

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JAMES N. STRAWSER, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 14-0424-CG-C
)	
LUTHER STRANGE, in his)	
official capacity as Attorney)	
General for the State of)	
Alabama, et al.,)	
)	
Defendants.)	

DEFENDANT PROBATE JUDGE TIM RUSSELL’S
MOTION FOR LEAVE TO FILE A REPLY TO
PLAINTIFFS’ RESPONSE TO HIS MOTION TO ALTER, AMEND, OR
VACATE

COMES NOW Tim Russell, in his official capacity as Probate Judge of Baldwin County, and hereby respectfully submits this Motion for Leave to File a Reply to Plaintiffs’ Response to his Motion to Alter, Amend, or Vacate:

1. For the first time in these proceedings, Plaintiffs have responded, albeit briefly, to the substance of the arguments advanced by Judge Russell in regards to quasi-judicial immunity.

2. Given the importance of this case and the novelty of the situation facing Judge Russell (and every other Probate Judge in the State of Alabama),

Defendants hereby respectfully submit that the brief Reply, which is attached hereto, will assist this Court and the Parties in elucidating the discrete question currently *sub judice*. Allowing a Reply will not prejudice any person or party or unduly delay the proceedings.

WHEREFORE, PREMISES CONSIDERED, Judge Russell, in his official capacity as Probate Judge for Baldwin County, Alabama, both individually and as a class representative, hereby respectfully requests that he be allowed to file a Reply to Plaintiffs' Response to the Motion to Alter, Amend, or Vacate.

Respectfully submitted this the 13th day of May, 2015.

s/Kendrick E. Webb

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I hereby certify that on this the 13th day of May, 2015, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will provide notice to the following CM/ECF participants:

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**DEFENDANT PROBATE JUDGE TIM RUSSELL’S
REPLY TO PLAINTIFFS’ RESPONSE TO HIS
MOTION TO ALTER, AMEND OR VACATE**

COMES NOW Tim Russell, in his official capacity as Probate Judge of Baldwin County, and hereby respectfully submits this Reply to Plaintiff’s Response to Motion to Alter, Amend or Vacate:

1. In recognition of the limited nature of a Motion to Alter, Amend, or Vacate, Judge Russell explicitly did not seek to re-litigate his original Motion to Dismiss in the Motion to Alter, Amend or Vacate, but rather confined that Motion to a single, narrow issue: his entitlement to quasi-judicial immunity arising from the fact that he is merely enforcing the order of a superior judicial tribunal in

refusing to issue same-sex marriage licenses. (Doc. 114, pg. 1.) Respectfully, this Court's Order denying the Motion to Dismiss addressed only the argument advanced by Judge Davis regarding judicial immunity, not the argument advanced by Judge Russell as to *quasi*-judicial immunity. (Doc. 111, pgs. 5-6.) Thus, contrary to Plaintiffs' argument, the Motion to Alter, Amend, or Vacate does not seek reconsideration of an issue already decided by this Court, but rather seeks an initial determination as to a single, specific issue.¹

2. Plaintiffs' refusal to acknowledge the orders issued by the Alabama Supreme Court in *Ex parte State ex rel. Alabama Policy Institute* does not render them nonexistent or lessen their weight as to Judge Russell or the other probate judges in the State of Alabama. The bottom line is that the effect of any judgment against Judge Russell in this case will be to hold him civilly liable, *including potentially for attorneys' fees and costs*, because he followed the orders issued against him by the Alabama Supreme Court. The portion of this Court's Order cited by Plaintiffs in the body of their Response as to this point addressed only the

¹Although Plaintiffs stop short of attempting to argue that Defendants actually waived any of their defenses, their attempt to imply that Defendants are somehow to blame for the fact that Plaintiffs apparently "misconstrued" the arguments raised in Judge Russell's Motion to Dismiss or their decision merely to adopt their response to the Motion to Dismiss submitted by Judge Davis is risible. (See Doc. 110 at pg. 2.) Unlike responses to a motion to dismiss, neither the Federal Rules of Civil Procedure nor the Local Rules grant the right to file such a reply, and this Court did not enter a briefing order providing for any such reply. No significance whatsoever can therefore be attached to the failure to file a reply brief. See *Endsley v. City of Macon, Ga.*, 321 Fed. Appx. 811, 812 (11th Cir. 2008). In this case, asking the Court for leave to file a reply that did nothing more than point out the obvious, i.e., that Plaintiffs merely adopted their Response to Judge Davis's Motion to Dismiss, would have been a waste of judicial resources.

arguments put forth regarding the Anti-Injunction Act, not those regarding quasi-judicial immunity.² Because these doctrines are not mutually exclusive, this Court's holding on the Anti-Injunction Act does not foreclose the relief requested by Judge Russell. A determination that the relief available from Judge Russell (or any other Probate Judge) is limited because of the doctrine of quasi-judicial immunity simply does not amount to a ruling that Plaintiffs are bound by the decision of the Alabama Supreme Court or that this Court lacks jurisdiction over the issue *sub judice*.

3. Only in a footnote do Plaintiffs address the actual argument put forth in the Motion regarding quasi-immunity. Their attempt to differentiate Roland v.

² Moreover, Hale v. Bimco Trading (the omitted citation in Plaintiffs' Response) is easily differentiated from the current case because, in that case, the state court had actually stayed the proceedings in front of it while the companion federal case was appealed to the United States Supreme Court. 306 U.S. 375, 378 (1939). The defendant officials in Hale were thus not in the same predicament in which Alabama's Probate Judges have found themselves, staring down the Scylla and Charybdis of contradictory binding orders. The Hale Court accordingly held that the doctrine was inapplicable. Id. at 378 ("That provision [the former version of the anti-injunction act] is an historical mechanism for achieving harmony in one phase of our complicated federalism by avoiding needless friction between two systems of courts having potential jurisdiction over the same subject-matter. The present record presents no occasion for bringing this safeguard into play." (internal citations omitted)).

It is also worth noting that the meaning and scope of the cited sentence from Hale has been questioned. Imperial County, Cal. v. Munoz, 449 U.S. 54, 60-61 (1980) (Powell, J. concurring); 449 U.S. at 61 (Blackmun, J. concurring). Further, Chase Nat. Bank v. City of Norwalk, Ohio, which was cited by the Hale Court as authority for this proposition, does not support an expansive interpretation, as its decision was explicitly based on the fact that the federal injunction would not affect or interfere with the state court proceedings, which is plainly not the case here. 291 U.S. 431, 439 (1934).

Phillips, from this case on the basis that their claims are not explicitly based on the relevant judicial orders, but are rather based on civil rights claims, is without merit because the claims in Roland were also couched as civil rights claims brought pursuant to 42 U.S.C. § 1983. 19 F.3d 552, 554 (11th Cir. 1994). Nevertheless, the Roland court granted those defendants quasi-judicial immunity because the actions that were alleged to have violated the plaintiff's civil rights (arresting her) were in fact done pursuant to a judicial order. Id. at 556-57. As in Roland, Judge Russell acted at all relevant times pursuant to a binding order from the Alabama Supreme Court. He is accordingly entitled to quasi-judicial immunity.

WHEREFORE, PREMISES CONSIDERED, Judge Russell, in his official capacity as Probate Judge for Baldwin County, Alabama, both individually and as a class representative, hereby respectfully submits this Reply to Plaintiffs' Response to his Motion to Alter, Amend, or Vacate, respectfully requesting that this Court reconsider its denial of his Motion to Dismiss and dismiss the claims against him pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted this the ____ day of _____, 2015.

s/Kendrick E. Webb

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