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Memo

To: WHOM IT MAY CONCERN
From: TROMBLY TINDALL P.C.
VOICE PHONE: (810) 385-7344; FAX: (815)425-0657
Date: 10/6/99
Re: SEPTEMBER 30, 1999 DECISION OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MICHIGAN, CASE NO. 98-CV-73896-DT

Enclosed please find Memorandum Opinion and Order of the United States District Court granting Declaratory Judgment against Defendants Wayne County Circuit Court, Wayne County Friend of Court, and, Wayne County Sheriff, declaring that Defendants' use of pre-printed, pre-signed, computer generated Orders to Show Cause and Bench Warrants for the arrest of allegedly delinquent child support payers violates constitutionally guaranteed rights to due process of law under the 4th and the 14th Amendments to the U.S. Constitution.

This decision represents a monumental development that will forever change the manner in which domestic relations and support orders are enforced in Michigan and across the United States. The decision is legally significant for the following reasons:

1. This decision is the **first and the only** case in which a Plaintiff has successfully obtained review and relief from a federal court of allegations of violation of federal constitutional rights by state domestic relations/support enforcement officials. Although numerous cases over the past 30 years have been brought in federal courts throughout the country seeking relief for alleged violations of federally protected constitutional rights by state domestic relations/support officials and state judges, all previous cases across the country have been denied access to and review by the federal courts on grounds of abstention. This is the first and the only case to ever obtain review or relief from a federal court.

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constitutional right to due process of law in state domestic relations/support enforcement proceedings.

3. This decision is the **first and only** case to recognize and declare the existence of a federally protected constitutional liberty interest which must be protected in all state domestic relations/enforcement proceedings.

4. This decision declares that state domestic relations and child support enforcement personnel (prosecutors and Friend of Court) **may not** issue court orders or bench warrants for arrest as they do now throughout most of the state of Michigan and in other states. Such orders and warrants **must** be issued by a judge; and, **only** after legitimate judicial review and consideration of the allegations giving rise to the request for the order/warrant.

5. The decision makes clear that state judges and courts **must** consider and enforce federal constitutional challenges/objections raised by a party to the actions, procedures and practices used by state agencies and courts to enforce domestic relations/support orders.

This decision is particularly timely and has immediate practical significance at this time. Over a period of some years recently, child support enforcement has become a politically hot issue. See, Attachments Nos. 1 and 2, as well as a crucial economic one. Politically, judges and elected law makers have adopted an aggressive enforcement posture in response to increasingly vocal pressure from special interest and voter groups. Economically, states have been subjected to ever increasing pressure from the federal government, through the federal Department of Health and Human Services, to improve state support collection statistics, by practically any available means; and, thereby, reduce state welfare burdens. Incentives to do this have included: federally funded bounties, penalties (reductions) in levels of federal funding for states that do not meet pre-determined federal collection quotas; and, federally assisted/subsidized collection techniques. This immense political and financial pressure has resulted in:

1. Sweeping misuse of civil contempt powers of the courts to arrest and jail alleged delinquent support payers without adequate hearing or trial. See Attachment 3.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL E. TINDALL,

Plaintiff,

Case No. 98-CV-73896-DT

v.

HONORABLE DENISE PAGE HOOD

WAYNE COUNTY FRIEND OF COURT, by: JOSEPH A. SCHEWE, DIRECTOR OF LEGAL SERVICES, and ALAN E. SKROK, STAFF ATTORNEY and ASSISTANT FRIEND OF COURT; WAYNE COUNTY SHERIFF'S DEPARTMENT, by: ROBERT FICANO, SHERIFF; WAYNE COUNTY CIRCUIT COURT, FAMILY DIVISION, by: KIRSTEN FRANK KELLY, PRESIDING JUDGE, MICHAEL F. SAPALA, CHIEF JUDGE,

Defendants.
_____/

MEMORANDUM OPINION AND ORDER

I. FACTS

Plaintiff Michael E. Tindall filed the instant suit under 42 U.S.C. § 1983 claiming that his constitutional rights are being violated by the Defendants' enforcement of Plaintiff's child support obligations. Plaintiff claims the following: 1) that M.C.L.A. § 552.628 provides for an unconstitutional suspension of an occupational license (Count III); 2) that the show cause orders issued by the Friend of the Court and Wayne County Circuit Court are illegal (Count IV); 3) that the bench warrants issued by Defendants are illegal (Count V); and 4) that the referee and judicial hearings are illegal (Count V).[1]

[1] Count I, entitled "Jurisdiction" does not state a claim but merely sets forth the jurisdictional basis of Plaintiff's Complaint. Count II, entitled "General Allegations," also does not state a specific claim but merely sets forth the factual basis of Plaintiff's claims found in Counts III through V.

Plaintiff was divorced by a Judgment of Divorce entered in December 1991 by the Wayne County Circuit Court. From 1992 through the present, Plaintiff claims he has been the subject of about eight show cause orders issued by the Friend of the Court during referee and judicial hearings. Plaintiff claims he has been illegally incarcerated without proper notice, hearing, opportunity to defend or be represented by counsel. Plaintiff states that he has orally and in writing objected to the procedures before the Wayne County Circuit Court, by complaint for Superintending Control in the Michigan Court of Appeals and by complaint for Superintending Control in the Michigan Supreme Court. These complaints were denied.

This matter is now before this Court on the various Defendants' Motion to Dismiss and Plaintiff's Motion for Summary Judgment. Responses were filed and a hearing was held on the matter.

II. ANALYSIS

A. Subject Matter Jurisdiction

1. Abstention Factors

Although not addressed by the parties, the Court must first determine whether it has subject matter jurisdiction over Plaintiff's Complaint. Plaintiff alleges Section 1983 claims in his Complaint. Inasmuch as Plaintiff is seeking federal review of a State Court order, this Court has no subject matter jurisdiction over such a claim.

A United States District Court has no authority to review final judgments of a state court judicial proceedings. Review of such judgments may be had in the United States Supreme Court. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983). To the extent that a District Court is requested to review a State Court's order, the District Court lacks subject-matter

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particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. Review of those decisions may be had only in this (U.S. Supreme Court) Court. 28 U.S.C. § 1257.

Feldman, 460 U.S. at 485-486. Federal courts require that a plaintiff raise his federal constitutional

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Court has noted the competence of state courts to adjudicate federal constitutional claims. Feldman, 460 U.S. at 483. Principles of equity, comity and federalism in certain circumstances counsel abstention in deference to ongoing state proceedings. Younger v. Harris, 401 U.S. 37 (1971). In Younger, the Supreme Court held that a federal court should not interfere with a pending state criminal proceeding except in the rare situation where an injunction is necessary to prevent great and immediate injury. Id. at 44. The Supreme Court has applied abstention to state civil proceedings which involve important state interests and to a variety of state administrative proceedings. Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. 423 (1982). The Supreme Court has enumerated a three-part test to determine abstention:

1) Whether the proceedings involved constitute an ongoing state judicial proceeding;
2) Do the proceedings implicate important state interests; and
3) Is there an adequate opportunity in the state proceedings to raise constitutional challenges?

Id. at 432.

2. Ongoing State Judicial Proceeding

In this case, the underlying proceeding involved is enforcement of Plaintiff's child support obligations under the divorce judgment entered by the Wayne County Circuit Court. If a state action is pending when the federal complaint was filed, the federal action must be dismissed. Hicks v. Miranda, 422 U.S. 332 (1975). Whether there is a pending state judicial proceeding, the Supreme Court has held that "[a] judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist." New Orleans Public Service, Inc. v. Council of the City of New Orleans, 491 U.S. 350, 370 (1989). So long as state court judicial

review is available, Younger abstention applies. Fieger v. Thomas, 74 F.3d 740, 745 (6th Cir. 1996).

The first requirement of the Younger abstention has been met. There is no dispute that the state proceedings in this case involve the enforcement of Defendant's child support obligations under a divorce judgment entered by the Wayne County Circuit Court. Plaintiff has not shown that he has appealed any of the orders entered by the Wayne County Circuit Court. Plaintiff did file a Complaint of Superintending Control with the Michigan Court of Appeals and with the Michigan Supreme Court. The requests for Superintending Control sought a stay of the proceedings before the Wayne County Circuit Court and to determine the fitness of Judge William Giovan to preside over the case. (Exs. E and F to Plaintiff's Complaint) Both courts denied Plaintiff's Complaint for Superintending Control. In Michigan, superintending control is an extraordinary power that may be invoked when the plaintiff demonstrates the defendant's failure to perform a clear legal duty and the absence of an adequate legal remedy. In re Recorder's Court Bar Ass'n v. Wayne Circuit Court, 443 Mich. 110, 134 (1993). Superintending control orders are used to determine "if the inferior tribunal, upon the record made, had jurisdiction, whether or not it exceeded that jurisdiction and proceeded according to law." In re People v. Burton, 429 Mich. 133, 139 (1994). The review by the Michigan appellate courts on a superintending control complaint is limited to questions of law and is not available when the plaintiff has an adequate legal remedy through an appeal. Id. When an appeal is available, the complaint for an order of superintending control must be dismissed. M.C.R. 3.302((D)(2). Appeal procedures to the Michigan Court of Appeals are governed by M.C.R. 7.200 *et seq.* and to the Michigan Supreme Court by M.C.R. 7.300 *et seq.*

The Court finds that there is currently a pending state judicial proceeding before the Wayne County Circuit Court involving Plaintiff's child support obligations under a divorce judgment.

law–involve a paramount state interest. Mann v. Conlin, 22 F.3d 100, 103 (6th Cir. 1994); Parker v. Turner, 626 F.2d 1, 3 (6th Cir. 1980).

4. Adequate Opportunity to Raise Constitutional Issues

The third requirement for abstention–that there be an adequate opportunity in state proceedings to raise constitutional challenges–has also been met. Abstention is appropriate unless state law clearly bars the interposition of the constitutional claims. Moore v. Sims, 442 U.S. 415, 425-26 (1979). The burden rests on the federal plaintiff to show that state procedural law barred presentation of the plaintiff's claims. Id. at 432.

As discussed above, Plaintiff has the opportunity to challenge the constitutionality of the procedures through the Michigan appellate courts. Plaintiff has not shown that he has challenged Defendants' procedures based on constitutional reasons before the Wayne County Circuit Court–in the form of motions--let alone before the Michigan appellate courts. Plaintiff's Complaints for Superintending Control do not address the constitutional challenges he has brought before this Court. The Michigan Courts have not had the opportunity to review Plaintiff's constitutional challenges to the procedures before the Wayne County Circuit Court nor the constitutionality of M.C.L.A. § 552.628 which authorizes the Michigan circuit courts to suspend an occupational license where an

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harassment, or flagrant unconstitutionality. Fieger, 74 F.3d at 750. The Younger Court has stated that "the possible unconstitutionality of a statute 'on its face' does not in itself justify an injunction against good-faith attempts to enforce it," especially absent "any showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief." Younger, 401 U.S. at 54. Any challenged statute must be "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." Id. at 53-54.

Plaintiff claims that he has shown that Defendants' actions to enforce child support orders were made in bad faith. Plaintiff states that Defendants are acting in bad faith by blindly and blatantly ignoring the constitutional principles established by the federal constitution which are recognized in Michigan. Plaintiff addresses three instances where Defendants have violated his constitutional rights.

The first instance is that the Friend of the Court personnel, with the Circuit Court's

complicity–issues show cause orders which are pre-printed, pre-signed by the Circuit Court judge, without review by Mr. Joseph A. Schewe for the Friend of the Court or a Circuit Court judge. Plaintiff states that he does not specifically challenge the constitutionality of the Friend of the Court and Enforcement Acts but that because the Friend of the Court does not follow the rules and statutes, his Fourth Amendment rights to procedural due process have been violated.

The second instance in which Plaintiff claims a violation of his constitutional rights is that the Friend of the Court personnel and the Circuit Court do not follow the rules and procedures in handling contempt proceedings. Plaintiff claims that he was not given alternatives to incarceration under M.C.L.A. §§ 552.635 and 552.637 nor given notice as to the standard of proof the contemnor must meet to rebut the statutory presumption under M.C.L.A. § 552.633. Plaintiff claims that if the Friend of the Court attorney is not satisfied with any offers by the party in arrears, a hearing before a referee is then immediately conducted. Plaintiff states that the referee hearing is conducted on hearsay statements from the Friend of the Court attorney, no evidence or testimony is taken, no cross examination is allowed, and the rules of evidence are not applied or enforced nor findings of fact or conclusions are made, as required by M.C.R. 3.215(E). If either party objects to the referee's oral decision, the parties are ordered to immediately appear before a Wayne County Circuit Court judge. The Friend of the Court attorney then orally recites to the judge what he claims the referee decided earlier. Neither the judge nor the parties are provided a written referee recommendation. Neither the parties nor the Friend of the Court attorney is sworn to testify before the Judge. The rules of evidence are not followed by the judge nor cross-examination allowed. The alleged contemnor is not advised by the judge of his right to counsel nor the existence of statutory alternatives to incarceration. Plaintiff claims the hearing usually lasts less than ten (10) minutes and usually results

in the incarceration of the alleged contemnor.

The third instance of violation of Defendant's constitutional rights is that the Circuit Court may restrict Plaintiff's ability to work under M.C.L.A. § 552.628. This statute allows the Circuit Court to suspend a professional license if child support obligations are not met. Plaintiff argues that M.C.L.A. § 552.628 violates his substantive and procedural due process rights.

Plaintiff submitted documentary evidence and an affidavit to support his arguments. Defendants submitted no documentary evidence to rebut Plaintiff's factual allegations that the Friend of the Court personnel and the Circuit Court do not follow the statutory provisions or the court rules. Defendants declined to submit any evidence or testimony from the Court at the hearing.

2. Pre-printed, Pre-Signed Order to Show Causes and Bench Warrants

As noted previously, Defendants have not submitted any evidence to rebut Plaintiff's evidence that the Friend of the Court, without review by a Circuit Court judge, issues a bench warrant at will. Plaintiff has presented sufficient evidence to support his allegation that the Friend of the Court personnel, with the Circuit Court's complicity, issues show cause orders which are pre-printed, pre-signed by the Circuit Court judge.

Plaintiff submitted bench warrants issued by the Circuit Court which he claims are pre-printed and issued without review and without the actual signature of a Circuit Judge. Attached to Plaintiff's Complaint, is a transcript of a May 14, 1997 Show Cause Hearing where the Friend of the Court attorney, Shelly A. Payne, admits to issuing a bench warrant for August 21, 1996. (5/14/97 hrg., p. 4) When the Court asked Ms. Payne, "who authorized the bench warrant" Ms. Payne responded, "I did." (5/14/97 hrg. p. 9) The court then asked, "Can you do [sic] on your own?" Ms. Payne responded, "Yes, I do that all the time. There's a failure to appear the Friend of the Court has

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court *may petition for an order to show cause* why the party should not be held in contempt.

(2) The order to show cause must be served personally or by ordinary mail at the party's last known address.

(3) The hearing on the order to show cause may be held no sooner than seven days after the order is served on the party. If service is by ordinary mail, the hearing may be held no sooner than nine days after the order is mailed.

(4) If the party fails to appear in response to the order to show cause, *the court may issue an order for arrest.*

M.C.R. 3.208(B) (italics added). M.C.L.A. § 552.631(1) state as follows:

(1) If any person has been ordered to pay support under a support order and fails or refuses to obey and perform the order, and if an order of income withholding is inapplicable or unsuccessful, a recipient of support or the office of the friend of the court may commence a civil contempt proceeding by *filing in the circuit court a petition for an order to show cause* why the delinquent payer should not be held in contempt. If the payer fails to appear in response to an order to

> show cause, *the court may issue a bench warrant* requiring that the payer be brought before the court without unnecessary delay to answer and plead that neglect or refusal.

M.C.L.A. § 552.631(1) (italics added).

Based on the unrebutted evidence submitted by Plaintiff, the Court finds that Plaintiff has submitted sufficient evidence to support his claim that it is the Wayne County Friend of the Court's practice to issue orders to show cause and bench warrants using pre-printed forms with the judge's signature already affixed without the judge's review and approval as required by M.C.R. 3.208(B) and M.C.L.A. § 552.631. Plaintiff's Complaint and affidavit stating that no Circuit Court judge reviews or actually signs the show cause orders and the bench warrants is unrebutted. No evidence to the contrary was submitted by Defendants, even after the Court invited Defendants to do so at the hearing.[2] Plaintiff has met the exception to abstention on the ground that Defendants have violated Plaintiff's due process rights under the Fourth Amendment, guaranteed by the Fourteenth Amendment, by failing to follow the procedures set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631. An individual's right to liberty is at stake when contempt proceedings are initiated by the Friend of the Court. The Friend of the Court's actions, without actual approval by the Circuit Court judges, are outside the statutory mandate of M.C.L.A. § 552.641 and M.C.R. 3.208(B).

3. Contempt Proceedings

Plaintiff has not submitted sufficient evidence to support his allegations that the Friend of

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[2] Although the Court must view the motion in the light most favorable to the nonmoving party, where "the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986).

the Court personnel and the Circuit Court do not follow the rules and procedures in handling contempt proceedings. Plaintiff has also not submitted sufficient evidence to show that Plaintiff was not given alternatives to incarceration under M.C.L.A. §§ 552.635 and 552.637 nor given notice as to the standard of proof the contemnor must meet to rebut the statutory presumption under M.C.L.A. § 552.633. Plaintiff has failed to submit sufficient evidence to show that the rules of evidence are not followed by the referee or the Circuit Court.

M.C.L.A. § 552.633 allows the court to find a payer in contempt "if the court finds that the payer is in arrears and if the court is satisfied that the payer has the capacity to pay out of currently available resources all or some portion of the amount due under the support order." Upon finding a payer in contempt, the court has the discretion to enter an order which includes committing the payer to the county jail. M.C.L.A. § 552.633(1)(a)-(e). M.C.L.A. § 552.635(1) allows the court to find a payer with capacity to pay arrearage in contempt "if the court is satisfied that by the exercise of diligence the payer could have the capacity to pay all or some portion of the amount due under the support order and that the payer fails or refuses to do so." Upon finding a payer in contempt, the court has the discretion to enter an order, including committing the payer to the county jail. M.C.L.A. § 552.635(2)(a)-(c). M.C.L.A. § 552.637 sets forth the provisions of the order of commitment pursuant to M.C.L.A. §§ 552.633 and 552.635. Nothing in these three statutes require a judge to notify a payer as to the alternatives which may be found in these statutes.

Plaintiff has not submitted any evidence, other than Plaintiff's conclusory allegations, to support his allegations that the rules of evidence are not followed during the hearings before the friend of the court, the referee or the circuit court judge. Disagreements with a judge's findings under M.C.L.A. §§ 552.633, 552.635 and 552.637 and any disputed evidentiary issues before the

Friend of the Court, the Referee or the Circuit Court judge may be brought before the state and appellate courts. None of these allegations are "flagrantly and patently violative of express constitutional prohibitions" as required by the Younger abstention doctrine. Younger, 401 U.S. at 53-54. The Court will abstain from ruling on these issues.

4. M.C.L.A. § 552.628

The Court will not address the issue that M.C.L.A. § 552.628 is unconstitutional because Plaintiff has not been subjected to the provisions of that statute. Plaintiff has not shown that there is a subject matter in controversy regarding the constitutionality of M.C.L.A. § 552.628. As the Supreme Court stated in Younger, "the possible unconstitutionality of a statute 'on its face' does not in itself justify an injunction against good-faith attempts to enforce it." Here, there has been no allegation that any attempts have been made to implement the statute. The Court will abstain from ruling on the constitutionality of M.C.L.A. § 552.628 because Plaintiff has not shown any attempt to enforce the statute.

C. Anti-Injunction Statute

Defendants Michael F. Sapala and Kirsten Frank Kelly claim that 28 U.S.C. § 2283 expressly forbids injunctive relief against judicial officers. 28 U.S.C. § 2283 states:

> A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

The Supreme Court in Mitchum v. Foster, 407 U.S. 225, 242 (1972), found that Section 1983 is an explicit exception to the anti-injunction statute. The Sixth Circuit expressly adopted those Supreme Court findings in Martin-Marietta Corp. v. Bendix Corp., 690 F.2d 558, 562 (6th Cir. 1982).

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Alternatively, the Wayne County Circuit Court judges and the Friend of the Court employees claim they are absolutely immune from the suit. Plaintiff agrees that judicial officers and friend of the court employees are absolutely immune from claims for monetary damages under Section 1983 while acting in their official capacities. Plaintiff does not seek damages. Plaintiff seeks a declaration that the enforcement hearings and procedures conducted by the friend of the court and its referees are unconstitutional.

It is well settled that judicial officers are absolutely immune from claims for damages under Section 1983. Imbler v. Pachtman, 424 U.S. 409 (1976). Friend of the Court employees are also absolutely immune from claims for damages whether acting as judicial designees, including referees or as prosecutors, such as Friend of the Court attorneys seeking enforcement of child custody and support orders. Watts v. Burkhart, 978 F.2d 269 (6th Cir. 1972). In Pulliam v. Allen, 466 U.S. 522, 541-42 (1984), the Supreme Court held that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in his/her judicial capacity. Equitable relief against a judge, as with any other defendant, is limited to cases where there is "a showing of an inadequate remedy at law and of a serious risk of irreparable harm. ..." Pulliam, 466 U.S. at 537.

On October 19, 1996, Public Law 104-317, the Federal Courts Improvement Act of 1996, was signed in to law. Section 309 of the Act amended 42 U.S.C. § 1983 as follows:

> [I]n any action brought against a judicial officer for an act or

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Hili v. Sciarrotta, 140 F.3d 210, 215 (2nd Cir. 1998); Ackermann v. Doyle, 43 F.Supp.2d 265, 272 (E.D. N.Y. 1999).

The legislative history of P.L. 104-317 clearly indicates that Congress intended to protect judicial officers from Section 1983 claims for injunctive relief, as well as damages. The Senate Report on the bill states:

> This section restores the doctrine of judicial immunity to the status it occupied prior to the Supreme Court's decision in Pulliam v. Allen, 466 U.S. 522 (1984) ...
>
> In Pulliam, the Supreme Court broke with 400 years of common-law tradition and weakened judicial immunity protections. The case concerned a State magistrate who jailed an individual for failing to post bond for an offense which could be punished only by a fine and not incarceration. The defendant filed an action under 42 U.S.C. 1983, obtaining both an injunction against the magistrate's practice of requiring bonds for nonincarcerable offenses, and an award of costs, including attorney's fees. The Supreme Court affirmed, expressly holding that judicial immunity is not a bar to injunctive relief in section 1983 actions against a State judge acting in a judicial capacity, or to the award of attorney's fees under the Civil Rights Attorney Fees Award Act, 42 U.S.C. 1988. Those statutes are now amended to preclude awards of costs and attorney's fees against judges for acts taken in their judicial capacity, and to bar injunctive relief unless declaratory relief is inadequate.
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> against a State judge, unless declaratory relief is unavailable or the State judge violated a declaratory decree. ...
>
> This section does not provide absolute immunity for judicial officers. Immunity is not granted for any conduct "clearly in excess" of a judge's jurisdiction, even if the act is taken in a judicial capacity. Moreover, litigants may still seek declaratory relief, and may obtain injunctive relief if a declaratory decree is violated or is otherwise unavailable. Section 311 restores the full scope of judicial immunity lost in Pulliam and will go far in eliminating frivolous and harassing lawsuits which threaten the independence and objective decision-making essential to the judicial process.

P.L. 104-317, Senate Report No. 104-366, Sept. 9, 1996.

It is clear that Congress amended Section 1983 to limit suits against judicial officers absent a showing that the judicial officer violated a declaratory decree or there is no declaratory decree available. In this case, there is no allegation that the judicial officers have violated a declaratory decree. Plaintiff sought declaratory relief, in addition to injunctive relief, which is available pursuant to 28 U.S.C. § 2201. Since there is no allegation that the judicial officers in this case have violated a declaratory decree, absolute judicial immunity bars Plaintiff's request for injunctive relief pursuant to 42 U.S.C. § 1983. Based on the amendment to 42 U.S.C. § 1983, it appears that the anti-injunction statute, 28 U.S.C. § 2283 now applies to 42 U.S.C. § 1983 claims with the limitations set forth in Section 1983. Plaintiff's claim for injunctive relief is denied.

E. Declaratory Relief

1. Five Factors

As noted previously, in addition to injunctive relief, Plaintiff has sought declaratory relief. 28 U.S.C. § 2201 provides in pertinent part:

[redacted]

> 1) whether the declaratory action would settle the controversy; 2) whether the declaratory action would serve a useful purpose in clarifying the legal relations in issue; 3) whether the declaratory remedy is being used merely for the purpose of "procedural fencing" or "to provide an arena for a race for res judicata"; 4) whether the use of a declaratory action would increase friction between our federal and state courts and improperly encroach upon state jurisdiction; and 5) whether there is an alternative remedy which is better or more effective.

Id.

2. First Factor / Settle the Controversy

The only claim remaining in this case is whether Defendants violated Plaintiff's due process constitutional rights when the Friend of the Court personnel, without the Circuit Court's review, issued show cause orders which are pre-printed and pre-signed by the Circuit Court judge but are not reviewed pursuant to M.C.R. 3.208(B) and M.C.L.A. § 552.631. Plaintiff claims a liberty interest created by the state court rules and statutes under the due process clause. Plaintiff does not claim that M.C.R. 3.208(B) and M.C.L.A. § 552.631 are unconstitutional but that Defendants failed to follow the procedures outlined under the rule and statute.

violation under the constitution, it must be shown that "the state court's application of its constitutionally adequate standard was so erroneous as to raise an independent due process violation." Id.

Based on the unrebutted evidence submitted by Plaintiff, he has established that Defendants' application of the state procedural rules violated his due process right. When show cause orders and bench warrants for a person's arrest are issued against a person, that person is facing a loss of liberty which the state cannot impose without notice and a meaningful opportunity to defend. The rules set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631 were enacted to protect a person's right to proper notice and to have independent review of the show cause order and bench warrant, other than that of Friend of the Court personnel who prosecute arrearage claims. The issuance of show cause orders and bench warrants on pre-printed form with the judge's signature already affixed to the form at the

discretion of Friend of the Court personnel and without subsequent review by a judge violates Plaintiff's due process rights under the Fourth Amendment, guaranteed by the Fourteenth Amendment.

The Court's declaration that Defendants' failure to follow the procedures set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631 violated Plaintiff's due process rights settles the controversy between Plaintiff and the Defendants as to whether Plaintiff's due process rights have been violated.

3. Balancing of the Remaining Factors

The Court's declaration clarifies the legal relations in issue. The Court's declaration establishes Defendants' duties toward Plaintiff and shows that Defendants should meaningfully follow the procedures set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631 before issuing show cause orders or bench warrants.

There may be some showing that Plaintiff is using this action for the purpose of "procedural fencing" in that Plaintiff may wish to avoid child support payments as ordered by the state court. The Court has made it clear that the Court will not disturb any findings by the Circuit Court on the issue of child support payments. The sole issue before this Court is the due process constitutional violation noted above.

The Court does not find that declaratory relief would increase friction between our federal and state courts and improperly encroach upon state jurisdiction. This Court's sole focus is whether Defendants have violated Plaintiff's due process rights by failing to meaningfully follow the procedures set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631. The Court makes no finding as to the appropriateness of the child support order issued and any prosecution to collect under the order so long as Plaintiff's due process rights are protected.

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IT IS FURTHER ORDERED that Defendant Kelly's Motion to Dismiss **(Docket No. 13, filed September 28, 1998)** is GRANTED IN PART and DENIED IN PART as more fully set forth above.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment **(Docket No. 15, filed September 28, 1998)** is GRANTED IN PART and DENIED IN PART as more fully set forth above.

IT IS FURTHER ORDERED that Plaintiff's Motion to Supplement Complaint **(Docket No. 27, filed March 24, 1999)** is MOOT.

IT IS FURTHER ORDERED that Defendant Wayne County Friend of the Court's Motion to Quash Plaintiff's Subpoena **(Docket No. 32, filed April 2, 1999)** is MOOT.

IT IS FURTHER ORDERED that Defendants Sapala and Kelly's Motion to Quash Findling Subpoena and for Protective Order **(Docket Nos. 36-1 and 36-2, filed April 5, 1999)** is MOOT.

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel Production of Documents and Deposition of Subpoenaed Witness **(Docket No. 37, filed April 6, 1999)** is MOOT.

IT IS FURTHER ORDERED that Declaratory Judgment is entered in favor of Plaintiff as to the due process claim on Defendants' application of the rules and procedures set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631 only as more fully set forth above.

IT IS FURTHER ORDERED that the Court ABSTAINS as to the Plaintiff's remaining claims and those claims are DISMISSED.

IT IS FURTHER ORDERED that Plaintiff's request for injunctive relief is DENIED.

DENISE PAGE HOOD
United States District Judge

DATED: SEP 30 1999

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DEPARTMENT, by: ROBERT PICANO, SHERIFF, WAYNE COUNTY CIRCUIT COURT, FAMILY DIVISION, by: KIRSTEN FRANK KELLY, PRESIDING JUDGE, MICHAEL F. SAPALA, CHIEF JUDGE,

Defendants.
_____/

JUDGMENT

In accordance with the Memorandum Opinion and Order entered this date and the Court having entered an order granting Plaintiff's Motion for Summary Judgment in favor of Plaintiff and against Defendants as to the due process claim as more fully set forth in the opinion, and dismissing the remaining claims based on abstention,

Accordingly, declaratory judgment is entered in favor of Plaintiff and against Defendants on the due process claim issue as more fully set forth in the opinion. Judgment is entered in favor of Defendants and against Plaintiff on the remaining claims.

DAVID J. WEAVER
CLERK OF COURT

Approved:

By: _____
Deputy Clerk

DENISE PAGE HOOD
United States District Judge
DATED: SEP 30 1999
Detroit, Michigan