

**NO. 07-3728**

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

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**HAROLD R. STANLEY,  
Appellant,  
v.  
THE HONORABLE JACK GRATE, et al,  
Appellee.**

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**Appeal from the United States District Court,  
Western District of Missouri, Central Division  
The Honorable Gary A. Fenner**

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**BRIEF OF APPELLEE**

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**JEREMIAH W. (JAY) NIXON  
Attorney General**

**Emily A. Dodge  
Missouri Bar No. 53914  
Assistant Attorney General**

**Post Office Box 899  
Jefferson City, MO 65102  
Phone: (573) 751-8782  
Fax: (573) 751-9456**

**ATTORNEYS FOR APPELLEE**

## **SUMMARY AND REQUEST FOR ORAL ARGUMENT**

Mr. Stanley, an electrical engineer, stopped paying court-ordered alimony to his former wife, Marcia Stanley. The Jackson County Circuit Court, which had entered the Stanleys' divorce decree and alimony judgment, addressed motions for contempt Ms. Stanley filed due to Stanley's continued failure to pay alimony. In March 2005, Mr. Stanley removed the contempt proceedings and, in his notice of removal, asserted claims under Section 1983 against Judge Grate, the 16th Judicial Circuit, Ms. Stanley, and the Director of the Missouri Department of Social Services, in Western District Mo. Case No. 05-0281, in an attempt to prevent the Missouri circuit court from taking any further action to enforce the divorce judgment that obligated him to support Ms. Stanley. On October 25, 2005, the district court dismissed Case No. 05-0281 because it did not have original subject matter jurisdiction over the civil contempt proceedings instituted by Ms. Stanley in that no federal question was raised in the state court proceedings, and due to the application of the domestic relations exception.

After the federal case was dismissed, Judge Grate issued a show cause order and set hearings to address Mr. Stanley's failure to pay \$23,000 in court-ordered maintenance. In September 2006, Stanley filed suit against Judge Grate in the United States District Court, Western District of Missouri, a second time, asserting Section 1983 claims against him based on his judicial actions to enforce the court's

divorce judgment in Jackson County Case Nos. 16DR96-08993-02 and 16DR96-08993-04 after Western District of Missouri Case No. 05-0281 was dismissed.

Judge Grate was entitled to judicial immunity because he had jurisdiction to conduct the contempt proceedings. The 16th Judicial Circuit, of which Judge Grate was circuit judge, had entered the judgments dissolving the Stanleys' marriage and imposing Mr. Stanley's obligation to pay alimony. Moreover, the district court determined it lacked subject matter jurisdiction and effectively remanded the contempt proceedings before Judge Grate took the judicial actions of which Mr. Stanley now complains.

Judge Grate requests this Court to affirm the district court's judgment in his favor, dismissing all counts against him. In order to adequately address the points on appeal, Judge Grate requests ten minutes for oral argument.

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## RESPONSE TO JURISDICTIONAL STATEMENT

Appellant is attempting to obtain appellate review of a remand order of the district court, although the basis for that remand was the district court's lack of subject matter jurisdiction. A remand order based on lack of subject matter jurisdiction, a ground enumerated in 28 U.S.C. §1447(c), is not reviewable, by appeal or otherwise. *First Nat'l Bank of Salem v. Wright*, 775 F.2d 245, 246 (8th Cir. 1985). Where a remand order was based on one of the grounds set forth in §1447(c), the appellate court will exercise its jurisdiction only to dismiss the appeal. *First Nat'l Bank of Salem*, 775 F.2d at 247.

## STATEMENT OF THE ISSUE

Whether the district court correctly held that Judge Grate, who found Stanley in contempt of court due to Stanley's failure to pay \$23,000 in maintenance payments, was entitled to judicial immunity.

*Duty v. City of Springdale*, 42 F.3d 460 (8th Cir. 1994)

*Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004)

*Mireless v. Waco*, 502 U.S. 9 (1991)

## STATEMENT OF THE CASE

Plaintiff Harold Stanley filed for divorce in Jackson County Circuit Court on August 8, 1996. The Jackson County Circuit Court dissolved Mr. Stanley's marriage to Defendant Marcia Stanley in 2000 in Jackson County Case No. 96-8993. The divorce judgment required Mr. Stanley to pay maintenance to Ms. Stanley. Ms. Stanley filed at least two motions for civil contempt in Jackson County Circuit Court, Case Nos. 16DR96-08993-02 and 16DR96-08993-04, after Mr. Stanley stopped complying with the court order requiring him to pay alimony to her.

On March 24, 2005, Mr. Stanley filed a notice of removal which stated that he was removing Jackson County Case Nos. 16DR96-08993-02 and 16DR96-08993-04 based on federal question jurisdiction. In his notice of removal, Stanley also named Judge Grate, the 16th Judicial Circuit, and the Director of the Missouri Department of Social Services as third-party defendants, asserting that the actions of Judge Grate and the 16th Judicial Circuit in enforcing Missouri statutes pertaining to alimony and maintenance through contempt proceedings violated Stanley's constitutional rights such that Stanley had a cause of action under Section 1983. On October 25, 2005, the district court, in Western District Mo. Case No. 05-0281, dismissed Stanley's "notice of removal," which the district court referred to as Stanley's "removal complaint." The district court held that it

did not have subject matter jurisdiction over the case because no federal question was presented. The district court also cited the domestic relations exception as a reason for dismissal. However, the district court did not explicitly order the case remanded, rather, the court dismissed Case No. 05-0281.

After the district court dismissed Case No. 05-0281, Judge Grate issued a show cause order and found Mr. Stanley in contempt due to his persistent failure to pay alimony and \$23,000 arrearage. Stanley unsuccessfully attempted to avoid the contempt by seeking a writ of prohibition from a state appellate court and a writ of mandamus from the Missouri Supreme Court.

Mr. Stanley then, on September 7, 2006, filed this action against Jackson County Circuit Judge Jack Grate, Marcia Stanley (Plaintiff's former spouse), and Ms. Stanley's attorney, Lester Wight. In the instant lawsuit, Mr. Stanley asserted that the district court did not remand the contempt proceedings back to Jackson County Circuit Court, therefore Judge Grate did not subsequently have jurisdiction to conduct contempt proceedings and issue orders related to Stanley's persistent failure to pay alimony. Stanley contended that Judge Grate violated his constitutional right to due process, right to travel, and freedom of association through his judicial actions enforcing Stanley's maintenance obligation. Stanley sought monetary damages, declaratory and injunctive relief, and a writ of mandamus.

On October 30, 2006, Defendant Grate filed a motion to dismiss Plaintiff's claims against him on grounds of judicial immunity and further alleged that Plaintiff's claims were barred by the *Rooker-Feldman* doctrine. Following Plaintiff's opposition to the motion, the district court, on January 9, 2007, dismissed all claims against Judge Grate and Defendant Wight. In that order, the district court recognized that its order dismissing Case No. 05-0281 had not explicitly stated that the case was remanded; the district court issued further orders in order to correct this error. (Ct. Doc. 32, p. 3, n. 1).

On February 12, 2007, Mr. Stanley filed a notice of interlocutory appeal in Eighth Circuit Case No. 07-1304. On February 27, 2007, this Court dismissed Mr. Stanley's appeal for lack of jurisdiction based on the lack of a final, appealable order of the district court. On November 9, 2007, the district court dismissed all claims against Ms. Stanley.

## STATEMENT OF THE FACTS

The Jackson County Missouri Circuit Court dissolved the Stanleys' marriage in 2000 in Case No. 16DR96-08993. (Ct. Doc. 1, p. 2; Ct. Doc. 9, Pl.'s App. G; Pl.'s Addendum p. 18). Mr. Stanley had filed for divorce on August 8, 1996. (Ct. Doc. 9, Pl.'s App. G). The divorce decree required Mr. Stanley to pay maintenance to Ms. Stanley. (Ct. Doc. 1, p. 2). By 2004, Mr. Stanley was not in compliance with the court order requiring him to pay alimony to his former wife. (Ct. Doc. 1, p. 3). Ms. Stanley filed at least two motions for civil contempt, in Jackson County Circuit Court Case Nos. 16DR96-08993-02 and 16DR96-08993-04. (Ct. Doc. 9, App. G, p. 2; Pl.'s App. p. 10). After Ms. Stanley filed her motion for contempt in Case No. 16DR96-08993-02, Mr. Stanley filed a motion to modify his maintenance obligation. (Ct. Doc. 1, p. 3; Pl.'s App. p. 15). Judge Grate reduced the amount of monthly maintenance Mr. Stanley was required to pay, although not to the extent Mr. Stanley had requested. (Ct. Doc. 1, p. 3).

On March 24, 2005, Mr. Stanley filed a notice of removal, claiming that he was removing the contempt proceedings to federal court. (Pl.'s App. p. 10). In his notice of removal, Stanley also asserted a Section 1983 claim against Judge Grate and the 16th Judicial Circuit, alleging that the contempt proceedings violated his constitutional rights. (Pl.'s App. pp. 5-6). On October 25, 2005, the district court dismissed Mr. Stanley's claims and "removal complaint" in Case No. 05-0281 due

to lack of subject matter jurisdiction, and based on the domestic relations exception. (Pl's App. pp. 14-18). Although the district court acknowledged that Stanley had filed a notice of removal, the court did not explicitly state that it was remanding the case to state court. (Pl.'s App. pp. 18-19).

Judge Grate subsequently issued a show cause order and found Mr. Stanley in contempt due to his persistent failure to pay alimony and \$23,000 arrearage. (Ct. Doc. 1, pp. 4-5, App. D; Pl's App. pp. 29-30). Stanley unsuccessfully attempted to avoid the contempt by seeking a writ of prohibition from a state appellate court and a writ of mandamus from the Missouri Supreme Court. (Ct. Doc. 1, App. E, F). On September 9, 2007, Stanley filed the federal lawsuit which is the subject of this appeal.

## ARGUMENT

**Judge Grate is entitled to the protection of judicial immunity in connection with his decision to hold Stanley in contempt of court, following a hearing, due to Stanley's failure to pay \$23,000 in alimony.**

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 that are taken in the complete absence of all jurisdiction. *Duty v. City of Springdale*, 42 F.3d 460, 462 (8th Cir. 1994). Where judicial immunity is at issue, the scope of the judge's jurisdiction is construed broadly, because judges' decisions related to their own jurisdiction are recognized as difficult. *Id. quoting Stump v. Sparkman*, 435 U.S. 349, 356 (1978).

Acts that are merely in excess of a judge's jurisdiction, in contrast with acts done in the complete absence of jurisdiction, do not deprive a judge of immunity. *Duty*, 42 F.3d at 462. 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). On the other hand, "there is a clear absence of jurisdiction where a

court of limited jurisdiction attempts to adjudicate a case outside of its jurisdiction,” e.g., a probate court conducting a criminal trial. *Id. citing Mann v. Conlin*, 22 F.3d 100, 104 (6th Cir. 1994), cert. denied, 513 U.S. 870 (1994).

The district court correctly held that Judge Grate was entitled to judicial immunity because Judge Grate had jurisdiction to enforce a judgment, entered by the same circuit court in Stanley’s divorce, requiring Stanley to pay alimony. A Missouri circuit court is a court of general jurisdiction with the power to dissolve marriages, require former spouses to pay child support or alimony, and enforce its judgments ordering family support to be paid with the court’s contempt power, when necessary. In Missouri, civil contempt proceedings are not punitive, but are intended to compel a person against whom a prior order, judgment, or decree was entered to comply with the relief granted by the court. *Ussery v. Ussery*, 156 S.W.3d 810, 816 (Mo. App. S.D. 2005). Thus, Judge Grate had jurisdiction to enforce the alimony provision of the divorce judgment through contempt proceedings.

Stanley’s complaints concerning the imposition and enforcement of his legal obligation to pay alimony were domestic relations matters within the power of the Jackson County Circuit Court. *See Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12 (2004). Once the circuit court found him in contempt, Stanley’s options were to pay the alimony arrearage or file an appeal in Missouri state court. *Ussery*,

156 S.W.3d at 816. The district court appropriately declined to involve itself with the contempt and alimony enforcement proceedings.

**The district court's order remanding this case to Jackson County Circuit Court due to lack of subject matter jurisdiction is not reviewable.**

Stanley attempts to argue that more than four years after the divorce judgment imposing his obligation to pay alimony was entered, he was able to remove proceedings to enforce his divorce decree to federal court in order to prevent the Jackson County Circuit Court from holding him in contempt. (See App's Br. at pp. 8-9). In response to Stanley's first lawsuit, the district court dismissed his "removal complaint" for lack of federal question jurisdiction. Although the district court did not actually remand the case to state court, as a matter of law, the case was required to be remanded under 28 U.S.C. §1447(c) because the district court found it did not have subject matter jurisdiction. *First Nat'l Bank of Salem v. Wright*, 775 F.2d 245, 246 (1985). The district court's remand order cannot be reviewed, by appeal or otherwise, because the court's basis for remand, the absence of federal jurisdiction, is a basis authorized by Section 1447. 28 U.S.C. §1447(c) (2006); *Nat'l Bank of Salem*, 775 F.2d at 246-47.

Despite the clear language of the statute that if it appears the district court lacks subject matter jurisdiction "the case shall be remanded," Stanley contends the

effect of the district court's inadvertent failure to instruct the clerk to mail a certified copy of the 2005 remand order to the Jackson County Circuit Court, and the district court's failure to use the word "remanded" was that the contempt proceeding was not remanded. However, "There is no doubt that in order to prevent delay" in state court's hearing "of remanded cases by protracted litigation of jurisdictional issues, Congress immunized from all forms of appellate review any remand order issued on the grounds specified in §1447(c), whether or not that order might be deemed erroneous by an appellate court." *Nat'l Bank of Salem*, 775 F.2d at 246, quoting *Thermtron Prods. v. Hermansdorfer*, 423 U.S. 336, 351 (1976). Mr. Stanley has striven to delay any action to enforce the alimony judgment in his ex-wife's favor through two federal lawsuits purportedly removing enforcement and contempt proceedings to federal court. Since the district court's remand order is not reviewable by this Court, Stanley's argument that, due to alleged defects in the order, Judge Grate could not take further action to enforce Stanley's alimony obligation, fail.

**The district court lacked subject matter jurisdiction over Mr. Stanley's complaint challenging state court judgments under *Rooker-Feldman*.**

This Court is not constrained by the district court's choice among the legal theories proposed by the parties for disposition of a case. Rather, this Court may affirm the district court's judgment on any ground supported by the record and not waived by defendants below. *Regions Bank v. J.R. Oil Co., L.L.C.*, 387 F.3d 721, 728 (8th Cir. 2004). In his motion to dismiss, Judge Grate also raised the district court's lack of subject matter jurisdiction over Stanley's attempts to challenge the validity of Jackson County Circuit Court judgments and orders on the basis of the *Rooker-Feldman* doctrine.

It is readily apparent, from examining Stanley's federal complaint, that Stanley was attempting to challenge the validity of Jackson County Circuit Court judgments and orders concerning his alimony obligation and arrearage, including the order finding him in contempt. Federal courts lack jurisdiction over challenges to state court judgments, regardless of whether the relief sought is monetary or injunctive in nature. *Lemons v. St. Louis County*, 222 F.3d 488, 492 (8th Cir. 2000). Although Stanley asserts that the state court's action was unconstitutional, the district court could not review Judge Grate's decisions because the United States Supreme Court has exclusive jurisdiction to review most state court decisions. *Ballinger v. Culotta*, 322 F.3d 546, 548 (8th Cir. 2003). "A party who

was unsuccessful in state court... ‘is barred from seeking what in substance would be appellate review of the state judgment in a United States district court based on the losing party’s claim that the state judgment itself violates the loser’s federal rights.’ ” *Id.*, citing *Johnson v. DeGrandy*, 512 U.S. 997, 1005-6 (1994).

Likewise, federal district courts are barred from exercising jurisdiction over general constitutional claims that are inextricably intertwined with a state court judgment where federal relief “can only be predicated upon a conviction that the state court” acted inappropriately or that the state court’s decision was wrong. *Lemons*, 222 F.3d at 493. In such cases, the federal proceeding may hardly be conceived of as “anything other than a prohibited appeal of the state court judgment.” *Id.* The key inquiry is whether Stanley’s interest in “having a state rule set aside is inseparable from his interest in upsetting a particular state court judgment based on that rule.” *Lemons* at 495. A federal plaintiff cannot obtain a hearing of a disguised state court appeal in federal district court by artful pleading. *Id.* at 494.

In effect, Stanley is asking the federal judicial system to oversee the Missouri state courts. This Court has previously held that such relief is barred by the *Rooker-Feldman* doctrine, because “[t]his is neither the function nor the purpose of the federal judicial system. A state’s judicial system is not subject to direct or indirect review in either the federal district courts or the federal courts of

appeal.” *Harris v. Missouri Court of Appeals*, 787 F.2d 427, 429 (8th Cir. 1986) (rejecting plaintiff’s equal protection challenge to Missouri state court decisions). This Court should decline to review Stanley’s complaints about Judge Grate’s judicial decision making for the same reasons.

### **CONCLUSION**

In light of the foregoing, Defendant, Judge Grate, requests this Court to affirm the district court’s entry of judgment in his favor.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON  
Attorney General

EMILY A. DODGE  
Assistant Attorney General  
Missouri Bar No. 53914

P.O. Box 899  
Jefferson City, MO 65102  
Phone 573-751-8782  
Fax 573-751-9456

ATTORNEYS FOR APPELLEE

**CERTIFICATE OF SERVICE AND COMPLIANCE**

I hereby certify that the text of the foregoing document, excluding the Summary and Request for Oral Argument, the Table of Contents, the Table of Authorities, this Certificate of Service and Compliance, and the Addendum, contains 2,640 words of proportional spacing as determined by the automated word count of the Microsoft Word processing system and has 14-point size, and that the diskette submitted with the instant brief has been scanned for viruses and is virus-free.

I further certify that two true and correct copies of this brief and a 3 ½ inch, labeled diskette containing this brief, were mailed, postage prepaid, this 6th day of February 2008 to:

Harold R. Stanley  
10707 E. 240<sup>th</sup> Street  
Peculiar, Missouri 64078

Daniel E. Hamann, Esq.  
Deacy & Deacy, LLP  
920 Main Street, Suite 1900  
Kansas City, MO 64105

Michael S. Dodig Esq.  
The Dodig Law Firm, LLC  
P.O. Box 158  
Lee's Summit, MO 64063-0158

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Assistant Attorney General