UNITED STATES COURT OF APPEALS
FOURTH CIRCIT

WESLEY C. SMITH	)	
Plaintiff/ Appellant	)	
	)	
v.	)	Case No: 07-2146
	)	
CHERI SMITH, et al	)	
Defendants/Appellees	)	

#2 - Case Citations For Informal Brief

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When the biggest threat to a person's property, liberty, or life comes from the legal system set on plunder, you have a better chance of maintaining any of the three without it.

Parental Rights

The rights of parents to the care, custody and nurture of their children is of such character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and such right is a fundamental right protected by this amendment (First) and Amendments 5, 9, and 14. Doe v. Irwin, 441 F Supp 1247; U.S. D.C. of Michigan, (1985).

A parent's right to the companionship, care, custody and management of his or her children is an interest "far more precious" than any property right. May v. Anderson, 345 US 528, 533; 73 S Ct 840, 843, (1952).

The "liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps **the oldest of the fundamental liberty interests recognized by this Court**." Troxel v. Granville, 530 U.S. 57, 65 (2000)

Parent who is wrongfully deprived of physical custody of children without due process has cause of action under 42 USCS 1983; Hooks v Hooks (1985, CA6 Tenn) 771 F2d 935

Father's 42 USCS 1983 lawsuit alleging that county sheriff deputies committed constitutional torts by **wrongfully depriving him of custody of his minor child is not subject to dismissal on ground that plaintiff has various remedies open under state and uniform custody law, since plaintiff is relying on liberty interest to custody of his child, and not merely arguing that certain procedural protections were not afforded him, or that he was deprived of "property" interest.** Elam v Montgomery County (1983, SD Ohio) 573 F Supp 797

Constitutional/Civil Rights

"It will be an evil day for American Liberty if the theory of a government outside supreme law finds lodgement in our constitutional jurisprudence. **No higher duty rests upon this Court than to exert its full authority to prevent all violations of the principles of the Constitution**." Downs v. Bidwell, 182 U.S. 244 (1901)

Congress, I think, concluded that the evils of allowing intentional, knowing deprivations of civil rights to go unredressed far out weighed the speculative inhibiting effects which might attend an inquiry into a judicial deprivation of civil rights." at 567 SANTIAGO V. CITY OF PHILADELPHIA, 435 F.Supp. 136

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws when he receives an injury." Chief Justice Marshall 1 Cranch 137 at 163 (1803).

"Constitutional 'rights' would be of little value if they could be indirectly denied." Gomillion v. Lightfoot, 364 U.S. 155 (1966), cited also in Smith v. Allwright, 321 U.S. 649.644

I agree with the statement of Justice Kennedy that "... The law makes a promise. The promise is neutrality. If that promise is broken, the law ceases to exist. **All that's left is the dictate of a tyrant, or a mob**." ~Quoted in Dababnah v. West Virginia Bd. Of Medicine, 47 F.Supp.2d 734, 749 (S.D.W.Va. 1999)

Abstention

Our disagreement with the district court comes down to the question of whether Catz's action is a "core" domestic relations case, seeking a declaration of marital or parental status, or a constitutional claim in which it is incidental that the underlying dispute involves a divorce. We conclude that the case is best described as the latter. True, the remedy Catz seeks -- a declaration that the Pima County divorce decree is void as a violation of due process -- would seem to "directly impact the marriage status and rights between the husband Plaintiff and his wife." On the other hand, **if the divorce judgment were unconstitutionally obtained, it should be regarded as a nullity**, see Phoenix Metals Corp. v. Roth, 284 P.2d 645, 648 (Ariz. 1955), and **any decree so stating would change nothing at all**. Further, the declaration Catz seeks would not itself address the merits, or ultimately dispose, of Chalker's divorce petition; she would be free to relitigate her marital status in state court. Finally, Catz is **not asking the district court to involve itself in the sort of questions attendant to domestic relations** that are assumed to be within the special expertise of the state courts -- for instance, the merits of a divorce action; what custody determination would be in the best interest of a child; what would constitute an equitable division of property; and the like. Instead, Catz **asks the court to examine whether certain judicial proceedings, which happened to involve a divorce, comported with the federal constitutional guarantee of due process. This is a sphere in which the federal courts may claim an expertise at least equal to that of the state courts**. *Catz v. Chalker*, 142 F.3d 279, 281 (6th Cir. 1998)

A judgment **absolutely void upon its face** may be attacked anywhere, directly or collaterally, whenever it presents itself, either by parties or strangers. **It is simply a nullity, and can be neither the basis nor evidence of any right whatever.** … (citations). Nagel v. P&M Distributors Inc. (1969) 273 Cal.App.2d 176, 180; 78 Cal.Rptr 65. [App. J-18; App. M-48].

Abstention is available in civil cases **only** where state's proceedings implicate overriding state interests and provide **adequate opportunity to raise constitutional challenges**; interest of state in administering its lease laws without federal interference is not of sufficient magnitude to persuade court to invoke abstention. Stewart v Hunt (1984, ED NC) 598 F Supp 1342

While federal courts are normally reluctant to interfere with state court proceedings, in special circumstances such action is authorized by 42 USCS 1983 notwithstanding 28 USCS 2283 comity considerations need not dissuade federal court from acting where **state court's proceedings will not afford due process of law.** New Haven Tenants' Representative Council, Inc. v Housing Authority of New Haven (1975, DC Conn) 390 F Supp 831

Relief under 42 USCS 1983 may not be defeated because relief was not first sought under a state law which provided a remedy. **It has been held that it is no answer that the state has a law which if enforced would give relief.** The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal remedy is involved. McNeese v Board of Education, 373 US 668, 10 L Ed 2d 622, 83 S Ct 1433....

Younger abstention doctrine does not apply to 42 USCS 1983 action brought to restrain state judiciary from conducting private tort litigation in a way that allegedly threatens to violate plaintiff's constitutional rights. Miofsky v Superior Court of California (1983, CA9 Cal) 703 F2d 332

Immunity

"**Power tends to corrupt, and absolute power corrupts absolutely**." - Lord Acton, in a letter to Bishop Mandell Creighton, 1887.

"We conclude that judicial immunity is not a bar to relief against a judicial officer acting in her [his] judicial capacity." Pulliam v. Allen, 466 U.S. 522 (1984); 104 S. Ct. 1781, 1980, 1981, and 1985

State immunity defenses may not be asserted in response to federal civil rights claims. Wilson v Jackson (1986) 66 Md App 744, 505 A2d 913

"**The language and purpose of the civil rights acts, are inconsistent with the application of common law notions of official immunity**. . . " JACOBSEN V. HENNE, 335 F.2d 129, 133 (U.S. Ct. App. 2nd Circ. - 1966) Also see" ANDERSON V. NOSSER, 428 F.2d 183 (U.S. Ct. App. 5th Circ. - 1971)

'The doctrine of judicial immunity from federal civil rights suits dates only from the 1967 Supreme Court decision in Pierson v. Ray, 386 U.S. 547 (1967), which found a Mississippi justice of the peace immune from a civil rights suit when he tried to enforce illegal segregation laws. Until this time, several courts had concluded that Congress never intended to immunize state-court judges from federal civil rights suits. See, for example, McShane v. Moldovan, 172 F.2d 1016 (6th Cir. 1949). 2435 U.S. 349 (1978)

I answer it is **better to invade the judicial power of the States than permit it to invade, strike down, and destroy the civil rights of citizens**, A judicial power perverted to such uses should be speedily invaded. ... And if an officer shall intentionally deprive a citizen of a right, knowing him to be entitled to it, then he is guilty of a willful wrong which deserves punishment." " Congressional Globe, 39th Cong., 1st sess. 1680 (1866) (presidential veto message to Congress). at 1837 (remarks of Rep. Lawrence).

"Our own experience is fully consistent with the common law's rejection of a rule of judicial immunity. We never have had a rule of absolute judicial immunity. At least seven circuits have indicated affirmatively that there is no immunity... to prevent irreparable injury to a citizen's constitutional rights..."

"Subsequent interpretations of the Civil Rights Act by this Court acknowledge Congress' intent to reach unconstitutional actions by all state and federal actors, including judges... The Fourteenth Amendment prohibits a state [federal] from denying any person [citizen] within its jurisdiction the equal protection under the laws. Since a State [or federal] acts only by its legislative, executive or judicial authorities, the constitutional provisions must be addressed to those authorities, including state and federal judges..."

"The Supreme Court has made it clear that the doctrine of **immunity should not be applied broadly and indiscriminately, but should be invoked only to the extent necessary to effect its purpose.** Gregory v. Thompson, 500 F.2d 59, 63-64 (9th Cir. 1974)

Official immunity, after all, 'is not a badge or emolument of exalted office, but an expression of a policy designed to aid in the effective functioning of government.' Barr v. Matteo. 360 U.S. 564, 572-573, 79 S.Ct. 1335, 1340, 3 L.Ed.2d 1434 (1959) " Gregory v. Thompson, 500 F.2d 59, 61 (9th Cir. 1974

"Absolute immunity, however, is 'strong medicine, justified only when the danger of [officials' being] deflect[ed from the effective performance of their duties] is very great.'[40] (Posner, J., dissenting). 792 F2d, at 660

"**immunity does not extend to a person who acts for the state, but [who] acts unconstitutionally**, because the state is powerless to authorize the person to act in violation of the Constitution." Althouse, Tapping the State Court Resource, 44 Vand. L. Rev. 953, 973 (1991).

The U.S. Supreme Court, in Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case **stripped of his official or representative character** and is subjected in his person to the consequences of his individual conduct. **The State has no power to impart to him any immunity** from responsibility to the supreme authority of the United States."

If a judge does not fully comply with the Constitution, then his orders are void, In re Sawyer, 124 U.S. 200 (1888), he/she **is without jurisdiction, and he/she has engaged in an act or acts of treason.**

State law providing for payment by state of judgment for civil rights violation against state official in individual capacity does not bar suit against individual in individual capacity. Barger v Kansas (1985, DC Kan) 620 F Supp 1432

"**No man [or woman] in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity**. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it." Butz v. Economou, 98 S. Ct. 2894 (1978); United States v. Lee, 106 U.S. at 220, 1 S. Ct. at 261 (1882)

A civil rights suit against state officials is not a suit against the state, however, if full relief can be obtained from the defendant officials without requiring the state to take any affirmative action Board of Supervisors v Ludley (CA5 La) 252 F2d 372, cert den 358 US 819, 3 L Ed 2d 61, 79 S Ct 31 and cert den 358 US 820, 3 L Ed 2d 61, 79 S Ct 32.

"Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." Olmstad v. United States, (1928) 277 U.S. 438

The determination of whether a suit in federal court against state officers is a suit against the state rests with the federal court, and state action in amending its constitution to make school officials special agencies of the state and to provide that the state withholds consent to suits against it through suits against such officials is **ineffective to prevent the bringing of such suits in federal court**. Board of Supervisors v Ludley

11th Amendment immunity does not prevent an action in federal court against a state official for *ultra vires* actions beyond the scope of statutory authority, or pursuant to authority deemed to be unconstitutional. Pennhurst, supra, 465 U.S. at 101-102, n. 11; Scham v. District Courts, 967 F. Supp 230, 232-233 (S.D.Tex. 1997).

... District Court does have jurisdiction under 28 USCS 1331 to review **due process** claims and claims of **noncompliance** with statutory directives or applicable regulations. Virginia ex rel. Commissioner, **Virginia** Dept. Of Highways & Transp. v Marshall (1979, CA4 Va) 599 F2d 588.

11th Amendment does not bar suit against state officials in their individual capacities, even if arising from their official acts, Hafer v. Melo, 502 U.S. 21, 30-31 (1991), unless the claim will "run to the state treasury" under state law. Reyes v. Sazan, 168 F.3d 158, 162-163

"**Government immunity violates the common law maxim that everyone shall have remedy for an injury done to his person or property**." FIREMAN'S INS/ CO. OF NEWARK, N.J. V. WASHBURN COUNTY, 2 Wis.2d 214, 85 N.W.2d 840 (1957)

Immunity fosters neglect and breeds irresponsibility, while liability promotes care and caution, which caution and care is owed by the government to its people." RABON V. ROWEN MEMORIAL HOSP., INC, 269 NSI. 13, 152 S.E.2d 485, 493 (1967)

Public officials, **including judges, were not immune from suit** for preventive relief under public accommodations provisions of civil rights act of 1964 (42 USCS 2000a et seq.) where intimidation, threats, and coercion had been used to prevent Negroes from exercising their rights thereunder. United States v Clark (DC Ala) 249 F Supp 720.

"There is no such thing as a power of inherent sovereignty in the government of the United States... **In this country, sovereignty resides in the people,** and Congress can exercise power, which they have, by their Constitution, entrusted to it. All else is withheld." Juliard v. Greeman, 110 U.S. 421 (1884)
A judge may be held liable under the statutes for an act done clearly in excess of his jurisdiction, and known by the judge to be such - Johnson v MacCoy (CA9 Cal) 278 F2d

"Second, **a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction**.[29] Mireles v. Waco, 502 US 9, 116 L Ed 2d 9, 14, 112 S Ct 286 (US 1991)

When a judicial officer acts entirely without jurisdiction or **without compliance with jurisdiction requisites** he may be held civilly liable for abuse of process even though his act involved a decision made in good faith, that he had jurisdiction. U.S. Fidelity & Guaranty Co. (State use of), 217 Miss. 576, 64 So. 2d 697

When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost. Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326

14th Amendment

If there is any conflict between the provisions of the Constitution and an amendment, the amendment must control, under the well-understood rule that the last expression of the will of the lawmaker prevails over an earlier one. Schick v United States, 195 US 65, 49 L Ed 99, 24 S Ct 826

Under the Fourteenth Amendment, it has the power to counteract and **render nugatory all state laws and proceedings** which have the effect of abridging any of the privileges or immunities of citizens of the United States, to deprive them of life, liberty, or property without due process of law, or to deny to any of them the equal protection of the laws (Anderson v St Paul, 226 Minn 186, 32 NW2d 538)

Every state power is limited by the inhibitions of the Fourteenth Amendment - Southern R. Co. v Virginia, 290 US 190, 78 L Ed 260, 54 S Ct 148

"We should, of course, not protect a member of the judiciary "who is in fact **guilty of using his powers to vent his spleen upon others**, or for any other personal motive not connected with the public good." at 564 ". . .the judge who knowingly turns a trial into a "Kangaroo" court? Or one who intentionally flouts the Constitution in order to obtain conviction? **Congress, I think, concluded that the evils of allowing intentional, knowing deprivations of civil rights to go unredressed far out weighed the speculative inhibiting effects which might attend an inquiry into a judicial deprivation of civil rights**." at 567 SANTIAGO V. CITY OF PHILADELPHIA, 435 F.Supp. 136

Suits against counties and municipal corporations of state were maintainable in district court, without state's consent, where other requisite jurisdictional elements existed. United States v **Prince William County** (1934, DC Va) 9 F Supp 219, affd (CA4 Va) 79 F2d 1007, cert den 297 US 714, 80 L Ed 1000, 56 S Ct 590

Equal Protection / Conspiracy

[S]ex, like race and national origin, is an immutable characteristic determined by the accident of birth .. .and the sex characteristic frequently bears no relation to ability to perform or contribute to society. Thus, to deprive members of a class founded on gender of equal protection or equal privileges and immunities without any justification is to act in an irrational and odious manner hence, with an invidiously discriminatory animus. 584 F.2d at 1243. Lake v Arnold, UNITED STATES COURT OF APPEALS, No. 96-3412

To withstand constitutional challenge under the equal protection clause of the Fourteenth Amendment, **classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives**. Craig v Boren (1976) 429 US 190, 50 L Ed 2d 397, 97 S Ct 451.

42 USCS 1985 is not limited to cases involving racial discrimination. Krieger v Republic Van Lines, Inc. (1977, SD Tex) 435 F Supp 335, 15 BNA FEP Cas 392, 15 CCH EPD par 8026

42 USCS 1985(3) does not require that targets of conspiracy be members of particular racial group, and it is agreement vel non among alleged conspirators to single particular group or class for discriminatory interference with constitutional rights that defines class for purposes of $1985(3) Hobson v Wilson (1982 DC Dist Col) 556 F Supp 1157

gender-based discriminations must serve important governmental objectives, and the discriminatory means employed must be substantially related to achievement of those objectives. Wengler v Druggists Mut. Ins. Co. (1980, US) 64 L Ed 2d 107, 100 S Ct 1540

A state statutory scheme which imposes alimony obligations on husbands but not wives violates the equal protection clause of the Fourteenth Amendment of the United States Constitution; to withstand scrutiny under the equal protection clause, classification by gender must serve important governmental objectives and must be substantially related to achievement of those objectives, and a statutory scheme may not be upheld on the basis of the state's preference for an allocation of family responsibility under which the wife plays merely a submissive dependent role. Childs v Childs (1979, 2d Dept) 69 Ad2d 406, 419 NYS2d 533, cert den and app dismd (US) 64 L Ed 2d 253, 100 S Ct 1824.

Essential element of conspiracy claim is existence of agreement between 2 or more persons to commit illegal act; plaintiff **need not show that such agreement was express**, but conspiracy may be **implied from circumstances**; showing of conspiracy must often be met by circumstantial evidence inasmuch as **conspirators rarely formulate their plans in ways susceptible to be proved by direct evidence**; pleading requirements under 1985 required at least minimum factual support of existence of conspiracy. Hunt v Weatherbee (1986, DC Mass) 626 F Supp 1097

Second most important element of cause of action under 42 USCS 1985(3), after intent, is proof of conspiracy; **if party has potential to stop illegal activity but fails to act to do so, then that party may be said to have impliedly conspired in such illegalities.** Dickerson v United States Steel Corp. (1977, ED Pa) 439 F Supp 55, 15 BNA FEP Cas 752 15 CCH EPD par 7823, 23 FR Serv 2d 1429

‘The contention that a conspiracy existed which deprived the petitioner of rights guaranteed by federal law makes each member of the conspiracy potentially liable for the effects of that deprivation. **Liability arises from membership in the conspiracy and from traditional notions that a conspirator is vicariously liable for the acts of his co-conspirators.** Liability does not arise solely because of the individual’s own conduct. Some personal conduct may serve as evidence of membership in the conspiracy, but the individual’s actions do not always serve as the exclusive basis for liability. Slavin v. Curry, 574 F.2d 1256, 1263 (5th Cir.1978), **In stating that the county could be held liable not only for the sheriff’s participation in the conspiracy, but could be held directly or vicariously liable as well for the actions of his alleged coconspirator,** we carefully distinguish

this premise for vicarious liability from that prohibited by Monell, in which 'the sole nexus between the employer and the tort is the fact of the employer-employee relationship.' Monell, 436 U.S. at 693, 98 S.Ct. at 2037

Proof of gross statistical disparity may itself constitute prima facie case of intentional pattern and practice discrimination. Pennsylvania v International Union of Operating Engineers (1978, ED Pa) 469 F Supp 329

Sex discrimination comes within scope of class-based animuses covered by $1985(3) Dudosh v Allentown (1985, ED Pa) 629 F Supp 849,

Due Process

Under the line of United States Supreme Court cases which has interpreted the guarantees of due process of law in the Federal Constitution's Fifth and Fourteenth Amendments to include a substantive component which **forbids the government to infringe certain "fundamental: liberty interests at all, no matter what process is provided**, unless the infringement is tailored to serve a compelling state interest-such substantive due process analysis must begin with a careful analysis of the asserted right, for the doctrine of judicial self-restraint requires the Supreme Court to exercise the utmost care whenever the court is asked to break new ground. Reno v Flores (1993, US) 123 L ed 2d 1, 113 S Ct 1439

The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects a property interest only from deprivation by state action; private use of state-sanctioned private remedies or procedures does not rise to the level of state action, b**ut when private parties make use of state procedures with the overt, significant assistance of state officials, state action may be found.** Fulsa Professional Collection Services, Inc. v Pope (1988, US) 99 L Ed 2d 565, 108 S Ct 1340.

Ex Parte conferences, hearings or Orders denying parental rights or personal liberties are unconstitutional, cannot be enforced, **can be set aside in federal court, and can be the basis of suits for money damages**. RANKIN V. HOWARD, 633 F.2d 844 (1980); GEISINGER V. VOSE, 352 F.Supp. 104 (1972)