

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)

FILED FOR RECORD  
VENICE BRANCH  
2006 JUL 12 AM 10:50  
KAREN E. RUSHING  
CLERK OF CIRCUIT COURT  
SARASOTA COUNTY, FL

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PLAINTIFF'S MOTIONS TO  
DENY DISMISSAL AND SUMMARY JUDGMENT FOR THE DEFENDANT  
AND FOR  
SUMMARY JUDGMENT FOR THE PLAINTIFF

Comes now William A. Cabana, plaintiff *pro se* with the assistance of counsel, to move this court deny the Defendant's Motion to Dismiss and his Motion for Summary Judgment. In support he offers,

1. Dismissal is improper, as the legislature has deemed Chapter 86 Declaratory Judgment provisions are to be liberally construed. (§ 86.101 Fla. Stat.)
2. Dismissal is improper, as the Florida Supreme Court has affirmed that Chapter 86 Declaratory Judgment actions are to be liberally construed. (Olive v. Maas, 811 So. 2d 644 (Fla. 2002).
3. The Plaintiff has standing as he has suffered injury and will continue to suffer injury because of the Florida Judiciary's continued jurisdiction to enforce a court order predicated on the statute against him. Such enforcement has and can again lead to loss of personal liberty, (incarceration) and loss of property.

4. Complaint at # 3 the plaintiff states "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.
5. The Defendant is proper as no other member of the executive branch of the Florida government is authorized to enforce the statute. The Judiciary under the Florida Constitution lacks authority to enforce statutes.
6. The Defendant has acknowledged his role as the proper Defendant in prior actions involving a constitutional challenge to § 61.08, permanent alimony statute, in Greenberg v. Zingale, 38 Fed. Appx. 197 (11<sup>th</sup> Cir. 2005) and Gogola v. Zingale, 141 Fed. Appx. 839 (11<sup>th</sup> Cir. 2005). Then he never challenged the impropriety of his being the Defendant. He is therefore estopped now from arguing to the contrary.
7. Defendant's Motion for Summary judgment must be denied because his legal arguments lack merit and are legally erroneous. (Please see memorandum of law)
8. Plaintiff moves for summary judgment as no material facts are in dispute and all law and legal arguments support his positions on all Counts. (Please see memorandum of law)

Respectfully submitted,



July 12, 2006

William A. Cabana. *pro se*, prepared with assistance of counsel

1050 Capri Isles Blvd., Apt F-105

Venice, FL 34292

Telephone/Fax: 941-480-1395

Email: [bcabana2@comcast.net](mailto:bcabana2@comcast.net)

Certificate of Service

I hereby certify that on the 12<sup>th</sup> day of July, 2006, I caused a true and accurate copy of the foregoing motion to be mailed by first class mail prepaid to

George Waas, Esq.  
Special Counsel  
Office of the Attorney General  
PL-01 The Capital  
Tallahassee, FL 32399-1015  
Counsel for the Defendant and for the Office of the Attorney General

Cathy L. Kamber, P.A.,  
Attorney for Sharon Mayo  
1675 Palm Beach Lakes Boulevard,  
The Forum, Tower A, Suite 700,  
West Palm Beach, FL 33401  
{FIRST CLASS MAIL}

Respectfully submitted,



William A. Cabana. *pro se*  
1050 Capri Isles Blvd., Apt F-105  
Venice, FL 34292  
Telephone/Fax: 941-480-1395  
Email: [bcabana2@comcast.net](mailto:bcabana2@comcast.net)