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STATEMENT OF THE CASE

This case arises out of a marital dissolution action filed in Jackson County, Missouri in December of 2000. The state court (Hon. Jack Grate, presiding) granted dissolution and ordered Harold Stanley to pay certain maintenance payments to Marcia Stanley. In March of 2005, Harold Stanley filed a removal complaint in the United States District Court for the Western District of Missouri alleging 42 U.S.C. § 1983 violations (Case No. 05-0281-CV-W-GAF; Judge Gary Fenner, presiding) arising out of the state court's efforts to enforce its dissolution orders. Upon motion by Marcia Stanley, the federal trial court dismissed Harold Stanley's removal complaint for lack of jurisdiction. The federal trial court stated in its order that it did not have subject matter jurisdiction over the matter and that the domestic relations exception to federal jurisdiction prevented the Court from exercising jurisdiction over the matter.

After the dismissal of Harold Stanley's removal complaint, Judge Grate issued a Notice of Hearing in the state court. Harold Stanley told the state court it did not have jurisdiction over him because the federal court had dismissed his claims but failed to remand the case to state court. In spite of Harold Stanley's argument, the Missouri state court properly continued litigation regarding Harold Stanley's failure to pay his maintenance obligation. Harold Stanley then filed the instant lawsuit, alleging a claim for Declaratory Relief (without specifying the

relief sought, or the grounds for such relief), for Deprivation of Constitutional Rights and Privileges (apparently arising out of the defendants participation in state court proceedings), for Conspiracy to Deprive Persons of Equal Protection of the Laws (again, for participation in state court proceedings), for Intentional Infliction of Emotional Distress, for Injunctive Relief, and for a Writ of Mandamus to the state court.

Judge Grate and Les Wight both filed motions to dismiss, and the federal trial court granted them on January 9, 2007, in a lengthy, detailed written order. Harold Stanley filed a motion for summary judgment on his remaining claims against Marcia Stanley. On November 9, 2007, the federal trial court entered an order dismissing the remaining claims against Marcia Stanley, applying [t]he same analysis the Court applied in dismissing Plaintiff s claims against Wight (Appellant s Addendum, p. 16).

SUMMARY OF THE ARGUMENT

The district court's dismissal of Harold Stanley's claims should be affirmed. Appellee Judge Grate is immune from suit, and he did not act outside his jurisdiction so as to divest him of that immunity.

The other claims of Harold Stanley were properly dismissed because they fail to state a claim upon which relief can be granted. Appellee Marcia Stanley is a private citizen, and therefore is not a state actor for purposes of 42 U.S.C. § 1983. Mr. Stanley has not alleged facts sufficient to show a corrupt conspiracy with a state actor. Moreover, Mr. Stanley's conspiracy claim must also fail because he did not sufficiently plead facts to show a meeting of the minds to harm Mr. Stanley among Judge Grate, Marcia Stanley, and Ms. Stanley's attorney. Finally, Harold Stanley failed to show how merely filing motions in state court and conducting court hearings could constitute outrageous or shocking conduct so as to support a claim for intentional infliction of emotional distress. For all of these reasons, the district court's dismissal of Mr. Stanley's claims should be affirmed.

The reality of the situation is that Mr. Stanley has demonstrated a long and persistent pattern of abusing the judicial system in order to thwart a state court ruling requiring him to pay alimony in a divorce case. Such tactics should not be allowed to continue.

ARGUMENT

Introduction

This appeal is merely the latest iteration of Harold Stanley's long-running attempt to thwart a divorce proceeding by repeatedly abusing the judicial system. Mr. Stanley is unhappy with the Missouri state court's decision to award maintenance payments to his ex-wife, Marcia Stanley, and he has used a variety of legal mechanisms and creative arguments to block any enforcement of that decision. Mr. Stanley's inventive claims¹ are based on a thorough misunderstanding or deliberate obfuscation of well-established legal principles, and they have already cost multiple parties and courts an abundance of resources as well as caused the delay that Mr. Stanley desired. The trial court has seen through Mr. Stanley's contrivances twice now, and it is time for them to be put to an end. Although Marcia Stanley's counsel will set out her arguments in this brief to the best of his ability, he humbly suggests that he can do no better than Judge Fenner's orders (Appellant's Addendum, pp. 4-16), and he commends those orders to the Court of Appeals for a thorough explanation of the legal issues presented here.

¹ Mr. Stanley has pursued his legal actions *pro se*, although he claims to have received guidance from legal counsel along the way (e.g., see Appellant's Brief, p. 1).

Discussion

I. Judicial Immunity of Judge Jack Grate²

Harold Stanley's first argument is that his claims against Judge Grate should not have been dismissed on the ground of judicial immunity. Appellee Marcia Stanley's interests are not directly affected by this issue, but because the judge's status is relevant to the claims against Ms. Stanley, we will briefly discuss that issue.

Mr. Stanley asserts that his first attempt to have the federal district court block the state court divorce proceedings, in which Mr. Stanley filed an ill-advised removal complaint in the Western District of Missouri, divested the state court of jurisdiction and, derivatively, all right to conduct judicial proceedings related to the parties. In fact, he mistakenly refers to all such subsequent proceedings as *ultra vires* and *ex parte*. His argument is that Judge Grate is not immune from the present suit because he lacked jurisdiction to continue conducting hearings in the divorce case after the federal trial court dismissed the removal complaint for lack of jurisdiction.

As noted by Judge Fenner in the trial court (Appellant's Addendum, pp 7-8), Harold Stanley misunderstands the difference between a judge acting completely outside his jurisdiction (as when a probate judge attempts to conduct a criminal

² This brief of Appellee Marcia Stanley will attempt to follow the organizational structure of the Appellant's brief, to the extent possible.

trial) and a judge acting in excess of his jurisdiction (as when a judge mistakenly concludes he has jurisdiction in a matter that would typically come before his court). *See, Duty v. Springdale, Arkansas*, 42 F.3d 460, 462 (8th Cir. 1994). Only the former will remove the judge's immunity from suit, but the latter is the case here (if Mr. Stanley's allegations are taken as true). Where a trial judge draws an incorrect conclusion about his jurisdiction³ in a case that he typically would hear (or, as here, a case that he had presided over for years), the remedy is to seek relief in the state court of appeals; it is not to file a federal lawsuit for violation of constitutional rights and conspiracy. It is abundantly clear that Judge Grate is immune from the suit filed by Harold Stanley.

In addition, the so-called removal complaint was never in the form of a true removal; it consisted of wholly new claims, incorrectly titled removal complaint so as to avoid the fee and inconvenience of filing and serving a new case. Mr. Stanley could not merely remove the actual issues in the divorce case without running afoul of the domestic relations exception to jurisdiction and the *Rooker-Feldman* doctrine, so he created new counterclaims in the divorce case and purported to remove the counterclaims to federal court. In effect, those new claims constituted a new complaint (even if improperly titled as a removal), and filing such a complaint does not divest the state court of jurisdiction. Mr. Stanley's

³ We are certainly not trying to imply that we believe Judge Grate incorrectly exercised jurisdiction. We are merely addressing the arguments of Mr. Stanley.

playing fast-and-loose with his creative pleading cannot be allowed to manipulate both the federal and the state judicial systems so as to dispossess Judge Grate of his judicial immunity from suit. Moreover, even if the removal complaint must be treated as a true removal, Marcia Stanley agrees with Judge Fenner's conclusion that (1) the removal complaint was dismissed, and it was made clear that proper jurisdiction was with the state court, and that (2) a clerical failure to send a formal remand to the state court cannot divest Judge Grate of his immunity.

II. Non-state Actors are not under color of law

A. Attorney-Client Privilege

Mr. Stanley argues that nothing in the complaint . . . infringes the attorney client privilege. Again, it is difficult to discern whether Mr. Stanley misunderstands the legal issues, or is deliberately obscuring them. Neither the defendants nor the trial court based any argument or decision on attorney-client privilege, and Mr. Stanley's argument is totally inapposite. Once again, Mr. Stanley's creative mind is in overdrive.

Mr. Stanley may be misunderstanding the principle that an attorney and his client cannot be guilty of conspiracy within the course and scope of the representation because an agent is merely an extension of the principal and therefore cannot conspire. [A]n identity between agent and principal leads to a legal impossibility in the context of a conspiracy. Two entities which are not

legally distinct cannot conspire with one another. *Macke Laundry Serv. Ltd. Pshp. V. Jetz Serv. Co.*, 931 S.W.2d 166, 176 (Mo. App. 1996). There is no allegation in Mr. Stanley s Petition that Les Wight was acting in any capacity other than as Marcia Stanley s attorney. Therefore, there could be no conspiracy between Les Wight and Marcia Stanley.

B. The Conspiracy Claim

As noted by Judge Fenner, a plaintiff attempting to plead a claim for conspiracy must allege facts to show a mutual understanding, or meeting of the minds, to commit the harm complained of. *Manis v. Sterling*, 862 F.2d 679, 681 (8th Cir. 1988); *Smith v. Bacon*, 699 F.2d 434, 436 (8th Cir. 1983). Harold Stanley s allegations consist of the claim that Marcia Stanley and her attorney filed certain motions in state court (with alleged knowledge that the case had not been remanded from the federal court), and the state court judge ruled in their favor (All Defendants together conspired to deny the Plaintiff his federal constitutional rights by persistent litigation in state court absent any jurisdiction. . . . Petition, ¶ 19 (emphasis added)). Dressing up the allegations with many colorful adjectives and phrases, and the repetition of the phrase acting in concert, cannot turn a routine court proceeding into a conspiracy between the judge and a litigant. Mr. Stanley alleged nothing more. The dismissal of the conspiracy claim should be affirmed.

C. Lay persons under color of state law

The argument here is an extension of the conspiracy argument. As a private citizen, Marcia Stanley cannot violate the constitutional rights of Harold Stanley, except through some type of conspiracy with a state actor. As noted by Judge Fenner, 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 [and/or his client] into a state actor under § 1983 (Appellant s Addendum, p. 13). [Harold Stanley] sets forth no facts which would support an inference that Wight [or Marcia Stanley] engaged in a conspiracy with state actors (Id.). The dismissal of the deprivation of constitutional rights claim should be affirmed.

D. Color of state law, redux

In section D, Mr. Stanley merely reiterates his contention that he has properly pled a § 1983 claim against each of the defendants. For all of the reasons set out above and in Judge Fenner s orders, Mr. Stanley s contention is still wrong.

E. Failure to State Claims upon which Relief can be Granted

In his final argument section (titled, Mr. Stanley Stated Claims Upon Which Relief May be Offered), Mr. Stanley argues that he has standing (another straw-man argument that is irrelevant to any of the points on appeal), and he makes conclusory statements about the sufficiency of his allegations.

Nowhere does he explain how he could state a claim for declaratory relief in Count I without identifying the relief sought or his entitlement to such relief. He does not explain how he could state a claim against non-state actors in Count II for Deprivation of Constitutional Rights and Privileges, or a claim in Count III for Conspiracy, without alleging facts to show a meeting of the minds and a corrupt conspiracy between the non-state actors and a state actor. He also fails to present any argument whatsoever that he properly pled a claim for intentional infliction of emotional distress, much less demonstrate how filing and/or deciding an ordinary motion in state court could be deemed extreme, outrageous conduct that results in bodily harm.⁴ In short, Mr. Stanley's lawsuit does not state any valid claim upon which relief can be granted, and his own argument does not even attempt to show otherwise except by bald conclusions. Mr. Stanley's claims were properly dismissed, and the district court should be affirmed.

CONCLUSION

Harold Stanley has managed to use and abuse both the state and federal court systems for several years to avoid compliance with an order to pay maintenance to his ex-wife. It is time for such tactics to stop. No amount of

⁴ [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, 569 (Mo. App. 1998). [I]t 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. App. 1987).

inventive outhouse-lawyering and exaggerated language can conjure up a cause of action in this case. Judge Fenner correctly dismissed Mr. Stanley's claims (again) and explained each reason for doing so in scholarly detail.

In his Conclusion section, Harold Stanley concedes that if a piece of paper (the formal remand of the removal complaint) had been sent from one court clerk to another court clerk, then he would have no cause of action. However, the lack of such a piece of paper does not indeed, cannot (1) divest a state court judge of his immunity from suit; (2) turn a state court order to pay alimony into a constitutional travesty; (3) turn a motion and hearing by a litigant into a corrupt conspiracy between the judge, the litigant, and her attorney; or (4) change ordinary behavior into outrageous conduct that intentionally inflicts emotional harm. Mr. Stanley's creative (but vague and hollow) allegations and hyperbolic language cannot fabricate a cause of action where it simply does not exist. Harold Stanley failed to plead a valid cause of action, and his case was properly dismissed.

WHEREFORE, Appellee Marcia Stanley respectfully requests that the Court affirm the judgment of the trial court dismissing all claims of Harold Stanley and award Marcia Stanley all chargeable costs of this action, plus such further relief as the Court deems just and appropriate.

Respectfully submitted,

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Certificate of Service

The undersigned attorney hereby certifies that two copies of this brief, plus one electronic version of the brief on CD-ROM, were served via U.S. Mail this 12th day of February, 2008, to each of the following:

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Certification of Compliance

1. This brief complies with the type-volume limitation of Fed.R.App.P. 32(a)(7)(B) because this brief contains 2,549 words, excluding the parts of the brief exempted by Fed.R.App.P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed.R.App.P. 32(a)(5) and the type style requirements of Fed.R.App.P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14-point Times New Roman font.
3. A copy of this brief was converted to PDF format and supplied to the Court on CD-ROM. The file copied to the CD-ROM was scanned for viruses and found to be virus-free.

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