

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

David Martin

v.

Attorney General Kwame Raoul, Judge Gregory Emmett Ahern Jr., Unnamed Cook County
Clerks, Cook County, Chief Deputy Clerk Gretchen Peterson, Unknown employee of the Illinois,
Department of Employment Security

Appeal No: 24-1915

MOTION TO DECLARE STATE COURT ORDER VOID

I David Martin, the Plaintiff respectfully moves this honorable court to declare the state court order for body attachment void. The state court order was entered post removal on August 10th 2023. The state court order is in violation of 28 U.S. Code § 1441 and 1446. In support of my motion, I state the following:

BRIEF STATEMENT OF FACTS

There were two cases in the state court of appeals cases. Both appeals were based of off the same circuit court case number. Both cases were designated as being related. On September 8th 2022, my initial state court appeals case was dismissed because I still have claims pending in state court. That logic applied to the second appeals case. It may have appeared that I filed a federal complaint while a state court

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

appeal was pending. In reality this is not true. Both appeals was over long before I filed my federal complaint... I may return to the state court of appeals once all my claims have been heard in the circuit court.

I filed a section 1983 complaint in the U.S. District Court. In my complaint, among many things, I requested declaratory and injunctive relief. Citing Pulliam v. Allen, 466 U.S. 522 (1984), which permits federal courts to grant such relief against state court judges. The state court case was removed in accordance to 28 U.S. Code § 1441 and 1446. The state court acknowledge the removal on November 11th, 2023 and April 26, 2023.

U.S. District Judge Andrea Wood held numerous Oral status hearings. **(Docket # 1 – 54)**. On November 30th, 2023 Judge Wood agreed that the case was properly removed, and that I had a right to challenge Ahern's orders. She said that she would enter a judgment on January 25th 2024. However, a judgment was never entered, and the case was eventually transferred to Judge Harjani.

Soon after the transfer, District Court Judge Harjani dismissed my complaint and denied my motion for a temporary restraining citing it as moot. **(Docket # 61)**

In his order, he stated that a state court appeal was pending when I filed my case, and that the U.S district court should not adjudicate my claim because of equity, comity, and federalism principles. His order indicates that my complaint was filed to right several wrongs done to me in the past. Among which was a "failure of Judge Ahern to

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

certify a bystander report—interfered with his ability to appeal in state court” Harjani found that “A judge enjoys absolute immunity for an act or admission taken in their judicial capacity. 42 U.S.C. § 1983; see also *Kowalski v. Boliker*, 893 F.3d 987, 999 (7th Cir. 2018)... Judge Ahern is afforded absolute judicial immunity for the actions in the Amended Complaint and must be dismissed.” **(Docket # 62)**

ARGUMENT

PLAIN LEGAL ERROR

I argue that Judge Harjani’s dismissal was improper and based on a clear misinterpretation of my claims. His orders indicates that I am seeking to right past wrongs and that Ahern has judicial immunity. I am not seeking to right past wrongs done by Ahern. I am seeking declaratory and injunctive relief, or any other remedy that would allow me to appeal Judge Aherns judgment in state court. My complaint clearly indicates that I am seeking prospective relief. In the complaint, I argued that “**Pulliam v. Allen, 466 US 522 - Supreme Court 1984 establishes that the United States District Courts has jurisdiction to provide injunctive and declaratory relief. The issue at hand is that Judge Ahern is refusing to produce an accurate record so that I may appeal his judgment... Without a record, I am unable to effectively appeal.**” **(Docket # 10 page 14).**

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

The defendants, also understood that I was seeking declaratory and or Injunctive relief stating that **“Plaintiff seeks declarative and injunctive relief against Judge Ahern”** Stated in their motion to dismiss **(Docket # 21 page 1)**

In my answer to the motion to dismiss, I went on further to clarify. **“A declaratory judgment is meant to define the legal rights and obligations of the parties in anticipation of some future conduct, not simply to proclaim liability for a past act.”** **Justice Network Inc. v. Craighead County Viewed Recently United States Court of Appeals, Eighth Circuit. July 26, 2019 931 F.3d 753 2019.** In this case I am seeking a declaratory judgment so that I may preserve the records for my future appeal.... An appeal is the only chance of me receiving some relief. However, I am unable to have an affective appeal without the court records and the bystander’s report. Without them I am guaranteed to lose my appeal. Declaratory relief is the only adequate remedy at law.” **(Docket # 26 pages 10 - 11)**

I also explained in several oral hearings with Judge wood that I was seeking declaratory and or injunctive relief. Illinois Appeal’s court require either a bystander’s report or a record of the proceedings. According to state law, I am responsible for getting the court records, and the bystander report. Without a certified report I would automatically lose my appeal. **(Docket # 26 pages 8 - 9).**

One of my amended complaints also seeks declaratory and injunctive relief from the Cook County clerks. In my amended complaint I allege **(“several parts of the court**

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

records were altered with the intention of making it unusable for my appeal.

Exhibit A is a copy of the 2-1401 motion I filed. Exhibit B is the altered version the clerks provided to the court of appeals”) (Docket #28 page 17)

According to Pulliam v. Allen, 466 U.S. 522 (1984), a judge does not have immunity from declaratory and injunctive relief. The ongoing issue is that I need to appeal Judge Ahern’s judgment in state court, and multiple requests have been made to correct the records. Certifying bystanders’ reports is a routine judicial function. However, Judge Ahern is refusing to do so. As a result, declaratory relief is not available in this situation because I cannot proceed with my appeal without the bystanders’ report. This refusal effectively prevents me from obtaining a legal remedy.

**MY ORIGINAL REQUEST
WAS NOT DEPENDENT
ON MY COMPLAINT**

I argue that my original motion for injunctive relief was not dependent on my complaint. This motion is not dependent on my complaint either. Both motions are completely independent of my complaint. My motion for injunctive relief was dependent

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

on federal law. Specifically, 28 US section 1441 and 1446 establishes that state courts completely lose jurisdiction after a case has been removed. **“any proceedings in the state court after the filing of the petition are absolutely void, despite subsequent determination that the removal petition was ineffective.”**

South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir.1971); see United States ex rel. Echevarria v. Silberglitt, 441 F.2d 225, 227 (2d Cir.1971)” (Docket # 34 page 4 - 5).

A more recent case, **Roman Catholic Archdiocese v. Feliciano, 140 S. Ct. 696 - Supreme Court 2020....** States that (“After removal, The state court loses all jurisdiction over the case, and, being without jurisdiction, its subsequent proceedings and judgment are not ... simply erroneous, but absolutely void. Every order thereafter made in that court is coram non iudice, meaning not before a judge.”) *Steamship Co. v. Tugman*, 106 U.S. 118, 122, 1 S.Ct. 58, 27 L.Ed. 87 (1882)... I argue that it is clear that my motions were based on federal law and not my complaint. Therefor dismissing my complaint does not make my motions moot.

JURISDICTIONAL ERROR

Ahern entered an order for contempt after the case had been duly removed to federal court, The state court acknowledged the removal but Ahern proceeded, nonetheless. This action constitutes a clear jurisdictional error as state courts lose jurisdiction upon the removal of a case to federal court. **“After removal, the**

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

jurisdiction of the state court absolutely ceases and the state court has a duty not to proceed any further in the case. Steamship Co. v. Tugman. 106 U.S. 118, 122, 1 S.Ct. 58, 60, 27 L.Ed. 87 (1882). Any subsequent proceedings in state court on the case are void ab initio. Steamship Co., supra, 106 U.S. at 122, 1 S.Ct. at 60.”

After removal, Ahern continued to hold hearings in state court. I did not participate in these hearings... It appears that Ahern proceeded because he somehow determined that my case was not properly removed. I argue that the removal statute clearly deprives judges of any authority to gauge the strength of a removal... Eventually I was held in contempt of state court. As a result, Ahern issued an order for body attachment. I argue that the order for body attachment is obviously void because it is in violation of federal law. Which is completely independent of my complaint. Dismissing my complaint does not address the removal violation.

**U.S. DISTRICT COURTS
MAY PROVIDE RELIEF
FROM STATE COURT ORDERS**

When a case is removed, the entire civil action, including all the parties and their claims, are transferred to federal court. **"A federal court is free to reconsider a state court order and to treat the order as it would any interlocutory order it might itself have entered" NOC PROPERTIES, LLC v. GREAT SMOKY MOUNTAINS**

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

RAILROAD, LLC, 2021... "A prior state court order in essence is federalized when the action is removed to federal court, although the order remains subject to reconsideration just as it had been prior to removal." FARMLANDS PARTNERS INC. v. FORTUNAE. (Docket # 38 page 11)

This court may relieve parties from void orders. **Federal Rule of Civil procedure 60 (b)** provides **"GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding... based on the reasoning that (4) the judgment is void;" (Docket # 38 page 11).** This court should relieve me from Aherns orders because they are void. They were issued after the state acknowledged the removal and after he and the state court litigants received notice of the removal.

CHALLENGES IN COMPLYING WITH THE VOID ORDER

Despite the order being void, I still attempted to pay the bond for fear of my freedom. I went to the Daily center, and I attempted to place the bond on credit card. However, it was not possible to pay the bond, because cook county abolished cash bonds in 2023. As a result, the department that would have processed the bond was being re-organized. I later filed an affidavit in state court indicating that I did not have enough cash to cover the huge bond, and requested a reasonable payment plan.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Ahern's court clerk directed me to reach out to the opposing party. However, they are refusing to set a hearing for my request.

I ask this court to declare the order for body attachment void because the order is in fact void. It is also in humane. I am currently unemployed, and I argue that the open order for a body attachment limits my employability. As what employer would consider employing someone who will be going to jail?

Being jailed now would cause irreparable harm. I am doing everything in my power to simply keep my head above water. If I were jailed now, I would likely loose my home and suffer a catastrophic setback. My elderly mother would suffer because she relies on me for support. In addition, finding a job would prove even more difficult because I would be too focused on getting back onto my feet.

SUMMARY

My federal complaint was dismissed after a misinterpretation. I am not seeking to right past wrongs. I am seeking prospective relief. To which, I need the certified bystanders report and the court records for my future appeal... Regardless, this motion is not dependent on my complaint. Its dependent on federal law. An order was issued after the state case was removed to federal court. That order is void, and I am praying that this court vacates it.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Wherefore, I Pray:

- 1. Any remedy this court can provide.**
- 2. That the state court order for a body attachment be declared void**
- 3. That I receive relief from the state court order for body attachment**

David Martin

David Martin
5332 S. Princeton
Chicago IL, 60609
773-893-0813
E-mail: MartinvThompson@gmail.com

6/14/2024