

Receipt Number

539583

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MATTHEW DUBAY,
Plaintiff,

vs.

LAUREN WELLS, an individual, and
SAGINAW COUNTY PROSECUTING
ATTORNEY'S OFFICE, BY AND
THROUGH, MICHAEL D. THOMAS,
PROSECUTOR,
Defendants.

Case: 1:06-cv-11016
Assign To: Lawson, David M
Referral Judge: Binder, Charles E
Assign. Date: 03-09-2006 At 10:45 AM
Description: CMP DUBAY V. WELLS, ET
AL (TAM)

COMPLAINT

NOW COMES Plaintiff, Matthew Dubay, by and through his counsel, Law Offices of Jeffery A. Cojocar, PC, and for his Complaint against the Defendants states as follows:

1. This is an action for both declaratory and injunctive relief, as well as monetary damages, based upon 42 U.S.C. §1983 which provides for redress of violations of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

2. As part of this action, and pursuant to applicable federal law, Plaintiff is seeking the modification and/or reversal of existing law and procedure, and the establishment of new law based upon the discriminatory treatment he and other similarly situated men receive under present notions of practice, due their violation of federal law.

I. PARTIES

3. Plaintiff, Matthew Dubay (hereinafter "Dubay") is an individual who presently resides within the City of Saginaw, County of Saginaw, State of Michigan and otherwise falls within the jurisdiction and venue of this Honorable Court.

4. Defendant, Lauren Wells (hereinafter "Wells") is an individual who presently resides within the City of Saginaw, County of Saginaw, State of Michigan and otherwise falls within the jurisdiction and venue of this Honorable Court.

5. Defendant, Saginaw County Prosecuting Attorney's Office (hereinafter "Saginaw"), is a governmental entity with its principal offices located within the City of Saginaw, County of Saginaw, State of Michigan, and which otherwise falls within the jurisdiction and venue of this Honorable Court. Specifically, and at all relevant times hereto, Prosecutor Michael Thomas has indeed run, managed and controlled the Saginaw County Prosecuting Attorney's Office as one of Michigan's governmental agencies.

II. JURISDICTION AND VENUE

6. At all times pertinent hereto, Defendant Saginaw was acting under the color of Michigan statutes, within the meaning of 42 U.S.C. §1983, and otherwise in violation of Dubay's federally protected rights and liberties.

7. Dubay brings this action under 42 U.S.C. §1983 and §1988 to redress the deprivation of rights under color of state law secured by the United States Constitution.

8. Original federal question jurisdiction of this Honorable Court is proper pursuant to 28 U.S.C. §1331, as well as 28 U.S.C. §1343.

9. Further, jurisdiction for declaratory and injunctive relief is proper under 28 U.S.C. §2201, 28 U.S.C. §2202, and Rule 65 Fed. R. Civ. Pro.

10. The claims in this action arise out of acts that are alleged to have been taken and injuries alleged to have been suffered in Saginaw County, Michigan, which is in the Northern

Division (at Bay City) of the Eastern District of Michigan and venue with this Honorable Court is proper pursuant to 28 U.S.C. §1391.

III. STATEMENT OF FACTS

11. On or about the fall of 2004, Dubay and Wells were involved in a relationship wherein consensual sexual acts took place between these individuals.

12. At this time, Dubay clearly informed Wells that he had no desire to be a parent at that point in his young life.

13. In response to these sentiments, Wells explicitly informed Dubay that she was not only infertile, but also using methods of contraception as an extra layer of assurance and protection.

14. In reliance upon these assurances by Wells, Dubay continued the parties' relationship, which included a sexual relationship.

15. Thereafter, after the parties' relationship began to deteriorate and eventually end, Dubay was shocked to find out that Wells was pregnant, allegedly with his child.

16. At that time, Wells exercised her unilateral right to not abort the child and otherwise bring the child to birth. The child (EGW) was born on XX-XX, 2005, much to the dismay, bewilderment and objection of Dubay who was at all times clear with his desires and intentions to Wells.

17. But a few weeks after the child's birth, a Paternity Complaint was brought by Saginaw through its prosecuting attorney's office against Dubay under Michigan's Paternity Act, which can be found at MCL 722.711 et seq. With the filing of this Complaint, the Defendants were seeking the entry of a judgment of filiation, the calculation and imposition of child support

figures and reimbursements for the delivery of this child, and other "statutory and/or equitable relief allowed by law." This Verified Complaint was initiated and signed by both Defendants to this cause of action, signed individually by Wells and on behalf of Saginaw through its assigned Assistant Prosecuting Attorney.

18. That underlying state action is presently pending at the Saginaw County Circuit Court, to which Dubay will be seeking a stay so that these governing, controlling and highly important Constitutional issues can be addressed and ruled upon by Your Honor. Specifically, besides other relief, Dubay is seeking a ruling finding that such practices and procedures, as initiated by these Defendants and which touch and detriment thousands of Michigan male residents each year, run afoul of the Equal Protection Clause of the United States Constitution and must be deemed illegal as a matter of law.

COUNT I
VIOLATION OF THE EQUAL PROTECTION
CLAUSE OF THE UNITED STATES CONSTITUTION

19. Dubay incorporates and realleges paragraphs 1 through 18 as though fully restated herein.

20. Section 1 of the Fourteenth Amendment to the United States Constitution provides that:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

21. Further, under Article 1, §2 of the Michigan Constitution:

Sec. 2. No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.

22. Under our nation's evolving jurist prudence, the right to privacy as protected under the concept of personal liberty has never been confined solely to females, as this right is supposed to extend to both men and women in deciding whether to bear or beget a child. *Roe v. Wade*, US 113 (1973); *Carey v. Population Services Int'l*, 431 US 678 (1977); *Eisenstadt v. Baird*, 405 US 438 (1972).

23. This fundamental right protected by the United States Constitution entails two separate rights that should not, and cannot, be segregated or selectively enforced by parties such as these Defendants. Specifically, it includes the right to procreate as well as the right to avoid procreation by men and women alike. As applied to the instant set of circumstances, the practice and pursuits of each of these Defendants under the guise of state law through Michigan's selectively enforced Paternity Act, which are perpetrated upon similarly situated men throughout this state, are discriminatory in nature and do deny individuals such as, and including, Dubay from the Equal Protection of the law under both federal and state Constitutions and guarantees.

24. Enforcement of such practices including, but not limited to, pursuit of the civil claim under Michigan's Paternity Act, does run afoul of these federally protected rights and liberties and is clearly violative of the Equal Protection Clause of the United States Constitution, as well as that of Michigan's Constitution.

25. The Defendants' actions being pursued against Dubay violate his federally protected and entrenched rights, and clearly show contrasting and discriminatory behavior and

influence over himself, as a male citizen, versus the treatment and protections afforded to females such as Wells. Such gender based classifications and discriminatory practices as being pursued against Dubay by the Defendants do not serve any viable and/or important governmental objective under any interpretation of the facts, and further are not substantially related to any such objective. These such practices as those being exhibited upon Dubay by the Defendants cannot withstand the applicable scrutiny and legal tests of the Equal Protection Clause of the United States Constitution, and therefore must be immediately stricken.

26. Michigan's Paternity Act as enforced, as demonstrated and exhibited by the actions of these Defendants, is an unequivocal violation of equal protection. Such practices and procedures impose special, broad and dissimilar responsibilities and obligations upon men such as Dubay, while affording certain privileges, rights and choices to be unilaterally made and exercised by females such as Wells, all to the societal, financial, emotional, psychological and other detriment of Dubay and other similarly situated men.

27. These actions of the Defendants are sweeping in nature, discriminatory, preventing and enjoining men from being afforded certain choices, the right to privacy, and certain other liberties provided to all females such as Wells, again to the detriment of men within this state such your instant Plaintiff.

28. These practices and procedures, including the enforcement of Michigan's Paternity Act, singles out one group and classification of individuals, being men such as Dubay, for unequal treatment without sufficient justification and for the very purpose of treating them differently than females and depriving them of federally recognized rights.

29. This treatment and punishment imposed by such practices is unconditional and furthers no substantial and compelling governmental interest, which could in any way outweigh the deprivation of rights exerted upon Dubay and other men found in his situation.

30. As a direct and proximate result of the Defendants' violations of Dubay's Equal Protection rights, Dubay has been materially and substantially injured in numerous respects, including, but not limited to, the following:

- Enduring a loss of liberty and loss of dignity;
- Sustaining a loss of public esteem;
- Subjecting himself to embarrassment, public reticule, anger, loss of self-esteem, etc.;
- Incurring substantial expense in being forced to not only pursue and seek the protection of his rights, but also to defend himself from the legal process and actions of these Defendants; and,
- Other such damages as may become known throughout the course of discovery in this matter.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter judgment and/or an order award him the following relief:

A. Declare that the actions and practices taken by these Defendants do indeed violate the Equal Protection Clause of both the United States Constitution and the Michigan Constitution insofar as they discriminate and/or treat men and women differently contrary to governing law;

B. Declare that enforcement of Michigan's Paternity Act, found at MCL 722.711 et seq, as applied and exhibited by Defendants such as these to be unconstitutional and a deprivation of not only Dubay, but all similarly situated men's Equal Protection rights;

C. Enjoin such enforcement of Michigan's Paternity Act against not only Dubay, but other similarly situated men;

- D. Pursuant to allowances under 42 U.S.C. §1983, award Dubay whatever monetary damages he may be entitled to commensurate with the proofs in this matter;
- E. Award Dubay reimbursement of costs and attorney fees under 42 U.S.C. §1988;
- and,
- F. Any other relief deemed agreeable and equity and good conscience.

Respectfully Submitted,
Law Offices of Jeffery A. Cojocar, P.C.



By: Jeffery A. Cojocar
Attorney for Plaintiff
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Shelby Township, MI 48316
(586) 816-0022
e-mail: cojocarlaw@algxmail.com
Bar number P54758

Dated: March 2, 2006

CIVIL COVER SHEET

County in which this action arose Saginaw County

This cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as the local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of filing the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS

Matthew Dubay

(b) County of Residence of First Listed Plaintiff Saginaw County, Michigan
(EXCEPT IN U.S. PLAINTIFF CASES)

BC 26145

(c) Attorney's (Firm Name, Address, and Telephone Number)
Law Offices of Jeffery A. Cojocar, PC, 8113 Wilson St., Shelby Township, MI 48316
(586) 816-0022

DEFENDANTS

Lauren Wells and Saginaw County Prosecuting Attorney's Office, by and through Michael D. Thomas, Prosecutor

County of Residence of First Listed Defendant Saginaw County, Michigan
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Select One Box Only)

- 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. C

Case: 1:06-cv-11016
Assign To: Lawson, David M
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Assign. Date: 03-09-2006 At 10:45 AM
Description: CMP DUBAY V. WELLS, ET AL (TAM)
Citizen or Subject of a Foreign Country 3 4 5 6

IV. NATURE OF SUIT (Select One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 447 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 IIIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Select One Box Only)

- 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC §1983 and the Equal Protection Clause of the United States Constitution

Brief description of cause:
Plaintiff's unequal treatment under the Equal Protection Clause as a male in a paternity matter.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ Undetermined CHECK YES only if demanded in complaint:
 monetary damages +/-
 injunctive relief
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE: _____ DOCKET NUMBER: _____

DATE: March 2, 2006
SIGNATURE OF ATTORNEY OF RECORD - Jeffery A. Cojocar

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

WARRANT TO LOCAL RULE 83.11

Is this a case that has been previously dismissed?

- Yes
- No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

- Yes
- No

If yes, give the following information:

Court: Saginaw County Circuit Court

Case No.: 2005-57583-DP

Judge: Patrick McGraw

Notes :
