

April 10, 2020

UNITED STATES DISTRICT COURT**SOUTHERN DISTRICT OF TEXAS**

Milling, Benson, Woodward, LLP, §
Plaintiff, §
§
v. § Civil Action H-20-239
§
Olga Pavlovna Blakley, MD, §
Defendant. §

Memorandum and Recommendation

Milling, Benson, Woodward, LLP (Milling) sued Olga Pavlovna Blakley in Louisiana state court on December 7, 2015. (D.E. 1-3 at 45.) Over four years later, on January 22, 2020, Blakley removed the case to the Southern District of Texas. (D.E. 1.) Milling moves to remand the case and seeks costs and fees associated with removal. (D.E. 7.) The court recommends that Milling's motion to remand be granted and that the case be remanded to the Civil District Court for the Parish of Orleans in Louisiana. Milling's request for an award of costs and fees is denied.

1. Background

In 2014, Milling, a Louisiana law firm, provided legal services to Blakley, a Texas resident. (D.E. 1 at 1, 77; D.E. 7 at 2.) In 2015, Milling sued Blakley in Louisiana state court seeking unpaid legal fees of \$65,551.51, plus interest and costs. (D.E. 1-3 at 4-5.) Following years of litigation, on November 26, 2019, the state court granted Milling's motion for summary judgment. (D.E. 7 at 12.) The court ordered Blakley to pay \$65,551.51 subject to a credit, plus interest, legal fees, and costs. *Id.* Thus, the amount Milling sought in its original petition is equal to the amount awarded in the judgment four years later. Thirteen days after summary judgment was granted, Milling moved to examine Blakley as a judgment debtor. (D.E. 1-1 at 3-4.) On December 23, 2019, the state court ordered Blakley to produce financial records and appear in court on January 30, 2020.

(D.E. 1-1 at 2.) The hearing was set to determine if property seizure would satisfy the judgment. *Id.* On January **22, 2020**, Blakley filed her notice of removal. (D.E. 1.) She asserts that the court has subject matter jurisdiction based on her Seventh Amendment right to a jury trial, as well as diversity jurisdiction. *Id.* Milling argues that the court lacks subject matter jurisdiction and moves to remand the case to Louisiana state court. (D.E. 7.)

2. Removal Venue

If a civil action filed in state court could have been filed in federal court, a defendant may remove the action to the district court where the state action is pending. 28 U.S.C. § 1441(a). The state action is pending in the Parish of Orleans in Louisiana. Because the statute only allows removal to the district court where the state action is, Blakley may not remove the case to the Southern District of Texas. Therefore, Blakley's notice of removal is improper and remand is appropriate for that reason alone. "Any ambiguities are construed against removal because the removal statute should be strictly construed in favor of remand." *Mang uno v. Prudential Prop. and Cas. Ins. Co.*, **276 F.3d 720, 723 (5th Cir. 2002)**.

3. Timing of the Removal

A notice of removal must be filed within thirty days of service of the initial pleading or receipt by the defendant of any paper from which it may first be ascertained that the case is removable. 28 U.S.C. § 1446(b). In any event, a case may not be removed based on diversity of citizenship more than one year after commencement of the action unless the plaintiff acted in bad faith. 28 U.S.C. § 1446(c).

Blakley filed her notice of removal more than four years after service of Milling's initial pleading. Milling's claims are for attorney's fees. There is no federal question. The amount in controversy as set forth in Milling's petition is in all material respects the same as the amount awarded by the state court. There is no evidence that Blakley received any document or paper in December **2019** or January **2020** that put her on notice that the case was removable. Blakley's notice of removal was filed late and the case must be remanded to state court.

"The time limitations in 28 U.S.C. Section 1446 are mandatory and must be strictly construed." *Hodge v. Stallion Oilfield Servs.*, No. CIV.A. H-07-CV-2255, 2007 WL 2777771, at *1 (S.D. Tex. Sept. 20, 2007) (internal quotation omitted).

4. Costs

Milling's motion to remand also seeks attorney's fees under 28 U.S.C. § 1447(c). "An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c). "Section 1447(c) authorizes courts to award costs and fees, but only when such an award is just." *Martin v. Franklin Capital Corp.*, **546 U.S. 132, 138** (2005). Fees should be denied if the removing party had an objectively reasonable basis in removal and reasons for departing from this rule "should be faithful to the purposes" of the statute. *Id.* at 141.

Although removal was not proper, the court is not convinced that Blakley's request was objectively unreasonable. Blakley, a pro se Texas defendant, apparently construed the Louisiana state court's order to appear as a basis for removal. Because the court is not convinced that an award of fees would be just, the court denies Milling's request. "There is no automatic entitlement to such an award." *Goffney v. Bank of America, N.A.*, 897 F. Supp. 2d 520, 528 (S.D. Tex. 2012); *see, e.g.*, *Citi Prop. Holdings, Inc. v. Labranche*, No. CIV.A. **11-617, 2011** WL 1980016, at *2 (E.D. La. May 20, 2011) ("[B]ecause the defendants are proceeding pro se, the court will not impose attorneys fees and costs associated with the removal.").

5. Conclusion

The court recommends that Milling's motion to remand be granted. Milling's request for costs and fees is denied. All current deadlines are vacated.

The parties have fourteen days from service of this memorandum and recommendation to file written objections. *See* 28 U.S.C. § 636(b)(1)(c); Fed. R. Civ. P. 72. Failure to timely file objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See Thomas v. Am.*, 474 U.S. 140,

147-49 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

Signed at Houston, Texas, on April 10 , **2020**.



Peter Bray
United States Magistrate Judge

UNITED STATES DISTRICT COURT

Unisittas District Court
SOUTHERN DISTRICT OFs
istrict of
Texas

ENTERED
May 07, 2020

David J. Bradley, Clerk

**Milling, Benson, Woodward,
LLP, Petitioner,**

v.

Civil Action H-20-239

**Olga Pavlovna Blakley, MD,
Respondent.**

Order of Adoption

On April 10, 2020, Magistrate Judge Peter Bray filed a memorandum and recommendation (16) recommending that the court grant Milling, Benson, Woodward, LLP's motion to remand. Olga Pavlovna Blakley filed objections. (18) The court denies Blakley's objections and adopts the memorandum and recommendation as its memorandum and opinion. The court will issue a separate order to remand.

Signed May 7, 2020, at Houston, Texas.

**Lynn N. Hughes
United States District Judge**

ENTERED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

June 03, 2020
David J. Bradley, Clerk

**MILLING, BENSON, WOODWARD,
LLP Plaintiff,**

*

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CIVIL ACTION NO. 4:20-cv-00239

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VERSUS

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**OLGA PAVLOVNA BLAKLEY, M.D.
Defendant**

*

*

ORDER

The Motion for Leave to File Opposition Memorandum with Incorporated
Memorandum in Support filed by Milling Benson Woodward LLP is GRANTED Milling's
memorandum in opposition attached to their Motion for Leave is filed into the record.

Houston, Texas, this 3 day of June, 2020.



Peter Bray

United States Magistrate Judge

UNITED STATES DISTRICT COURT

**Unitgdat District Court
SOUTHERN DISTRICT of Texas**

Milling, Benson, Woodward,
LLP, Petitioner,

ENTERED
July 10, 2020

David J. Bradley, Clerk

V.

Civil Action H-20-239

Olga Pavlovna Blakley,
MD, Respondent.

Order of Adoption

Blakley's motion for reconsideration (23) is denied.

Signed July 10, 2020, at Houston, Texas.

Lynn N. Hughes
United States District Judge

ENTERED

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

July 28, 2020
David J. Bradley, Clerk

Milling, Benson, Woodward, LLP,
Plaintiff,

v.

Civil Action H-20-239

Olga Pavlovna Blakley, MD,
Defendant.

ORDER ON MOTION FOR LEAVE TO FILE SECOND MOTION

FOR RECONSIDERATION

Pending before the court is Defendant Olga Pavlovna Blakley, MD's Motion for Leave to File Second Motion for Reconsideration. (29) Because the motion repeats arguments the court has fully considered, the motion is DENIED.

Signed at Houston, Texas, on July 28, 2020.



Peter Bray /
United States Magistr Judge

ENTERED

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Milling, Benson, Woodward, LLP,
Plaintiff,

v.

Civil Action H-20-239

Olga Pavlovna Blakley, MD,
Defendant.

ORDER ON MOTION FOR LEAVE TO FILE SECOND MOTION

FOR RECONSIDERATION

Pending before the court is Defendant Olga Pavlovna Blakley, MD's Motion for Leave to File Second Motion for Reconsideration. (29) Because the motion repeats arguments the court has fully considered, the motion is DENIED.

Signed at Houston, Texas, on July 28, 2020.



Peter Bray /
United States Magistr Judge

United States Court of Appeals
for the Fifth Circuit

United States Courts
Southern District of Texas
FILED

October 20, 2020

David J. Bradley, Clerk of Court

No. 20-20425



A True Copy
Certified order issued Oct 20, 2020

MILLING, BENSON, WOODWARD, L.L.P.,

w. tAti CA.
Clerk, L.S. Court of Appeals, Fifth Circuit

Plaintiff—Appellee,

versus

OLGA PAVLOVNA BLAKLEY, M.D.,

Defendant—Appellant.

Appeal from the United States District
Court for the Southern District of
Texas USDC No. 4:20-CV-239

Before DENNIS, WILLETT, and HO, *Circuit Judges*.

PER CURIAM:

We must examine the basis of our jurisdiction on our own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Here, the defendant removed this case from state to federal court on the basis of diversity jurisdiction. The plaintiff moved to remand, and the district court granted the motion, finding the case was removed to the wrong federal district court and the notice of removal was filed outside the time constraints of 28 U.S.C. § 1446. The defendant then filed a notice of appeal from the order of remand.

No. 20-20425

It is well settled that a district court's grant of a motion to remand is interlocutory and unappealable if remand is based on defects in the removal procedure or lack of subject-matter jurisdiction. 28 U.S.C. § 1447(d), *Price v. Johnson*, 600 F.3d 460, 462 (5th Cir. 2010). Accordingly, the appeal is DISMISSED for want of jurisdiction.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 20, 2020

Mr. David J. Bradley
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

No. 20-20425 Milling, Benson, Woodward v. Olga Blakley,
MD
USDC No. 4:20-CV-239

Dear Mr. Bradley,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Jann Wynne

v
By:

Jann M. Wynne, Deputy Clerk 504-
310-7688

cc w/encl:

Ms. Olga Pavlovna Blakley.
Mr. Chadwick William Collings

United States Court of Appeals
for the Fifth Circuit

United States Courts
Southern District of Texas
FILED

October 20, 2020

David J. Bradley, Clerk of Court

No. 20-20425



A True Copy
Certified order issued Oct 20, 2020

MILLING, BENSON, WOODWARD, L.L.P.,

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Clerk, L.S. Court of Appeals, Fifth Circuit

Plaintiff—Appellee ,

versus

OLGA PAVLOVNA BLAKLEY, M.D.,

Defendant—Appellant.

Appeal from the United States District
Court for the Southern District of
Texas USDC No. 4:20-CV-239

Before DENNIS, WILLETT, and HO, *Circuit Judges.*

PER CURIAM:

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United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 19, 2021

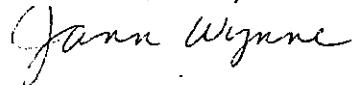
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-20425 Milling, Benson v. Blakley
USDC No. 4:20-CV-239

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Jann M. Wynne, Deputy Clerk
504-310-7688

Ms. Olga Pavlovna Blakley
Mr. Chadwick William Collings

United States Court of Appeals
for the Fifth Circuit

No. 20-20425

MILLING, BENSON, WOODWARD, L.L.P.,

Plaintiff—Appellee,

versus

OLGA PAVLOVNA BLAKLEY, M.D.,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-239

ON PETITION FOR REHEARING EN BANC

Before DENNIS, WILLETT, and Ho, *Circuit Judges.*

PER CURIAM:

Treating the Petition for Rehearing En Banc as a Motion for Reconsideration, the Motion for Reconsideration is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 20, 2020

Mr. David J. Bradley
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

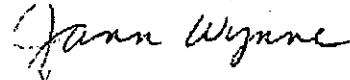
No. 20-20425 Milling, Benson, Woodward v. Olga Blakley,
MD
USDC No. 4:20-CV-239

Dear Mr. Bradley,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By:
Jann M. Wynne, Deputy Clerk 504-
310-7688

cc w/encl:

Ms. Olga Pavlovna Blakley.
Mr. Chadwick William Collings

United States Court of Appeals
for the Fifth Circuit

United States Courts
Southern District of Texas
FILED

January 27, 2021

Nathan Ochsner, Clerk of Court

MILLING, BENSON, WOODWARD, L.L.P.,

No. 20-20425



Certified as a true copy and issued
as the mandate on Jan 27, 2021

Attest: *Jyle W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

Plaintiff—Appellee,

versus

OLGA PAVLOVNA BLAKLEY, M.D.,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-239

Before DENNIS, WILLETT, and Ho, *Circuit Judges.*

PER CURIAM:

We must examine the basis of our jurisdiction on our own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Here, the defendant removed this case from state to federal court on the basis of diversity jurisdiction. The plaintiff moved to remand, and the district court granted the motion, finding the case was removed to the wrong federal district court and the notice of removal was filed outside the time constraints of 28 U.S.C. § 1446. The defendant then filed a notice of appeal from the order of remand.

No. 20-20425

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United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 27, 2021

Mr. Nathan Ochsner
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

No. 20-20425 Milling, Benson v. Blakley
USDC No. 4:20-CV-239

Dear Mr. Ochsner,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Rebecca L. Leto

By:
Rebecca L. Leto, Deputy Clerk
504-310-7703

cc w/encl:

Ms. Olga Pavlovna Blakley
Mr. Chadwick William Collings

ENTERED

March 04, 2021

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Milling, Benson, Woodward, LLP,
Plaintiff,

§

§

§

v.

Civil Action H-20-239

§

§

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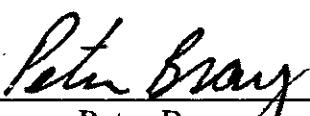
Olga Pavlovna Blakley, MD,
Defendant.

ORDER ON MOTION FOR LEAVE TO FILE AN AMENDED APPEAL

Defendant Olga Pavlovna Blakley, M.D., filed a motion for leave to amend her notice of appeal. (36) Rule 4 of the Federal Rules of Appellate Procedure requires a notice of appeal to be filed with the district clerk within thirty days of the entry of judgment. Fed. R. App. P. 4(a)(1); *see* 28 U.S.C. § 2107. The district court may only extend the time frame for thirty days. Fed. R. App. P. 4(a) (5)(C). Blakley filed a notice of appeal on August 4, 2020. That appeal has been decided and the time to appeal has run. Blakley's motion is denied.

In the alternative, Blakley moves to file a writ of certiorari. Petitions for writs of certiorari are filed in the Supreme Court of the United States. The district court plays no role in whether Blakley files such petition.

Signed at Houston, Texas, on March 4, 2021.


Peter Bray
United States Magistrate Judge