

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

WILLIAM A. CABANA, *pro se*,

v.

Case No.: 06 CA 5063 SC

JAMES ZINGALE, EXECUTIVE DIRECTOR,
FLORIDA DEPARTMENT OF REVENUE
(In his official capacity)

KAREN E. JUDSON
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

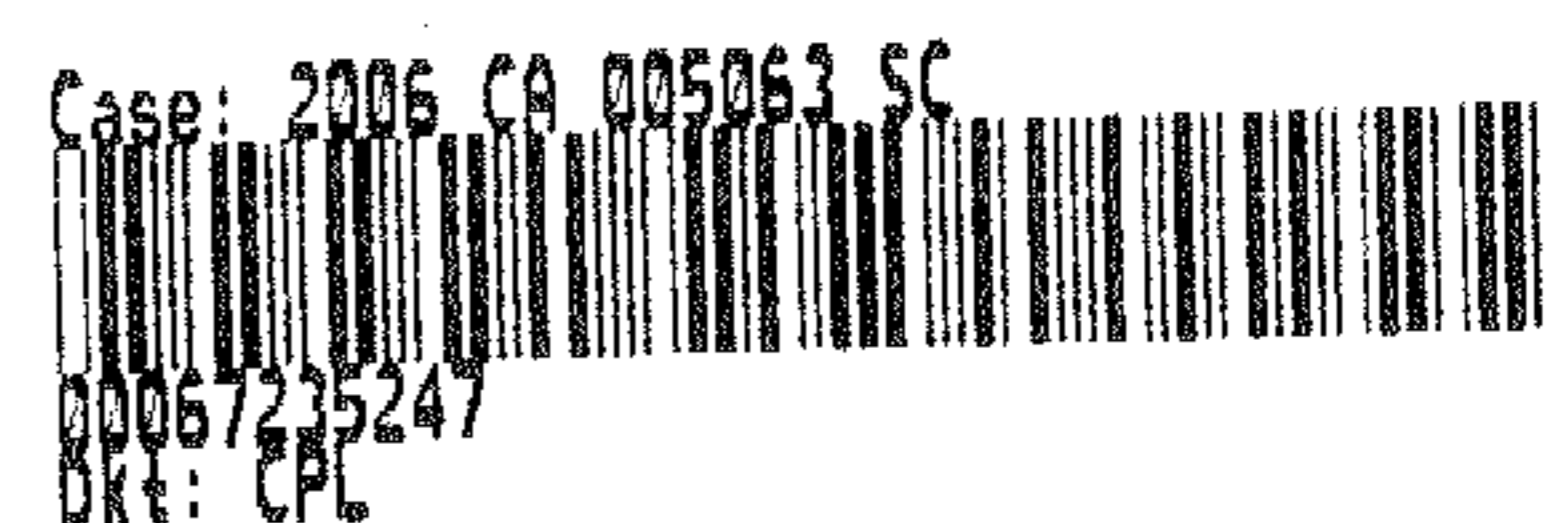
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ACTION FOR DECLARATORY JUDGMENT and INJUNCTIVE RELIEF
§ 61.08 FLA. STAT. (ALIMONY) IMPERMISSIBLY INFRINGES
ART. I, § 23 FLA. CONST. (RIGHT OF PRIVACY)
ART. II, § 3, FLA. CONST. (SEPARATION OF POWERS),
ART I § 2, FLA. CONST. (BASIC RIGHTS)
AND CONFLICTS WITH
CONNOR V. SOUTHWEST 668 SO. 2D 175 (FLA. 1995)

Comes now WILLIAM A. CABANA, *pro se* with assistance of counsel, seeking a declaratory judgment, temporary injunctive relief, and permanent injunctive relief, pursuant to Art. I § 23 (Right of Privacy) Fla. Const., Art. I §2 Basic Rights, Art. II § 3 (Separation of Powers) Fla. Const., and Chapter 86 (Declaratory Judgment) Fla. Stat.

The Plaintiff argues that §61.08 Fla. Stat, permanent alimony statute, impermissibly infringes Art. I § 23 (Right of Privacy) Fla. Const., Art. II § 3 (Separation of Powers) Fla. Const., Art. I §2 Basic Rights and conflicts with Connor v. Southwest, 668 So. 2d 175 (Fla. 1995), i.e. abrogation of the doctrine of necessities. In support he offers:



Chapter 86 Fla. Stat. Declaratory Judgment

1. Chapter 86, Fla. Stat. provisions are to be liberally construed (§ 86.101 Fla. Stat.; Olive v. Maas, 811 So. 2d 644 (Fla. 2002)).
2. This Court has jurisdiction pursuant to § 86.011 Fla. Stat. to determine the constitutionality of Chapter 61 Fla. Stat. alimony provisions, postdissolution permanent spousal support provisions (§§ 61.011, 61.031, 61.043, 61.071, 61.08, 61.09, 61.10, 61.12, 61.1301, 61.13015, 61.13016, 61.14, 61.17, 61.18, 61.181, 61.1824 Fla. Stat.).
3. WILLIAM A. CABANA has standing pursuant to § 86.021 Fla. Stat. as one who claims an interest, is in doubt, has his rights, status, equitable and legal relations affected by the noted Chapter 61 Fla. Stat. provisions such that he desires and requires a declaration of rights, status, equitable and legal relations thereunder.
4. The proper defendant, pursuant to Chapter 86 Fla. Stat. provisions, the Florida Attorney General, and Florida case law, is the State official charged with enforcing Chapter 61 Fla. Stat. alimony (postdissolution permanent spousal support provisions). (See also Chapter 61.14 Fla. Stat.)
5. Pursuant to Florida Statutes § 86.091 notice is given to interested parties, i.e. Sharon Ann Cabana (aka Mayo), party who initiated the marriage dissolution action, to the Defendant as the State's enforcing agent, and to the Attorney General of the State of Florida.

Jurisdiction

6. This court has jurisdiction to hear this declaratory judgment action pursuant to Chapter 86 Fla. Stat. and Rabin v. State Dept. Of Revenue, 884 So.2d 983

(Fla.App. 4 Dist. 2004)¹

Alimony Statutes

7. Chapter 61 Fla. Stat. is entitled “Dissolution of Marriage: Support: Custody.”
8. Chapter 61 Fla. Stat. permanent alimony, postdissolution permanent spousal support provisions, (§§ 61.011, 61.031, 61.043, 61.071, 61.08, 61.09, 61.10, 61.12, 61.1301, 61.13015, 61.13016, 61.14, 61.17, 61.18, 61.181, 61.1824) require a former spouse to a marriage with the ability to pay to support the other former spouse with a need, for life, based on 2¹⁸ and “any other factor to do equity between the parties” with threat of wage garnishment, loss of professional license, contempt and imprisonment.
9. The spousal support provisions mandate that the state invade the privacy protected zone of marriage, through the judiciary, to examine, evaluate, determine and conclude the terms and nature, inter alia, of the interpersonal relationship, spousal roles, spousal conduct, parental decision making, parenting conduct, economic standard of living, occupations, education, savings, assets, charitable contributions and most importantly the intimate emotional, psychological and physical details of the parties during their marriage to apply a discretionary

¹ “where the official action complained of has in fact been, or is being performed, in the county wherein the suit is filed, or when the threat of such action in that county is both real and imminent.

This exception to the common law privilege of venue is limited to those cases wherein the primary purpose is to obtain direct judicial protection from an alleged unlawful invasion of the constitutional rights of the plaintiff within the county where the suit is instituted, because of the enforcement or threatened enforcement by a state agency of a statute, rule or regulation alleged to be unconstitutional as to the plaintiff, and where the validity or invalidity of the statute, rule or regulation sought to be enforced comes into question only secondarily and incidentally to the main issue involved”. Rabin v. State Dept. Of Revenue, 884 So.2d 983 (Fla.App. 4 Dist. 2004)

opinion using an equitable standard in order to implement the statutory provisions.

Florida and Federal Constitution

10. Art. I § 23 Fla. Const. 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.”
11. Federal and Florida Constitutions and Judicial rulings have determined the existence of a right of privacy, which includes marriage and personal decisions related to marriage. (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); Florida Constitution Article I Section 23; Winfield v. Division of Para-Mutual Wagering, 477 So. 2d 544 (Fla. 1985))
12. Divorce is within the umbrella of protection of the federal Right of Privacy contained within the Fourteenth Amendment U.S. Constitution. Littlejohn v. Rose, 768 F. 2d 765, 768 (6th Cir. 1985)
13. Florida Constitution Article I Section 2 states... “**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.”

14. Art. II §3 Fla. Const. Separation of Powers prohibits the Florida legislature from delegating its constitutionally exclusive law making power to the Florida judiciary.

Abrogation of Spousal Duty of Support

15. Connor v. Southwest, 268 So. 2d 175 (Fla. 1995) abrogated the doctrine of necessaries. The ruling effectively altered the policy of the state to make each party in a marriage responsible for herself/himself.

WILLIAM A. CABANA

16. WILLIAM A. CABANA is a resident of Venice, FL, Sarasota County Florida.
17. WILLIAM A. CABANA'S marriage was dissolved by Order of the Courts of the State of Florida on July 28, 1972 (Fifteenth Judicial Circuit Court of Florida Case Number 501971DR004137XXDIFD). Over thirty three (33) years ago he was ordered to pay twenty-five dollars (\$25) a week alimony.
18. Prior to issuing its July 28, 1972 Order the State, through its Court, invaded and examined the intimate details of the privacy area of the marriage of WILLIAM A. CABANA.
19. After its invasion and examination of the intimate details of WILLIAM A. CABANA'S privacy area of marriage the State, through its Court reassigned the property rights between WILLIAM A. CABANA and Sharon Ann Cabana (aka Mayo).
20. The State, through its Court, redistributed the marital property of WILLIAM A. CABANA and Sharon Ann Cabana (aka Mayo) pursuant to § 61.075 Fla. Stat.
21. The State, through its Court's Order of Final Judgment of Dissolution required

WILLIAM A. CABANA to pay permanent alimony, i.e. postdissolution permanent spousal support.

22. WILLIAM A. CABANA has been jailed at least twice for failing to pay alimony pursuant to §61.08 Fla. Stat. in 1991 and in 2006.
23. WILLIAM A. CABANA, if he fails to pay his permanent alimony arrearages from his divorce now thirty-three years after his divorce he is subject to being jailed and the ongoing threat of Social Security garnishment.
24. WILLIAM A. CABANA had met his alimony obligation for over thirty years.
25. WILLIAM A. CABANA lives with an income below the poverty level.
26. WILLIAM A. CABANA has been granted indigent status by the Fifteenth Judicial Circuit Court of Florida.
27. WILLIAM A. CABANA is subject to arrest warrants and imprisonment because of the enforcement of a Chapter 61 Final Judgment Order. Such enforcement is part of Chapter 61 Fla. Stat.
28. WILLIAM A. CABANA'S Florida Constitutionally guaranteed right to privacy (Art. I § 23 Fla. Const.) and Art. I §2 Basic Rights have been violated by the State's repeated contempt judicial proceedings and Final Judgment of Dissolution Order of July 28, 1972 as well as other related judicial proceedings, judicial orders, the Chapter 61 Fla. Stat. provisions and the case law those judicial actions are based upon. He has been injured and will continue to be injured by the alimony statute.
29. WILLIAM A. CABANA'S Florida Constitutionally guaranteed right of privacy (Art. I §23 Fla. Const. right) has been violated because the State has failed to

