

**SUMMARY FOR ORIGINAL REMEDIAL WRITS  
IN THE WESTERN DISTRICT COURT OF APPEALS**

Harold R. Stanley,  
*Relator*

vs.

No. \_\_\_\_\_

The Honorable Jack Grate,  
Les Wight, Esq.  
*Respondents.*

**WRIT SUMMARY**

Parties:

Relator: Harold Stanley, former husband, *pro se*

Respondents: the Honorable Jack Grate, 16<sup>th</sup> Judicial Circuit, Division 17;

Les Wight, Esquire, attorney for former wife.

Nature of underlying action: Ultra Vires civil contempt proceedings on alleged  
arrearages of maintenance payments by former husband.

Action of Respondent being challenged, including date thereof: Ultra vires order to show  
cause entered in state court after federal court dismissed the action thirty-three  
(33) months prior. Respondent Order August 8, 2008 attached as Exhibit G.

Hearing Date: Hearing noticed for October 9, 2008 before the Honorable Jack Grate in  
the 16<sup>th</sup> Judicial Circuit, Division 17, state of Missouri.

Relief sought by Relator: Estop all ultra vires proceedings in this dismissed action.

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

<b>HAROLD R. STANLEY,</b>	)	
<b>Relator</b>	)	
v.	)	<b>Circuit Case No.: 16DR96-08993</b>
<b>THE HONORABLE JACK GRATE,</b>	)	<b>Division 17</b>
<b>16<sup>th</sup> Judicial Circuit, Division 17,</b>	)	
<b>LES WIGHT, ESQ.</b>	)	
<b>Attorney for Marcia E. Stanley,</b>	)	
<b>Respondents</b>	)	

**PETITION FOR WRIT OF PROHIBITION**

Comes now Relator HAROLD R. STANLEY, *pro se with assistance of counsel*, pursuant to Missouri Supreme Court Rule 97, and petitions this court to issue a Writ of Prohibition to the HONORABLE JACK GRATE to stop all civil contempt and enforcement proceedings against Mr. Stanley because the Respondent lacks all jurisdiction in this action.

On 24 March 2005, pursuant to 28 U.S.C. § 1441, this action (Case Number 16DR96-08993) was properly removed to United States District Court for the Western District of Missouri (Case Number 05-0281-CV-W-GAF).

On 25 October 2005, at the motion of Relator's ex-wife's Attorney Michael Dodig the federal court, dismissed this action and all claims. (Exhibit A Dismissal Order).

On 9 January 2007, fifteen (15) months after dismissing the action, the Honorable Gary Fenner sua sponte and ultra vires issued an order of remand (Exhibit B) that is the

subject of an outstanding appeal before the U.S. Eighth Circuit Court of Appeals (Case Number 07-3728) filed November 24, 2007.

This action was dismissed. Whether it has been properly remanded is to be determined by the U.S. Eighth Circuit Court of Appeals. Until such a ruling the Honorable Jack Grate lacks all jurisdiction to proceed.

No parties are or will be prejudiced if this court grants the requested writ. On the contrary, by denying the writ this court will deny Mr. Stanley his liberty interest and civil rights.

It is Mr. Stanley's position that an outstanding civil contempt arrest warrant issued ultra vires on 9 December 2005 before this action was purportedly remanded to state court from federal court was also ultra vires and this conduct has denied him his civil rights. This ultra vires conduct by the respondents is the subject of a federal 42 U.S.C. § 1983 action (Case Number 06-0752-CV-W-GAF) that is on appeal to the U.S. Eighth Circuit Court of Appeals (Case Number 07-3728).

### **Statement of the Facts**

In support of his petition Relator states:

1. On 24 March 2005 the former husband properly removed Case 16DR96-08993 to U.S. District Court and noticed all parties and the clerk of the circuit court. (see attached date stamped 24 March 2005 Notice of Filing of Notice of Removal filed with the clerk of the circuit court, Exhibit C)
2. Removal was effected under 28 U.S.C. §§ 1441, 1446 and 1447.

3. Upon removal, this state Case 16DR96-08993 became U.S. District Court Case 05-0281-CV-W-GAF.
4. Pursuant to 28 U.S.C 1446 (d),

“28 U.S.C. 1446 (d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.”
5. On July 19, 2005 the former wife, through counsel moved the district court to dismiss U.S. District Court Case 05-0281-CV-W-GAF. (attached Exhibit D)
6. On October 25, 2005 the district court dismissed all claims. It did not remand. (attached Exhibit A)
7. By action of the former wife, through counsel, and the U.S. District Court’s order of dismissal this action was reposed.
8. The former wife is estopped from any further proceedings as she requested and was granted dismissal of this action in federal court.
9. The former wife had a choice to move for remand or move for dismissal and chose the latter. Her error, or the error of her counsel, to request dismissal and to be granted dismissal does not recreate jurisdiction in the circuit court.
10. The former wife did not avail herself of a procedure to permit the Circuit Court of Jackson County Missouri to reassume jurisdiction, i.e., a motion for remand, therefore she must be estopped from attempting such resumption now.

11. The former wife nor her counsel appealed the U.S. District Court order of dismissal entered almost three (3) years ago.
12. The state court's former ultra vires resumption of jurisdiction is the subject of U.S. District Court Case 06-0752-CV-W-GAF.
13. On January 9, 2007, lacking all jurisdiction as he had dismissed Case 05-0281-CV-W-GAF 15 months earlier, U.S. District Court Judge Gary A. Fenner *sua sponte* and *ultra vires* entered an order of remand.
14. The actions of the U.S. District Court under Case 06-0752-CV-W-GAF are now the subject of the U.S. Eighth Circuit Court of Appeals Case 07-3728, which remains open as of September 27, 2008 (attached Exhibit E).
15. On May 9, 2008, Respondent Les Wight, Esq., petitioned the state court for a contempt citation. (attached Exhibit F).
16. Mr. Wight did not serve a copy on Mr. Stanley at the time of filing as required by Missouri Supreme Court Rule 43.01(a).
17. On August 8, 2008, the Honorable Judge Grate accepted Mr. Wight's *ex parte* application and issued an Order to Show Cause.
18. On August 30, 2008 the Order to Show Cause was literally dropped at the feet of Mr. Stanley's sister-in-law by the process server. (attached Exhibit G)
19. On September 6, 2008, Mr. Stanley timely moved the court to vacate the order, refusing the order for lack of jurisdiction. The Honorable Jack Grate was noticed, by U.S.P.S. Registered Mail RB 504 232 468 US. (attached Exhibit H)

20. On September 12, 2008 the Honorable Judge Grate denied Mr. Stanley's Motion to Vacate, without reasoned opinion. (attached Exhibit I)

### **Reasons to Issue Writ**

#### **Jurisdiction**

This Court has jurisdiction to issue this writ of prohibition. The Missouri Constitution, Article V, Section 4, "...and districts of the court of appeals may issue and determine original remedial writs..."

#### **Writ of Prohibition**

"Prohibition will lie only to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent exercise of extra-jurisdictional power." *State ex rel. Linthicum v. Calvin*, 57 S.W.3d 855, 856-57 (Mo. banc 2001) (See also State of Missouri, ex rel. Bobby Joe Mayes, Relator v. The Honorable John D. Wiggins, Respondent, Mo. SC85657, citing State ex rel. Linthicum v. Calvin, 57 S.W.3d 855, 856-57 (Mo. banc 2001)).

#### **Irreparable Harm of Respondents' Conduct**

In this instance the trial court's entertaining hearings is *ultra vires*, i.e. without jurisdictional power. The conduct of the trial court has caused Mr. Stanley, loss of liberty interest and irreparable harm. Issuance of a writ of Prohibition to the trial court is proper.

#### **Ultra Vires Conduct**

An official act does not become *ultra vires* if the officer was statutorily empowered to act but may have acted erroneously. Wyoming v. United States, 279 F.3d

1214, 1229-30 (10th Cir. 2002). Here the Respondents were not statutorily empowered to act. On the contrary, they were explicitly prohibited from acting pursuant to 28 U.S.C. § 1446 (d).

This case presents precisely the sort of exceptional circumstances that warrant the exercise of this Court's prohibition jurisdiction.

### **Suggestions in Support**

#### **Effect of Removal to Federal Court**

28 U.S.C. § 1446 (d), Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is **remanded**. [Emphasis added]

The removal of a case from state court to federal court effects a transfer of the *entire* action, including all the parties and *all the claims*, to the federal court. City of Gainesville v. Brown-Crummer Investment Co., 277 U.S. 54, 60 (1928); Arango v. Guzman Travel Advisors Corp., 621 F.2d 1371, 1376 (5th Cir. 1980); Murphy v. Kodz, 351 F.2d 163, 167 (9th Cir. 1965); Hartlein v. Illinois Power Co., 601 N.E.2d 720, 726 (Ill. 1992). A defendant, upon filing a notice of removal, “shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk” of the state court, which effects the removal. 28 U.S.C. § 1446(d). At that point, “the [s]tate court shall proceed no further unless and until the case is remanded.” *Id.*

“After compliance with the removal statute[,] the jurisdiction of the [s]tate court is suspended until there has been a remand.” Levine v. Lacy, 204 Va. 297, 300, 130 S.E.2d

43, 445 (1963); accord Yarnevic v. Brink's, Inc., 102 F.3d 753, 754 (4th Cir. 1996); Maseda v. Honda Motor Co., 861 F.2d 1248, 1254 (11th Cir. 1988); Allman v. Hanley, 302 F.2d 559, 562 (5th Cir. 1962). “Any subsequent proceedings in state court on the case are void ab initio.” Maseda, 861 F.2d at 1254-55 (citing Steamship Co. v. Tugman, 106 U.S. 118, 122 (1882)); accord South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir. 1971). A later determination that the removal petition was not proper does not change that outcome. See Maseda, 861 F.2d at 1254 n.11; Moore, 447 F.2d at 1073; United States v. Silbergliitt, 441 F.2d 225, 227 (2d Cir. 1971); Lowe v. Jacobs, 243 F.2d 432, 433 (5th Cir. 1957).

A proper filing of a notice of removal immediately strips the state court of its jurisdiction. 28 U.S.C. § 1446(d), State of South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir. 1971).

The subject case was dismissed, not remanded, by the Federal court. Therefore, all state court proceedings subsequent to the March 24, 2005 removal are void *ab initio*.

### **Effect of Dismissal**

If the federal court concluded it lacked removal jurisdiction then its proper course of action was remand. Instead it chose to order dismissal. The effect of dismissal is noted in *C.I.R. v. Sunnen*, 333 U.S. 591, 597 (1948),

“The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment. See von Moschzisker, 'Res Judicata,' 38 Yale L.J. 299; Restatement of the Law of Judgments, 47, 48.”

Mrs. Stanley's Attorney in the removed action apparently, mistakenly and erroneously moved the federal court for dismissal instead of remand of the removed action. The federal court granted the defendant's request for dismissal. Remand never occurred until fifteen months later when in the 42 U.S.C. § 1983 action district court Judge Fenner realized all the mistakes in the removed action. Judge Fenner's ultra vires sua sponte post judgment order remanding the removed case while he was deliberating on the civil rights action is further proof the defendants lacked all jurisdiction in the prior attempts to resume jurisdiction.

### **Sua Sponte Remand 15 Months After Dismissal**

It is Mr. Stanley's position that federal judge, the Honorable Gary Fenner, lacked all jurisdiction to remand this action fifteen months after he dismissed it. The properness of this sua sponte remand is an issue in an appeal before the U.S. Eighth Circuit Court of Appeals in Mr. Stanley's Civil rights action appeal (Appeal Case Number 07-3728. It is Mr. Stanley's position the Respondent's lack all jurisdiction to initiate the challenged civil contempt proceeding until final ruling by the U.S. Courts whether remand of this action to the state court was valid.

### **Prayer for Relief**

Mr. Stanley has suffered irreparable harm from the Respondents' *ex parte* and *ultra vires* actions in this matter, i.e loss of liberty interest and denial of civil rights. Relator Mr. Stanley has suffered irreplaceable economic loss and direct expense

preparing documents to preserve his rights since the removal to Federal court on March 24, 2005. Relator, his present spouse, and his family have suffered great emotional distress from the *ultra vires* arrest order(s) already issued, and those that may be issued in response to Relator's refusal to accept the state court's attempts to assert unlawful jurisdiction.

Wherefore Harold R. Stanley, Relator, *pro se*, prays this court issue a writ of prohibition to the 16<sup>th</sup> Judicial Circuit Court, to wit:

1. Proceed no further in action Case Number 16DR96-08993 until and if the U.S. Courts rule that remand in this action was valid;
2. Vacate Order to Show Cause;
3. Vacate Arrest Warrant (Exhibit J);

and provide any other relief that is proper and just.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of October, 2008, I caused a true and accurate copy of the foregoing to be served via U.S. Mail postage prepaid to

The Honorable Jack Grate  
Jackson County Courthouse Annex  
308 W. Kansas  
Independence Mo. 64050

Les D. Wight, Esq.  
Attorney for Marcia E. Stanley  
501 W. Lexington  
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Exhibit D – 19 July 2005 Motion to Dismiss..... D1-D7

Exhibit E – Eighth Circuit Court of Appeals Docket #07-3728 ..... E1-E3

Exhibit F – 9 May 2008 Application for Contempt Citation ..... F1-F3

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Exhibit J – 9 December 2005 Judgment Entry Review of Contempt, and  
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