

IN THE CIRCUIT COURT
OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY
FLORIDA
CIVIL DIVISION

CASE NO.

In Re: The Marriage of
WIFE
Petitioner/Wife

v.

HUSBAND.,
Respondent/Husband

**MOTION FOR A DECLARATORY JUDGMENT
TEMPORARY INJUNCTIVE RELIEF,
PERMANENT INJUNCTIVE RELIEF,
DISQUALIFICATION AND CERTIFICATION**

**CHAPTER 61 ALIMONY, EQUITABLE DISTRIBUTION, SUPPORT AND CUSTODY
PROVISIONS VIOLATE THE FLORIDA CONSTITUTION ARTICLE I SECTION 23
AND SECTION 2**

Comes now HUSBAND., through counsel, seeking a declaratory judgment, temporary injunctive relief, and permanent injunctive relief, pursuant to the United States Constitution; Article I Section 23 of the Florida Constitution, the Privacy Amendment; 42 U.S.C. § 1983 the Civil Rights Act of 1879; and Section 86.011 et seq., Florida Statutes because Chapter 61 provisions impermissibly infringe the fundamental constitutional rights Article I Section 23, Right to Privacy, and Article I Section 2, Basic Rights.

Further, HUSBAND. seeks an immediate order of disqualification and certification to the District Court of Appeal with suggestion, pursuant to Florida Rules of Appellate Procedure Rule 9.125, to immediately certify to the Florida Supreme Court as a matter of great public importance, because the issues have a great effect on the proper administration of justice throughout the state, and because the law creates an anomaly of conflict of interest for this Court and the District Court of Appeal. In support he offers:

A. Declaratory Judgment (Chapter 86)

1. Florida Statutes Chapter 86 provisions are to be liberally construed (Florida Statutes § 86.101; *Olive v. Maas*, No. SC00-317 Corrected Opinion February 14, 2002 (Fla. 2002)).
2. This Court has jurisdiction pursuant to Florida Statutes § 86.011 to address the constitutionality of Florida Statutes Chapter 61 Dissolution, Support and Custody provisions.
3. HUSBAND. 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.
4. The proper defendant, pursuant to the Florida Attorney General, and Federal case law, is this Circuit Court as the State official charged with enforcing Florida Statutes Chapter 61 provisions. (See also Chapter 61.14)
5. Pursuant to Florida Statutes § 86.091 Notice is given to interested parties, i.e. WIFE, party who initiated the marriage dissolution action, to this Court as the State's enforcing agent, and to the Attorney General of the State of Florida.

B. Statutes

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

7. Chapter 61 Dissolution provisions mandate consideration of alimony award, equitable distribution of property, child support and custody in a Court of Chancery with a standard of equity. The Statutes further provide enforcement authority with wage garnishment, driver license suspension, contempt and imprisonment.

8. The Chapter 61 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, parental spending, economic standard of living, occupations, education, savings, assets, charitable contributions and most importantly the intimate emotional, psychological and physical details of the parties and family during their marriage to apply a discretionary opinion using an equitable standard in order to implement the statutory provisions.

C. Fundamental Constitutional Right to Privacy

9. 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.”

10. *North Florida Women's Health and Counseling Services, Inc., et al, v. State of Florida,* (Fla. July 10, 2003) crystallizes the legal principles to be applied when the Privacy Amendment has attached to a state and the statute's constitutionality is challenged,

“The act [legislation impinging on certain fundamental rights] is presumptively unconstitutional unless proved valid by the State” (p 25)

“It is not enough for the state to say that an interest is compelling. It must be demonstrated through comprehensive and consistent legislative treatment.” (p 40)

1. Marriage and Personal Decisions relating to Marriage, i.e. Dissolution

11. Marriage and personal decisions related to marriage are protected by the Right of Privacy well established in Federal and State law. (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); *Roe v. Wade*, 410 U.S. 113, (1973) ; Florida Constitution Article I Section 23; *Winfield v. Division of Para-Mutual Wagering*, 477 So. 2d 544 (Fla. 1985))
12. Dissolution of Marriage is a personal decision related to marriage.
13. Chapter 61 Dissolution of Marriage provisions (alimony and equitable distribution) are unconstitutional. Under North Florida Women's Health the statute is unconstitutional until the State proves its burden of a compelling State interest applied in the least intrusive manner. There is none.

2. Alimony (§ 61.08)

14. "At common law there was no right to alimony at all." "The so-called 'right' to alimony does not exist as an incident to divorce A vinculo unless it is granted by statute." *Pacheco v. Pacheco*, 246 So.2d 778, 780 (Fla.1971).

15. § 61.08 is unconstitutional. Under North Florida Women's Health the statute is unconstitutional until the State proves its burden of a compelling State interest applied in the least intrusive manner. There is none.

3. Child Support (§ 61.13 and § 61.30)

16. The amount of spending by a parent for a child, i.e. child support, is a parenting decision.

17. Parenting decisions are protected by the Right of Privacy well established in Federal and State law. Santosky v. Kramer, 455 U.S. 745, 753 (1982) “freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment”; Von Eiff v. Azicri, 720 So.2d 510, (Fla.1998) “In Santosky v. Kramer, 455 U.S. 745, 753 (1982), the United States Supreme Court specifically acknowledged the fundamental liberty interest of parents in the "care, custody and management" of their children.”

18. The standard for a compelling state interest to justify State interference is no longer best interest of a child but “prevention of demonstrable harm.” Von Eiff v. Azicri, 720 So.2d 510, (Fla.1998); North Florida Women's Health v. State of Florida, July 10, 2003.

19. There is only a minimal amount of child support the State can justify to prevent harm to a child. Any amount over that minimum intrudes on the fundamental right of parenting and is unconstitutional.

20. The Child Support guidelines (§ 61.30) in excess of the bare minimal amount represents State intrusion in the Privacy Protected zone of spending which is a parenting decision.

21. Chapter 6130 Child support provisions based on income are unconstitutional. The State cannot dictate spending for a child based on income. Under North Florida Women's Health the

statute is unconstitutional until the State proves its burden of a compelling State interest applied in the least intrusive manner. There is none.

4. Child Custody (§ 61.13)

22. Child custody is a parenting right.

23. Parenting Rights are protected by the Right of Privacy well established in Federal and State law, *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) “freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment”; *Von Eiff v. Azicri*, 720 So.2d 510, (Fla.1998) “In *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), the United States Supreme Court specifically acknowledged the fundamental liberty interest of parents in the "care, custody and management" of their children.”

24. Chapter 61 Child Custody provisions are unconstitutional. The State cannot dictate custody terms between a parent and a child absent a showing of demonstrable harm. Under *North Florida Women's Health* the statute is unconstitutional until the State proves its burden of a compelling State interest applied in the least intrusive manner. There is none.

5. § 61.071 Alimony pendente lite; suit money

25. The rationale for alimony, particularly in the dissolution process but before court ordered dissolution, is the concept of Coverture.

26. Coverture was the basis for the doctrine of necessaries, i.e. that a husband was responsible for the care and debts of his wife especially to third parties.

27. Coverture was extinguished with Article X Section 5 Florida Constitution, F. S. § 708 (Married Women's Property), and *Merchant's v. Cain*, 9 So. 2d 373, 375 (Fla. 1942).

28. “The majority’s abrogation of the doctrine of necessities appears to shift the policy of the State by, in effect, requiring each spouse to take care of himself or herself.” Connor v. Southwest Florida Regional Medical Center, Inc., 668 So. 2d 175 (Fla. 1995).
29. The State cannot make economically independent parties in a marriage dependent economically after a marriage.
30. The State making economically independent parties in a marriage economically dependent is a conflict with Connor.
31. Based on Connor and under North Florida Women’s Health the statute (§ 61.071) is unconstitutional until the State proves its burden of a compelling State interest applied in the least intrusive manner. There is none.

D. Fundamental Constitutional Basic Rights Article I Section 2

32. Florida Constitution Article I Section 2 guarantees the fundamental Rights to ...
- “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.”
33. Chapter 61 Dissolution of Marriage statutes alimony, equitable distribution and excess child support violate the fundamental Right to enjoy liberty, pursue happiness, be rewarded for industry, and possess property.
34. North Florida Women’s Health states a statute effecting a fundamentally guaranteed Right (here Basic Rights) is presumed unconstitutional.
35. Once the Right of Privacy is attached to the Statute the burden shifts to the State to prove its burden of a compelling State interest applied in the least intrusive manner. There is

none.

36. Chapter 61 alimony provision takes from Floridians their monies (reward for industry) and gives it to another citizen. Under North Florida Women's Health the statute is unconstitutional until the State proves its burden of a compelling State interest applied in the least intrusive manner. There is none.

37. Chapter 61 equitable distribution provision strips the property rights (Right to possess property) from one Floridian and gives them to another citizen. Under North Florida Women's Health the statute is unconstitutional until the State proves its burden of a compelling State interest applied in the least intrusive manner. There is none.

38. Chapter 61 Child Support provision mandating support based upon income strips Floridians of the Basic Rights of reward for industry and right to possess property. Under North Florida Women's Health the statute is unconstitutional until the State proves its burden of a compelling State interest applied in the least intrusive manner. There is none.

E. Disqualification and Certification

39. This Court as the state official designated(61.08 (4)(b), 61.1301, 61.1301 (1)(a), 61.1301 (1)(b), 61.130 (6)(c), 61.13015 (1), 61.13015 (3)(b)) to enforce the provisions of Chapter 61 and is the defendant in the declaratory and injunctive motion pursuant to Florida Statutes § 86.091 for the constitutionally challenged Chapter 61 provisions applied in the Final Order of Judgment in this case.

40. This Court also has the jurisdiction to rule on this motion related to the constitutionality of the challenged statutes (§ 86.011, § 86.011 (1)).

41. Code of Judicial Conduct Canon 3 E (1) (d) (i) mandates a judge disqualify herself when she is a defendant in an action.

42. This Court has an irremedial conflict of interest as the defendant and adjudicator in this motion.

43. The District Court of Appeal stands in the same shoes as the Circuit Court as a defendant to this action. It suffers the same infirmity of conflict of interest.

44. The Florida Supreme Court serves as the court of last resort and therefore, despite it also standing in the shoes of the Circuit Court, is the only remaining state entity capable of ruling on the issues in this action.

45. The only plausible resolution to this Court's conflict of interest is disqualification and certification of the questions to the District Court of Appeal with the suggestion to immediately certify to the Florida Supreme Court as a matter of great public interest, as a matter that has great effect on the proper administration of justice in the State (Rule 9.125), and because of the apparent conflict of interest created for the courts by the statutes and case law.

F. HUSBAND.

46. WIFE and HUSBAND. requested this Circuit Court grant them a divorce a vinculo.

47. The State of Florida continues to invade his marriage and examine the most intimate details of his marriage in order to take actions with the intention of violating his Basic Right to be rewarded for his industry, right to possession of property, violate his parenting rights, and violate his Right to Privacy.

48. HUSBAND. is today subject to the ongoing threat of Social Security garnishment, driver's license suspension, contempt proceedings and imprisonment based on Chapter 61 provisions and the stigma associated with such State action.

1. Right to Privacy Violated

49. HUSBAND.'s Florida Constitutionally guaranteed right to 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 and invade his personal privacy, parenting right and liberty interest.

50. Florida Chapter 61 do not serve a State interest sufficiently compelling to override the rights of HUSBAND. to his Federal and State constitutionally guaranteed 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 an highly intrusive manner and is at its weakest in the facts of this case.

2. Basic Rights Violated

51. HUSBAND.'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.

3. Right to Equal Protection Violated

52. HUSBAND.'s right to equal protection has been denied him compared with single persons and many other former married persons on whom the State did not statutorily and judicially impose alimony, different child support amounts, vary in equitable distribution and award other than 50% custody rights to each parent.

53. HUSBAND.'s right to equal protection has been denied him by the State compared with single persons and many other former married persons who do not have their liberty imperiled by

the threat of contempt and imprisonment related to provisions of Chapter 61.

4. Right to Equal Protection Violated by Gender Bias

54. HUSBAND.'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).

55. The Florida Supreme Court acknowledges Gender Bias in the Court System based on the findings and conclusions of the Gender Bias report.

56. HUSBAND.'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.

5. Chapter 61 Fails for Vagueness

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

58. The above noted provisions of Florida Statutes Chapter 61 do not permit a reasonable person, here, HUSBAND., to know which statutory and elements of his marriage in Florida Statute 61.08 will apply and how they will be weighed in the court arriving at a judicial order.

59. The vagueness and unpredictability of § 61.14 (1)(a) “the circumstances or the financial ability of either party changes” relating to a modification of HUSBAND.'s Final Order does not provide him enough clarity of notice for him to understand the criteria for which he will be held accountable.

60. Gender Bias—Then and Now, Continuing Challenges in the Legal System, The Report of the Gender Bias Study Implementation Commission (1996) containing findings and conclusions and notices the Florida Courts of the vagueness of the Chapter 61 provisions.

61. This lack of statutory predictability when coupled with the threat of wage garnishment, loss of driver's license, contempt and arrest causes the statute to fail for vagueness and ambiguity. 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.

G. WIFE

62. WIFE is a healthy ___ year old _____.

63. WIFE was worked as _____ for over _____ years.

H. CHILD

64. CHILD is the only child of WIFE and HUSBAND..

65. CHILS is a healthy ___ year old in high school.

66. WIFE and HUSBAND. are both committed to preventing demonstrable harm to CHILD.

I. Injunctive Relief

67. HUSBAND. has no adequate remedy at law and continues to face imminent and irreparable loss of his rights.

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

69. HUSBAND. 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 the _____ CIRCUIT COURT.

70. Any payments now made to WIFE will be immediately expended by her as the payments are allegedly for the necessities of life.

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

72. This Court has been acting under color of State law in depriving HUSBAND. of his constitutional rights because of an unconstitutional statute.

73. HUSBAND. has been forced to retain the undersigned counsel to vindicate his right to 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.

74. HUSBAND. is entitled to recover all costs and a reasonable attorneys' fee pursuant to 42 U.S.C. § 1988, Florida Statutes § 86.081 and Florida common law.

J. Immediate Divorce to be Granted

75. The State is without authority to deny an immediate divorce, a vinculo free of all bonds and duties to each other, to HUSBAND. and WIFE.

76. The State must grant an immediate divorce, a vinculo free of all bonds and duties to each other, to HUSBAND. and WIFE.

K. Jennings Reservation

77. The HUSBAND reserves all rights in this claim for adjudication in federal court.

78. The HUSBAND is before this court involuntarily.

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

1. Disqualify itself and enter an immediate order of certification to the District Court of Appeal and a suggestion to immediately certify to the Florida Supreme Court as a matter of great public importance, as having a great effect on the proper administration of justice in the state (R.A.P. Rule 9.125), and because the law creates an anomalous conflict of interest for the Circuit Court as defendant and adjudicator; AND,
2. Immediately grant HUSBAND. AND WIFE a divorce a vinculo free of all bonds and duties to each other.
3. Enter an immediate temporary injunction prohibiting the State of Florida through this or any State Court including the Family Division of the _____ CIRCUIT 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 HUSBAND. related to the alimony, equitable distribution, child support above the minimal amount in Chapter 61.30 pending appellate review by the Supreme Court;

In the alternative,

4. Immediately grant HUSBAND. and WIFE a divorce a vinculo free of all bonds and duties to each other.
5. Enter a declaratory judgment that HUSBAND. has a constitutional right under the Privacy amendment to be free of the burden of the provisions of Florida Statutes Chapter 61;
6. Enter a declaratory judgment that HUSBAND. has a constitutional right under the equal protection laws of Florida to be free of the burden of the provisions of Chapter 61;

7. Enter a declaratory judgment that Florida Statutes Chapter 61 provisions violate the Florida Constitution Article I Section 23, and in the alternative violate the Florida Constitution Article I Section 2, and in the alternative, the United States Constitution Due Process clause of the Fourteenth Amendment, and in the alternative fail for vagueness;
8. Enter a temporary and permanent 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 HUSBAND. related to the provisions of Florida Statutes Chapter 61;
9. Provide any other relief appropriate.
10. Awarding HUSBAND. all costs and a reasonable attorneys' fee for the prosecution of this action pursuant to 42 U.S.C. § 1988, Florida Statutes § 86.011 and Florida common law.

IT IS HEREBY CERTIFIED that a copy of this pleading has been mailed to attorney for interested parties WIFE and, Assistant Attorney General, this Day of , 2003.

Respectfully submitted,

Counsel for HUSBAND as Cooperating Attorney for the Center for Liberty and Privacy.