

United States Court of Appeals
for the Fifth Circuit

No. 22-10122
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 3, 2023

Lyle W. Cayce
Clerk

CANDACE SEARCY,

Plaintiff—Appellant,

versus

ORCHARD NATIONAL TITLE,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:21-CV-1910

Before DAVIS, SMITH, and DENNIS, *Circuit Judges.*

PER CURIAM:*

Plaintiff-Appellant, Candace Searcy, appeals the district court's order remanding this matter to state court as improperly removed. She also requests this Court to consider her motions for default judgment filed in state and federal court. Because the district court's remand order is not reviewable as set forth in 28 U.S.C. § 1447(d), we DISMISS the appeal.

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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Searcy filed suit in Dallas County District Court against Orchard National Title and Courtney Anthony, a real estate broker. She asserted claims for breach of contract, fraudulent price gouging, and malpractice in connection with a residential real estate contract. Searcy subsequently removed her action to federal court on the grounds that she would be unable to receive justice in state court. The district court adopted the magistrate judge's recommendation that the case be remanded as "improperly removed."¹

In her appellate brief, Searcy raises no legal arguments challenging the basis for the district court's remand order, nor does she cite to any legal authority indicating that the district court's decision to remand was erroneous. Instead, Searcy argues that she is entitled to a default judgment under Texas Rule of Civil Procedure 21 because the defendants never answered her lawsuit.

Notwithstanding Searcy's failure to identify any error by the district court, this Court must first examine the basis of its jurisdiction to review the district court's remand order. *See Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987) ("This Court must examine the basis of its jurisdiction, on its own motion, if necessary."). "Congress has severely circumscribed the power of federal appellate courts to review remand orders." *See Schexnayder v. Entergy La., Inc.*, 394 F.3d 280, 283 (5th Cir. 2004). Specifically, 28 U.S.C. § 1447(d), prohibits our review of a remand order that is based "on either a lack of subject matter jurisdiction or a defect in removal procedure."

¹ As noted by the magistrate judge, 28 U.S.C. § 1441(a) provides that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed *by the defendant or the defendants*, to the district court of the United States for the district and division embracing the place where such action is pending." (emphasis added).

No. 22-10122

Schexnayder, 394 F.3d at 283; *see* § 1447(d). “This bar to review applies even if the order might otherwise be deemed erroneous.” *Price v. Johnson*, 600 F.3d 460, 462 (5th Cir. 2010) (citation omitted).

The remand order was based on a defect in the removal procedure and lack of subject matter jurisdiction. Specifically, under § 1441(a), a plaintiff is not authorized to remove an action to federal court. Moreover, although Searcy asserted federal question jurisdiction, she included only state law causes of action in her complaint; and she pleaded no facts supporting diversity jurisdiction. Consequently, under § 1447(d), we lack jurisdiction to review the district court’s remand order.

Based on the foregoing, this appeal is DISMISSED.

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 03, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 22-10122. Searcy v. Orchard National Title
USDC No. 3:21-CV-1910

Enclosed is a copy of the court's decision. The court has entered judgment under **FED. R. APP. P. 36**. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through **41**, and **5TH CIR. R. 35**, **39**, and **41** govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following **FED. R. APP. P. 40** and **5TH CIR. R. 35** for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

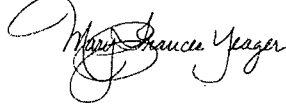
Direct Criminal Appeals. **5TH CIR. R. 41** provides that a motion for a stay of mandate under **FED. R. APP. P. 41** will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under **FED. R. APP. P. 41**. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script, appearing to read "Mary Frances Yeager".

By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

Enclosure(s)

Ms. Candace Searcy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CANDACE SEARCY,

Plaintiff,

v.

ORCHARD NATIONAL TITLE,

Defendant.

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No. 3:21-cv-01910-X-BT

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court in this closed civil action is Plaintiff Candace Searcy's *pro se* "Motion to Reopen Case." (ECF No. 26.) The District Court referred the motion to the United States magistrate judge pursuant to 28 U.S.C. § 636(b) and a standing order of reference. For the reasons stated, the District Court lacks jurisdiction over this case and should DENY the pending motion.

I.

On August 17, 2021, Searcy purportedly removed this case from the 134th District Court, Dallas County, Texas to this Court. Not. Rem. (ECF No. 3). On November 4, 2021, the undersigned magistrate judge issued findings and conclusions, recommending that the District Court remand Searcy's case as improperly removed, or in the alternative, dismiss it for lack of subject-matter jurisdiction. FCR (ECF No. 18). Searcy did not file

objections, and on December 20, 2021, the District Court accepted the magistrate judge's findings and recommendation and entered a judgment remanding the case to state court because it was improperly removed. Ord. (ECF No. 24); J. (ECF No. 25).

On January 4, 2022, Searcy filed the pending motion. Mot. (ECF No. 26). In it, she states that she filed her case in this Court because the state judge and the Dallas County Court lacked jurisdiction over her claims. She further explains that she is entitled to pursue her case in federal court because Orchard National Title committed a crime against her, and she paid a \$400.00 filing fee.

II.

The Court evaluates a motion seeking reconsideration of a prior ruling either as (i) a motion to alter or amend a judgment under Rule 59(e), or (ii) a motion for relief from a final judgment, order, or proceeding or under Rule 60(b). *Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 182 n. 2 (5th Cir. 2012). If the movant filed the motion within twenty-eight days after the entry of judgment, the Court treats the motion as though it was filed under Rule 59; and if the movant filed the motion more than twenty-eight days after the entry of judgment, the Court analyzes it under Rule 60(b). *Id.* Here, Searcy filed her motion on January 4, 2022—fifteen days after the Court entered its judgment on December 20, 2021. Therefore, the Court should construe Searcy's post-judgment motion seeking to "reopen" her case as a Rule 59

motion. *See* Fed. R. Civ. P. 59(e) (“A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.”).

Under Rule 59, the court may “open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law. . . and direct the entry of a new judgment.” Fed. R. Civ. P. 59(a)(2). When a court considers a Rule 59 motion, it is must recognize “the need to bring litigation to an end and the need to render decisions on the basis of all the facts” must be balanced. *Ford v. Elsbury*, 32 F.3d 931, 937 (5th Cir. 1994). A motion to alter or amend judgment under Rule 59(e) “serve[s] the narrow purpose of allowing a party ‘to correct manifest errors of law or fact or to present newly discovered evidence.’” *Waltman v. Int’l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989) (quoting *Keene Corp. v. Int’l Fidelity Ins. Co.*, 561 F. Supp. 656, 665 (N.D. Ill. 1982)). A manifest error of law is an error “that is plain and indisputable, and that amounts to a complete disregard of the controlling law.” *Guy v. Crown Equip. Corp.*, 394 F.3d 320, 325 (5th Cir. 2004) (internal quotation marks omitted). A court has considerable discretion in deciding whether to reopen a case under a Rule 59(e) motion. *Edward H. Bohlin Co., Inc. v. Banning Co., Inc.*, 6 F.3d 350, 355 (5th Cir. 1993).

III.

As District Court previously determined, Searcy improperly removed this case from state court. That is: “As the plaintiff, . . . Searcy

may not remove a case from state court to federal court. . . . And, to the extent Searcy disagrees with a ruling by the presiding judge in her state court action or with the outcome of that case, removal to federal district court cannot serve as a substitute for filing an appeal in state court.” FCR 4. Therefore, the District Court remanded Searcy’s case to state court on December 20, 2021. As a result, the Court lacks jurisdiction over Searcy’s pending motion. *See New Orleans Serv., Inc. v. Majoue*, 802 F.2d 166, 167 (5th Cir. 1986) (per curiam) (following a remand to state court, a district court is divested of jurisdiction to vacate or reconsider a remand order pursuant to 28 U.S.C. § 1447(d)); *Robertson v. Ball*, 534 F.2d 63, 66 n.5 (5th Cir. 1976) (holding that once a federal court decides a remand to state court is appropriate, the action should proceed there without regard to whether the remand was appropriate.); *see also Smith v. JCC Fulton Dev., LLC*, 2019 WL 2340943, at *1 (E.D. La. June 3, 2019) (citing *Majoue*, 802 F.2d at 167). Accordingly, the District Court should DENY Searcy’s motion.

Conclusion

The District Court should DENY Searcy’s motion (ECF No. 26).

Signed January 31, 2022.



REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

The United States District Clerk is directed to serve a true copy of these findings, conclusions, and recommendation on the parties. Pursuant to Title 28, United States Code, Section 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must serve and file written objections within 14 days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory, or general objections. A party's failure to file such written objections to these proposed findings, conclusions, and recommendation will bar that party from a *de novo* determination by the District Court. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Additionally, any failure to file written objections to the findings, conclusions, and recommendation within 14 days after being served with a copy will bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CANDACE SEARCY,

Plaintiff,

v.

ORCHARD NATIONAL TITLE,

Defendant.

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Civil Case No. 3:21-CV-01910-X-BT

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE
JUDGE

On December 20, 2021, the Court accepted the findings, conclusions, and recommendation of the United States Magistrate Judge that this case be remanded to state court, and the case was remanded [Doc. Nos. 24 and 25]. Subsequently, plaintiff Candace Searcy filed a motion to reopen the case [Doc. No. 26]. The United States Magistrate Judge made findings, conclusions, and a recommendation that this motion be denied based on a lack of jurisdiction [Doc. No. 27]. Searcy filed objections, but did not identify the specific finding or recommendation to which objection was made, state the basis for the objection, or specify the place in the magistrate judge's report and recommendation where the disputed determination was found. [Doc. No. 28]. Nonetheless, the District Court reviewed the proposed findings, conclusions, and recommendation *de novo*. As the magistrate judge explained, the Court lacks jurisdiction over Searcy's motion because it has already remanded her case to state court. Outside of two inapplicable exceptions, "[a]n order

remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise”¹ This provision “has been universally construed to preclude not only appellate review but also reconsideration by the district court.”² So, finding no errors, the Court **ACCEPTS** and **ADOPTS IN FULL** the magistrate judge’s findings, conclusions, and recommendations. Searcy’s motion is **DENIED**.

IT IS SO ORDERED this 8th day of April, 2022.



BRANTLEY STARR
UNITED STATES DISTRICT JUDGE

¹ 28 U.S.C. § 1447(d).

² *Smith v. JCC Fulton Development, LLC*, No. 19-4962, 2019 WL 2340943, at *1 (E.D. La. June 3, 2019) (quoting *Bender v. Mazda Motor Corp.*, 657 F.3d 1200, 1203 (11th Cir. 2011)). See also *New Orleans Serv., Inc. v. Majoue*, 802 F.2d 166, 167 (5th Cir. 1986) (per curiam).

United States Court of Appeals
for the Fifth Circuit

No. 22-10122

United States Court of Appeals
Fifth Circuit

FILED

January 30, 2023

CANDACE SEARCY,

Lyle W. Cayce
Clerk

Plaintiff—Appellant,

versus

ORCHARD NATIONAL TITLE,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:21-CV-1910

ON PETITION FOR REHEARING EN BANC

Before DAVIS, SMITH, and DENNIS, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 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

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Suite 115
NEW ORLEANS, LA 70130

January 30, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

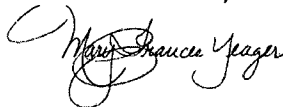
No. 22-10122 Searcy v. Orchard National Title
USDC No. 3:21-CV-1910

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script, appearing to read "Mary Frances Yeager", written over a horizontal line.

By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

Ms. Candace Searcy