IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

CHRISTOPHER YANCEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-09-597-C
	)	
TIMOTHY THOMAS and TAMMY THOMAS, husband and wife,	)	
	)	
Defendants.	)	

MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

The Defendants, Timothy Thomas and Tammy Thomas, move this Court to dismiss the cause based on abstention grounds under *Younger v. Harris*, 401 U.S. 37, 91 S.Ct.746, 27 L.Ed.2d 669 (1971), *Middlesex County Ethics Committee v. Golden State Bar Association*, 457 U.S. 423, 102 S.Ct.2515, 73 L.Ed.2d 116 (1982), and, *Morrow v. Winslow*, 94 F.3d 1386 (10th Cir. 1996). The cited decisions are controlling of the issues in this matter and Defendants urge that abstention is required because the three (3) conditions set forth in *Younger v. Harris, supra*, have been met.

In support hereof, Defendants provide the Court with a memorandum brief together with documentation concerning the continuing and ongoing state court adoption proceedings underlying this case in the District Court of Cleveland County, Oklahoma.

Wherefore, Defendants pray that this Court enter an order of abstention and dismiss this case.

BRIEF IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

This is the second time this Court has been called upon to rule on nearly identical allegations and the same claims for relief (Exhibit H, Order, *Yancey v. Bonner*, Case No CIV-08-539-C).[1] The issues here presented have also been reviewed once by the United States Supreme Court which denied certiorari, twice by the Court of Civil Appeals of the State of Oklahoma, and five times by the Supreme Court of Oklahoma in appellate and extraordinary proceedings. Indeed, Plaintiff, Yancey, testified before the District Court of Cleveland County that he "paid his attorney to keep the case going" rather than support the child which is the subject of the underlying action. Exhibit E, p.5, ¶6.

Notwithstanding the above, Exhibits A through I clearly establish that there is presently, an ongoing state court proceeding before the District Court of Cleveland County, Oklahoma under Case No. PA-2002-00167, which this Court and the Court of Appeals for the Tenth Circuit have already held to be sufficient to support abstention. Indeed, this case (and its predecessor, Case No. CIV-08-539-C) collectively are identical to *Morrow, supra*. The only difference is that in *Morrow*, the adoptive parents and the judge were sued together. Here, they have been sued separately. A detailed statement of the relevant facts is set forth in the opinions of the Oklahoma Court of Civil Appeals attached as Exhibits C and E.

ARGUMENT AND AUTHORITIES

[1]It is also the second time the Thomas's have been hauled into federal court in connection with the subject adoption. The first case, (Exhibit J) was dismissed by Plaintiff after the Thomas's expended large sums of money. While it was pending Plaintiff did absolutely nothing while costing the Thomas's unnecessary attorney fees to defend.

PROPOSITION I

THIS COURT SHOULD ABSTAIN BECAUSE PLAINTIFF SEEKS TO ENJOIN AN ONGOING JUDICIAL PROCEEDING, WHICH FALLS WITHIN THE CONSTITUTIONALLY MANDATED JURISDICTION OF THE SUPREME COURT OF OKLAHOMA AND THE DISTRICT COURTS OF OKLAHOMA, BECAUSE IT IMPLICATES IMPORTANT INTERESTS OF THE STATE OF OKLAHOMA, AND BECAUSE THERE IS AMPLE OPPORTUNITY FOR PLAINTIFF TO RAISE AND PRESENT HIS FEDERAL AND CONSTITUTIONAL CHALLENGES IN THE STATE COURT PROCEEDING.

It cannot be seriously argued that there is not a strong federal policy against interference with pending state court judicial proceedings by the federal courts. *Younger v. Harris, supra*. The policy has existed, in one form or another since the early days of the Republic and has been reaffirmed by the Supreme Court many times since. For the purposes of this motion, the seminal case is *Younger v. Harris, supra*, which involved an effort to enjoin a criminal prosecution in California. The Supreme Court held that federal intervention in that instance was not proper for policy reasons based upon time-honored principles of equity jurisdiction against injunctions when the plaintiff has an adequate remedy at law. The court also pointed to the concept of "comity" as the fundamental underpinning of the Abstention Doctrine. Comity, the court said, includes:

> ". . . a proper respect for state functions, a recognition of the fact that the entire country is made up of a union of separate state governments, and a continuance of the belief that the national government will fare best if the states and their institutions are left free to perform their separate functions in their separate ways." *Younger v. Harris*, 91 S.Ct. at 750.

Later, in *Middlesex Ethics Committee v. Garden State Bar Association, supra*, the Supreme Court extended the reach of the Abstention Doctrine to civil cases generally. The court reasoned that all of the policy considerations underlying the *Younger* decision were fully applicable to non-

criminal judicial proceedings "when important state interests are involved." 457 U.S. at 432. The court also held that the same rules of comity and "minimal respect" for state processes precluded any presumption or inference that the states will not protect and safeguard federal rights. In other words, the burden of overcoming the mandatory and non-discretionary bar of *Younger v. Harris*, is on the plaintiff. Accordingly, allegations which are mere conclusions and which are non-specific are insufficient as a matter of law. *Whitzel v. Division of Occupational Licensing*, 240 F.3d 871 (10th Cir. 2001).

Middlesex, supra, involved an effort by a New Jersey lawyer to enjoin a state bar disciplinary proceeding. The plaintiff had publically accused a New Jersey trial judge of conducting a legalized lynching and a kangaroo court. The bar association sought to have him disciplined for what it said was misconduct. Rather than answer the complaint and assert his federal rights in the state proceeding, the lawyer sought to have it enjoined in federal court. The trial court dismissed the case based upon the *Younger* decision. The circuit court disagreed and reversed. The Supreme Court reinstated the order of dismissal and reversed the Court of Appeals. It held that the Abstention Doctrine applied with equal force to civil judicial proceedings and bar disciplinary proceedings and it adopted a three-part inquiry regarding the circumstances under which it is mandatory. The court said:

> ". . . The policies underlying *Younger* are fully applicable to non-criminal judicial proceedings when important state interest are involved. *Murray v. Sims*, 414 U.S. 415, 423, 99 S.Ct.2371, 2377, 60 L.Ed.2d 994 (1979); *Huffman v. Pursue, Limited*, 420 U.S. 592, 604-605, 95 S.Ct.1200, 1208, 43 L.Ed.2d 482 (1975). The importance of the state interest may be demonstrated by the fact that the non-criminal proceedings bear a close relationship to proceedings criminal in nature as in *Huffman, supra*. Proceedings necessary for the vindication of important state policies or for the function of the state judicial system also evidence the state's substantial interest in the litigation. (Citations omitted.) Where vital state interests are involved,

> a federal court should abstain 'unless state law clearly bars re-interposition of constitutional claims.' *Murray*, 442 U.S. at 426, 99 S.Ct.2379. '[T]he . . . pertinent inquiry is whether the state proceedings afford an adequate opportunity to raise the constitutional claims.' *Id.*, at 430, 99 S.Ct. at 2380. *See* also *Gibson v. Berryhill*, 411 U.S. 464, 93 S.Ct.1689, 36 L.Ed.2d 488 (1973).
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> The question in this case is threefold: *first*, do state bar disciplinary hearings within the constitutionally prescribed jurisdiction of the state Supreme Court constitute an ongoing state judicial proceeding; *second*, do the proceedings implicate important state interest; and, *third*, is there is an adequate opportunity in the state proceeding to raise constitutional challenges."

Plainly, the allegations in the Complaint, either singly or when coupled with the undisputed facts before this Court, demonstrate that this is a classic case for abstention because all of the questions articulated by the Supreme Court must be answered in the affirmative.

I.

THE UNDERLYING OKLAHOMA STATE ADOPTION PROCEEDINGS CONSTITUTION AN ONGOING JUDICIAL PROCEEDING.

In Oklahoma, as in all other states, the law recognizes the important state obligation to protect children and, where necessary, to provide for their welfare. Indeed, an entire Title of the Oklahoma Statutes, comprised of nearly two volumes of the Statutes Annotated is devoted to children and their welfare. Comprehensive laws include, among several other significant subjects, Indian Child Welfare. Jurisdiction to enforce Title 10 of the statutes, as well as conduct hearings, is conferred initially on the district courts. Article 7, Section 7(a), Oklahoma Constitution. The party aggrieved by a decision of the District Courts of Oklahoma, including the Plaintiff, have further recourse before the Supreme Court of Oklahoma under Article 7, Section 1, Oklahoma Constitution. That court, sitting as an appellate court has the power to affirm, modify, vacate or reverse any lower court order. Thereafter Plaintiff's appellate rights do not end with the Oklahoma State Supreme

Court. The United States Supreme Court has jurisdiction to review final state-court judgments by way of direct appeal. 28 U.S.C. § 1257. The court has found its authority to review state-court judgments to be exclusive. *Lance v. Dennis*, 546 U.S. 459, 463 (2006). Due to the exclusive nature of this form of federal jurisdiction, 'lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgment.' *Id.*

In short, a plaintiff is not permitted to bypass the state judicial process and seek separate redress via an original action in the United States District Court. There is no doubt that a state court adoption proceeding is a judicial proceeding. Likewise, there is no doubt that it is ongoing, that it has been ongoing for quite some time, and that it is likely to be ongoing for a considerable period of time in the future. Under *Middlesex*, such a proceeding must be considered an ongoing judicial proceeding which is ". . . of [such] a character as to warrant federal-court deference." 457 U.S. at 43.

In fact, the United State Court of Appeals for the Tenth Circuit has expressly found that the very underlying judicial proceeding in this matter meets all of the requirements of both *Younger* and *Middlesex*. (Exhibit H.) In *Yancey I*, (see Exhibit I) the circuit court pointed out that:

> "The district court applied the abstention standards set forth in *Middlesex County Ethics Comm v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982), and determined that the state appeal undoubtedly constituted an ongoing judicial proceeding even though the state was not a party. It further explained that under Tenth Circuit precedent, 'adoption and child custody proceedings are an especially delicate subject of state policy,'" even with respect to Indian children whose placement is governed by the ICWA. (Quoting *Morrow v. Winslow*, 94 Fed.3d 1386, 1393 (10th Cir. 1996)). Finally the court concluded that Yancey had a sufficient opportunity to raise his federal claims in the state proceedings, as evidenced by the Supreme Court's explicit sanctioning of his ICWA claim in his first appeal. Finding no applicable exception to the *Younger* doctrine under the circumstances, the court concluded abstention was warranted and dismissed Yancey's action.
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> * * *

> Yancey appears to acknowledge that this case is governed by *Marrow*, but he urges us to reject *Marrow's* majority opinion in favor of the dissent, claiming it is particularly persuasive under the facts of his case. This we cannot do. We cannot overrule the judgment of another panel of this court. We are bound by the precedent of prior panels absent en banc reconsideration or a superseding contrary decision by the Supreme Court.' *In Re: Smith*, 10 Fed.3d 723, 724 (10th Cir. 1993) (per curium.) In *Morrow*, a case with strikingly similar facts, we held that the ICWA was not 'intended to allow federal court interdiction of ongoing state custody disputes involving Indian children.' 94 F.3d at 1395. Moreover, the majority specifically rejected the defense argument that § 1941 of the ICWA authorizes federal court intervention in ongoing custody proceedings."[2]

PROPOSITION II

THE ADOPTION PROCEEDING BEFORE THE DISTRICT COURT OF CLEVELAND COUNTY, AND BEFORE THE SUPREME COURT OF OKLAHOMA IMPLICATE IMPORTANT STATE INTERESTS.

The ultimate goal of all of the statutes provided for in Title 10 of the Oklahoma Statutes is to protect children and to see to their welfare. Adoption proceedings such as the case in question here, have traditionally been matters over which the states have exercised extensive control. The interest of the State of Oklahoma in the underlying proceeding is clearly sufficient to warrant federal abstention. Moreover, Oklahoma has its own Indian Child Welfare Act, and the Supreme Court of Oklahoma, in the underlying case, has extensively commented on its jurisdiction to enforce that statute as well. *See In Re: Baby Boy L.*, 2004 OK 93, 103 P.3d 1079.

PROPOSITION III

THERE IS AMPLE AND ADEQUATE OPPORTUNITY FOR PLAINTIFF TO URGE WHATEVER FEDERAL AND CONSTITUTIONAL LAW HE WISHES UNDER OKLAHOMA PROCEDURE.

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[2]Defendants recognize that an Order and Judgment of the Court of Appeals is not "precedent." It is, however, based upon the identical fact situation and the same underlying case, and is offered to remind the Court of its prior ruling.

As previously noted, the jurisdiction of the Oklahoma state courts is set forth in Article 7 of the Oklahoma Constitution. Both the Supreme Court of Oklahoma and the district courts have unlimited original and appellate jurisdiction of all justiciable matters. Obviously, and without belaboring the point, such unlimited jurisdiction includes the right and the power to enforce both state and federal law. Indeed, the state courts in all of the multiple proceedings described in the exhibits, have done just exactly that. Plaintiff is here because he has lost in the trial court and the trial court's decisions have been affirmed by the Court of Civil Appeals and certiorari has been denied.

The last and perhaps most important element necessary to warrant federal abstention is that the state's procedure provides an adequate opportunity for the Plaintiff to raise his federal challenges and issues. He has had, and will continue to have the right to contested evidentiary proceedings, with the right to representation of counsel, the right to brief, the right to argue and the right to do all other things normally and traditionally done in contested legal proceedings. In fact, Plaintiff and his counsel and actually raised the very federal issues mentioned in the Complaint (and in the predecessor Complaint) before the state courts and those courts have ruled. There is simply no argument which can be made that the statutory proceedings provided for in the Oklahoma Statutes somehow prohibit Plaintiff from raising any issue he wants before the state court.

All that is necessary is that Plaintiff be provided the *opportunity* to raise and urge federal challenges and defenses before a tribunal with the authority to decide and dispose of them. There is no contention by the Plaintiff that the state district court or the Supreme Court of Oklahoma lack the authority to decide matters of federal law, or that he was denied the opportunity to present his

authorities in the state forum. He only alleges that the state court decisions are wrong and now, for the second time, seeks unwarranted redress before this Court.

In *Ballard v. Stanton*, 833 F.2d 593 (6th Cir. 1987) the Court of Appeals held that the requirement that a plaintiff be afforded the opportunity to assert his federal rights is satisfied if those issues can be raised either in the trial court or on appeal to the state appellate court. The court also ruled that the bad faith exception to the *Younger* doctrine did not exist so long as the plaintiff had the opportunity to present his constitutional issues either at trial or on appeal.

PROPOSITION IV

PLAINTIFF HAS NOT ALLEGED AND CANNOT DEMONSTRATE ANY EXCEPTION TO THE *YOUNGER* ABSTENTION DOCTRINE.

The *Younger* decision, as well as its progeny, have held that federal intervention in an ongoing state proceeding should be denied if the conditions are met *unless extraordinary circumstances exist*. Precisely what circumstances come within the meaning of "extraordinary" has been the subject of much litigation and many appellate decisions. The extraordinary circumstances which have been recognized are cases of proven harassment, or cases instituted in bad faith without hope of obtaining a valid conviction or judgment, or cases in which in the state seeks to enforce laws which are patently unconstitutional in every paragraph, line and phrase. In the present case, Plaintiff has not alleged and cannot demonstrate that he comes within any of the exceptions noted. The record demonstrates that this is not a case of proven harassment. If anything, it is the Defendants who have been harassed. Indeed, Plaintiff's position on the issue of custody has been found to be without merit by the trial and appellate courts of Oklahoma which were all conducted after full evidentiary hearings, briefs, arguments and submissions. No court has held that the adoption

proceeding below even approaches anything such as harassment and, given the prior judicial decisions therein, and the fact that Plaintiff's claims have failed on the merit, multiple times, the adoption proceeding itself is the very antithesis of bad faith just because Plaintiff's opposition below has prevailed.

CONCLUSION

In conclusion, this case should be dismissed and this Court should opt to abstain. This action is a classic example of a flawed effort to enjoin an ongoing state proceeding which is now pending before the District Court of Cleveland County, after having been dealt with by three final appellate decisions. The proceedings below implicate the important interest of the State of Oklahoma in its children's welfare and Plaintiff has had multiple and adequate opportunities to raise and urge his constitutional and federal issues in the state proceeding. In addition, neither the allegations in the Complaint nor the record show the existence of any exception to the prohibition against federal interference as articulated in *Younger v. Harris*, *Middlesex County Ethics Committee v. Garden State Bar Association, supra*.

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July, 2009, I electronically transmitted the above document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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s/Charles F. Alden, III
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