

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF ILLINOIS  
3 EASTERN DIVISION

4 DAVID MARTIN,

5 Plaintiff,

6 vs.

7 ATTORNEY GENERAL KWAME RAOUL, JUDGE  
8 GREGORY EMMETT AHERN, JR., UNNAMED  
9 COOK COUNTY CLERKS, COOK COUNTY,

10 Defendants.

)  
)  
)  
) No. 22 CV 6296  
)  
)

) Chicago, Illinois  
) October 10, 2023  
) 9:32 a.m.  
)  
)

11 TRANSCRIPT OF PROCEEDINGS - TELEPHONIC STATUS HEARING

12 BEFORE THE HONORABLE ANDREA R. WOOD

13 APPEARANCES:

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1 (Proceedings heard via telephone:)

2 THE CLERK: Calling the next case, 22 CV 6296, Martin  
3 versus Ahern, et al., for status.

4 THE COURT: Plaintiff?

5 MR. MARTIN: Martin here.

6 THE COURT: Thank you, Mr. Martin.

7 MS. JOHNSTON: Good morning, Your Honor. Mary  
8 Johnston on behalf of defendants.

9 THE COURT: Yes. Thank you.

10 Okay. So the motion to dismiss filed on behalf of  
11 Judge Ahern and the Attorney General is fully briefed.  
12 There's also been a motion filed in the interim since the last  
13 status hearing and since the motion to dismiss was fully  
14 briefed seeking a temporary restraining order.

15 And this motion, I think, Mr. Martin, it looks like  
16 it also addresses some of the arguments that were made to  
17 dismiss your case, but, primarily, the request that you're  
18 making is for me to enter an order that would stop the  
19 proceedings in state court until things are decided here.

20 Am I getting the gist of your request correct?

21 MR. MARTIN: The overall gist is correct, but the  
22 only reason I mentioned those points is because it's really --  
23 I just wanted to highlight, you know, certain facts in the  
24 state court. But, yeah, overall just -- I mean, there's no  
25 jurisdiction in state court, and I think Ahern was supposed to

1 stop -- well, the state court was supposed to stop all  
2 proceedings after a removal was filed.

3 And I did give the Court several bona fide good faith  
4 removal notices, and I've been found in contempt of court in  
5 one of these proceedings. And even though it was kind of, you  
6 know, backed out, there's also the possibility of a body  
7 attachment, you know, for not appearing in court. And all of  
8 this shouldn't really be happening because there shouldn't  
9 really be any state court proceedings, according to the law.

10 THE COURT: So with respect to your motion and your  
11 complaint, I think one thing that is perhaps a little bit --  
12 maybe has been lost in the shuffle a bit with your original  
13 complaint and filing here is that when you filed your original  
14 complaint in this action which was in November of 2022, it was  
15 filed as a new complaint with you as the plaintiff and the  
16 various defendants: The Judge, the State of Illinois, Kim  
17 Foxx, et cetera. That was filed as a new action. It was not  
18 properly filed as a removed action from state court.

19 So I do want to flag that because when a case is  
20 removed from state court to federal court, it doesn't change  
21 who the plaintiff is or who the defendants are or what the  
22 cause of action is. So if you have a state court case that is  
23 pending related to, for example, any sort of support issues  
24 where I assume that there's a petitioner in connection with  
25 the case in state court where they're asking for, you know,

1 whatever they're asking for, a contribution towards college  
2 expenses or whatever it is, there presumably is a petitioner  
3 in that case who is seeking relief against you where they are  
4 the plaintiff or petitioner, and you are the respondent or  
5 defendant. Is that correct, Mr. Martin?

6 MR. MARTIN: For the most part, it's correct, but the  
7 problem with all that is that Ahern is the judge in that case,  
8 and he's being sued. And I think there's things in the  
9 judge's oath that would basically create a situation where he  
10 wouldn't even be able to hear the case until these issues --  
11 until this issue is resolved, right? Because you have a judge  
12 that's being sued, and there's allegations that he doesn't  
13 have jurisdiction. And he's being sued in federal court  
14 because there is -- and this is where I put that information  
15 in the motion. Because he's been sued in federal court.

16 I haven't done anything to cause myself to, you know,  
17 cause harm or to deny Ms. Thompson equity, as they say. You  
18 know, I haven't done anything so I'm pretty much an innocent  
19 person in this matter.

20 So there's all types of constitutional violations  
21 which are being pursued in federal court, and the judge  
22 themselves are being sued for declaratory relief. There's  
23 problems with the notice and opportunity to be heard. There's  
24 all types of problems that would prevent him from basically  
25 continuing on with this case.

1           So even though, as you say, that the notice of  
2 removal is lost in the shuffle, it was re-filed, right? You  
3 know, so I would say that it was filed once, and then it was  
4 filed again after. And I haven't seen anything in the law  
5 that would indicate that the re-filing is improper in terms of  
6 re-filing the notice of removal because I think the whole  
7 point is just to give --

8           THE COURT: Yeah. Let me just -- I have to stop you  
9 there, Mr. Martin.

10           Just to be clear, you have not removed that case to  
11 this court. There has not been a notice of removal filed at  
12 least under this case.

13           If you filed it and it was assigned to a different  
14 judge, that could have happened, but under this case number,  
15 22 CV 6296, I don't want you to be confused about the status  
16 of this case.

17           There is a very specific procedure that governs  
18 removal. There is a specific document that is called a notice  
19 of removal that has to be filed to open the case, and that  
20 wasn't filed here. You filed a complaint which is at Docket  
21 Number 1.

22           Now, I'm going to look at your civil cover sheet here  
23 to see if there's any indication. You cite federal question  
24 jurisdiction. There's a related case, it looks like, that's  
25 cited as being in front of Judge Blakey.

1           Yes, I see that you do say, "Origin: Removed from  
2 state court and the related case in front of Judge Blakey."  
3 But, for removal, there has to be -- there's a specific  
4 document called "Notice of Removal," and you have to attach to  
5 that all of the pleadings that have been filed in the state  
6 court case that you're trying to remove.

7           And, again, moving a case from state court to federal  
8 court doesn't change who the parties are. You don't become  
9 the plaintiff. The judge doesn't become -- that's a whole new  
10 lawsuit.

11           So what you've done here is you have filed a new  
12 lawsuit. You have not taken the lawsuit from state court and  
13 put it in federal court, which is what removal is, because the  
14 requirements of the removal statute haven't been satisfied. I  
15 don't have a notice of removal that's filed here. I don't  
16 have copies of all of the pleadings.

17           I'm guessing, based on the timeline, that the time  
18 period within which you're permitted to remove a case, it  
19 might be too late. There are lots of procedural requirements  
20 that as far as I can see have not been satisfied.

21           I have been treating your case as a new case filed  
22 because you did file a complaint, and that's why your more  
23 recent motion which focuses on removal was a little bit  
24 surprising to me to see that you were suggesting you actually  
25 removed the case from state court because that has not

1 happened here. And I don't want you to be confused about  
2 that. The procedural requirements for removal, as far as I  
3 can see, just have not been met.

4 Do you have questions about that?

5 MR. MARTIN: Well, the only thing I would say is that  
6 I think -- so did you notice that I did file a notice -- there  
7 was two notices of removals filed? And I just want to make  
8 sure that in your decision, you noticed both of them.

9 THE COURT: What dockets? What are the docket  
10 numbers? Do you know?

11 MR. MARTIN: I don't have it in front of me, but I  
12 did because there was an instance when I noticed that they  
13 were continuing to -- I'm trying to actually get in my  
14 computer here.

15 THE COURT: Did you file them in state court?

16 MR. MARTIN: So what I did was that I actually -- so  
17 I actually filed it in federal court the second time, and then  
18 I gave a copy to state court. But I will admit in good faith  
19 that I did not attach the state documents to that.

20 So I just want to be up front and honest with you,  
21 but there was a second notice of removal filed. Now, whether  
22 or not that satisfies the removal procedure I'm not sure of,  
23 but I do want to let you know I did file a second notice of  
24 removal.

25 THE COURT: I'm taking a look at the docket. I don't

1 see a notice of removal, and it's possible that it's in one of  
2 the docket entries. It does not appear to be in the first  
3 docket entry which is the one that opens the case.

4 MR. MARTIN: If I can --

5 THE COURT: Ms. Johnston, have you seen a notice of  
6 removal in your review of the docket?

7 I didn't see this raised in your motion to dismiss.

8 MS. JOHNSTON: Your Honor, I have not seen one.  
9 Again, I mean, I suppose, in theory, it's possible it's  
10 somewhere, but I'm looking at the docket as well. I certainly  
11 don't see, like, what I think of as a typical notice of  
12 removal. And I'm kind of looking through things now, and I'm  
13 not finding it within any of the documents that I'm noticing.

14 MR. MARTIN: I can tell you with absolute certainty  
15 that a second one was filed and that it was accepted. Just  
16 give me a second here.

17 THE COURT: Okay. And you can raise it. I don't  
18 know that that is dispositive to your case, but for a motion  
19 to remove something to federal court, for example, you would  
20 not have had to issue summons because the parties to the  
21 removal would already be in the case. You would not have to  
22 re-serve because they would already be in the case.

23 Removal is just taking an existing case with the  
24 parties who are in the case and taking it from state to  
25 federal court. It is not where you move a case and then you



1 seek your own damages.

2 MS. JOHNSTON: Your Honor.

3 THE COURT: Ms. Johnston?

4 MS. JOHNSTON: Apologies. I think I did find  
5 something. Docket Number 19.

6 THE COURT: Brief Statement of Facts?

7 MS. JOHNSTON: Brief Statement of Facts, but if you  
8 open that up --

9 THE COURT: It does say, "Notice of Removal," yes.  
10 Okay.

11 MS. JOHNSTON: There was something that was filed in  
12 state court.

13 MR. MARTIN: I also want to point out the law says  
14 regardless of whether or not the removal was ineffective, you  
15 know, the law still applies in terms of not continuing to have  
16 court hearings in state court.

17 I think my understanding of the law is that one of  
18 the things that's happening in a notice of removal is that  
19 you're giving them a fair notice that this case is being  
20 removed, and I've certainly done that.

21 And, you know, the plaintiffs were given -- in the  
22 state case were given the notice, and Ahern was given a  
23 notice. Everyone was given a notice.

24 And whether or not -- according to the law -- I mean,  
25 I would rather -- because it seems like we're arguing this on

1 the fly. If Ms. Johnston with the defendants opposes this, I  
2 would much rather have a chance to respond in writing.

3 THE COURT: So just one other question.

4 So the plaintiffs in the state court case, you say  
5 that they received notice of the removal. Who are the  
6 plaintiffs in the state court case?

7 MR. MARTIN: Mrs. Thompson.

8 THE COURT: And Mrs. Thompson, I don't believe, is a  
9 defendant in this case.

10 MR. MARTIN: She was originally, but I think you  
11 admonished me to remove her.

12 THE COURT: Okay. So just so that I'm clear, what  
13 you are trying to do and what the basis is for your motion  
14 asking me to issue a temporary restraining order of the state  
15 court judge is you are saying that you removed that case,  
16 meaning you want me to decide the support and payment issues  
17 that were in state court.

18 Is that what you're asking, or are you asking for me  
19 to decide whether they violated your constitutional rights and  
20 you get damages?

21 MR. MARTIN: That's a tricky question, Your Honor.

22 THE COURT: It's not intended to be tricky. I just  
23 need to know the answer so that I know what to do next.

24 MR. MARTIN: So I can tell you, you know, just being  
25 honest, is that they don't have -- property is being taken.

1 So if I go back to ex parte, Your Honor, property is being  
2 taken without due process of law.

3 There's no real jurisdiction in state court, and  
4 there hasn't been notice, proper notice, in state court.  
5 There's no controversy in state court. Mrs. Thompson did not  
6 allege a controversy in her filings in state court.

7 So you're bringing me into court through force,  
8 right? Because if I don't show up, I'm going to get a body  
9 attachment, and then I'm going to go to jail.

10 So I think regardless of whether or not there's a  
11 proper removal, I think a temporary restraining order would  
12 still be in order because there's an issue of jurisdiction,  
13 and property is being taken without due process of law.

14 And I think, you know, the federal courts, according  
15 to 1983, these are state statutes that are being used to do  
16 these things; and I think the 1983 deprivation of rights under  
17 the code of law applies. And I think that you have  
18 jurisdiction to decide all the matters.

19 And I think, you know, matters like not getting  
20 proper information for the Zoom hearings, I can't attend the  
21 state court proceedings because I'm not given the correct Zoom  
22 information, you know, there's just so many issues that if the  
23 defendants are opposing this -- I guess that's where we should  
24 start.

25 Are the defendants opposing whether or not, you know,

1 I should go to jail in this case? Because that's essentially  
2 what's on the table.

3 THE COURT: Well, I will hear what Ms. Johnston wants  
4 to do here, but there are threshold issues of jurisdiction,  
5 and, as a general rule, as a federal court judge, I do not  
6 have the ability to reverse an order or stay an order that  
7 would be issued by a state court. So if the state court judge  
8 issues an order holding you in contempt or issuing a writ of  
9 body attachment, I am not an appellate court for a state  
10 court.

11 You might be able, under some circumstances, to bring  
12 an action for damages; but as we've discussed before,  
13 generally speaking, a state court judge is going to be immune  
14 for actions taken in connection with a case and that what's  
15 available to a party who wants to complain about it is they  
16 have to bring an appeal, or you could bring a motion to recuse  
17 that judge or to transfer to a different judge. Those are the  
18 remedies, but they're all remedies in the state court system.

19 MR. MARTIN: Right.

20 THE COURT: Let me hear from Ms. Johnston what her  
21 position is with respect to the motion for a TRO, and then  
22 I'll decide where to go next.

23 Ms. Johnston.

24 MR. MARTIN: I had one more thing to say, but I'll go  
25 ahead and wait for Ms. Johnston.

1 THE COURT: Okay. Ms. Johnston, do you have a  
2 response to that motion?

3 MS. JOHNSTON: Just a couple of points, Your Honor.

4 I'm sorry. I'm looking at this notice of removal,  
5 and I guess I'm kind of reviewing it on the fly.

6 I will say that I do not believe that there has been,  
7 you know, a proper removal in this case. And so ultimately  
8 what we're looking at, as you discussed, with the underlying  
9 lawsuit that was filed here, it appears to be a separate  
10 lawsuit against Judge Ahern and Attorney General Raoul seeking  
11 a separate set of relief.

12 To the extent that that that's what he is looking  
13 for, then the motion to dismiss has been fully briefed. Any  
14 of the additional information in this motion for a temporary  
15 restraining order is kind of, in effect, a surreply, and we  
16 should let the motion rest as it is until we get a ruling.

17 If he's looking to actually argue that this was  
18 properly removed, I would need a little bit of time to look at  
19 this and probably file a written response.

20 THE COURT: So I think part --

21 MR. MARTIN: The only --

22 THE COURT: Part of what I think Mr. Martin is trying  
23 to do is he wants me to issue an order that would restrain  
24 Judge Ahern from issuing any additional orders in the state  
25 court proceeding and to say that that proceeding must be

1 stayed while the federal case is going on.

2 Do you oppose that relief?

3 MS. JOHNSTON: Yes. We would oppose that, and I  
4 would ask for an opportunity to respond in writing.

5 THE COURT: Mr. Martin, you wanted to make an  
6 additional point?

7 MR. MARTIN: Well, if they're going to respond in  
8 writing, then I would just simply reply to it, but I do want  
9 to say that although they did issue a body attachment because  
10 Ahern -- it looks like what he's doing -- and this is where we  
11 get into recusal issues because he's being sued in federal  
12 court. And it looks like what he's doing, he's timing this  
13 case so that as soon as it comes back, I would be, you know,  
14 under this pressure to, you know, go to jail or so on and so  
15 forth.

16 What I did want to say, most importantly, is that  
17 even though there was a contempt of court issued, he rolled  
18 that back. And I think he rolled it back because it wasn't in  
19 the timing of the federal cases. I think what he's waiting  
20 for is for it to come back and so on and so forth.

21 But there are no orders that I'm asking you to undo.  
22 What I'm asking for is protection because these proceedings  
23 are continuing to go on, and I don't think it's proper, you  
24 know, in a situation where a judge is being sued. Even if you  
25 set aside the issues of removal, you have a judge who's being

1 sued, and, in my mind, he automatically should just recuse  
2 himself -- right? -- according to the judge's oath.

3 THE COURT: So, actually, there is actually case law  
4 on that point, Mr. Martin, where a judge does not have to and,  
5 in most cases, should not recuse themselves just because  
6 they've been sued because a lot of times -- and I'm not saying  
7 that's what's going on here, but a lot of times, somebody will  
8 sue the judge just as a way to get them off the case and not  
9 because they actually have a real grievance. So that's why  
10 the rule is that, generally speaking, you can't force a judge  
11 off a case by bringing a lawsuit against them.

12 And, again, I'm not speaking to the merits of your  
13 situation. I'm just saying, as a general rule, you know, the  
14 judge doesn't have to recuse himself just because you've sued  
15 them.

16 MR. MARTIN: And my only response to that is I have  
17 filed a bona fide case. The defendants have not argued  
18 against the fact that I have not been served. The defendants  
19 have not argued that Mrs. Thompson didn't provide a genuine  
20 controversy. The defendants have not argued that, you know,  
21 there is no -- they haven't really proven that there was real  
22 jurisdiction in the state case.

23 You're just simply bringing me into court so that you  
24 can lay these judgments against me. And I think -- I argue  
25 that I have a bona fide case.

1 I'm not removing it just to remove it just to get him  
2 off the case. I'm doing it because my rights are being  
3 violated so it's a bona fide situation. So, like, why would  
4 she even want to hold onto a case like that?

5 So anyway, I'll wait until the defendants respond,  
6 and I would just ask for time to reply.

7 THE COURT: So I'll set a schedule on that.

8 I may in an order give the parties some direction  
9 with respect to the removal issue, just maybe something, in  
10 particular, that I would want you to weigh in on to the extent  
11 that that matters. Maybe it doesn't.

12 Ms. Johnston, you'd like an opportunity to respond to  
13 the TRO in writing, the request for a TRO?

14 MS. JOHNSTON: If it's necessary.

15 Looking at the document, I do not believe that  
16 anything has been removed. And, again, it's defendants'  
17 opinion that the issues before this Court are the ones that  
18 were raised in the complaint and that have been briefed on the  
19 motion to dismiss which has now been fully briefed, but I can  
20 respond to the TRO in writing.

21 I will just inform the Court for a time frame, after  
22 Monday, the 16th, I will be out of the country from  
23 October 17th through the 27th. And I'm working on several  
24 sort of major filing deadlines right up until I leave so I  
25 would request some time there.



1 THE COURT: Mr. Martin, do you have a next court date  
2 in front of Judge Ahern?

3 MR. MARTIN: That's going to be on the 10th -- I'm  
4 sorry. Today is the 10th. I think I have a court date next  
5 week, but, again, like, my argument is simply not based on the  
6 removal but it's overall. I mean, just in good faith, right,  
7 fair play, you know, there shouldn't even be any hearings in  
8 the state --

9 THE COURT: Do you recall what date your court date  
10 is?

11 MR. MARTIN: Let me get that for you. One second  
12 here.

13 THE COURT: Thank you.

14 MS. JOHNSTON: Your Honor, I would argue that if  
15 removal isn't an issue at hand here, what we're looking at are  
16 the same issues that have been raised and addressed in the now  
17 fully briefed motion to dismiss. I don't think that a  
18 temporary restraining order would be necessary or appropriate  
19 at this stage, especially given that it, like I said --  
20 although I would want to look into it a little bit more  
21 possibly, but I just don't believe that the case was properly  
22 removed. And as you pointed out earlier, what this case is is  
23 a new set of issues seeking a new type of relief. It's not  
24 removing the state court case per se.

25 What he's looking for is very specific relief against

1 Judge Ahern that is, yes, related to the underlying state  
2 court case but not actually just having removed that case.

3 MR. MARTIN: And I just want to say I definitely  
4 oppose the defendants' position.

5 THE COURT: I understand. I understand both sides'  
6 positions.

7 When are you due back in court?

8 MR. MARTIN: Well, it's important because jail is on  
9 the table.

10 So I'm due on the 19th.

11 THE COURT: Okay.

12 MR. MARTIN: And there's tons of issues that would  
13 affect the state court case and not necessarily affect Ahern  
14 so --

15 THE COURT: I understand.

16 So here is what I'm going to do. Because I  
17 understand that Ms. Johnston is going to be away from the  
18 office for a period of time, I am going to issue an order  
19 based on our discussion today.

20 I need to take a look back through the docket because  
21 as I think I indicated, I had not originally focused on the  
22 fact that Mr. Martin viewed this as a removed case rather than  
23 a new case, and I will issue an order.

24 I've made a note that he has a court hearing on the  
25 19th, and my intent is to issue an order before the 19th that

1 will give some direction and hopefully help Mr. Martin as he  
2 is deciding what he needs to do for his court date next week  
3 and assist in that proceeding in general.

4 I will still give an answer date for -- you know, to  
5 the extent there are remaining issues from the TRO, I will set  
6 a response date and a reply date, but I'm going to issue an  
7 order, I think, that will give some clarity on the posture of  
8 this case in light of the notice of removal and the discussion  
9 we've had today.

10 So with that in mind, Ms. Johnston, when is it that  
11 you are out of the country?

12 MS. JOHNSTON: I am out October 17th through the  
13 27th.

14 I will make sure -- just as, you know, your order  
15 that will be forthcoming might not be entered then, I will  
16 make sure that there's someone from my office signed up to get  
17 notifications so that they'll be able to see whenever anything  
18 comes through and, if necessary, take any steps. But I would  
19 request then if I could, I would request sometime the week of  
20 November 13th, if possible, to file a written response to the  
21 TRO.

22 THE COURT: So I think that's a little bit far out so  
23 I will give you -- since you're coming back -- I think you  
24 said the 26th?

25 MS. JOHNSTON: My first day -- I get back into town

1 on the 27th so the first day back in the office will be the  
2 30th.

3 THE COURT: Okay. So the most that I will do for  
4 today is four weeks from today which is November 7th.

5 As I said, I'm going to issue an order before then  
6 because this is positioned as a TR0. It is directed towards  
7 state court proceedings where there's an upcoming hearing next  
8 week, and I think, in light of the discussion, I need to take  
9 another look at the docket regarding just getting some  
10 clarification for everyone regarding the new case versus  
11 removed case status.

12 Once that order is issued, there may or may not be  
13 additional issues for the parties to brief. If there are,  
14 then I'd like the response from the defendants by the 7th and  
15 any reply by the 21st at the latest.

16 If you file sooner than that, Mr. Martin, I can get  
17 working on it sooner.

18 In the meantime, I will be reviewing the motion to  
19 dismiss which is already fully briefed and, you know, will be  
20 tackling those issues as well. But today, I have a better  
21 understanding, Mr. Martin, of what you were intending to do  
22 with this case.

23 I do have other parties who are waiting on the line  
24 for their turn so I'm going to set another status date after  
25 the 21st.

1           Mr. Martin, I've made a note that you have a court  
2 date on October 19th so I'll be looking at your file and  
3 issuing an order in advance of that. Okay?

4           I'm going to ask my courtroom deputy to set another  
5 telephone hearing date after the 21st.

6           Laritza.

7           THE CLERK: Judge, we can do November 30th at  
8 9:00 a.m.

9           MR. MARTIN: Sounds good to me.

10          THE COURT: Okay. Thank you, Mr. Martin. Thank you,  
11 Ms. Johnston, for answering my questions. I do need to move  
12 to the next matter.

13          MR. MARTIN: Thank you, Your Honor.

14          (Proceedings adjourned at 10:06 a.m.)

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C E R T I F I C A T E

I, Brenda S. Varney, certify that the foregoing is a complete, true, and accurate transcript from the record of proceedings on October 10, 2023, before the HONORABLE ANDREA R. WOOD in the above-entitled matter.

<u>/s/Brenda S. Varney, CSR, RMR, CRR</u>	<u>June 17, 2024</u>
Official Court Reporter	Date
United States District Court	
Northern District of Illinois	
Eastern Division	