Peculiar, MO 64078 on 10/6/2006 (McDowell, Shelly). (Entered: 10/05/2006)

10/11/2006	<u>6</u>		RETURN OF SERVICE of complaint executed by Harold R Stanley. Jack Grate served on 9/14/2006, answer due 10/4/2006. (McDowell, Shelly) (Entered: 10/11/2006)
10/11/2006	<u>7</u>		RETURN OF SERVICE of complaint executed by Harold R Stanley. Lester Wight served on 9/14/2006, answer due 10/4/2006. (McDowell, Shelly) (Entered: 10/11/2006)
10/11/2006	<u>8</u>		RETURN OF SERVICE of complaint executed by Harold R Stanley. Marcia E Stanley served on 9/14/2006, answer due 10/4/2006. (McDowell, Shelly) (Entered: 10/11/2006)
10/16/2006	<u>9</u>		ANSWER to Counterclaim on behalf of Counter Defendant Harold R Stanley, Plaintiff Harold R Stanley. (Attachments: # <u>1</u> Exhibit)(McDowell, Shelly) (Entered: 10/17/2006)
10/16/2006	<u>10</u>		REPLY to answer on behalf of Counter Defendant Harold R Stanley, Plaintiff Harold R Stanley. (Related document(s) <u>4</u>) (McDowell, Shelly) (Entered: 10/17/2006)
10/18/2006	<u>11</u>		NOTICE of appearance by Emily A. Dodge on behalf of Jack Grate (Dodge, Emily) (Entered: 10/18/2006)
10/18/2006	<u>12</u>		MOTION for extension of time to file answer filed by Emily A. Dodge on behalf of Jack Grate Suggestions in opposition/response due by 11/2/2006 unless otherwise directed by the court (Dodge, Emily) (Entered: 10/18/2006)
10/30/2006	<u>13</u>		MOTION to dismiss party <i>Grate</i> filed by Emily A. Dodge on behalf of Jack Grate Suggestions in opposition/response due by 11/14/2006 unless otherwise directed by the court (Dodge, Emily) (Entered: 10/30/2006)
10/30/2006	<u>14</u>		NOTICE of filing Plaintiff's Non Objection to the Extension of Time for Defendant The Honorable Jack Grate to Respond by Harold R Stanley re <u>12</u> MOTION for extension of time to file answer. (Carr, Lori) (Entered: 10/31/2006)
11/03/2006	<u>15</u>		SUGGESTIONS in opposition re <u>13</u> MOTION to dismiss party <i>Grate</i> on behalf of Plaintiff Harold R Stanley. Reply suggestions due by 11/20/2006 unless otherwise directed by the court (Attachments: # <u>1</u> Appendix A# <u>2</u> Appendix B# <u>3</u> Appendix D)(Related document(s) <u>13</u>) (Carr, Lori) (Entered: 11/06/2006)
11/07/2006	<u>16</u>		ORDER granting <u>12</u> Motion for Extension of Time to Answer re <u>12</u> MOTION for extension of time to file answer Jack Grate answer due 10/30/2006. Signed by Judge Gary A. Fenner on 11/7/06. (Mitchell, Lisa) Copy mailed to Harold R Stanley, 10707 E. 240th, Peculiar, MO 64078 on 11/8/2006 (Carr, Lori). (Entered: 11/07/2006)
11/14/2006	<u>17</u>		MOTION to dismiss case filed by Daniel Edward Hamann on behalf of Lester Wight Suggestions in opposition/response due by 11/29/2006 unless otherwise directed by the court. (Hamann, Daniel) (Entered: 11/14/2006)

11/14/2006	<u>18</u>		SUGGESTIONS in support re <u>17</u> MOTION to dismiss case filed by Daniel Edward Hamann on behalf of Defendant Lester Wight. (Related document(s) <u>17</u>) (Hamann, Daniel) (Entered: 11/14/2006)
11/27/2006	<u>19</u>		ORDER TO SHOW CAUSE for failure to file proposed scheduling order.Show Cause Response due by 12/12/2006. Signed by Judge Gary A. Fenner on 11/27/06. (Mitchell, Lisa) Copy mailed to Harold R Stanley, 10707 E. 240th, Peculiar, MO 64078 on 11/28/2006 (McDowell, Shelly). (Entered: 11/27/2006)
11/29/2006	<u>21</u>		SUGGESTIONS in opposition re <u>17</u> MOTION to dismiss case on behalf of Counter Defendant Harold R Stanley. Reply suggestions due by 12/14/2006 unless otherwise directed by the court (Related document(s) <u>17</u>) (McDowell, Shelly) (Entered: 12/04/2006)
12/04/2006	<u>20</u>		ORDER TO SHOW CAUSE for failure to respond to Defendant Wight's Motion to Dismiss.Show Cause Response due by 12/19/2006. Signed by Judge Gary A. Fenner on 12/4/06. (Mitchell, Lisa) Copy mailed regular and certified mail, return receipt # 7002 2410 0001 5861 2845 to Harold R Stanley, 10707 E. 240th, Peculiar, MO 64078 on 12/4/2006 (McDowell, Shelly). (Entered: 12/04/2006)
12/05/2006	<u>22</u>		PROPOSED SCHEDULING ORDER <i>and Discovery Plan</i> by Marcia E Stanley. (Dodig, Michael) (Entered: 12/05/2006)
12/05/2006	<u>23</u>		RULES OF TRIAL Signed by Judge Gary A. Fenner on 12/5/06. (Mitchell, Lisa) Copy mailed to Harold R Stanley, 10707 E. 240th, Peculiar, MO 64078 on 12/5/2006 (McDowell, Shelly). (Entered: 12/05/2006)
12/05/2006	<u>24</u>		SCHEDULING ORDER: Discovery due by 6/8/2007. Pretrial Conference set for 12/14/2007 01:30 PM before Judge Gary Fenner. Jury Trial set for 1/14/2008 09:00 AM in Courtroom 8A, Kansas City (GAF) before Judge Gary Fenner.Dispositive Motions due by 7/15/2007. Signed by Judge Gary A. Fenner on 12/5/06. (Mitchell, Lisa) Copy mailed to Harold R Stanley, 10707 E. 240th, Peculiar, MO 64078 on 12/5/2006 (McDowell, Shelly). (Entered: 12/05/2006)
12/05/2006	<u>25</u>		CERTIFICATE OF SERVICE by Jack Grate filed by Emily A. Dodge on behalf of Defendant Jack Grate.(Dodge, Emily) (Entered: 12/05/2006)
12/07/2006	<u>26</u>		GREEN CARD showing return of service. Harold Stanley served on 12/05/06. (Related document(s) <u>20</u>) (McDowell, Shelly) (Entered: 12/07/2006)
12/07/2006	<u>27</u>		CERTIFICATE OF SERVICE OF INITIAL RULE 26 DISCLOSURES filed by Daniel Edward Hamann on behalf of Defendant Lester Wight.(Hamann, Daniel) (Entered: 12/07/2006)

12/11/2006	<u>28</u>		RESPONSE TO ORDER TO SHOW CAUSE by Lester Wight. (Hamann, Daniel) (Entered: 12/11/2006)
12/13/2006	<u>29</u>		SUGGESTIONS in support re <u>17</u> MOTION to dismiss case (<i>Reply Suggestions</i>) filed by Daniel Edward Hamann on behalf of Defendant Lester Wight. (Related document(s) <u>17</u>) (Hamann, Daniel) (Entered: 12/13/2006)
12/13/2006	<u>30</u>		SUGGESTIONS in opposition re <u>17</u> MOTION to dismiss case on behalf of Counter Defendant Harold R Stanley, Plaintiff Harold R Stanley. Reply suggestions due by 12/28/2006 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit)(Related document(s) <u>17</u>) (McDowell, Shelly) (Entered: 12/14/2006)
12/13/2006	<u>31</u>		CERTIFICATE OF SERVICE OF INITIAL RULE 26 DISCLOSURES on behalf of Counter Defendant Harold R Stanley, Plaintiff Harold R Stanley.(McDowell, Shelly) (Entered: 12/14/2006)
01/09/2007	<u>32</u>		ORDER granting <u>13</u> motion to dismiss party, granting <u>17</u> motion to dismiss case Signed by Judge Gary A. Fenner on 1/9/07. (Mitchell, Lisa) Copy mailed to Harold R Stanley, 10707 E. 240th, Peculiar, MO 64078 on 1/10/2007 (McDowell, Shelly). (Entered: 01/09/2007)
02/06/2007	<u>33</u>		NOTICE OF INTERLOCUTORY APPEAL as to <u>32</u> Order on Motion to Dismiss Party, Order on Motion to Dismiss Case by Harold R Stanley. Filing fee \$ 455, receipt number 247724. (Attachments: # <u>1</u> Form A)(McDowell, Shelly) (Entered: 02/06/2007)
02/06/2007	<u>34</u>		TRANSMISSION of Notice of Appeal and docket sheet to US Court of Appeals re <u>33</u> Notice of Interlocutory Appeal (Crespo, Wil) (Entered: 02/06/2007)
02/08/2007			***Appeal Receipt of Notice of Appeal and supporting documents received by USCA on: Thu Feb 8 06:56:44 CST 2007 (Crespo, Wil) (Entered: 02/08/2007)
02/12/2007			USCA Case Number from 8th Circuit Court of Appeals is 07-1304 for <u>33</u> Notice of Interlocutory Appeal filed by Harold R Stanley, no schedule available. (Crespo, Wil) (Entered: 02/12/2007)
02/27/2007	<u>35</u>		USCA Judgment and/or Opinion as to <u>33</u> Notice of Interlocutory Appeal filed by Harold R Stanley This is a preliminary judgment and/or opinion of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. This appeal is dismissed for lack of jurisdiction as there is no final appealable order. (Crespo, Wil) (Entered: 02/27/2007)
03/30/2007	<u>36</u>		MANDATE of US COURT OF APPEALS as to <u>33</u> Notice of Interlocutory Appeal filed by Harold R Stanley with mandate

			issued on 3/29/07. (Crespo, Wil) (Entered: 03/30/2007)
07/12/2007	<u>37</u>		MOTION for extension of time filed by Harold R Stanley. Suggestions in opposition/response due by 7/27/2007 unless otherwise directed by the court. (McDowell, Shelly) (Entered: 07/13/2007)
07/30/2007	<u>38</u>		ORDER granting <u>37</u> motion for extension of time Signed by Judge Gary A. Fenner on 7/30/07. (Mitchell, Lisa) (Entered: 07/30/2007)
08/15/2007	<u>39</u>		MOTION for partial summary judgment, Suggestion in support of this Motion and, Plaintiff's Affidavit of Material Facts filed by Harold R Stanley. Suggestions in opposition/response due by 9/17/2007 unless otherwise directed by the court (Attachments: # <u>1</u> Affidavit of Material Fact# <u>2</u> Notice of Exhibit Attachment)(Carr, Lori) (Entered: 08/16/2007)
09/17/2007	<u>40</u>		SUGGESTIONS in opposition to motion for summary judgment re <u>39</u> MOTION for summary judgment filed by Michael Scott Dodig on behalf of Defendant Marcia E Stanley. Reply suggestions due by 10/5/2007 unless otherwise directed by the court. (Related document(s) <u>39</u>) (Dodig, Michael) (Entered: 09/17/2007)
09/17/2007	<u>41</u>		NOTICE of change of address by Michael Scott Dodig (Dodig, Michael) (Entered: 09/17/2007)
10/02/2007	<u>42</u>		REPLY SUGGESTIONS to motion re <u>39</u> MOTION for Partial summary judgment on behalf of Plaintiff Harold R Stanley. (Related document(s) <u>39</u>) (Baldwin, Joella) (Entered: 10/02/2007)
11/09/2007	<u>43</u>	9	Order of Dismissal Signed by Judge Gary A. Fenner on 11/9/07. (Mitchell, Lisa) Copy mailed regular and certified mail, return receipt # 7002 2410 0001 5861 7420 to Harold Stanley, 10707 E. 240th Street, Peculiar, MO 64078 on 11/14/2007 (McDowell, Shelly). (Entered: 11/09/2007)
11/13/2007	<u>44</u>	11	CLERK'S JUDGMENT (Diefenbach, Tracy) Copy mailed regular and certified mail, return receipt # 7002 2410 0001 5861 7420 to Harold Stanley, 10707 E. 240th Street, Peculiar, MO 64078 on 11/14/2007 (McDowell, Shelly). (Entered: 11/13/2007)
11/19/2007	<u>45</u>		GREEN CARD showing return of service certified mail, return receipt # 7002 2410 0001 5861 7420 to Harold Stanley. (Related document(s) <u>43</u> , <u>44</u>) (McDowell, Shelly) (Entered: 11/19/2007)
11/26/2007	<u>46</u>		NOTICE OF APPEAL as to <u>44</u> Clerk's Judgment, <u>43</u> Order of Dismissal, by Harold R Stanley. Filing fee \$ 0.00. (Attachments: # <u>1</u> Form A)(McDowell, Shelly) (Entered: 11/28/2007)
11/28/2007	<u>47</u>		TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>46</u>

			Notice of Appeal. (Crespo, Wil) (Entered: 11/28/2007)
11/28/2007			***Appeal Receipt of Notice of Appeal and supporting documents received by USCA on: Wed Nov 28 12:51:08 CST 2007 (Court of Appeals3,) (Entered: 11/28/2007)
12/04/2007	<u>48</u>		USCA Case Number from 8th Circuit Court of Appeals is 07-3728 for <u>46</u> Notice of Appeal filed by Harold R Stanley. Briefing schedule entered by the Court of Appeals is attached. (Attachments: # <u>1</u>)(Crespo, Wil) (Entered: 12/04/2007)
12/05/2007			RECEIPT number 261675 in the amount of \$455.00 issued to Harold Stanley for appeal filing fees. (Beard, Melanie) (Entered: 01/08/2008)
12/12/2007	<u>49</u>		MOTION for sanctions filed by Michael Scott Dodig on behalf of Marcia E Stanley. Suggestions in opposition/response due by 12/27/2007 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit Affidavit and copy of motion/letter# <u>2</u> Exhibit Attorney's fees statement)(Dodig, Michael) (Entered: 12/12/2007)
12/12/2007	<u>50</u>		SUGGESTIONS in support re <u>49</u> MOTION for sanctions filed by Michael Scott Dodig on behalf of Defendant Marcia E Stanley. (Related document(s) <u>49</u>) (Dodig, Michael) (Entered: 12/12/2007)
12/26/2007	<u>51</u>		SUGGESTIONS in opposition re <u>49</u> MOTION for sanctions on behalf of Plaintiff Harold R Stanley. Reply suggestions due by 1/10/2008 unless otherwise directed by the court (Related document(s) <u>49</u>) (Beard, Melanie) Additional attachment(s) added on 12/27/2007 (Beard, Melanie). Modified on 12/27/2007 to replace and delete the main document, as it was incompletely filed (Beard, Melanie). (Entered: 12/27/2007)
12/27/2007			NOTICE OF DOCKET MODIFICATION. A modification has been made to the document filed on 12/26/07 as Document No. 51, SUGGESTIONS in opposition re 49 MOTION for sanctions. The document has been deleted as the incomplete document was filed.The Clerk's Office has refiled the complete document. This is a text entry only – no document is attached. (Beard, Melanie) (Entered: 12/27/2007)
02/21/2008	<u>52</u>		ORDER denying <u>49</u> motion for sanctions Signed by District Judge Gary A. Fenner on 2/21/08. (Mitchell, Lisa) Copy mailed to Harold R Stanley, 10707 E. 240th, Peculiar, MO 64078 on 2/22/2008 (McDowell, Shelly). (Entered: 02/21/2008)
02/25/2008			Appeal Remark re <u>46</u> Notice of Appeal : Mailed this date to the 8th Circuit Court of Appeals the ECF file. (Crespo, Wil) (Entered: 02/25/2008)
03/17/2009	<u>53</u>		ORDER directing Defendant Marcia Stanley to file status report. Status Report due by 4/1/2009. Signed by District Judge Gary A. Fenner on 3/17/09. (Mitchell, Lisa) Copy mailed to

			Harold R Stanley, 10707 E. 240th, Peculiar, MO 64078 on 3/17/2009 (McDowell, Shelly). (Entered: 03/17/2009)
03/17/2009	<u>54</u>		USCA Judgment and/or Opinion as to <u>46</u> Notice of Appeal filed by Harold R Stanley This is a preliminary judgment and/or opinion of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. It is hereby ordered and adjudged that the appeal is dismissed for lack of jurisdiction. (Attachments: # <u>1</u> Opinion)(Crespo, Wil) (Entered: 03/17/2009)
04/08/2009	<u>55</u>		MANDATE of US COURT OF APPEALS as to <u>46</u> Notice of Appeal filed by Harold R Stanley with mandate issued on 4/8/09. (Crespo, Wil) (Entered: 04/08/2009)
04/20/2009	<u>56</u>	12	Order of Dismissal of Counterclaim. Signed by District Judge Gary A. Fenner on 04/20/09. (McDowell, Shelly) Copy mailed to Harold R Stanley, 10707 E. 240th, Peculiar, MO 64078 on 4/21/2009 (McDowell, Shelly). (Entered: 04/21/2009)
05/18/2009	<u>57</u>	13	NOTICE OF APPEAL as to <u>56</u> Order of Dismissal by Harold R Stanley. Filing fee \$ 455, receipt number 268762. (Attachments: # <u>1</u> Form A, # <u>2</u> List of Issues on Appeal, # <u>3</u> Judgment and Opinion COA, # <u>4</u> Order of 11/09/07, # <u>5</u> Clerk's Judgment 11/13/07)(McDowell, Shelly) (Entered: 05/18/2009)
05/18/2009	<u>58</u>	26	TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>57</u> Notice of Appeal. Mailed this date to Movant a copy of the docket sheet and NOA. (Crespo, Wil) (Entered: 05/18/2009)

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

HAROLD STANLEY,)	
)	
Plaintiff.)	
)	
v.)	Case No. 06-752-CV-W-GAF
)	
HON. JACK GRATE, et al.,)	
)	
Defendants.)	

ORDER

Pending before the Court are two Motions to Dismiss, filed pursuant to Fed. R. Civ. P. 12(b)(6) (“Rule 12(b)(6)”) by Defendants Les G. Wight II (“Wight”) and Hon. Jack Grate (“Judge Grate”) (collectively “Defendants”). (Doc. #13, #17). Judge Grate is a judge for the Circuit Court of Jackson County, Missouri and Wight is counsel for Plaintiff Harold Stanley’s (“Plaintiff”) ex-wife, Marcia E. Stanley (“Ms. Stanley”). Plaintiff, who is proceeding *pro se*, asserts that Defendants intentionally inflicted emotional distress and deprived him of his rights under the First, Fifth, and Fourteenth Amendments of the United States Constitution by pursuing litigation against Plaintiff in Missouri state court to enforce a state court judgment requiring Plaintiff to pay alimony to Ms. Stanley. (Doc. #1). Plaintiff claims that Defendants’ pursuit of such litigation violates his rights because the Missouri state court lacks jurisdiction over matters related to Plaintiff’s divorce. Id.

Because Judge Grate is entitled to judicial immunity from suit, his Motion to Dismiss all counts against him is GRANTED. Further, Plaintiff fails to state a claim for declaratory judgment against Wight

in Count I because Plaintiff does not indicate what relief he seeks by way of declaratory judgment. Plaintiff also fails to state a claim against Wight in Count IV for intentional infliction of emotional distress (“IIED”) because Plaintiff sets forth no facts to support a finding that Wight engaged in extreme and outrageous conduct or that Wight’s actions were intended only to cause Plaintiff emotional harm. Finally, Plaintiff fails to state claims against Wight in Counts II and III under the First, Fifth, or Fourteenth Amendments because Wight, as a private attorney, is not subject to liability for alleged violations of individual constitutional rights. Accordingly, Wight’s Motion to Dismiss all counts against him is GRANTED.

DISCUSSION

I. Facts

Plaintiff was divorced from Ms. Stanley in December 2000 in the Circuit Court of Jackson County, Missouri. (Doc. #1). Plaintiff filed a “removal complaint” with this Court on March 24, 2005, purporting to remove civil contempt proceedings filed against him by Ms. Stanley for Plaintiff’s alleged failure to pay court-ordered alimony in accordance with the parties’ divorce decree. (Case No. 05-cv-00281-GAF). Plaintiff’s “removal complaint” claimed that the Missouri Dissolution of Marriage Maintenance Provisions violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the U.S. Constitution because they infringed upon his “personal decisions relating to marriage” and his “fundamental right to privacy to dissolve his marriage.” *Id.* at Doc. #1. Plaintiff further alleged that the Missouri alimony statute violated the Thirteenth Amendment of the U.S. Constitution by “den[ying] him his property rights and permanently enslav[ing] him to labor for the benefit of his former spouse.” *Id.*

On October 25, 2005, the Court dismissed Plaintiff’s “removal complaint,” finding that removal of Plaintiff’s counterclaims was improper because this Court did not have original subject matter jurisdiction

over Ms. Stanley's actions for civil contempt. Id. at Doc. #12. The Court further found that it lacked jurisdiction pursuant to the domestic relations exception to federal jurisdiction because Plaintiff's claims closely related to his marriage dissolution and, therefore, jurisdiction was proper only in Missouri state court. Id. This Court dismissed Plaintiff's "removal complaint" for lack of subject matter jurisdiction.

On November 15, 2005, following this Court's dismissal of Plaintiff's "removal complaint," Judge Grate issued a Notice of Hearing for December 9, 2005. (Doc. #1). Plaintiff informed the state court that is was without jurisdiction to proceed in the case. Id. Plaintiff claims that the Missouri state court lacked jurisdiction to pursue litigation against him to enforce its judgment because this Court dismissed Plaintiff's claims but did not explicitly state in its Order that the case was therefore remanded to the Missouri state court.¹ (Doc. #15-1, #21). Following this Court's October 25, 2005 Order, the Missouri state court has pursued litigation against Plaintiff relating to his alleged failure to pay court-ordered alimony, which Plaintiff contends constitutes intentional infliction of emotional distress and violates his rights under the First, Fifth, and Fourteenth Amendments.

Judge Grate argues that Plaintiff's claims against him should be dismissed because he is entitled to judicial immunity. (Doc. #13). Wight argues that Plaintiff's claim in Count I, entitled "Declaratory Relief,"

¹This Court clearly divested itself of jurisdiction in its October 25, 2005 Order and made abundantly clear to Plaintiff that jurisdiction was proper in Missouri state court. Plaintiff did not appeal the Order. However, due to an inadvertent error, the Order neglected to explicitly state that the case was thereby remanded and to instruct the clerk's office to mail a certified copy of the order of remand to the clerk of the state court. This Court does not believe that such an order is necessary, given the record herein. However, to avoid any potential for dispute on this question from this point forward, the clerk's office is hereby instructed to mail a certified copy of Doc. #12 in Case No. 05-cv-00281-GAF to the clerk of the state court together with the explicit order of remand which has been entered in said case.

should be dismissed because Count I does not actually seek declaratory relief, or any relief at all. (Doc. #18). Wight further argues that Plaintiff's Complaint fails to allege facts under Count IV which support his claim for IIED. Id. Lastly, Wight argues that he is not subject to liability under Counts II and III for alleged violations of Plaintiff's constitutional rights because he is a private attorney, not a state actor. Id.

II. Standard

A motion to dismiss is the proper method to test the legal sufficiency of the complaint. Schuer v. Rhodes, 416 U.S. 232, 236 (1974). Rule 12(b)(6) provides that a cause of action may be dismissed for the failure to state a claim upon which relief may be granted. When considering a motion to dismiss, the court treats all well pled facts as true and grants all reasonable inferences therefrom in favor of the non-moving party. Westcott v. City of Omaha, 901 F.2d 1486, 1488 (8th Cir. 1990). However, the court is not required to accept the pleader's own legal conclusions. Id. A motion to dismiss should only be granted if it appears from the face of the complaint that the plaintiff cannot prove any set of facts to support his claims for relief. Morton v. Becker, 793 F.2d 185, 187 (8th Cir. 1986).

III. Analysis

A. Judicial Immunity

Judge Grate contends that judicial immunity bars Plaintiff's claims against him. (Doc. #13). Plaintiff argues that Judge Grate is not immune from suit because Judge Grate lacked jurisdiction to enforce the state court judgment requiring Plaintiff to pay alimony. (Doc. #15-1). It is essential to the administration of justice that a state court judge exercising his authority "shall be free to act upon his own convictions, without apprehension of personal consequences to himself." Mireless v. Waco, 502 U.S. 9, 10 (1991). Accordingly, a judge may be subject to suit only for non-judicial acts or for actions taken in the complete

absence of all jurisdiction. Duty v. City of Springdale, Arkansas, 42 F.3d 460, 462 (8th Cir. 1994). The scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge, because some of the most difficult questions a judge determines are those related to his jurisdiction. Id. quoting Stump v. Sparkman, 435 U.S. 349, 356 (1978). An act in excess of jurisdiction will not deprive the judge of immunity. Id. Acts done in excess of jurisdiction are far different from acts done in the complete absence of jurisdiction. Id. A "judge acts in excess of jurisdiction if the act complained of is within his general power of jurisdiction but is not authorized because of certain circumstances." Id. quoting Billingsley v. Kyser, 691 F.2d 388, 389 (8th Cir. 1982) (per curiam). In contrast, "there is a clear absence of jurisdiction when a court of limited jurisdiction attempts to adjudicate a case outside of its jurisdiction, such as when a probate court conducts a criminal trial." Id. citing Mann v. Conlin, 22 F.3d 100, 104 (6th Cir. 1994), cert. denied, 513 U.S. 870 (1994).

In this case, Plaintiff argues that Judge Grate lacked jurisdiction to enforce his own judgment requiring Plaintiff to pay alimony because this Court did not explicitly remand the case to state court in its October 25, 2005 Order. However, as discussed at length in this Court's October 25, 2005 Order, domestic relations proceedings are subject to the exclusive jurisdiction of the state court. The Order made clear that jurisdiction was proper in Missouri state court, and that no basis whatsoever existed for federal court jurisdiction. Plaintiff's filing of frivolous counterclaims in federal court clearly cannot be said to deprive Judge Grate "of all jurisdiction" to enforce his own judgment. Further, an inadvertent clerical error made by this Court does not divest Judge Grate of judicial immunity and subject him to suit for alleged violations of Plaintiff's civil rights, particularly in light of this Court's clear finding in its October 25, 2005 Order that jurisdiction was proper in state court. Accordingly, judicial immunity protects Judge Grate from

suit and his Motion to Dismiss all counts against him is GRANTED.

B. Declaratory Judgment

Count I of Plaintiff's Complaint is entitled "Declaratory Relief." (Doc. #1). Wight argues that this Count should be dismissed because it consists entirely of abstract invocations of the First, Fifth, and Fourteenth Amendments but does not indicate what relief Plaintiff seeks by way of a declaratory judgment. (Doc. #18). "The same pleading standards that apply in other civil actions govern proceedings under the [Declaratory Judgment Act]." Miller v. Pacific Shore Funding, 224 F.Supp.2d 977, 993 (D. Md. 2002) *citing* Marchese v. Shearson Hayden Stone, Inc., 644 F.Supp. 433, 439 (D.Md. 1992); 5 Wright & Miller, Federal Practice and Procedure: Civil 3d § 1238 (3d ed. 2004). Thus, in seeking a declaratory judgment, a plaintiff must state a claim for which relief may be granted. Marchese, 644 F.Supp. at 993 *citing* Fed. R. Civ. P. 8(a). The failure to indicate what the plaintiff seeks by way of declaratory judgment is itself a failure to state a claim. Conkey v. Reno, 885 F.Supp. 1389, 1392 (D. Nev. 1995) (citations omitted).

In this case, Count I simply incorporates previously pleaded allegations and adds: "The Plaintiff is entitled to the protections of the First, Fifth, and Fourteenth Amendments to the United States Constitution liberty interests, particularly the right of association, right to travel, right to due process and equal protection." Count I does not pray for declaratory judgment and does not make factual allegations sufficient to support a claim for declaratory judgment. Instead, Count I consists only of abstract invocations of the First, Fifth, and Fourteenth Amendments. Because Plaintiff fails set forth factual allegations in support of his claim for declaratory judgment and fails to indicate what he seeks by way of a declaratory judgment, Wight's Motion to Dismiss Count I is GRANTED.

C. IIED

Wight argues that Plaintiff's claim against him for IIED fails to set forth facts which would support a finding that Wight engaged in extreme and outrageous conduct or that the sole purpose of Wight's conduct was to cause Plaintiff emotional distress. To state a claim for IIED under Missouri law, "a plaintiff must plead extreme and outrageous conduct by a defendant who recklessly or intentionally causes severe emotional distress that results in bodily harm." Sansonetti v. City of St. Joseph, 976 S.W.2d 572, 579 (Mo. App. W.D. 1998) *citing* Gibson v. Brewer, 952 S.W.2d 239, 249 (Mo. banc 1997). Extreme and outrageous conduct is difficult to define; however, "it is clear that the defendant's conduct must be more than simply malicious and intentional." Viehweg v. Vic Tanny Int'l of Mo., Inc., 732 S.W.2d 212, 213 (Mo. Ct. App. 1987). "Mere insults, indignities, inconsiderations or petty oppressions do not rise to the level of outrageous conduct." Wooten v. Pleasant Hope R-VI School Dist., 139 F.Supp.2d 835, 843 (W.D. Mo. 2000) *quoting* Evans v. Six Flags, 613 F.Supp. 219, 220 (E.D. Mo. 1985). Indeed, Missouri courts have recognized that, to meet the definition of extreme and outrageous conduct, the defendant's conduct must "go beyond all possible bounds of decency, [so as to] be regarded as atrocious and utterly intolerable in a civilized community." Viehweg, 732 S.W.2d at 213. Under Missouri law, it is for the Court to determine whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. Wilt v. Kansas City Area Transp. Authority, 629 S.W.2d 669, 671 (Mo. App. W.D. 1982). The Court should grant a motion to dismiss if it is not reasonably debatable that the conduct described in the complaint is not shocking or atrocious. *See* Wooten, 139 F.Supp.2d at 843.

Here, Plaintiff claims that "[t]he conduct of all Defendants was odious, perverse, and outrageous, to relish in the delight of repeated ex parte ultra vires conduct to deprive the Plaintiff of his freedom and to

utterly disregard and flaunt voluminous federal law denying them the authority to which they exercised self aggrandizement of jurisdiction.” (Doc. #1). Though Plaintiff’s allegations consist of many colorful adjectives and phrases, nowhere does Plaintiff allege any actual facts which support a finding that Wight’s conduct was extreme and outrageous. When translated into plain English, Plaintiff’s Complaint appears to allege only that, in the course of representing Ms. Stanley, Wight appeared and/or filed motions before Judge Grate, and that Judge Grate made rulings favorable to Wight’s client and adverse to Plaintiff, allegedly without jurisdiction to do so. These allegations and any inferences that may be drawn from them do not support the conclusion that Wight’s alleged conduct may reasonably be regarded as extreme and outrageous.

Further, an essential element of the tort of intentional infliction of emotional distress is that “the conduct must be intended **only** to cause extreme emotional distress to the victim.” Thomas v. Special Olympics Missouri, Inc., 31 S.W.3d 442, 446 (Mo. App. W.D. 2000) *quoting* K.G. v. R.T.R., 918 S.W.2d 795, 799 (Mo. banc 1996) (emphasis in original). Accordingly, “one must allege not just that the actor knew that emotional distress would result from his or her acts, but that [inflicting emotional distress] was the **sole** motivation for the actor’s conduct.” Id. at 448 (emphasis in original). Plaintiff’s Complaint contains no such allegations or inferences. Because Plaintiff fails to set forth facts which would support a finding that Wight engaged in extreme and outrageous conduct or that Wight’s actions were intended solely to cause emotional harm, Wight’s Motion to Dismiss Plaintiff’s IIED claim against him is GRANTED.

D. First, Fifth, and Fourteenth Amendments

Count II is entitled “Deprivation of Constitutional Rights and Privileges,” and Count III is entitled “Conspiracy to Deprive Persons of Equal Protection of the Laws.” (Doc. #1). Both Counts appear to

allege violations of the First, Fifth, and Fourteenth Amendments. Wight argues that lawyers acting in the representation of their clients cannot be held liable for alleged constitutional violations because they do not act under color of state law. Indeed, it is well settled that the conduct of legal counsel generally does not constitute action under color of law.² DuBose v. Kelly, 187 F.3d 999, 1003 (8th Cir. 1999); *see also* Polk County v. Dodson, 454 U.S. 312, 325 (1981) (public defender appointed by state court to represent an indigent defendant does not act under color of state law when performing lawyer's traditional functions); Chambers v. Kaplan, 648 F.2d 1193, 1194 (8th Cir. 1981) (private attorney representing inmate in a lawsuit against the state department of corrections did not act under color of state law).

Only in extraordinary circumstances where a private attorney acts as a “willful participant in joint action with the State or its agents” can § 1983 liability be imposed on a private attorney. DuBose, 187 F.3d at 1003. “The key inquiry is whether the private party was a willful participant in [a] corrupt conspiracy.” Id. To withstand a motion to dismiss, allegations of conspiracy “must be pled with sufficient specificity and factual support to suggest a ‘meeting of the minds.’” Manis v. Sterling, 862 F.2d 679, 681 (8th Cir. 1988) *quoting* Smith v. Bacon, 699 F.2d 434, 436 (8th Cir. 1983). To state a claim for a § 1983 conspiracy, “a plaintiff must plead in detail, through reference to material facts, the relationship or nature of the conspiracy between the state actor(s) and the private persons.” Harvey v. Harvey, 949 F.2d 1127, 1133 (11th Cir. 1992) *citing* Fullman v. Graddick, 739 F.2d 553, 556-57 (11th Cir. 1984). Conclusory, vague and general allegations of conspiracy are not sufficient to state a claim upon which relief may be granted. Fullman, 739 F.2d at 557.

²Though Plaintiff does not explicitly state in his Complaint, the Court treats Counts II and III as being brought pursuant to 42 U.S.C. § 1983 (“§ 1983”).

The DuBose case presents a rare example of the circumstances under which a private attorney may be considered to have acted under color of law by acting as a willful participant in a conspiracy with state actors. In DuBose, a plaintiff had prosecuted a malpractice case against his attorney in an earlier matter. Id. at 1000. After the plaintiff lost the suit against his attorney, the plaintiff filed an action under § 1983, alleging that his attorney, his attorney's attorneys, and the state trial judge who heard the suit had conspired to deprive him of his right to due process. Id. The plaintiff alleged that he had overheard his attorney and his attorney's attorneys, through court chamber doors, conspiring with the judge to prevent the plaintiff's attorney from being held liable in the malpractice suit the plaintiff had filed. Id. at 1001. The plaintiff alleged that, after the parties went over the pros and cons involved, the judge stated to the attorneys that the plaintiff's attorney could "enjoy his retirement." Id.

In the instant case, Plaintiff's factual allegations imply, at most, that Wight appeared before Judge Grate in the course of Wight's representation of Ms. Stanley, and that Judge Grate made rulings adverse to Plaintiff. The fact that a court makes a ruling favorable to one side and adverse to the other in a contested proceeding does not imply a "corrupt conspiracy" which transforms a private attorney into a state actor under § 1983. Though Plaintiff concludes in his Complaint that Judge Grate, Wight, and Ms. Stanley conspired to deprive him of his civil rights, Plaintiff fails to put forth any material facts which would suggest that there was a "meeting of the minds" between Wight and either Judge Grate or Ms. Stanley. Because conduct of private legal counsel generally does not constitute action under color of law and because Plaintiff sets forth no facts which would support an inference that Wight engaged in a conspiracy with state actors, Wight's Motion to Dismiss Counts II and III is GRANTED.

CONCLUSION

Because Judge Grate did not act in the absence of jurisdiction in pursuing litigation to enforce the Missouri state court's judgment against Plaintiff, Judge Grate is entitled to judicial immunity from suit. Accordingly, Judge Grate's Motion to Dismiss all counts against him is GRANTED. Plaintiff fails to state a claim for declaratory judgment against Wight in Count I because Plaintiff does not indicate what relief he seeks by way of declaratory judgment. Plaintiff also fails to state a claim against Wight for IIED in Count IV because Plaintiff sets forth no facts to support a finding that Wight engaged in extreme and outrageous conduct or that Wight's actions were intended only to cause Plaintiff emotional harm. Finally, Plaintiff fails to state claims against Wight in Counts II and III under the First, Fifth, or Fourteenth Amendments because Wight did not act under color of law and is therefore not subject to liability for alleged violations of Plaintiff's constitutional rights. Accordingly, Wight's Motion to Dismiss all counts against him is GRANTED.

IT IS SO ORDERED.

/s/ Gary A. Fenner
GARY A. FENNER, JUDGE
United States District Court

DATED: January 9, 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

HAROLD STANLEY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-0752-CV-W-GAF
)	
HON. JACK GRATE, et al.,)	
)	
Defendants.)	

ORDER

Pending before the Court is Plaintiff Harold Stanley’s (“Plaintiff”) Motion for Partial Summary Judgment against Defendant Marcia Stanley (“Defendant”) filed pursuant to Fed. R. Civ. P. 56. (Doc. #39).

A federal court can dismiss a suit for lack of subject matter jurisdiction where a plaintiff’s claim his constitutional rights were violated does not contain sufficient allegations of state action.¹ See Lubin v. Crittenden Hosp. Ass’n, 713 F.2d 414, 415-16 (8th Cir. 1983); Briscoe v. Bock, 540 F.2d 392, 394, 396 (8th Cir. 1976); and Nowlin v. Prof’l Auto Sales, Inc., 496 F.2d 16, 17 (8th Cir. 1974) (affirming dismissal for lack of subject matter jurisdiction where plaintiff’s claims did not sufficiently allege state action).

In this Court’s January 9, 2007 Order, the Court held Plaintiff’s constitutional claims against Defendant’s Co-defendant Les G. Wight II (“Wight”) could not proceed because Wight was a private actor under the circumstances. (Doc. #32 pp.8-11). Plaintiff’s present claims against

¹Fed. R. Civ. P. 12(h)(3) requires a court to dismiss an action, whether or not the parties raise the issue, if the court determines it lacks subject matter jurisdiction over the action.

Defendant are identical to those he made against Wight. (Doc. #1). The same analysis the Court applied in dismissing Plaintiff's claims against Wight applies here. Plaintiff's claim for Intentional Infliction of Emotional Distress also fails because it is based on state law and the Court has no original jurisdiction in this case. Accordingly, all Plaintiff's claims against Defendant are DISMISSED.

IT IS SO ORDERED.

s/ Gary A. Fenner _____
GARY A. FENNER, JUDGE
UNITED STATES DISTRICT COURT

DATED: November 9, 2007

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JUDGMENT IN A CIVIL CASE

HAROLD STANLEY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-0752-CV-W-GAF
)	
HON. JACK GRATE, et al.,)	
)	
Defendants.)	

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X Decision by Court. This action came before the Court. The issues have been determined and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that

all Plaintiff's claims against Defendant are DISMISSED.

IT IS FURTHER ORDERED AND ADJUDGED pursuant to this Court's order of January 9, 2007 that

Judge Grate's Motion to Dismiss all counts against him is GRANTED and Wight's Motion to Dismiss all counts against him is GRANTED.

November 13, 2007
Date

Patricia L. Brune
Clerk

/s/ Tracy L. Diefenbach
(by) Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

HAROLD STANLEY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-0752-CV-W-GAF
)	
HON. JACK GRATE, et al.,)	
)	
Defendants.)	

ORDER

Pending before the Court is Defendant Marcia E. Stanley's failure to respond to the Court's direction that she file a status report with regard to her remaining counterclaim against Plaintiff Harold Stanley. (Doc. #53). Due to her failure to respond to the Court's request or indicate in any other manner that she intends to further pursue her counterclaim, the counterclaim is DISMISSED.

IT IS SO ORDERED.

s/ Gary A. Fenner
Gary A. Fenner, Judge
United States District Court

DATED: April 20, 2009

**Notice of Appeal to a Court of Appeals From a Judgment or Order
of a District Court**

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION

CASE NUMBER 06-0752-CV-W-GAF

Harold R. Stanley,)
Plaintiff, *pro se*,)
v.) Notice of Appeal
The Honorable Jack Grate et al.,)
Defendants)

Notice is hereby given that I, Harold R. Stanley, the Plaintiff in the above-named case, hereby appeal to the United States Court of Appeals for the 8th Circuit from the final judgment entered by the District Court in the Order identified as Document 56 filed on the 20th day of April, 2009.

The 8th Circuit Court of Appeals on March 17, 2009 dismissed Plaintiff's November 24, 2007 appeal of this case because the prior orders "did not dispose of the counterclaim raised by Marcia Stanley in her answer." The April 20, 2009 order disposes of the counterclaim, and now the district court work is complete in this action and timeliness of appeal of the district court's final order is proper.

A handwritten signature in black ink, appearing to read "Harold R. Stanley", with a long horizontal flourish extending to the right.

Harold R. Stanley, Plaintiff *pro se*
10707 E. 240th Street
Peculiar, Missouri 64078
Telephone: 816-779-4284
E-mail: hstanley@fairpoint.net
May 16, 2009

Certificate of Service

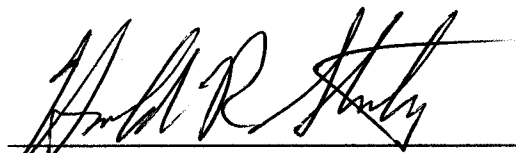
The undersigned hereby certifies that a true and correct copy of the Notice of Appeal and Appellant's Form A was sent via first-class U.S. Mail, postage pre-paid, this 16th Day of May, 2009 to

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Attorney for Defendant the Honorable Jack Grate

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Attorney for Defendant Marcia E. Stanley

A handwritten signature in black ink, appearing to read "Harold R. Stanley". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Harold R. Stanley, Plaintiff, *pro se*
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Peculiar, Missouri 64078
816.779.4284
hstanley@fairpoint.net

**U.S. COURT OF APPEALS – EIGHTH CIRCUIT
APPELLANT'S FORM A**

Appeal Docket
No. _____

Appeal Information Form
To be filed with the Notice of Appeal

STYLE OF CASE:

Harold R. Stanley,

Appellant,

Vs.

COUNSEL: NAME, ADDRESS, AND TELEPHONE NUMBER

Harold R. Stanley, *pro se*
10707 E. 240th Street
Peculiar, Missouri 64078
E-mail: hstanley@fairpoint.net
Phone: 816-779-4284

COUNSEL: NAME, ADDRESS, AND
TELEPHONE NUMBER

The Honorable Jack Grate,

Lester Wight, Esq.,

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Attorney for Defendant the Honorable Jack
Grate

Daniel E. Hamann
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Attorney for Defendant Lester Wight, Esq.

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Marcia E. Stanley

Appellees

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Fax: 816-554-4551
E-mail: dodig@dodiglaw.com
Attorney for Defendant Marcia E. Stanley


LIST ISSUES ON APPEAL (For administrative purposes). This also serves as Appellant's statement of issues under FRAP 10(b)(3):

1. Whether it is error for the trial court to sua sponte, deliberately, and substantively alter a fifteen-month-old judgment in a separate lawsuit when such altering lacks authority and denies the Appellant access to the courts for his 42 USC § 1983 action?
2. Whether it is error to dismiss a defendant state court judge from a 42 USC § 1983 action when the action complaint alleges and documents he acted under color of state law to deprive the plaintiff of his civil rights in a state court proceeding that lacked all jurisdiction?
3. Whether it is error to dismiss an attorney defendant from a 42 USC § 1983 action when the action complaint alleges and documents he acted under color of state law by participating with a state court judge to deprive the plaintiff of his civil rights in a state court proceeding that lacked all jurisdiction?

4. Whether it is error to dismiss a layperson from a 42 USC § 1983 action when the action complaint alleges and documents she acted under color of state law by participating with a state court judge to deprive the plaintiff of his civil rights in a state court proceeding that lacked all jurisdiction?

5. Whether it was error to dismiss a 42 USC § 1983 action that sufficiently alleges the defendants were persons who acted under color of state law, pled sufficient facts to permit the defendants to know the conduct, time and place of such impermissible conduct at issue, and that pled specific constitutional civil rights that were denied the Plaintiff?

This appeal is amenable to settlement.

Submitted by:  5-16-09
Harold R. Stanley, *pro se* Date

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 07-3728

Harold R. Stanley,

Appellant,

v.

Honorable Jack Grate; Lester Wight;
Marcia E. Stanley,

Appellees.

*
*
*
* Appeal from the United States
* District Court for the
* Western District of Missouri.
*
* [UNPUBLISHED]
*
*

Submitted: March 9, 2009
Filed: March 17, 2009

Before BYE, COLLOTON, and GRUENDER, Circuit Judges.

PER CURIAM.

Harold Stanley appeals the district court's¹ dismissal of his civil rights complaint. After careful review, we conclude that the court's judgment was not a final, appealable order because it did not dispose of the counterclaim raised by Marcia Stanley in her answer. See 28 U.S.C. § 1291 (courts of appeals shall have jurisdiction of appeals from all final decisions of district courts); Fed. R. Civ. P. 54(b) (any order that adjudicates fewer than all claims does not end action as to any claims or parties);

¹The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.

Miller v. Special Weapons, L.L.C., 369 F.3d 1033, 1034-35 (8th Cir. 2004) (noting problems with allowing counterclaims that are “dead but undismissed” or are substantively resolved by non-final orders, to proceed; dismissing appeal for lack of jurisdiction where district court failed to rule on counterclaim even though it was necessarily disposed of by summary judgment order); Thomas v. Basham, 931 F.2d 521, 522-23 (8th Cir. 1991) (jurisdictional issues will be raised sua sponte when there is indication that jurisdiction is lacking; court lacked jurisdiction over appeal from summary judgment order because defendant’s counterclaims were outstanding at time of order).

Accordingly, we dismiss the appeal for lack of jurisdiction.

United States Court of Appeals

For The Eighth Circuit

Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329

St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
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March 17, 2009

Mr. Spencer J. Brown
DEACY & DEACY
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Suite 1900
Kansas City, MO 64105-0000

RE: 07-3728 Harold Stanley v. Honorable Jack Grate, et al

Dear Counsel:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00a.m. today. Please hold the opinion in confidence until that time.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

SRD
Enclosure(s)

cc: Ms. Emily Ann Dodge
Mr. Michael Scott Dodig
Mr. Daniel E. Hamann
Mr. Harold R. Stanley
Ms. Ann Thompson

District Court/Agency Case Number(s): 4:06-cv-00752-GAF

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

HAROLD STANLEY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-0752-CV-W-GAF
)	
HON. JACK GRATE, et al.,)	
)	
Defendants.)	

ORDER

Pending before the Court is Plaintiff Harold Stanley’s (“Plaintiff”) Motion for Partial Summary Judgment against Defendant Marcia Stanley (“Defendant”) filed pursuant to Fed. R. Civ. P. 56. (Doc. #39).

A federal court can dismiss a suit for lack of subject matter jurisdiction where a plaintiff’s claim his constitutional rights were violated does not contain sufficient allegations of state action.¹ See Lubin v. Crittenden Hosp. Ass’n, 713 F.2d 414, 415-16 (8th Cir. 1983); Briscoe v. Bock, 540 F.2d 392, 394, 396 (8th Cir. 1976); and Nowlin v. Prof’l Auto Sales, Inc., 496 F.2d 16, 17 (8th Cir. 1974) (affirming dismissal for lack of subject matter jurisdiction where plaintiff’s claims did not sufficiently allege state action).

In this Court’s January 9, 2007 Order, the Court held Plaintiff’s constitutional claims against Defendant’s Co-defendant Les G. Wight II (“Wight”) could not proceed because Wight was a private actor under the circumstances. (Doc. #32 pp.8-11). Plaintiff’s present claims against

¹Fed. R. Civ. P. 12(h)(3) requires a court to dismiss an action, whether or not the parties raise the issue, if the court determines it lacks subject matter jurisdiction over the action.

Defendant are identical to those he made against Wight. (Doc. #1). The same analysis the Court applied in dismissing Plaintiff's claims against Wight applies here. Plaintiff's claim for Intentional Infliction of Emotional Distress also fails because it is based on state law and the Court has no original jurisdiction in this case. Accordingly, all Plaintiff's claims against Defendant are DISMISSED.

IT IS SO ORDERED.

s/ Gary A. Fenner
GARY A. FENNER, JUDGE
UNITED STATES DISTRICT COURT

DATED: November 9, 2007

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

JUDGMENT IN A CIVIL CASE

HAROLD STANLEY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-0752-CV-W-GAF
)	
HON. JACK GRATE, et al.,)	
)	
Defendants.)	

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X Decision by Court. This action came before the Court. The issues have been determined and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that

all Plaintiff's claims against Defendant are DISMISSED.

IT IS FURTHER ORDERED AND ADJUDGED pursuant to this Court's order of January 9, 2007 that

Judge Grate's Motion to Dismiss all counts against him is GRANTED and Wight's Motion to Dismiss all counts against him is GRANTED.

November 13, 2007
Date

Patricia L. Brune
Clerk

/s/ Tracy L. Diefenbach
(by) Deputy Clerk

U. S. COURT OF APPEALS - EIGHTH CIRCUIT
NOTICE OF APPEAL SUPPLEMENT

MISSOURI WESTERN DISTRICT - KANSAS CITY

Please note any additions or deletions to the style of the case from the style listed on the docket sheet (or attach an amended docket sheet with the final style of the case).

Case Caption: Stanley v. Grate et al	Case No. 06-cv-00752-GAF
Appellant: Harold R Stanley	Appellee: Honorable Jack Grate, Lester Wight
Appellant's Attorney(s):	Appellee's Attorney(s):
Harold R Stanley 10707 E. 240th Peculiar, MO 64078 PRO SE	Emily A. Dodge Missouri Attorney General P.O. Box 899 Jefferson City, MO 65102 (573) 751-7344 Email: emily.dodge@ago.mo.gov
	Daniel Edward Hamann Deacy & Deacy, LLP Suite 1900 920 Main Street Kansas City, MO 64105-2010 816-421-4000 Fax: (816) 421-7880 Email: deh@deacylaw.com
Court Reporter(s):	Please return files and documents to:
None	United States District Court 400 East 9th Street, Room 1510 Kansas City, MO 64106
	Contact Person for Appeal: Willie Crespo 816-512-5068

Length of Trial: 0	Fee: \$455	IFP: No	Pending IFP Motion: No
Counsel: Pro-Se	Pending Motions? No	Local Interest? No	Simultaneous Release? No

Special Comments: This is the 2nd appeal by appellant, appeal #07-3728.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

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Appeal No. 09-2198 Harold Stanley v. Honorable Jack Grate, et al

Date: May 22, 2009

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