

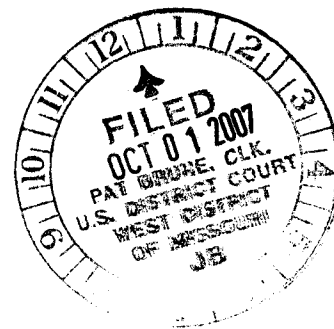
IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CASE NUMBER 06-0752-CV-W-GAF

Harold Stanley,
Plaintiff,

v

Honorable Jack Grate et al.,
Defendants



**PLAINTIFF'S SUGGESTIONS TO DEFENDANT STANLEY'S OPPOSITION TO
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff, *pro se*, with assistance of counsel, moved for partial summary judgment on the liability of Defendant Marcia Stanley for violating his civil rights pursuant to 42 U.S.C. § 1983. The defendant's violation of 28 U.S.C. § 1446 (d) resulted in loss of liberty to the Plaintiff via her conduct under color of state law with the Honorable Jack Grate through ultra vires state court proceedings to result in a civil contempt order for alleged alimony arrearages and a resultant state arrest warrant predicated on the ultra vires proceedings. The arrest warrant is still in effect.

To deny Plaintiff's motion for partial summary judgment, she argues...

- a. Motion for Summary Judgment is out of time;
- b. Plaintiff's statement of undisputed facts violates Local Rule 56.1 (a);
- c. Motion fails as a matter of law, i.e. after this court dismissed the removed action the state court's continued litigation was proper; this court lacks jurisdiction under the domestic relations exception to federal jurisdiction; Rooker-Feldman applies.

The Defendant's arguments fail for the following reasons,

A. Motion for Summary Judgment Was Timely Filed

Plaintiff's Motion for Partial Summary Judgment was timely filed. This court granted Plaintiff's unopposed request for an extension of time for filing of dispositive motions until August 15, 2007. Plaintiff filed his Motion for Partial Summary Judgment on August 15, 2007 and served it to opposing counsel via U.S. Mail on August 14, 2007.

Local Rules of court relating to scheduling are not fixed, rigid regulations. Their purpose is to maximize the efficiency of judicial proceedings and to minimize the use of court resources. The Plaintiff's Motion for Summary judgment does not waste judicial or defendant resources. It does not prejudice the defendant nor add to her costs in any way. The date of filing had no adverse impact on the court or the defendant. Further, permitting this court to rule on Plaintiff's Motion for Partial Summary Judgment spares the defendant the expenses of trial on the issue.

B. Statement of Undisputed Facts Complies with the Intention of Local Rule 56.1

Plaintiff's Motion for Partial Summary Judgment complies with the intent of Local Rule 56.1. *Northwest Bank & Trust Co. v. First Ill. Nat'l Bank*, 354 F. 3d 721 (8th Circuit 2003) interprets the standards by which a Motion for Summary Judgment is in compliance with Local Rule 56.1. The Eighth Circuit viewed Local Rule 56.1 in the following terms,

1. ...the trial court should not have to "scour" the record for factual disputes. Here, the plaintiff's Motion itself states there are no material facts in dispute. The Plaintiff's Affidavit numerically lists all material facts at issue. All facts attested to are presented in the complaint. Most important—the defendant did not dispute a single fact—material or immaterial.
2. "The party opposing the summary judgment must file a response to the movant's statement that either 'expressly admits, denies, or qualifies' each of the movant's

material facts. L.R. 56.1 (b)(2).” The Plaintiff’s affidavit readily presented the Defendant facts she could have disputed. The Defendant was silent on the facts. She disputed none.

3. “...the party opposing summary judgment must file its own concise statement of material facts with supporting appendix citations. L.R. 56.1 (b).” The Defendant’s Motion and Suggestion does not comply with this rule requirement cited in *Northwest* 354 F. 3d
4. “Local Rule 56.1 exists to prevent a district court from engaging in the proverbial search for a needle in the haystack.” The record is small in this case. The material facts are limited to the complaint. The Plaintiff’s affidavit presented the court with a clear and concise record of material facts. The court need not search a haystack.
5. Equity, unclean hands, should be applied to the Defendant’s suggestion that the Plaintiff’s motion should fail because of non compliance with L.R. 56.1. Defendant herself fails to comply with L.R. 56.1. See #3. above.

C. Plaintiff’s Motion for Summary Judgment Prevails as a Matter of Law

1. State Court Proceeded After Removal and Before Remand

28 U.S.C. § 1446 (d) is unambiguous in prohibiting state court proceedings after removal is effected and before remand. The Motion proves as a matter of law that removal was effected. The complaint and Motion prove the state court conduct of the state actor and the Defendant Marcia Stanley, under color of state law, was in violation of federal law, 28 U.S.C. § 1446 (d). The Defendant’s deliberate and willful conduct to abuse the state’s judicial machinery resulted in the Plaintiff’s deprivation of civil rights and liberty interest by the issuance of an arrest warrant that remains in effect against him. All elements for the 42 U.S.C. § 1983 claim were well pled.

The Plaintiff's Suggestion is clear – there is a difference between a proper removal and a district court's lacking subject matter jurisdiction. The Plaintiff will not belabor the court on this point again.

2. The Domestic Relations Exception Does Not Apply to This Action

The Defendant's argument that the domestic relations exception applies to this action fails. This action is a civil rights 42 U.S.C. §1983 action. No claims are made and no relief is sought in any way relating to the parties prior state court alleged alimony arrearages proceeding - or any domestic relations issue. The Defendant mistakenly comingles the separate removed federal action with this civil rights action.

3. Rooker Feldman is Inapplicable

Again the Defendant request for this court to apply Rooker-Feldman preclusion must fail. The Defendant's reliance on Rooker-Feldman is misplaced. No prior state court judgment - valid or invalid - is even remotely at issue in this action. The Plaintiff has proven, as a matter of law, that the state court proceedings that denied him his civil rights took place ultra vires, i.e. lacked all jurisdiction. He is not asking this court to review, amend or overturn any state court judgment. *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005)

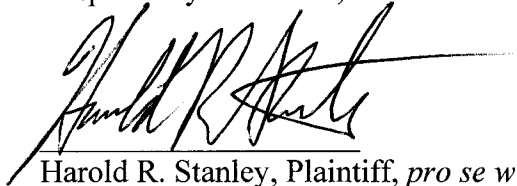
D. Plaintiff's Motion for Partial Summary Judgment Must be Granted

Thus, Rule 56 mandates summary judgment against a party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). If the evidence presented by the nonmoving party is merely colorable, or is not significantly probative, summary judgment must be granted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 , 249-250 (1986). Similarly, the existence of a mere "scintilla" of evidence in support of the

nonmoving party's case is insufficient to preclude an order granting summary judgment. *Id.* At 252.

Wherefore the Plaintiff moves this court to grant his partial summary judgment against defendant Marcia E. Stanley declaring her liable for civil damages pursuant to her violation of the Plaintiff's civil rights because she does not dispute any material facts and, as a matter of law, he is entitled to summary judgment on liability. Further the Plaintiff requests this court order jury trial to determine damages.

Respectfully submitted,

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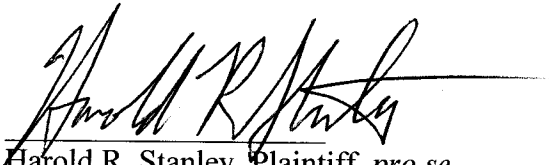
Harold R. Stanley, Plaintiff, *pro se with* assistance of counsel
10707 E. 240th Street
Peculiar, Missouri 64078
hstanley@fairpoint.net

September 28, 2007

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing motion to deny dismissal and memorandum of law was sent via first-class U.S. Mail, postage pre-paid, this 28th day of September 2007 to:

Michael S. Dodig, Esq.
The Dodig Law Firm, Inc.
P.O.Box 158
Lees Summit, MO 64063-0158
816.560.9931
816.347.9802 Fax
mdodig@kc.rr.com
Attorney for Defendant Marcia E. Stanley

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

Harold R. Stanley, Plaintiff, *pro se*
10707 E. 240th Street
Peculiar, Missouri 64078
hstanley@fairpoint.net