

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

FILED
STEPHEN J. MURPHY
CLERK

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

02 SEP 24 AM 10:59

MICHAEL A. GALLUZZO,

Plaintiff,

-vs-

CHAMPAIGN COUNTY COURT
OF COMMON PLEAS, et al.,

Defendant.

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Case No. C-3-01-174

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

ORDER JOINING THE STATE OF OHIO AS A PARTY DEFENDANT

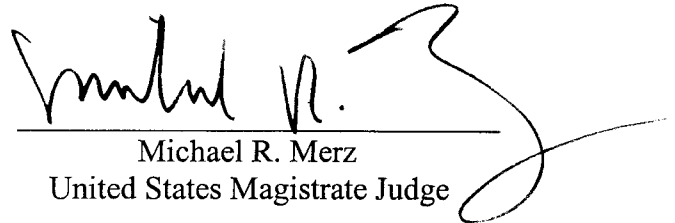
In this case Plaintiff Michael Galluzzo challenges the constitutionality of Ohio Revised Code § 3109.04 and Ohio R. Civ. P. 75(N) insofar as they allow a parent to be deprived of custody of his children without proof by clear and convincing evidence that he is unfit to be a parent (Amended Complaint, Doc. No. 20, ¶4). On August 19, 2002, in considering the claim of Defendant Champaign County Common Pleas Court that it was not a sufficiently adverse party, Magistrate Judge ordered Plaintiff to add either his ex-spouse Teresa Cook or the State of Ohio as a party defendant (Doc. No. 48). Protesting the Magistrate Judge's conclusion about the Common Pleas Court, Plaintiff nonetheless moved to add both Teresa Cook and the State of Ohio (Doc. No. 49). He served that Motion on both those proposed parties as well as on the Common Pleas Court and none of them has opposed the Motion.

Plaintiff had named Teresa Cook as a defendant when he first filed suit, but she raised no objection to being voluntarily dismissed without prejudice (See Doc. No. 19). Nor has she willingly reentered the case to defend the statute. The Court is reluctant to impose the costs of constitutional litigation on a party who does not seek to be involved when adequate defense can be

provided by the State of Ohio.

Accordingly, Plaintiff's Motion to Add the State of Ohio as a defendant is GRANTED. Plaintiff's Motion to add Teresa Cook is denied as moot. Plaintiff shall promptly prepare and deliver to the Clerk the papers required for the United States Marshal to make service on the State of Ohio.

September 24, 2002.



Michael R. Merz
United States Magistrate Judge