

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

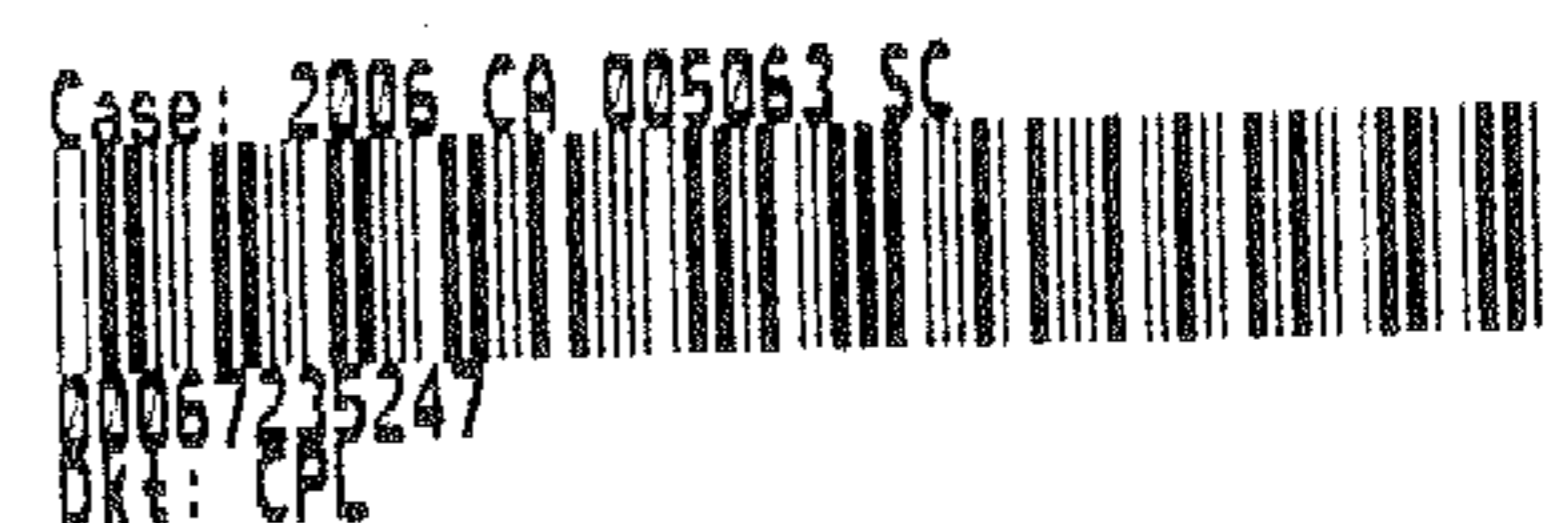
2006 JUN -2 AM 11:19

FILED FOR RECORD
VENICE BRANCH

**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

express a compelling State interest applied in the least intrusive manner to validate the Chapter 61 Fla. Stat. noted above which put him at risk of imprisonment, invade his privacy, and imperil his Art. § 2 Fla. Stat. basic rights.

30. Florida Chapter 61 postdissolution permanent spousal support provisions do not serve a State interest sufficiently compelling to override the rights of WILLIAM A. CABANA to his Federal and State constitutionally guaranteed Right of Privacy in the facts in this case. To the extent that the noted Chapter 61 Fla. Stat. provisions serve a compelling State interest, that interest is applied in a highly intrusive manner and is at its weakest in the facts of this case.
31. WILLIAM A. CABANA'S Art. I § 2 Fla. Stat. basic rights have been violated by his being denied such things as the full enjoyment of the fruits of labor and industry, retirement, own property, enjoy the freedom from fear of arrest and imprisonment, enjoy the freedom from the threat of having his Social Security garnished, enjoy the freedom from having adverse credit ratings, enjoy the freedom from the stigma of court proceedings, and to enjoy the remaining few days of his life on Earth, among other pursuits of happiness.
32. WILLIAM A. CABANA'S right to equal protection has been denied him compared with single persons and many other former married persons on whom the State did not statutorily and judicially impose a duty of spousal support during their marriage or after exercising their constitutional associational and privacy rights by dissolving their marriage.
33. WILLIAM A. CABANA'S right to equal protection has been denied him by the State compared with single persons and many other former married persons who

do not have their liberty imperiled by the threat of contempt and imprisonment related to the alimony provisions of Chapter 61 Fla. Stat.

34. WILLIAM A. CABANA'S right to equal protection has been denied him by the State because of the Florida Judicial System implementing an Affirmative Action Gender based bias program grounded in the Report of the Florida Supreme Court Gender Bias Study Commission (1990) and Gender Bias—Then and Now, Continuing Challenges in the Legal System, The Report of the Gender Bias Study Implementation Commission (1996).
35. WILLIAM A. CABANA'S constitutionally guaranteed Art. I § 2 Fla. Const. rights are violated by the State in §61.08 Fla. Stat. acting in a court of chancery, applying a judicial standard of equity in a self acknowledged Gender Bias setting by a judiciary granted wide discretionary powers.

Count I

36. The Plaintiff incorporates 1 to 35 above.
37. Chapter 61 Fla. Stat. alimony and enforcement provisions impermissibly infringe the Plaintiff's and all Floridians' Art. I §23 Fla. Const. Right of Privacy in the privacy protected zone of personal decisions relating to marriage, i.e. divorce (dissolution of marriage).
38. Plaintiff pray this court declares Chapter 61 Fla. Stat. alimony and enforcement provisions impermissibly infringe the Plaintiff's and all Floridians' Art. I §23 Fla. Const. Right of Privacy in the privacy protected zone of personal decisions relating to marriage, i.e. divorce (dissolution of marriage).
39. Plaintiff prays this court declare that Chapter 61 alimony provisions, §61.08,

place an undo burden on his fundamental constitutional right and liberty interest to alter his associational interests by altering his marital status, i.e. Right of Privacy in the protected zone of “personal decisions relating to marriage” i.e to divorce.

40. Plaintiff prays this court declare Chapter 61 Fla. Stat. alimony statute, § 61.08 is unconstitutional, void ab initio and unenforceable as impermissibly conflicting with Art. I § 23 Fla. Const.
41. WILLIAM A. CABANA has no adequate remedy at law and continues to face imminent ongoing, current, future and irreparable loss of his constitutional rights.
42. Absent expedited consideration and prompt injunction, WILLIAM A. CABANA will continue to suffer substantial and irreparable harm and his rights will continue to be denied before this court can rule.
43. WILLIAM A. CABANA has been, continues to be, and will be imminently further deprived of his Art. I § 23 Right of Privacy by the State of Florida through its Court system.
44. The Plaintiff is likely to prevail on the merits.
45. Plaintiff prays this court grant a temporary and permanent injunction against the enforcement of court orders predicated upon § 61.08 alimony provisions against the Plaintiff and all Floridians.
46. WILLIAM A. CABANA has been forced to incur costs to preserve his constitutional basic rights and right of privacy. He has been forced to incur costs to prosecute this action.
47. WILLIAM A. CABANA is entitled to recover all costs pursuant to § 86.081 Fla.

Stat.

Count II

48. The Plaintiff incorporates 1 to 47 above.
49. Chapter 61 Fla. Stat. alimony and enforcement provisions impermissibly infringe the Plaintiff's and all Floridians' Art. I §2 Fla. Const. Basic Rights, i.e. equal protection, right to enjoy the fruits of one's labor, right to property.
50. Plaintiff pray this court declares Chapter 61 Fla. Stat. alimony and enforcement provisions impermissibly infringe the Plaintiff's and all Floridians' Art. I §2 Fla. Const. Basic Rights, i.e. equal protection, right to the fruits of his labor and right to property.
51. Plaintiff prays this court declare that Chapter 61 alimony provisions, §61.08, place an undo burden on his fundamental constitutional right and liberty interest of equal protection compared with other divorcing Floridians and compared with married Floridians who have no legal obligation of spousal support.
52. Plaintiff prays this court declare Chapter 61 Fla. Stat. alimony statute, § 61.08 is unconstitutional, void ab initio and unenforceable as impermissibly conflicting with Art. I § 2 Fla. Const.
53. WILLIAM A. CABANA has no adequate remedy at law and continues to face imminent ongoing, current, future and irreparable loss of his constitutional rights.
54. Absent expedited consideration and prompt injunction, WILLIAM A. CABANA will continue to suffer substantial and irreparable harm and his rights will continue to be denied before this court can rule.
55. WILLIAM A. CABANA has been, continues to be, and will be imminently

further deprived of his Art. I § 2 Basic Rights by the State of Florida through its Court system.

56. The Plaintiff is likely to prevail on the merits.
57. Plaintiff prays this court grant a temporary and permanent injunction against the enforcement of court orders predicated upon § 61.08 alimony provisions against the Plaintiff and all Floridians.
58. WILLIAM A. CABANA has been forced to incur costs to preserve his constitutional basic rights and right of privacy. He has been forced to incur costs to prosecute this action.
59. WILLIAM A. CABANA is entitled to recover all costs pursuant to § 86.081 Fla. Stat.

Count III

60. The Plaintiff incorporates 1 to 59 above.
61. Chapter 61 Fla. Stat. alimony provisions impermissibly infringe Art. II § 3 Fla. Const. Separation of Powers because the alimony statutes, §61.08 et al are an impermissible delegation by the Florida legislature of its exclusive constitutional law making power to the Florida judiciary.
62. Plaintiff pray this court declares Chapter 61 Fla. Stat. alimony statute, § 61.08 Fla. Stat. impermissibly infringe Art. II § 3 Fla. Const. Separation of Powers.
63. Plaintiff prays this court declare Chapter 61 Fla. Stat. alimony statute, § 61.08 is unconstitutional, void ab initio and unenforceable as impermissibly conflicting with Art. II § 3 Fla. Const.
64. WILLIAM A. CABANA has no adequate remedy at law and continues to face

imminent ongoing, current, future and irreparable loss of his constitutional rights.

65. Absent expedited consideration and prompt injunction, WILLIAM A. CABANA will continue to suffer substantial and irreparable harm and his rights will continue to be denied before this court can rule.
66. WILLIAM A. CABANA has been, continues to be, and will be imminently further deprived of his constitutional rights provided by Art. II § 3 Fla. Const.
67. The Plaintiff is likely to prevail on the merits.
68. Plaintiff prays this court grant a temporary and permanent injunction against the enforcement of court orders predicated upon § 61.08 alimony provisions against the Plaintiff and all Floridians
69. WILLIAM A. CABANA has been forced to incur costs to preserve his constitutional basic rights and right of privacy. He has been forced to incur costs to prosecute this action.
70. WILLIAM A. CABANA is entitled to recover all costs pursuant to § 86.081 Fla. Stat.

Count IV

71. The Plaintiff incorporates 1 to 70 above.
72. Chapter 61 Fla. Stat. alimony provisions impermissibly conflict with the Florida Supreme Court ruling in Connor v. Southwest, 668 So. 2d 175 (Fla. 1995).
73. The Conner at 668 ruling abrogated the doctrine of necessities, which made the husband responsible to third parties for the debts of the wife.
74. The Conner at 668 ruling made each party in a marriage economically responsible for herself/himself.

75. The Connor at 668 ruling removed the obligation of married spouses for the economic support of each other.
76. Plaintiff pray this court declares Chapter 61 Fla. Stat. alimony statute, § 61.08 Fla. Stat. impermissibly conflicts with ruling and public policy established in Connor at 668 that parties in a marriage are economic independents and have no obligation of economic support to one another.
77. Plaintiff prays this court declare Chapter 61 Fla. Stat. alimony statute, § 61.08 is in valid, void ab initio and unenforceable after Conner at 668.
78. WILLIAM A. CABANA has no adequate remedy at law and continues to face imminent ongoing, current, future and irreparable loss of his constitutional rights.
79. Absent expedited consideration and prompt injunction, WILLIAM A. CABANA will continue to suffer substantial and irreparable harm and his rights will continue to be denied before this court can rule.
80. WILLIAM A. CABANA has been, continues to be, and will be imminently further deprived of his constitutional rights provided by Art. II § 3 Fla. Const.
81. The Plaintiff is likely to prevail on the merits.
82. Plaintiff prays this court grant a temporary and permanent injunction against the enforcement of court orders predicated upon § 61.08 alimony provisions against the Plaintiff and all Floridians
83. WILLIAM A. CABANA has been forced to incur costs to preserve his constitutional basic rights and right of privacy. He has been forced to incur costs to prosecute this action.
84. WILLIAM A. CABANA is entitled to recover all costs pursuant to § 86.081 Fla.

