

30 April 05

**IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA**

Family Division

Case No. 50197 DR004137XXDIFD

**In Re Marriage of
WILLIAM A. CABANA
Petitioner, Former Husband, pro se**

and

**SHARON ANN MAYO f/k/a
SHARON ANN CABANA
Respondent/Former Wife.**

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**SHARON R. BOCK
CLERK & COMPTROLLER
FAMILY DIVISION**

PETITIONER'S MOTION TO DENY CONTEMPT AND TO TERMINATE ALIMONY

Comes now WILLIAM A. CABANA, pro se, requesting this court to deny Respondents Motion for Contempt and to Terminate Alimony. In support he offers that the Motion for Contempt is predicated upon the constitutionality of F.S. §61.08 effected in the Final Order of Dissolution of Marriage.

1. The Respondent moves this court to declare §61.08 as impermissibly infringing Florida Constitution Article I Section 23, Right to Privacy, Article I Section 2 Basic Rights, in the Privacy Protected Zone of personal decisions relating to marriage, i.e. to dissolve his marriage.
2. This defense to the Motion of Contempt to deny is grounded in the United States Constitution; Article I Section 23 of the Florida Constitution, the Privacy Amendment; Fla. Con. Article I Section 2, Basic Rights; and Section 86.011 et seq., Florida Statutes.

Jennings & England Reservation

3. WILLIAM A. CABANA reserves all his federal and state constitutional claims for subsequent litigation in federal court by making on the record, at this outset, a reservation as to the disposition of the entire case by the state courts to preserve access to the federal forum. Fields v. Sarasota Manatee Airport Authority, 953 F.2d 1299, 1303 (11th Cir. 1992) citing Jennings v. Caddo Parish School Bd., 531 F.2d 1331 (5th Cir. 1976).
4. WILLIAM A. CABANA requests this court adjudicate his state law constitutional challenge of §61.08 in the context of this contempt proceeding as violation of the Florida Constitution Article I Section 23 and Article I Section 2 and Conflicting with Connor v. Southwest Florida Regional Medical Center, Inc., 668 So. 2d 175 (Fla. 1995).
5. WILLIAM A. CABANA requests this court to review and incorporate but not adjudicate his federal constitutional challenges to the statutes. England v Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964). He asks this court to consider federal constitutional law when it deliberates on the state law challenge raised but he does not ask for the federal claims to be adjudicated.
6. WILLIAM A. CABANA plans to ask the federal court to adjudicate his federal claims in the event this court and Florida Appellate courts rule adversely on his state claims.
7. WILLIAM A. CABANA is before this court involuntarily because the state of Florida, and SHARON ANN MAYO has applied, and is enforcing §61.08 against him. He must defend himself because the statutes authorize, and this Circuit Court has retained jurisdiction.
8. WILLIAM A. CABANA, because of possible Rooker-Feldman and Younger abstentions does not have federal court available to him at this time to adjudicate these state constitutional claims.

Incorporation of Federal Materials

9. This Court and all parties are noticed that WILLIAM A. CABANA incorporates all federal law as may be applicable for consideration by this court when it deliberates on his state law constitutional challenge.

a. F.S. §61.08 impermissibly infringes the U.S. Constitution 14th Amendment due process clause Right of Privacy in the privacy protected zone of the personal decision relating to marriage to dissolve a marriage. Littlejohn v. Rose, 786 F.2d 785, 786 (6th Cir. 1985) (citing Zablocki v. Redhail, 434 at 385); Loving v. Virginia, 388 U.S. 1, 12, 87 S.Ct. 1817 (1967); Zablocki v. Redhail, 434 US 374 (1978); Planned Parenthood v. Casey, 505 U.S. 833, (1992).

b. F.S. §61.08 impermissibly infringes the U.S. Constitution 13th Amendment ban on involuntary servitude. United States v. Kozminski, 487 U.S. 931, 942 (1998)

c. F.S. §61.08 impermissibly infringes the U.S. Constitution 14th Amendment equal protection clause as marital status is a suspect class, wealth is a suspect class, and the statute impacts a fundamental right. Shapiro v Thompson, 394 U.S. 618 (1969); San Antonio School District v. Rodriguez, 411 U.S. 1 (1973)

In support he offers:

10. Florida Statutes Chapter 86 provisions are to be liberally construed (Florida Statutes § 86.101; Olive v. Maas, 811 So.2d 644 (Fla. 2002).

11. This Court has jurisdiction pursuant to Florida Statutes § 86.011 to address the constitutionality of Florida Statutes Chapter 61 postdissolution permanent spousal support provisions (61.011, 61.031, 61.043, 61.071, 61.08, 61.09, 61.10, 61.12, 61.1301, 61.13015, 61.13016, 61.14, 61.17, 61.18, 61.181, 61.1824).

12. WILLIAM A. CABANA has standing pursuant to Florida Statutes § 86.021 as one who claims an interest, is in doubt, has his rights, status, equitable and legal relations affected by the noted Chapter 61 provisions such that he desires and requires a declaration of rights, status, equitable and legal relations thereunder.

13. Pursuant to Florida Statutes § 86.091 Notice is given to interested parties, i.e. James Zingale, Executive Director, Florida Department of Revenue, and to the Attorney General of the State of Florida.

Statutes

14. Florida Statutes Chapter 61 is entitled "Dissolution of Marriage: Support: Custody."

15. Chapter 61 post dissolution permanent spousal support provision (61.011, 61.031, 61.043, 61.071, 61.08, 61.09, 61.10, 61.12, 61.1301, 61.13015, 61.13016, 61.14, 61.17, 61.18, 61.181, 61.1824) require a former spouse to a marriage with the ability to pay to support the other former spouse with a need, for life, with threat of wage garnishment, lose of driver's license, loss of professional license, contempt and imprisonment.

16. The spousal support provisions mandate that the state invade the marriage, through the judiciary, to examine, evaluate, determine and conclude the terms and nature of the interpersonal relationship, spousal roles, spousal conduct, parental decision making, parenting conduct, economic standard of living, occupations, education, savings, assets, charitable contributions and most importantly the intimate emotional, psychological and physical details of the parties during their marriage to apply a discretionary opinion using an equitable standard in order to implement the statutory provisions.

17. The alimony enforcement sections (§61.14) invade the state Right of Privacy and Property and liberty interest of WILLIAM A. CABANA

Constitution

18. Florida Constitution Article I Section 23 restricts the government from intruding into the private life of any person. “Article I Section 23 Right of Privacy. --Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.”

19. Federal and Florida Constitutions and Judicial rulings have determined the existence of a right of privacy that includes a Privacy Protected Zone of “personal decisions relating to marriage.” (U.S. Constitution Fourteenth Amendment Due Process Clause; Griswold v. Connecticut, 381 U.S. 479 (1965); Carey v. Population Serv. Int'l., 431 U.S. 678, 684-685 (1977); Parenthood v. Casey, 505 U.S. 833, (1992); Zablocki v. Redhail, 434 US 374 (1978); Florida Constitution Article I Section 23; Winfield v. Division of Para-Mutual Wagering, 477 So. 2d 544 (Fla. 1985)), N. Fla. Women's Health & Counseling Servs., Inc. v. State, 866 So. 2d 612, 635 (Fla. 2003) and Littlejohn v. Rose, 786 F.2d 785, 786 (6th Cir. 1985) (citing Zablocki v. Redhail, 434 at 385)

20. Florida Constitution Article I Section 2 states... “**SECTION 2. Basic rights.**--All natural persons, female and male alike, ... have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property.”

21. After this court’s invasion and examination of the intimate details of WILLIAM A. CABANA’S privacy area of marriage the State, through this Court reassigned the property rights between WILLIAM A. CABANA and his spouse.

22. The State, through this Court, redistributed the marital property of WILLIAM A.

CABANA and his spouse pursuant to Florida Chapter § 61.075.

23. The State, through this Court's Order of Final Judgment of Dissolution required WILLIAM A. CABANA to pay postdissolution permanent spousal support.

24. WILLIAM A. CABANA has continuously met his postdissolution spousal support obligation to the best of his economic, physical, mental and emotional capacity.

25. WILLIAM A. CABANA has been retired, of failing health and destitute, i.e. income below the United States Department of Health and Human Services 2004 poverty guideline for single person income.

26. WILLIAM A. CABANA has no legal duty to support the Petitioner pursuant to Connor v. Southwest Florida Regional Medical Center, Inc., 668 So. 2d 175 (Fla. 1995)

27. Were WILLIAM A. CABANA to support the Respondent he would be in worse poverty than he is.

28. SHARON ANN MAYO filed this Motion for Contempt with full knowledge of WILLIAM A. CABANA'S economic plight.

29. WILLIAM A. CABANA filed a financial affidavit March 2004, indicating his inability to pay arrearages in alimony and concurrent amounts of alimony.

30. WILLIAM A. CABANA today is subject to the ongoing threat of Social Security garnishment, and present contempt and imprisonment if he fails to comply with the Final Judgment Order predicated on the above Chapter 61 §61.06 section.

31. WILLIAM A. CABANA has had this Contempt proceeding instituted against him by his former spouse for non-payment of Chapter 61.08 permanent support provisions.

32. WILLIAM A. CABANA is imminently subject to arrest warrants and imprisonment because of the enforcement of a Chapter 61 Final Judgment Order. Such enforcement is part of

Chapter 61, i.e. §61.14.

33. WILLIAM A. CABANA'S Florida Constitutionally guaranteed Right of Privacy (Florida Constitution Article I Section 23 right) and Article I Section 2 Rights have been violated by the State's current contempt judicial proceedings as well as other related judicial proceedings, judicial orders, the Chapter 61 Florida Statutes provisions and the case law those judicial actions are based upon.

34. WILLIAM A. CABANA'S Florida Constitutionally guaranteed Right of Privacy (Florida Constitution Article I Section 23 right) has been violated because the State has failed to express a compelling State interest applied in the least intrusive manner to validate the Chapter 61 Florida Statutes noted above which put him at risk of imprisonment, invade his privacy, and imperil his Article I Section 2 basic rights.

35. Florida Chapter 61 postdissolution permanent spousal support provisions do not serve a State interest sufficiently compelling to override the rights of WILLIAM A. CABANA to his Federal and State constitutionally guaranteed Liberty interest and Right of Privacy in the facts in this case. To the extent that the noted Chapter 61 provisions serve a compelling State interest, that interest is applied in a highly intrusive manner and is at its weakest in the facts of this case.

36. WILLIAM A. CABANA'S Article I Section 2 basic rights have been violated by his being denied such things as the full enjoyment of the fruits of labor and industry, retirement, own property, enjoy the freedom from fear of arrest and imprisonment, enjoy the freedom from the threat of having his Social Security garnished, enjoy the freedom from having adverse credit ratings, enjoy the freedom from the stigma of court proceedings, and to enjoy the remaining few days of his life on Earth, among other pursuits of happiness.

37. WILLIAM A. CABANA'S right to equal protection has been denied him compared with

his former spouse, single persons and many other former married persons on whom the State did not statutorily and judicially, intrude into the intimate details of their marriage and then impose postdissolution permanent spousal support obligations.

38. WILLIAM A. CABANA'S right to equal protection has been denied him by the State compared with his former spouse, single persons and many other former married persons who do not have their liberty imperiled by the threat of contempt and imprisonment related to the postdissolution permanent spousal provisions of Chapter 61.

39. WILLIAM A. CABANA'S right to equal protection has been denied him by the State because of the Florida Judicial System implementing an Affirmative Action Gender based bias program grounded in the Report of the Florida Supreme Court Gender Bias Study Commission (1990) and Gender Bias—Then and Now, Continuing Challenges in the Legal System, The Report of the Gender Bias Study Implementation Commission (1996).

40. WILLIAM A. CABANA'S constitutionally guaranteed Article I Section 2 and Section 23 rights are violated by the State acting in a court of chancery, applying a judicial standard of equity in a self acknowledged Gender Bias setting by a judiciary granted wide discretionary powers.

41. The above noted provisions of Florida Statutes Chapter 61 also fail for reason of vagueness.

42. The vagueness and unpredictability of § 61.14 (1)(a) "the circumstances or the financial ability of either party changes" relating to a modification and or an enforcement of WILLIAM A. CABANA'S Final Order does not provide him enough clarity of notice for him to understand the criteria for which he will be held accountable.

43. Gender Bias—Then and Now, Continuing Challenges in the Legal System, The Report of

the Gender Bias Study Implementation Commission (1996) notices the Florida Courts of the vagueness of the postdissolution permanent spousal support provisions.

44. This lack of statutory predictability when coupled with the threat of income garnishment, arrest and contempt causes the statute to fail for vagueness and ambiguity.

45. The vagueness of the Statutory provisions when coupled with wide judicial discretion applying principles of equity in a setting of Gender Bias and Gender Based Affirmative Action that subject him to a lifetime risk of imprisonment are unconstitutional.

Injunctive Relief

46. WILLIAM A. CABANA has no adequate remedy at law and continues to face imminent and irreparable loss of his rights.

47. Absent expedited consideration and prompt injunction, WILLIAM A. CABANA will continue to suffer substantial and irreparable harm and his rights will continue to be denied before this court can rule.

48. WILLIAM A. CABANA has been, continues to be, and will be imminently further deprived of his Article I Section 2 and Section 23 Rights by the Family Division of this court.

49. Any payments now made to his former spouse will be immediately expended by her as the payments are allegedly for the necessities of life.

50. There will be no way for WILLIAM A. CABANA to recover payments made while he awaits this Court's final Declaratory Order and possible appeals.

51. WILLIAM A. CABANA has the likelihood of prevailing on the merits of this constitutional statutory challenge.

52. This Court has been acting under color of State law in depriving WILLIAM A. CABANA of his constitutional rights because of an unconstitutional statute.

53. This court now, by entertaining and conducting this Contempt proceeding is acting in a ministerial role, not in a neutral adjudicatory role. The former spouse is using the coercive threat of law and the legal process to make WILLIAM A. CABANA work for her benefit till he dies, she dies or she remarries.

54. The former spouse is denying WILLIAM A. CABANA his liberty interest and fundamental rights and property rights while attempting to also deny him his bodily freedom.

55. Both this court and the former spouse in this contempt proceeding are acting under color of state law.

56. WILLIAM A. CABANA has been forced to retain the advice of counsel to vindicate his Right of Privacy because of the continuing risk of imprisonment, and denial of rights imposed by this Court's action rendered under color of state law. He has been forced to incur costs and a reasonable attorneys' fee in connection with this action despite being pro se.

57. 51. WILLIAM A. CABANA is entitled to recover all costs and a reasonable attorneys' fee pursuant to 42 U.S.C. § 1988 and Florida common law as well as costs pursuant to Florida Statutes § 86.081.

Prayer for Relief

“It is well settled that . . . if a law ‘impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional.’”
Harris v. McRae, 448 U.S. 297, 312 (1980) (quoting City of Mobile v. Bolden, 466 U.S. 55, 76 (1980))

WHEREFORE WILLIAM A. CABANA prays that the Court take jurisdiction over this matter, enter such orders as are appropriate to expedite consideration of this motion, and:

1. Deny Motion for Contempt; and

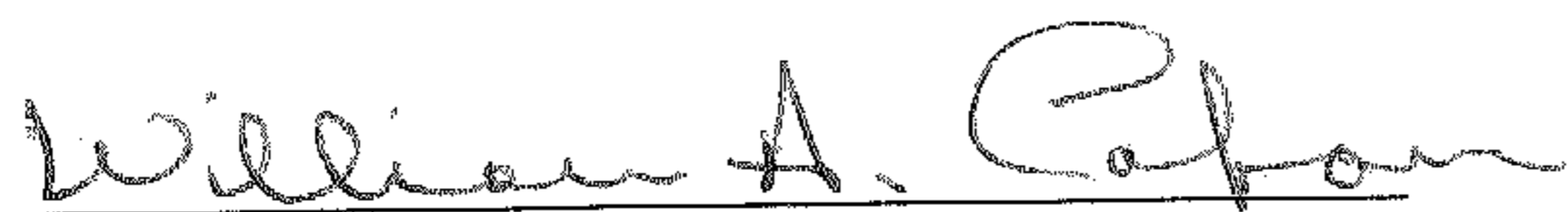
2. Enter an immediate temporary injunction prohibiting the State of Florida through this or any State Court, any agency of the State of Florida, or any interested party to this action from initiating any adverse proceedings or entering, or enforcing any adverse orders against WILLIAM A. CABANA related to the state law claims concerning post-dissolution permanent spousal support provisions of Florida Statutes Chapter 61 pending appellate review by the Supreme Court;

In the alternative,

3. Enter a declaratory judgment that WILLIAM A. CABANA and all Floridians have a constitutional right under the Privacy amendment to be free of the burden of the post-dissolution permanent spousal support provisions of Florida Statutes Chapter 61, i.e. §61.08;
4. Enter a declaratory judgment that WILLIAM A. CABANA has a constitutional right under the equal protection laws of Florida to be free of the burden of the postdissolution permanent spousal support provisions of Florida Statutes Chapter 61;
5. Enter a declaratory judgment that Florida Statutes Chapter 61 postdissolution permanent spousal support provisions impermissibly infringe the Florida Constitution Article I Section 23, and in the alternative violate the Florida Constitution Article I Section 2, and in the alternative, and in the alternative fail for vagueness;
6. Enter a temporary injunction prohibiting the State of Florida through this or any State Court, any agency of the State of Florida, or any interested party to this action from initiating any adverse proceedings or entering, or enforcing any adverse orders against WILLIAM A. CABANA related to the postdissolution permanent spousal support provisions of Florida Statutes Chapter 61;

7. Awarding WILLIAM A. CABANA all costs pursuant to F.S. §86.011, and a reasonable attorneys' fee for the prosecution of this action pursuant to, 42 U.S.C. 1988 and Florida common law.

Respectfully submitted,



WILLIAM A. CABANA, pro se

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2005, I caused a true and accurate copy of this Motion to Deny Contempt and Termination of Alimony to be sent to:

Other party or his/her attorney:

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