IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CIVIL DIVISION AT FRANKFORT

Cause No.: 3:10-cv-00031-GFVT-JGW

John Kevin Steele,	)	In a petition for habeas from the Shelby
	)	Circuit Court, Shelby County, Kentucky
Petitioner,	)	
	)	
v.	)	State court cause no.: 03-CI-00619
	)	
Kentucky Alternative Program 030,	)	
	)	
Respondent.	)	the Hon. Stephen K. Mershon, presiding

Petitioner's Amended Objections to Report and Recommendations

Comes now the Petitioner, John Kevin Steele, and provides his amended written Objections to the Magistrate Judge's recent Report and Recommendations in this matter, stating and providing:

The Magistrate has provided, with reasonable lucidity, what would appear to be a proper and normal conclusion in this matter. However, there are noted certain points of self-contradiction, and there also appears to be missing some fundamental facts and observations as to the true and breathtaking nature of what is actually transpiring, even now – absolutely clear, ***daily*** manifested violations of Constitutional Rights, particularly as to the categorically unlawful takings of both Property and Liberty, without even recognizing a scintilla of the directly relevant Due Process.

Indeed, it could even appear that the Federal Government is proximately liable for the mess at instant bar, and, accordingly, amenable to suit, for directly inducing, via its various "carrot and stick" federalization of family law programs, the Commonwealth's remarkable violations of the Constitution, as are clearly evidenced herein against the single Petitioner, and are also, of utmost likelihood, committed **annually** against at least dozens, *if not hundreds*, of Citizens of Kentucky.

The official Records in this matter absolutely and clearly reflect:

1) The Shelby County family court did 'make and execute' family support orders against the Petitioner, in total amounts of recurring debt levels that have **wildly** exceeded his *total* "gross" income, even to roughly the onerous point of *double* his *total* "gross" income;

2) Petitioner had attempted, on more than one occasion, to move the same Shelby County family court into reducing his total, aggregate family support order amount(s) to a much more reasonable level, but was routinely denied by the same Shelby County family court;

3) Subsequently, the Shelby County family court also ruled it had "found" that Petitioner was in "contempt" for "willfully" not paying in full compliance to said exceedingly-high family support orders, yet **no sane, competent and reasonable person** would be blind to the simple fact that monetary payment outlay can *never* physically exceed income in hand;

4) Adding to even further Constitutional insult and injury, the Shelby County family court also, as the sentence for said "contempt", and ***regardless*** of whether it was deemed civil or criminal, whether it was deemed punitive or coercive, or whether it was deemed indirect or direct, did then order and remand Petitioner to the *custody* of law enforcement, with an expressly determinate sentencing of exactly one hundred and eighty (180) days, later also relaxing the "terms" slightly, to yet still remaining in *custody* under home confinement.

However, the Shelby County family court was, in fact, legally precluded from ANY attempt to "make" or "execute" such onerous family support orders against Petitioner, <u>in the first place</u>.

Those family support orders are <u>VOID</u>, not *merely* voidable, as both federal and state laws statutorily mandate. Indeed, their only consideration of legal effect in these matters is as to their nature in being the "fruit of the poisonous tree" herein, causing yet *additional* violations against the Petitioner's guaranteed Constitutional and Due Process Rights, as unto Property and Liberty.

45 CFR 303.100(a)(3) and KRS 405.467(6) limit the amount of wages that are subject to withholding for child support. The maximum amounts are expressed in percentages and depend upon whether the obligated parent has remarried and is supporting a new family, and whether arrearages are owed that equal or exceed 12 weeks of support. The Consumer Credit Protection Act (CCPA) (15 U.S.C. § 1673(b)(2)) limits are:

A. 50 percent of a person's disposable earnings if the person is supporting a second family (a spouse and/or dependent child);

B. 55 percent if the person is supporting a second family and owes an arrearage that is 12 weeks or more past due;

C. 60 percent of the person's disposable earnings if the person is not supporting a second family; or,

D. 65 percent if the person is not supporting a second family and owes an arrearage that is 12 weeks or more past due.

However, while it is clear that *withholding* of an obligor's income is normally considered as to its exceptional limits, the simple fact of the matter is that, in the case of Petitioner, the Commonwealth has violated the maximum limits of law as expressed under the Consumer Credit Protection Act, as regards the initial invalidity to "make" or "execute" any family support order, *in the first place*, that exceeds the total dollar amount available from the obligor parent's periodic "disposable" income (roughly equivalent to "net" income in many situations not involving directly work-related expenditures). *See now*, **15 U.S.C. § 1673(c)**, which clearly mandates:

(c) Execution or enforcement of garnishment order or process prohibited

No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

Pursuant to federal law, consumers are protected from having more than 25% of their aggregate disposable earnings subject to garnishment by creditors. 15 U.S.C. § 1673(a). As defined in the statute, "garnishment" is defined to mean "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt." 15 U.S.C. § 1672(c).

The consumer protections of § 303(a) of the Act do *not* apply, however, to "any order for the support of any person issued by a court of competent jurisdiction . . . which affords substantial due process, and which is subject to judicial review." 15 U.S.C. § 1673(d)(1). In such cases, a garnishment to enforce any order of support shall not exceed 50% of an individual's disposable earnings if the individual is supporting a spouse or dependent child other than the spouse or child for whose support the order is to be used. 15 U.S.C. § 1673(b)(2), or 60% where the individual is not supporting another spouse or child. 15 U.S.C. § 1673(b)(2).

Thus, any order for garnishment of wages for purposes of support must comply with § 303(b) of the Act. E.g., *Voss Products, Inc. v. Carlton*, 147 F. Supp.2d 892 (E.D. Tenn. 2001); *Marshall v. District Court for Forty-First Judicial District of Michigan*, 444 F. Supp. 1110 (E.D. Mich.1978); *State Comptroller v. First Alabama Bank*, 642 So. 2d 1349 (Ala. Civ. App. 1993); *Cameron v. Hughes*, 825 P.2d 882 (Alaska 1992); *Bitzer v. Bitzer*, No. CA 98-648 (Ark. Ct. App., Feb. 24, 1999); *Garcia v. Garcia*, 560 So. 2d 403 (Fla. 3d DCA 1990); *Naedel v. Naedel*, 115 Md. App. 347, 693 A.2d 60 (1997); *Magee v. Magee*, 755 So.2d 1057 (Miss. 2000); *Gardiner v. Fanning*, 1994 Neb. 246 (1994); *Bigness v. Obit*, 448 N.Y.S.2d 120 (N.Y. Fam. Ct. 1982); *In re Yeauger*, 83 Ohio App. 3d 493, 615 N.E.2d 289 (1992); *Laws v. Laws*, 758 A.2d 1226 (Pa. Super. 2000); *Center for Gastrointestinal Medicine v. Willitts*, 137 N.H. 67, 623 A.2d 752 (1993). Compliance includes that of 15 U.S.C. § 1673(c), **precluding all unlawful orders**.

Indeed, the Commonwealth of Kentucky, as part of yet another additional federal funding scheme, entered into compliance and promulgation procedures, required under 15 U.S.C. § 1675, to enact its own "equal or better" CCPA protections for the Citizens under its own jurisdiction.

However, it appears the Commonwealth is in non-compliance with these CCPA requirements.

So, the Federal Government, by inducing the Commonwealth of Kentucky with various "carrot and stick" federalization programs of family law, i.e., UCCJA, UCCJEA, UIFSA, and UCLSA as enacted and amended, has compelled large expansion of child support *enforcement* actions, yet failed to ensure the Commonwealth included protections of CCPA within the same.

By allowing the Commonwealth to "run amok" in untold numbers of unlawfully creating and issuing ("making" and "executing") family support orders that are VOID, *in the first place*, precisely amounting to unlawful takings of Property without providing Due Process, and then further allowing the Commonwealth to "enforce" such onerous orders of fictitious, recurring debt, even with additional unlawful takings of Liberty without providing Due Process, it would seem that the Federal Government, in fact, could be considered proximately liable for its own negligence in recognizing clear violations of CCPA (i.e., as in the instant Shelby County Circuit Court family support orders that have wildly exceeded even *the entire totality* of Petitioner's meager income), and the question so becomes – just how often, within the Western and Eastern District (federal) Courts of Kentucky, are similarly-situated child support obligors being denied even a scintilla of *reasonable* justice and relief? Dozens annually? Hundreds? Thousands?

The Petitioner's claims are well-founded, and confirmed by the Court's own Record in this matter, simply comparing the Shelby County family court's ordered amounts, against the same Petitioner's own income and asset amounts that are upon his accepted *in forma pauperis* motion and application – the same being *already* and fully accepted by the Federal Government herein.

EXHAUSTION OF STATE REMEDIES IS ALREADY DONE

Petitioner apologizes for the slight clerical error in stating "April" as the filing date of his state court petition for habeas relief. As the Court noted, Petitioner challenges a February 18, 2010 state court conviction. On March (*not "April"*) 8th, 2010, state habeas petition was filed with the Shelby County Circuit Court. On March 10th, 2010, it was heard and denied by same.

By this point in time, counsel for Petitioner in state court, Mr. Carter, was essentially working pro bono, and as a favor to Petitioner. However, the Shelby County Circuit Court had already taken all of Petitioner's money, resources and assets. Mr. Carter would not be handling appeal.

Being without finances to hire counsel for appeal of habeas denial, Petitioner was forced to file his motion and affidavit for seeking *in forma pauperis* status for purposes of continuing his prosecution of habeas corpus relief. However, the Shelby County Circuit Court *also* denied Petitioner's such IFP application (obviously without good cause, and even against good cause), and thereby, also, permanently terminated further review on the denial of habeas relief, itself.

As far as the Commonwealth is concerned, performed and done by way of its "trusty" officer at the Shelby County Circuit Court, the Commonwealth, *itself*, has decreed that the Petitioner's "exhaustion" line of review steps *as of right* has come to an end. **Denied**. "Exhaustion" is **done**, *already*, and there is no moment, whatsoever, when this Court might possibly suggest otherwise.

The United States Supreme Court has long recognized that "a State cannot create a transitory cause of action and at the same time destroy the right to sue on that transitory cause of action in any court having jurisdiction." *Tennessee Coal, Iron & R. Co. v. George*, 233 U. S. 354, 360 (1914). The fact that the Commonwealth, itself, has created the unlawful custody and restraint of Liberty issue, ***yet also*** ordered the denial of any remaining *practical and reasonable* method to challenge the same act, is creating a transitory cause of action, while destroying the right to sue.

CONCLUSION

The summary of indisputable facts is thus, absolutely justifying prompt, substantive relief:

1. The Commonwealth of Kentucky has unlawfully and unconstitutionally deprived the Petitioner of his well established Rights to protections against takings of his Property (money) without affording the directly relevant Due Process involved, i.e., under CCPA provisions against any issuance of family support orders exceeding maximum limits.
2. The Commonwealth's (the Shelby County Circuit Court's) family support orders issued against the Petitioner are not merely voidable, but are VOID, and are void *ab initio*.
3. All further "enforcements" of such void orders are only further constitutional injuries, and consist of nothing more, being "fruit of the poisonous tree" in all respects herein;
4. Indeed, not only is the Petitioner absolutely entitled to immediate release from unlawful restraint of his Liberty, but he is further absolutely entitled to various compensatory and consequential damages, as well as also being entitled to certain remedial actions.

Petitioner further notes that both the state and federal officials and agents involved herein all have certain fiduciary duties unto proper and reasonable calculations of money and legal results.

Indeed, this entire mess is utterly exacerbated by the fact that Mr. Mershon, ostensible judge of the Shelby County Circuit Court, has **no** oath of office, and, during the entire time of pendency of the state trial court proceedings, was **not** even a judge, to begin with. *See*, Ex. # 1.

Finally, Petitioner notes reminder from *Colorado River Water* and all of its many progeny, instructing over and over again, in regards to the "unflagging obligation" of federal courts to use their jurisdiction and therein to provide remedies for injuries against federal due process rights.

WHEREFORE, the undersigned Petitioner now and hereby moves the Court to *promptly and immediately* issue its any form of *actual, substantive relief* against the clearly unlawful, daily

unconstitutional injuries being manifested against his inalienable rights to Liberty and Property being taken without Due Process, and further moves for all other relief just and proper herein.

Respectfully submitted,

_____

John Kevin Steele
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Shelbyville, KY 40065
[telephone redacted]
[email address redacted]

CERTIFICATE OF SERVICE

I hereby certify: that on this _____ day of June, 2010, a true and complete copy of the foregoing amended objections to magistrate report and recommendations, by depositing the same for delivery via first-class United States postal service or equivalent, has been duly served upon:

(Attorney General for the Commonwealth):
Attorney General Jack Conway
Office of the Attorney General
Capitol Suite 118
700 Capitol Avenue
Frankfort, KY 40601-3449

(contact for current home incarceration):
Kentucky Alternative Program
c/o Pam Robinson
622 West Main Street
Shelbyville, KY 40065

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