

Palm Beach County Judge Rules A Victory For Freedom Of Speech

W. Palm Beach, FL., - Sept. 15, 2005. – In a victory for Freedom of Speech on September 14, an attempt by a West Palm Beach resident, Sharon A. Mayo through her attorney, Ms. Cathy Kamber, Esq. to closed down a controversial Internet website failed. Ms. Mayo had filed for an injunction in objection to the content of the website where Family Law Court records, regarding an alimony case, were being published.

In an Emergency Motion for Injunction, Sanctions and Other Relief filed in family court on Aug. 18th, 2005, Ms. Mayo, the ex-spouse of William A. Cabana of Venice, FL sought temporary and permanent injunctions to close down the former husband's www.abolish-alimony.org website because of an alleged objectionable display of personal data.

Ms. Mayo's motion claimed Mr. Cabana's action was "willful, malicious, and intended to cause her personal harm." In addition, personal data was posted there and she feared a potential theft of her identity. She also requested that Mr. Cabana put up a \$20,000 bond to cover her legal fees in face of the fact that he has a declared inability to pay.

With a few exceptions, most documents filed with the court are a matter of public record and available to anyone upon request. However, Mr. Cabana had voluntarily removed all the material considered objectionable within a few days of receiving notice of Ms. Mayo's concern. In spite of his removal of the data, Ms. Mayo continued to press on with her motion to have the site closed down. Fortunately, the Honorable Judge Martin Colin of the Fifteenth Circuit Court thwarted the attempt by denying her motion.

Ms. Mayo, while seeking relief from the court in wanting protection for her own Right to Privacy, had filed documents with the court exposing the same personal information of Mr. Cabana. Based on the arguments of her claim, her actions were, in effect, a violation of his Right to Privacy by making his data public.

Mr. Cabana whose marriage was dissolved in 1972 has been challenging the constitutionality of Florida family law statutes with a lawsuit. Mr. Cabana's lawsuit asserts that the Right to Privacy in the privacy-protected zone of personal decisions relating to marriage, i.e. to divorce is a constitutionally protected fundamental right. It is a privacy zone in which the state cannot intrude without a compelling state interest that is applied in the least intrusive manner. The same legal argument exists for the Right to Privacy recognized in the Florida State Constitution.

In addition, the statutes impermissibly infringe the Florida Constitution, Article II, Section 3, Separation of Powers by allowing judges excessive discretionary powers in family law court rulings rather than having them following established guidelines which the legislature should be originating. Normally, legislatures make the laws and the judges enforce those laws. By allowing these excess discretionary powers in lieu of guidelines, they are, in effect, granting the judges lawmaking ability.

Mr. Cabana's original challenge in Federal Court, asking for a declaratory judgment on the constitutionality of the statutes, was remanded back to the circuit court for him to seek a ruling there. The circuit court recently denied his motion, thus paving the way for him to appeal it to a higher state court.

Over 33 years ago, Mr. Cabana who is now 67 years old, was ordered to support his ex-wife with permanent alimony. After over 31 years of paying alimony and having a declining income, no ability to pay, no more assets to give, and retirement years of being forced to live below the Federal poverty level, Mr. Cabana fell behind in his alimony payments. Despite having no financial ability to pay, Ms. Mayo attempted to have him jailed on contempt charges for not making his payments.

Cabana says “the life-time burden placed on ex-spouses has turned the American dream of life, liberty, and pursuit of happiness into a nightmare of bondage, threats, and intimidation for me. Now, even my freedom of speech has been attacked by trying to close down my website because someone disagrees with its content.”

Quoting Cabana once more: “ I want every Floridian who pays alimony, is contemplating marriage and every person with a conscience to know what the state of Florida has done to me with forced alimony payments since it could also happen to them...all because of a marriage gone bad.”

See www.abolish-alimony.org, under State & Federal filings, for additional information about Mr. Cabana’s ongoing court battle for case number 501971DR004137XXDIFD.