

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

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**PLAINTIFF'S MOTION AND SUGGESTIONS (MEMORANDUM OF LAW) TO DENY  
DEFENDANT THE HONORABLE JACK GRATE'S  
MOTION TO DISMISS**

Plaintiff, *pro se*, with assistance of counsel, pursuant to Local Rules, Rule 7.1

(d)(e) moves this court to deny Defendant The honorable Jack Grate's Motion to Dismiss.

In support he offers,

1. *Rooker-Feldman* Doctrine is inapplicable as the Plaintiff does not request this court to review a state court order. *Exxon Mobil v. Saudi Basic Industries Corp*, 125 S.Ct. 1517 (2005); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1929); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).
2. *Ankenbrandt* Abstention is inapplicable as the Plaintiff does not request a divorce decree, alimony, child custody. *Ankenbrandt v. Richards*, 504 U.S. 689 at 703 (1992); *Elk Grove Unified School District v. Newdow*, 542 U. S. 1 (2004).
3. Judicial Immunity is inapplicable in a motion to dismiss and is an unavailable affirmative defense when the Defendant, as here, clearly lacked all jurisdiction for his ultra vires conduct resulting in the civil rights violated claims. 42 U.S.C. § 1446 (d); *Stump v. Sparkman*, 435 U.S. 349 (1978)

WHEREFORE the Plaintiff prays this court will deny the Defendant's motion to dismiss.

Respectfully submitted,

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November 1, 2006

**SUGGESTIONS TO DENY MOTION TO DISMISS**  
**(Memorandum of Law)**

**Introduction**

This action is a 42 U.S.C. § 1983 action against defendants who willfully conspired, and engaged in ultra vires state court proceedings to deprive the Plaintiff of his civil rights.

After the Plaintiff effected removal of his state court action to federal court, and before remand, the Defendants participated in state court proceedings in the state court with clear absence of all jurisdiction.

The Plaintiff is not attacking his divorce decree. He is attacking the unlawful attempt by the Defendants to enforce the decree when there was a clear absence of all jurisdiction to do so. The action is not a domestic relations action but a civil rights violation action.

Furthermore, in the removal action in federal court the Defendant, Marcia E. Stanley, moved for dismissal. This court dismissed the removed case---it did not remand it. Because the action was never remanded and because it was dismissed --for both reasons--there was a clear absence of all jurisdiction of the state court and the Defendants for their proceedings that resulted in the deprivation of the Plaintiff's civil rights.

### **A. Standard of Review**

*Scheuer v. Rhodes*, 416 U.S. 232 (1974),

When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test. Moreover, it is well established that, in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader.

### **B. Pleadings are Sufficient for 42 U.S.C. § 1983 Claim**

The pleadings readily meet the standard of pleading required for a 42 U.S.C. § 1983 claim against this defendant who claims immunity.

In *GJR Investments, Inc. v. County of Escambia*, 132 F.3d 1359 (11th Cir. 1998), for example, the court stated:

[T]his circuit, along with others, has tightened the application of Rule 8 with respect to § 1983 cases in an effort to weed out nonmeritorious claims, requiring that a § 1983 plaintiff allege with some specificity the facts which make out its claim. **Some factual detail in the pleadings is necessary** to the adjudication of § 1983 claims. This is *particularly true* in cases involving qualified immunity, where we must determine whether a defendant's actions violated a clearly established right. [Emphasis added]

The pleadings easily satisfy this requirement.

### **C. Pleadings are Sufficient for Civil Rights Conspiracy Claim**

*Loubser v Thacker*, 440 F3d 439 (7th Cir. 2006), a 42 U.S.C. § 1983 case,

“The remaining issue is whether the allegations of conspiracy are sufficiently informative to survive dismissal. The issue is close. Although conspiracy is not something that Rule 9(b) of the Federal Rules of Civil Procedure requires be proved with particularity, **and so a plain and short statement will do**, Hoskins v. Poelstra, 320 F.3d 761 (7th Cir. 2003); Walker v. Benjamin, 293 F.3d 1030, 1039 (7th Cir. 2002); Walker v. Thompson, 288 F.3d 1005, 1007 (7th Cir. 2002); see generally Swierkiewicz v. Sorema, N.A., 534 U.S. 506, 512, 122 S. Ct. 992, 152 L. Ed. 2d 1 (2002); Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 168, 113 S. Ct. 1160, 122 L. Ed. 2d 517 (1993), it differs from other claims in having a degree of vagueness that makes a bare claim of "conspiracy" wholly uninformative to the defendant. Federal pleading entitles a defendant to notice of the plaintiff's claim so that he can prepare responsive pleadings. Fed. R. Civ. P. 8(a); Doe v. Smith, 429 F.3d 706, 708 (7th Cir. 2005); Lotierzo v. A Woman's World Medical Center, Inc., 278 F.3d 1180, 1183 (11th Cir. 2002). That is why courts require the plaintiff to allege the parties, the general purpose, and the approximate date of the conspiracy. Walker v. Thompson, *supra*, 288 F.3d at 1007-08; Ryan v. Mary Immaculate Queen Center, 188 F.3d 857, 858-60 (7<sup>th</sup> Cir. 1999).” [Emphasis added]

The pleading are lucid on the dates, parties, and conduct of the defendants in the conspiracy.

#### **D. Rooker-Feldman Doctrine is Inapplicable**

*Exxon Mobil v. Saudi Basic Industries*, 544 US 280 (2005) is now controlling authority on the very narrow application of the *Rooker-Feldman* doctrine (*Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1929); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983)).

*Exxon Mobil* 544 US reaffirmed the very narrow application of the jurisdictional character of the *Rooker-Feldman* doctrine,

*"The Rooker-Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."* [Emphasis added]

The *Rooker-Feldman* doctrine creates a narrow and limited exception to the congressionally mandated structure of dual federal and state jurisdiction, and its sole role is to prohibit federal district courts from conducting de facto appellate review of state-court decisions.

Because the Plaintiff does not contest—in any way, shape, or form—the Missouri trial court’s judgment, *Rooker-Feldman* is simply inapplicable.

Properly understood, the *Rooker-Feldman* doctrine articulates the narrow jurisdictional principle that the subject matter jurisdiction bestowed by Congress on the lower federal courts does not include jurisdiction to review state-court decisions. Because the Appellant’s claims in the federal district court do not challenge a state-court judgment, *Rooker-Feldman* has no application to this case.

In fact, *Rooker-Feldman* properly applies in only *one* circumstance—when the federal plaintiff *challenges* the substance of a previous state-court decision, regardless whether that challenge involves claims that were “actually litigated” previously or claims that are merely “inextricably intertwined” with the previous adjudication. See *Noel v. Hall*, 341 F.3d 1148, 1158 (CA9 2003). (“Only when there is already a forbidden de facto appeal in federal court does the ‘inextricably intertwined’ test come into play.”). *Rooker-Feldman* has only one application—prohibiting de facto federal appeals of state-court judgments.

“In determining the applicability of the *Rooker-Feldman* doctrine, federal courts ‘cannot simply compare the *issues* involved in the state-court proceeding to those raised in the federal-court plaintiff’s complaint,’ but instead ‘must pay close attention to the *relief* sought by the federal-court plaintiff.’” *Hood v. Keller*, 341 F.3d 593, 597 (CA6 2003) (quoting *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 (CA9 2003)).

The *Rooker-Feldman* doctrine asks: is the federal plaintiff seeking to set aside a state judgment, or does he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party? Here the Plaintiff does not seek

to set aside his divorce decree. He does claim the state court proceedings that deprived him of his civil rights, i.e. the contempt and arrest warrants, are ultra vires and therefore void ab initio.

Under *Feldman*, the relevant question is whether the relief sought by the federal plaintiff is actually challenging a prior adjudication. See *Feldman*, 460 U.S., at 483-84 (considering “[t]he difference between seeking review in a federal district court of a state court’s final judgment in a bar admission matter and challenging the validity of a state bar admission rule”); *Noel*, 341 F.3d, at 1163 (“It is a forbidden de facto appeal under *Rooker-Feldman* when the plaintiff in federal district court complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court.”).

See also *Loubser v. Thacker*, 440 F.3d 439 (7th Cir. 2006) for a similar fact pattern in a 42 U.S.C. § 1983 action ruling *Rooker-Feldman* inapplicable.

#### **E. Exhaustion of All State Court Appeals**

Though the Plaintiff was not required to exhaust all state court appeals prior to filing this 41 U.S.C. § 1983 action he did attempt to seek a state court remedy. The Plaintiff filed a Writ of Mandamus to the Missouri State Appellate Court and to the Missouri Supreme Court and was denied review on each. There was no reasoned opinion. The request was for a recognition of the state court proceeding as lacking all jurisdiction. This Federal action is a civil rights violation resulting from that state court ultra vires conduct of the defendants.

#### **F. Ankenbrandt Abstention is Inapplicable**

This action is a civil rights violation action that was the result of ultra vires judicial transgressions in a domestic relations enforcement state court action. The *Ankenbrandt* abstention is inapplicable because the Plaintiff is not asking for a divorce decree, alimony, child custody, nor to alter the status of the parties in relation to marriage. As the Supreme Court as explained in *Ankenbrandt v. Richards*, 504 U.S. 689 at 703 (1992),

"The domestic relations exception is not a prudential limitation on our federal jurisdiction. It is a limiting construction of the statute defining federal diversity jurisdiction, 28 U. S. C. §1332, which "divests the federal courts of *power to issue divorce, alimony, and child custody decrees.*" [Emphasis added]

Appellant's complaint specially does not request a divorce, alimony or child custody decree. Therefore *Ankenbrand* 504 U.S. is inapplicable.

*Ankenbrandt* 504 U.S. is further inapplicable when a constitutional claim predominates or is the gravamen of the action. As the U.S. Supreme Court, Rehnquist concurring, illuminates the narrow application of *Ankenbrand* 504 U.S., in *Elk Grove Unified School District v. Newdow*, 542 U. S. 1 (2004),

"...the domestic relations exception only applies when a party seeks to have a district court issue a "divorce, alimony, and child custody ..."  
3 Cite as: 542 U. S. \_\_\_\_ (2004)

"...on the merits, this case presents a substantial federal question that transcends the family law issue to a greater extent than *Palmore*. The domestic relations exception is not a prudential limitation on our federal jurisdiction. It is a limiting construction of the statute defining federal diversity jurisdiction, 28 U. S. C. §1332, which 'divests the federal courts of power to issue divorce, alimony, and child custody decrees,' *Ankenbrandt*, 504 U. S., at 703. This case does not involve diversity jurisdiction, and respondent does not ask this Court to issue a divorce, alimony, or child custody decree. Instead it involves a substantial federal question about the constitutionality of ..."

"Therefore, the domestic relations exception to diversity jurisdiction forms no basis for denying standing to respondent. When we discussed abstention in *Ankenbrandt*, we first noted that "[a]bstention rarely should be invoked, because the federal courts have a 'virtually unflagging obligation . . . to exercise the jurisdiction given them.'" *Id.*, at 705 (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U. S. 800, 817 (1976)). *Ankenbrandt*'s discussion of abstention by no means supports the proposition that only in the rare instances where "a substantial federal question . . . transcends or exists apart from the family law issue," ante, at 9, should federal courts decide the federal issue. As in *Ankenbrandt*, "the status of the domestic relationship has been determined as a matter of state law, and in any event has no bearing on the underlying [constitutional violation] alleged."

### **G. The Defendant is Not Entitled to Immunity**

The Defendant Grate knowingly acted with complete lack of jurisdiction regarding well known and settled law. *STUMP v. SPARKMAN*, 435 U.S. 349, 357 (1978).

“The Court of Appeals correctly recognized that the necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him. Because ‘some of the most difficult and embarrassing questions which a judicial officer is called upon to consider and determine relate to his jurisdiction . . .,’ Bradley, *supra*, at 352, the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge. A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be *subject to liability only when he has acted in the ‘clear absence of all jurisdiction.’* 7 13 Wall., at 351.” [Emphasis added]

### **H. There was a Well Known Clear Absence of all Jurisdiction**

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.*” [Emphasis added]

Removed had been effected by the filing of the Notice of Filing Notice of Removal in the Jackson County Clerk of Court. (Attached)

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 443, 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. Silberglitt*, 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).

Removal was effected. There never was remand. In addition, the removed action was dismissed. The state court never regained jurisdiction.

### **I. Eleventh Amendment Immunity is Inapplicable**

A Judge is not immune for tortious acts committed in a purely administrative, non-judicial capacity. *Forrester v. White*, 484 U.S. 219, 227-229 (1988); *Stump v. Sparkman*, 435 U.S. at 380. *Mireles v. Waco*, 112 S.Ct. 286 at 288 (1991).

*Hafer v. Melo*, 502 U.S. 21 (1991) is applicable here. State officials can be sued for injunctive relief in their official capacity but may not be sued in their official capacity for damages. State officials can be sued for damages in their personal capacity.

"[S]ince *Ex parte Young*, 209 U.S. 123 (1908)," we said, "it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law." Scheuer, *supra*, at 237. While the doctrine of *Ex parte Young* does not apply where a plaintiff seeks damages from the public treasury, damages awards against individual defendants in federal courts "are a permissible remedy in some circumstances notwithstanding the fact that they hold public office." 416 U.S., at 238 . That is, the Eleventh Amendment does not erect a barrier against suits to impose "individual and personal liability" on state officials under 1983. *Ibid*.

To be sure, imposing personal liability on state officers may hamper their performance of public duties. But such concerns are properly addressed within the framework of our personal immunity jurisprudence. See *Forrester v. White*, *supra*, at 223. Insofar as respondents seek damages against Hafer personally, the Eleventh Amendment does not restrict their ability to sue in federal court.

We hold that state officials, sued in their individual capacities, are "persons" within the meaning of 1983. The Eleventh Amendment does not bar such suits, nor are state officers absolutely immune from personal liability under 1983 solely by virtue of the "official" nature of their acts. [*Hafer* U.S. 502, 30.]

### **Conclusion**

Wherefore for the above reasons the Defendant's Motion to Dismiss must be denied because *Rooker-Feldman* doctrine, *Ankenbrandt* abstention, Eleventh Amendment and judicial immunity are inapplicable. All claims are adequately pled.

### **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 1st Day of November, 2006 to

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