

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GERALD W. STATON
Appellant

9th Cir. Case No. 09-16128

District Court Case No. 2:08-cv-01117-MHM

vs.

INDIANA ADULT PROTECTIVE SERVICES, ET AL.
Appellee

APPELLANT'S INFORMAL BRIEF

1. Jurisdiction

a. Timeliness of Appeal

- | | | |
|-------|---|------------------|
| (i) | Date of entry of judgment or order of lower court: | <u>3/27/2009</u> |
| (ii) | Date of Service of any motion made after judgment:
(other than for fees and costs) | <u>4/21/2009</u> |
| (iii) | Date of entry of order deciding motion: | <u>5/21/2009</u> |
| (iv) | Date notice of appeal filed: | <u>5/22/2009</u> |

b. Please find attached one copy of each of the following:

1. The order from which I am appealing
2. The district court's entry of judgment
3. The district court docket sheet

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2. What are the facts of your case?

By attempting to prevent the further abuse, exploitation, and possible suicide of a mentally ill friend, I have instead been denied my rights as a U.S. citizen under the Sixth and Fourteenth Amendments to the U.S. Constitution; I have had 18 U.S.C. §§ 241, 242, and 245 as well as a Title II violation of the Americans with Disabilities Act perpetrated against me; my good name and reputation have been tarnished; and my relationship with my former employer was irreparably damaged, which has greatly affected my future earned income.

In August 2003, my friend, Michael Lewitz, divorced his wife of 22 years, quit a lucrative job as a procurement manager for Wells Fargo Bank, and “ran” from Phoenix, AZ. to Reynolds, IN. where he then attempted suicide in an attempt to escape his “unbearable emotional pain” during an episode of dysphoria that had been precipitated by his having been subjected to the practices of Scientology.

Michael has a childhood etiology for borderline personality disorder—which is classified as a serious mental illness by the American Psychiatric Association—and I personally witnessed him exhibit every manifestation of borderline behavior. According to The Anderson Report, “It is not to be doubted that Scientology techniques worsen and prolong the mental troubles of the mentally ill and that they produce in even a normal person disturbances and anxieties which may precipitate mental trouble.”

During telephone conversations that I had with Michael before all communication with him was shut off, he indicated that the amount of sleep that he gets has been abridged to sometimes as little as 3 hours per night by activity and the administration of cocaine, and that he has no privacy because his housemate and practicing Scientologist, Donald C. Lay, Jr., Ph.D., routinely searches through his personal belongings. He also told me that he felt as if someone was influencing his decisions, and that he had thought of leaving Reynolds, IN. numerous times but felt that he couldn't.

In June of 2005, believing that Michael Lewitz and I were friends and having no reason to believe that I would not be welcomed, I took the opportunity that a business trip afforded me to visit him in Reynolds, IN. Michael initially acted as if he was glad to see me, but then suddenly his eyes turned completely black ¹and he began screaming "get off my land...get off my land." That was the only thing that he said to me as he physically attacked me and assaulted me with a hunting rifle. As Michael continued to pace and mutter to himself, I told his housemate, Dr. Lay, that Michael's behavior was not normal and asked that he get Michael professional help, to which he responded, "just go away."

¹ Note: A strong emotional stimulus (e.g., an unexpected pistol firing) will cause the pupils to dilate. The dilation will persist even if a bright light is presented to the eye, indicating that the emotional response can override the usual pupillary constriction to intense light stimuli. Animal studies have shown that pupillary dilation occurs with stimulation of the hypothalamus, thalamus, and reticular formation. These are brain areas that have been implicated in emotional behavior and behavioral arousal (John L. Andreassi, *Psychophysiology: Human Behavior and Physiological Response*, Lawrence Erlbaum Associates, 2000).

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Shortly thereafter, I received a telephone call from his housemate, Donald C. Lay, Jr., Ph.D., during which he stated that the conversation was being recorded. He then went on to say that he routinely intercepts the mail everyday in order to filter out all of the mail addressed to Michael. To illustrate his point, I received a package of 23 unopened letters that I had mailed to Michael between August 2003 and September 2005 with a letter from Dr. Lay, the wording of which clearly indicates that he obstructs Michael's correspondence of his own volition with no regard as to whether Michael either knows or approves of his doing so. I reported this violation of U.S.C. 18 § 1702, Obstruction of Correspondence to the U.S. Postal Inspection Service and received a letter in response that had changed my complaint to one involving U.S.C. 18 § 1708, Mail Theft/Tampering and referenced letters addressed to me instead of to Michael Lewitz. I wrote a letter to inform the Inspector of the mistake that had been made, but I received no response. Senator McCain's office made an inquiry on my behalf, and I received a letter from the Inspector in Charge of the Inspection Service's Detroit office, Gregory Campbell, in which he stated that since Donald C. Lay, Jr., Ph.D. is authorized to remove mail from the authorized depository for mail matter at that address "there is no federal violation in this case." Needless to say, no investigation was conducted. No attempt was made to secure the recording of the telephone conversation nor was any interest shown in the unopened letters addressed to Michael that Donald had returned to me.

I consulted with three (3) mental healthcare professionals (Dr. Gary Lovejoy, Ph.D.; Elyce M. Benham, MS, NCC, CCFC, and LPC; and Dr. Dina Bachelor Evan) to get their opinions on the behaviors of Michael Lewitz that I was witnessing in order to confirm my suspicion of borderline personality disorder (BPD). The behaviors that I described were attributed to a hypothetical case and Michael was never personally identified during any of these consultations.

Elyce M. Benham, MS, NCC, CCFC, and LPC stated: "I'm seeing some descriptions of symptoms that would be consistent with BPD. I'm also seeing some very disturbing things (i.e. the possible fugue states). He appears to have a very high degree of 'pathology,' and his identity disturbance per your description is quite pronounced. His compartmentalizing, as you noted, is probably one of the only coping mechanisms that he has to deal with the hideous abuse and neglect he suffered throughout his childhood and adolescence. I believe that you are sincerely trying to get help for your friend, and that's not an easy thing to do for someone with BPD."

In October 2005, having reason to believe per Indiana Code § 12-10-3-6, that my friend, Michael Lewitz, is an endangered adult as defined by Indiana Code § 12-10-3-2 ; I filed a report of adult endangerment as is required of anyone having reason to believe that a person is an endangered adult under Indiana Code § 12-10-3-9.

APS case manager Angela Shay determined that my report was unwarranted based on her own prejudicial opinion without conducting an investigation as is required by Indiana Code § 12-10-3-6. APS and Angela Shay, Dawn Gross (Angela's supervisor), and County Prosecutor Jerry Bean as officials thereof then responded to my attempts to appeal APS' decision by conspiring to

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deny me the right to immunity under Indiana Code § 12-10-3-11 in violation of U.S.C. 18 § 241 (they met with Michael for the very first time 6 months after I had filed my report—not to investigate my report, but to influence him to file a petition for an order of protection against me by making him believe that my attempt to help him was “stalking” and that I was attempting to hurt him as a subterfuge to hide their dereliction of duty and to make me just go away). They also used their positions as well as the office of county prosecutor in an attempt to get me fired from my job in violation of U.S.C. 18 § 242 and 245. I reported this to the U.S. Department of Justice Civil Rights Division Criminal Section and the U.S. District Attorney for the northern Indiana district and was completely ignored.

An ex parte protection order was issued on May 3rd, 2006.

I requested and was granted a hearing that was held on July 17th, 2006, during which I argued that the trial court’s order was void because it denied me immunity from all civil and criminal liability arising from my having made a report of adult endangerment in good faith per I.C. § 12-10-3-11, that it denied me equal protection under that law per the 14th Amendment to the U.S. Constitution, that the matter had arisen from the misconduct of APS officials Angela Shay, Dawn Gross, and Jerry Bean who had influenced Michael—who is not a reasonable person due to the presence and influence of BPD as well as his being subjected to an ongoing program of coercive persuasion—to file the petition as a subterfuge to hide their dereliction of duty, and filed motions to quash the order and to order an independent mental examination of Michael Lewitz.

The presiding judge, Judge Robert W. Thacker, stated on record that he’s a Scientologist, disregarded my argument, denied my motions—thereby denying my right under the 6th Amendment to the U.S. Constitution to present relative and exculpatory evidence in support of my defense—and ordered that the protective order would remain in full force and effect for 2 years—thereby denying me immunity under I.C. § 12-10-3-11 and equal protection under that law per the 14th Amendment to the U.S. Constitution

I filed an appeal with the Indiana State Court of Appeals on the grounds that the trial court had committed prejudicial error by denying my motion to order an IME of Michael Lewitz and thereby denying my right to present relative and exculpatory evidence under the 6th Amendment to the U.S. Constitution and by denying me equal protection under Indiana Code under the 14th Amendment to the U.S. Constitution.

The appellate court affirmed the trial court’s order stating in its decision that pro se litigants are held to the same standard as licensed lawyers and I had omitted a “statement of case” and a “summary of argument” from my brief.

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I have attention deficit disorder, a disability protected by the Americans with Disabilities Act and a fact that I had made the court aware of and which had been testified to by Michael during the ex parte hearing for the order of protection.

The appellate court committed a Title II violation of the ADA by holding me to the same standard as a licensed lawyer instead of making reasonable accommodation for my disability, a precedent that should be re-evaluated in light of *Turgeon v. Brock*, Civ. No. 94269-SD, 1994 WL 529919 (D.N.H. September 29, 1994), which determined that State courts are not immune from compliance with the ADA—they must accommodate the disabilities of litigants.

I reported this to the U.S. Department of Justice Civil Rights Division Disabilities Section which informed me that it could not offer me legal or financial assistance. I did not request legal or financial assistance! What I expected was an investigation of my complaint!

On May 3rd, 2008, I filed a citizen petition with the U.S. Department of Health and Human Services requesting that a public health warning be issued to alert people to the mental health hazard posed by the practices of Scientology so that others might be spared the nightmare that I have described. I have received no information as to its disposition other than the fact that it was received.

All of the aforementioned has been reported—repeatedly—to U.S. Senators Bayh, Lugar, Kyl, and McCain; U.S. Representative Harry Mitchell; Indiana State Governor Mitch Daniels and Indiana State Lieutenant Governor Rebecca Skillman; Indiana State Attorney General Steve Carter; Indiana State Senator Brandt Hershman; the Indiana State Judicial Nominating Committee; and the U.S. Senate Judicial Commission.

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3. What did you ask the district court to do (for example, award damages, give injunctive relief, etc.)?

I requested a declaratory judgment declaring that the acts and practices of the Church of Scientology pose a hazard to the mental health of the American public, whereas said declaratory judgment addresses only such acts and practices and does not interfere with the beliefs of the Church of Scientology and a writ mandating that the U.S. Department Of Health And Human Services address my citizen petition.

I requested a declaratory judgment that *Intention* is the mental element required for 18 U.S.C. § 1702 Obstruction of Correspondence and not *Lack of authorization*, as Inspector Campbell contends and a writ mandating that the U.S. Postal Inspection Service conduct a reasonable investigation of my complaint considering that Donald C. Lay, Jr., Ph.D. is exerting undue influence on Michael Lewitz.

I requested a writ mandating that the U.S. Department of Justice investigate my reports of 18 U.S.C. § 241, 242, and 245, and a Title II violation of the Americans with Disabilities Act, and the violation of 18 U.S.C. § 4 by U.S. Senators Bayh, Lugar, Kyl, and McCain; U.S. Representative Harry Mitchell; Indiana State Governor Mitch Daniels and Indiana State Lieutenant Governor Rebecca Skillman; Indiana State Attorney General Steve Carter; Indiana State Senator Brandt Hershman; the Indiana State Judicial Nominating Committee; and the U.S. Senate Judicial Commission as well as the psychological kidnapping of Michael Lewitz, a reasonable investigation of which should search for aforementioned evidence of his being subjected to methods of coercive persuasion without his knowledge or consent and undue influence being exerted over his independent decision-making abilities.

I requested a declaratory judgment that the Indiana State Court of Appeal's practice of holding all pro se litigants to the same standard as licensed lawyers and not making reasonable accommodation for the disabilities of pro se litigants with mental disabilities is a Title II violation of the Americans with Disabilities Act.

I requested a writ mandating the White County Circuit Court to correct its prejudicial error and order an independent mental evaluation of Michael Lewitz to detect the presence and influence of borderline personality disorder as well as his having been subjected to methods of coercive persuasion and undue influence in order to vindicate me and clear my good name and reputation, and to order protective services for Michael Lewitz to prevent his further abuse, exploitation, and possible suicide. (I meant to ask for an injunction, which I made clear to the court)

I asked the court to award general and special damages along with Plaintiff's reasonable attorney's fees actually incurred, court costs and other taxable costs incurred in such amount to be proven at trial and for such further relief that the Court may deem just under the premises.

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4. State the claim or claims that you raised at the district court.

Whereas, The State of Indiana's denial of my rights as a U.S. citizen under the 6th and 14th Amendments of the U.S. Constitution and its perpetration of violations of 18 U.S.C. §§ 241, 242, 245, and Title II of the Americans with Disabilities Act against me along with its refusal to protect Michael Lewitz from further abuse, exploitation, and possible suicide has caused me severe embarrassment and emotional and psychological distress that has manifested as depression, insomnia, free-floating anxiety, intensified ADHD symptoms, and painful and embarrassing stress-induced eczema, and has greatly and adversely affected my reputation and future earned income, and

Whereas, the intentional violation of federal law that has been perpetrated against me by Indiana State officials is all the more egregious because it has not only caused me irreparable harm but has allowed an individual with a serious mental illness to sustain additional psychological injury that could and should have been prevented as well as has caused his chances of recovery from a serious but treatable mental illness to be greatly diminished.

5. What issues are you raising on appeal?

The district court's dismissal of my case with regard to the Indiana defendants due to lack of subject matter jurisdiction, judicial immunity, and lack of personal jurisdiction.

The district court's dismissal of my case with regard to the Federal defendants due to lack of subject matter jurisdiction and sovereign immunity.

6. Did you present all these issues to the district court? Yes

7. What law supports these issues on appeal? (You may, but need not, refer to cases and statutes.)

The district court erred in citing subject matter jurisdiction: Rooker-Feldman doctrine as grounds for dismissal with regard to the Indiana defendants. I am not appealing the final judgment of the White Circuit Court in the State of Indiana—to do so would be moot since the protective order that it issued against me denying me immunity and equal protection under the law under the Fourteenth Amendment to the United States Constitution expired on May 3rd, 2008. I am suing for a declaratory and injunctive relief since I am prohibited by law from suing for monetary damages.

The district court erred in citing judicial immunity as grounds for dismissal with regard to the Indiana defendants. Judge Robert W. Thacker not only committed treason by breaking his oath to support the Constitution of the United States of America, but in doing so he also

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surrendered any claim that he had to judicial immunity. There is a general rule that a ministerial officer, who acts wrongfully, although in good faith, is nevertheless liable in a civil action and cannot claim the immunity of the sovereign. *Cooper v. O'Conner*, 99 F.2d 133. When a judicial officer acts entirely without jurisdiction or without compliance with jurisdiction requisites he may be held civilly liable for abuse of process even though his act involved a decision made in good faith, that he had jurisdiction. *State use of Little v. U.S. Fidelity & Guaranty Co.*, 217 Miss. 576, 64 So. 2d 697. Additionally, Judge Robert W. Thacker stated on record, "You can sue me...I don't care."

The district court erred in citing personal jurisdiction as grounds for dismissal with regard to the Indiana defendants. In *Bunn-O-Matic Corp. v. Bunn Coffee Service Inc.*, 1998 U.S. Dist. LEXIS 7819; 46 U.S.P.Q.2D (BNA) 1375(C.D. IL 1998), the court applied the Illinois long arm statute, which extends jurisdiction to the limits of that permitted under the Constitution, 735 ILCS 5/2209(c), and concluded that asserting jurisdiction over the Defendant would not violate the federal constitutional limits. Like that of Illinois, Arizona's long arm statute extends jurisdiction to the limits of that permitted under the Constitution, *Ariz. R. Civ. P. 4.2(a)*.

"It is ... clear that the state in which a victim of a tort suffers the injury may exercise personal jurisdiction over the alleged tortfeasor. *See Janmark, Inc. v. Reidy*, 132 F.3d 1200, 1202 (7th Cir. 1997) (noting that "there can be no serious doubt . . . that the state in which the victim of a tort suffers the injury may entertain a suit against the accused tortfeasor") (citing *Calder v. Jones*, 465 U.S. 783, 79 L. Ed. 2d 804, 104 S. Ct. 1482 (1984)). The actions of the Indiana defendants caused me to be denied privilege in the state of Arizona, therefore Arizona may exercise personal jurisdiction over the Indiana defendants.

The district court dismissed my cause of action against the U.S. Postal Inspection Service, citing the Postal Reorganization Act's prohibition of judicial review. I did not request judicial review of the U.S. Postal Inspection Service's actions. I requested a declaratory judgment that *Intention* is the mental element required for 18 U.S.C. § 1702 Obstruction of Correspondence and not *Lack of authorization*, as Inspector Campbell contends. Even though Donald C. Lay, Jr., Ph.D. admitted over a recorded phone line and then again in a letter to routinely intercepting the mail everyday in order to filter out mail addressed to Michael Lewitz, Inspector Campbell maintains that no crime has been committed because Dr. Lay is authorized to remove mail from the mailbox at their address, which is not correct.

The U.S. Department of Health and Human Services has been made aware of a hazard to the mental health of American citizens. The fact that it is choosing to ignore it is obscene when its duty is to protect the health of the American people. It is appropriate and proper and in the American Public's interest that a writ mandating that the U.S. Department of Health and Human Services address my citizen petition under 28 U.S.C. § 1361 as it is required to do under 5 U.S.C. § 551.

The district court erred by using the U.S. Department of Justice's argument that it has agency discretion in determining which complaints to investigate and cannot be compelled to do so by a private citizen as grounds for dismissal. Title 28 U.S.C. § 1361. Action to compel an officer of the United States to perform his duty. The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

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8. Do you have any other cases pending in this court? If so, give name and docket number of each case.

I do not have any other cases pending in this court.

9. Have you filed any previous cases which have been decided by this court? If so, give name and docket number of each case.

I have not filed any previous cases which have been decided by this court.

Date: 7/13/09

Gerald W. Staton

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CERTIFICATE OF SERVICE

Case Name: GERALD W. STATON v. INDIANA ADULT PROTECTIVE SERVICES, ET AL.

Case No.: 09-16128

IMPORTANT: You must send a copy of ALL documents filed with the court and any attachments to counsel for ALL parties in this case. You must also file a certificate of service with this court telling us that you have done so. You may use this certificate of service as a master copy, fill in the title of the document you are filing and attach it at the back of each filing with the court. Please list below the names and addresses of the parties who were sent a copy of your document and the dates on which they were served. Be sure to sign the statement below. You must attach a copy of the certificate of service to each of the copies and the copy you file with the court.

I certify that a copy of the opening brief was served by U.S.P.S. certified first class service on the persons listed below.

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