

APPENDIX

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APPENDIX A

**UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 22-2225

BOARD OF SUPERVISORS OF ALLEGHANY
COUNTY,

Plaintiff - Appellee,

v.

DONNIE T. KERN,

Defendant - Appellant.

Appeal from the United States District Court for the
Western District of Virginia, at Roanoke. James P.
Jones, Senior District Judge. (7:22-cv-00424-JPJ-
PMS)

Submitted: March 16, 2023

Decided: March 20, 2023

Before WILKINSON, AGEE, and HARRIS, Circuit
Judges.

Dismissed by unpublished per curiam opinion.

Donnie T. Kern, Appellant Pro Se. Christopher
Stanislaw Dadak, GUYNN WADDELL CARROLL
& LOCKABY, P.C., Salem, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Donnie T. Kem seeks to appeal the district court's order remanding the underlying civil action against Kern to the state court from which it was removed.

[T]he law as it stands today provides that an order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to [28 U.S.C. §] 1442 or [§] 1443 . . . shall be reviewable by appeal or otherwise.

BP P.L.C. v. Mayor & City Council of Balt., 141 S. Ct. 1532, 1536-37 (2021) (cleaned up). The district court remanded the case to state court after determining that it lacked subject matter jurisdiction. We therefore are without jurisdiction to review the remand order. See 28 U.S.C. § 1447(c), (d).

Accordingly, we dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

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APPENDIX B

FILED: April 25, 2023

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 22-2225
(7:22-cv-00424-JPJ-PMS)

**BOARD OF SUPERVISORS OF ALLEGHANY
COUNTY**

Plaintiff - Appellee

v.

DONNIE T.A.M. KERN

Defendant - Appellant

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc. Entered at the direction of the panel: Judge Wilkinson, Judge Agee, and Judge Harris.

For the Court

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

No. 7:22CV00424

BOARD OF SUPERVISORS OF ALLEGHANY
COUNTY,

Plaintiff - Appellee,

v.

DONNIE T. KERN,

Defendant - Appellant.

ORDER

Judge James P. Jones

The defendant filed a Notice of Removal in this case on July 26, 2022. The removed case had been dismissed on July 18, 2022, by the Circuit Court of Alleghany County, Virginia, on the motion of the plaintiff¹. The defendant earlier filed a Notice of Removal and an Amended Notice of Removal in the same state case, but this Court remanded the action in each instance

¹ Because under Virginia law all judgments and orders remain under control of the trial court for 21 days, Va. Sup. Ct. R. 1:1, I will assume that removal is still possible, assuming that there is subject-matter jurisdiction. See *Oviedo v. Hallbauer*, 655 F.3d 419, 422–23 (5th Cir. 2011) (holding removal is not possible after the state court’s jurisdiction “has wholly expired”)

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for lack of subject-matter jurisdiction. Bd. of Supervisors of Alleghany Cnty. v. Kern, No. 7:21-cv-00471, 2021 WL 4355289 (W.D. Va. Sept. 13, 2021) (Cullen, J.), appeal dismissed, No. 21- 2046, 2022 WL 205434 (4th Cir. Jan. 24, 2022) (unpublished), cert. denied, No. 21- 1537, 2022 WL 4651942 (U.S. Oct. 3, 2022).

For the reasons stated in the earlier rulings by this Court, I find that there is a lack of subject-matter jurisdiction. Accordingly, it is ORDERED that this case is REMANDED to the Circuit Court of Alleghany County. The Clerk shall close the case.

Enter: October 25, 2022

/s/ James P. Jones
Senior United States District Judge