

No. _____

—
IN THE SUPREME COURT
OF THE UNITED STATES
—

ROBERT WILLIAM WAZNEY, Pro-se (forced) - Petitioner

vs.

Sharon Renee Wazney a/~~k~~/a Sharon Renee Clobassole - Respondent

—
ON PETITION FOR A WRIT OF CERTIORARI
—

APPENDIX
—

ROBERT WILLIAM WAZNEY, Pro-se (forced)
990 Wisacky Hwy.
Bishopville, SC 29010
Inidgent (forced)
Convict (forced)
Pro se (forced)
803-428-2800

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18A715 / 18-6466

184715 A

FILED: August 28, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6466
(3:17-cv-02873-HMH)

SHARON WAZNEY

Plaintiff - Appellee

v.

ROBERT WAZNEY

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in
accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

18A715 A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6466

SHARON WAZNEY,

Plaintiff - Appellee,

v.

ROBERT WAZNEY,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at
Columbia. Henry M. Herlong, Jr., Senior District Judge. (3:17-cv-02873-HMH)

Submitted: August 23, 2018

Decided: August 28, 2018

Before DUNCAN and FLOYD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Robert Wazney, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

18A715 A

Robert Wazney appeals from the district court's order adopting the report and recommendation of the magistrate judge and remanding the underlying divorce proceeding back to state court. We dismiss the appeal. Remand orders are generally "not reviewable on appeal or otherwise." 28 U.S.C. § 1447(d) (2012). The Supreme Court has explained that the appellate restrictions of "§ 1447(d) must be read in pari materia with § 1447(c), so that only remands based on grounds specified in § 1447(c) [*i.e.*, lack of subject matter jurisdiction and defects in removal procedures] are immune from review under § 1447(d)." *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 127 (1995). Whether a remand order is reviewable is not based on a district court's explicit citation to § 1447(c); "[t]he bar of § 1447(d) applies to any order invoking substantively one of the grounds specified in § 1447(c)." *Borneman v. United States*, 213 F.3d 819, 824-25 (4th Cir. 2000).

Here, the district court dismissed for lack of subject matter jurisdiction, citing § 1447(c). Accordingly, we lack jurisdiction to review the merits of the district court's order. Thus, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

FILED: October 30, 2018

18A715-8

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6466
(3:17-cv-02873-HMH)

SHARON WAZNEY

Plaintiff - Appellee

v.

ROBERT WAZNEY

Defendant - Appellant

ORDER

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Duncan, Judge Floyd, and Senior
Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

18A715 C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

| | | |
|-------------------------|---|----------------------------|
| Sharon Wazney, |) | |
| |) | |
| Plaintiff, |) | C.A. No. 3:17-2873-HMH-KFM |
| |) | |
| vs. |) | OPINION & ORDER |
| |) | |
| Robert Wazney, #363679, |) | |
| |) | |
| Defendant. |) | |

This matter is before the court on Robert Wazney's ("Wazney") pro se motions pursuant to Rule 59(e) and 60(b) of the Federal Rules of Civil Procedure. After consideration, the court denies Wazney's motions.

The court previously adopted the Report and Recommendation and remanded this case to state court for lack of subject matter jurisdiction in an order dated March 26, 2018. (Mar. 26, 2018 Order, ECF No. 27.) On April 9, 2018,¹ Wazney filed a motion to alter or amend the judgment. (Mot. Alter or Amend, ECF No. 31.) Wazney also filed a motion for reconsideration pursuant to Rule 60(b) of the Federal Rules of Civil Procedure on April 9, 2018. Id. This matter is now ripe for consideration.

A motion to alter or amend the judgment under Rule 59(e) may be made on three grounds: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest

¹ Houston v. Lack, 487 U.S. 266 (1988).

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injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). “Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of the judgment” Pac. Ins. Co. v. Am. Nat’l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). “In general reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” Id. (internal citation and quotation marks omitted).

Rule 60(b) “invest[s] federal courts with the power in certain restricted circumstances to vacate judgments whenever such action is appropriate to accomplish justice.” Compton v. Alton S.S. Co., 608 F.2d 96, 101-02 (4th Cir. 1979) (internal quotation marks omitted). “The remedy provided by the Rule, however, is extraordinary and is only to be invoked upon a showing of exceptional circumstances.” Id. at 102. Rule 60(b) “does not authorize a motion merely for reconsideration of a legal issue.” United States v. Williams, 674 F.2d 310, 312 (4th Cir. 1982). “Where the motion is nothing more than a request that the district court change its mind . . . it is not authorized by Rule 60(b).” Id. at 313.

Upon review, Wazney’s Rule 59(e) motion fails to identify any intervening change in controlling law, new evidence, or clear error of law. Further, Wazney is attempting to generally reallege his arguments. In addition, in his Rule 60(b) motion, Wazney reasserts his arguments and fails to show any exceptional circumstances. Based on the foregoing, Wazney’s motions are denied.

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Therefore, it is

ORDERED that Wazney's motion to alter or amend, docket number 31, is denied. It is further

ORDERED that Wazney's motion for reconsideration pursuant to Rule 60(b), docket number 32, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
April 13, 2018

NOTICE OF RIGHT TO APPEAL

The Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

18A715 E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

| | | |
|-------------------------|---|----------------------------|
| Sharon Wazney, |) | |
| |) | |
| Plaintiff, |) | C.A. No. 3:17-2873-HMH-KFM |
| |) | |
| vs. |) | OPINION & ORDER |
| |) | |
| Robert Wazney, #363679, |) | |
| |) | |
| Defendant. |) | |

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Kevin F. McDonald, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 of the District of South Carolina.¹ The Defendant, proceeding pro se, filed a notice of removal in an effort to remove an action for divorce, that was initially filed in Sumter County Family Court and then appealed to the South Carolina Court of Appeals, to federal court. In his Report and Recommendation, Magistrate Judge McDonald recommends remanding this case for lack of subject matter jurisdiction.

The Defendant filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

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E

Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that the Defendant's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his arguments. Therefore, after a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge McDonald's Report and Recommendation and incorporates it herein by reference.

It is therefore

ORDERED that this action is remanded to the Sumter County Family Court because the federal court lacks subject matter jurisdiction over this matter. It is further

ORDERED that the Defendant's motions to proceed in forma pauperis, docket number 2, and amend his complaint, docket number 17, are denied as moot.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
March 26, 2018

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that they have the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

UNITED STATES DISTRICT COURT

for the

District of South Carolina

18A715 F

Sharon Wazney

Plaintiff

v.

Robert Wazney,

Defendant

Civil Action No. 3:17-cv-2873-HMH

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

☐ the plaintiff (name) _____ recover from the defendant (name) _____ the amount of _____ dollars (\$___), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) _____ recover costs from the plaintiff (name) _____.

☒ other: This action is remanded to the Sumter County Family Court

This action was (check one):

☐ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

☒ decided by the Honorable Henry M. Herlong, Jr.

Date: March 27, 2018

CLERK OF COURT

s/Kathy Rich, deputy clerk

Signature of Clerk or Deputy Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**