

**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.



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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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**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

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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.

*
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*
* 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

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March 17, 2009

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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