
United States Court of Appeals for the Fifth Circuit

No. 23-60262

United States Court of Appeals
Fifth Circuit

FILED

June 20, 2023

IN RE JESSICA N. SMITH AN ADULT

Lyle W. Cayce
Clerk

ELLIS KEYES,

Plaintiff—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:23-CV-84

UNPUBLISHED ORDER

Before KING, JONES, and SMITH, *Circuit Judges.*

PER CURIAM:

This court must examine the basis of its jurisdiction on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). In this civil rights case, plaintiff removed from state to federal district court. The district court *sua sponte* remanded to state court, finding defects in the removal procedure. The removal is procedurally defective because 28 U.S.C. § 1441(a) authorizes only defendants to remove a case from state court to federal court.

It is well settled that a district court's remand is interlocutory and unappealable if remand is based on defects in the removal procedure or lack of

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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.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

IN THE MATTER OF JESSICA N.
SMITH AN ADULT

CIVIL ACTION NO. 1:23-cv-84-TBM-RPM

MEMORANDUM OPINION AND ORDER

Ellis Keyes filed a Notice of Removal [1] in this case on March 29, 2023. This Court then *sua sponte* ordered Keyes to file a document explaining how this Court had jurisdiction over this matter. [3]. Keyes has filed his response and it does not demonstrate that this Court has subject-matter jurisdiction over this suit. Therefore, this case is remanded to the Chancery Court of Pearl River County, Mississippi.

Keyes's notice of removal indicates that he initially filed this suit as a petition for appointment of a guardian or conservator for his daughter. [1], p. 1. He notes that he has been told his daughter's alleged addiction and mental health require such an arrangement. [1], pp. 1-2. He also asserts, in his response to this Court's show cause order, that either his or his daughter's civil rights are being violated and references 42 U.S.C. § 1983 for the first time there. [4], p. 3

Civil cases can be removed from state courts to federal courts under 28 U.S.C. § 1441. That statute 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." 28 U.S.C. § 1441(a) (emphasis added). Keyes is not the defendant in this suit; as his notice of removal attests—as well as his response to this Court's show cause order—he filed this suit. Therefore, section 1441 does not allow him to remove this case. *See Valencia v. Allstate*

Tx. Lloyd's, 976 F.3d 593, 595 (5th Cir. 2020) ("The law is clear that a case filed in state court may be removed to federal court only be 'the defendant or the defendants.'" (quoting 28 U.S.C. § 1441(a))).

Because Keyes did not properly remove this case, it is not properly before this Court and must be remanded. *See id.* at 597. Separately, this Court notes that Keyes makes no reference to 28 U.S.C. § 1443 which provides for removal in certain civil rights cases. That section would also not avail Keyes though because it likewise restricts its application to "the defendant" in a given case. 28 U.S.C. § 1443.

IT IS THEREFORE ORDERED AND ADJUDGED that this case is REMANDED back to the Chancery Court of Pearl River County, Mississippi. A certified copy of this opinion and order shall be mailed immediately by the Clerk's Office to the Chancery Clerk of Pearl River County, Mississippi, pursuant to 28 U.S.C. § 1447(c).

THIS, the 19th day of April, 2023.



TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE

IN THE CHANCERY COURT OF PEARL RIVER COUNTY, MISSISSIPPI

IN THE MATTER OF THE GUARDIANSHIP AND
CONSERVATORSHIP OF JESSICA N. SMITH

CAUSE NO. 55CH1:22-pr-00227-CS

ORDER OF DISMISSAL

THIS CAUSE came before the Court for hearing on April 25, 2023, on the *Petition for Emergency Guardianship and Conservatorship of Jessica N. Smith* filed by the Petitioner. Present in open court was the Petitioner, Mr. Ellis Keyes. The Court conducted an on the record hearing and received testimony from the Petitioner. Having considered same, and being advised in the premises, the Court finds that the *Petition* fails for insufficient evidence per MCA § 93-20-305 and § 93-20-407, fails for insufficient notice per MCA § 93-20-303 and §93-20-403, fails for non-compliance with U.C.C.R. 6.01(A). The Petitioner was offered the opportunity on several occasions prior to trial to remedy these deficiencies, but failed to make the necessary changes in order for his *Petition* to meet the statutory requirements.

Having considered the foregoing, the Court hereby dismisses Plaintiffs' *Petition for Guardianship and Conservatorship* and dismisses this case without prejudice.

IT IS THEREFORE ORDERED AND ADJUDGED that this matter is DISMISSED WITHOUT PREJUDICE.

SO ORDERED AND ADJUDGED on this, the 25th day of April, 2023.



CHANCELLOR M. CHADWICK SMITH

FILED

APR 28 2023

MELINDA SMITH BOWMAN CHANCERY CLERK

BY *Melinda Bowman* Case: 55CH1:22-pr-00227-CS

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IN THE CHANCERY COURT OF PEARL RIVER COUNTY, MISSISSIPPI

**IN THE MATTER OF THE GUARDIANSHIP
OF JESSICA N. SMITH
ELLIS KEYES**

PETITIONER

CIVIL ACTION NO.: 23-PR-154-CS

TEMPORARY ORDER

THIS CAUSE came on for hearing July 31, 2023, on the Petition for the Guardianship of Jessica Smith. Appearing before the Court were, the Petitioner, Ellis Keyes, her next friend, by and through his attorney Morgan D. Bishop. In addition, the following interested parties appeared before the Court, Ms. Leanne Lumpkin, sister of Jessica Smith; Ms. Marsha Delacroix, sister of Jessica Smith; Mr. Leon Smith, brother of Jessica Smith; and the Mississippi Department of Mental Health via attorney MaCall Chastain with the Mississippi Office of the Attorney General. The Court conducted a brief inquiry of the parties, and having considered the premises, hereby finds as follows:

1. The proposed ward, Jessica Smith, is currently housed at the Mississippi Department of Mental Health upon a twelve month commitment pursuant to Order of the Chancery Court of Pearl River County in Cause No. 22-cm-13. That pursuant to that proceeding Marsha Delacroix was named as the person of contact.
2. That Marsha Delacroix shall be named as temporary guardian of the Ward, Jessica Smith in this action until further order of the Court. This shall be addressed by separate Order of the Court.
3. That the Mississippi Department of Mental Health by and through the Mississippi State Hospital at Whitfield, shall conduct a medical evaluation of Jessica Smith pursuant to the

requirements of § 93-20-305 and 307 of the MS. Code of 1972 (Commonly known as the GAP Act) requiring:

The chancery judge shall be the judge of the number and character of the witnesses and proof to be presented, except that the proof must include certificates made after a personal examination of the respondent by the following professionals, each of whom shall make in writing a certificate of the result of that examination to be filed with the clerk of the court and become a part of the record of the case

- (a) Two (2) licensed physicians; or
- (b) One (1) licensed physician and either one (1) licensed psychologist, nurse practitioner, or physician's assistant.

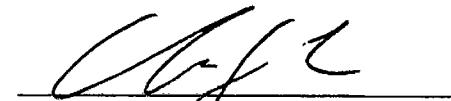
The personal examination may occur face-to-face or via telemedicine, but any telemedicine examination must be made using an audio-visual connection by a physician licensed in this state and as defined in Section 83-9-351. A nurse practitioner or physician assistant conducting an examination shall not also be in a collaborative or supervisory relationship, as the law may otherwise require, with the physician conducting the examination. A professional conducting an examination under this section may also be called to testify at the hearing.

1. That upon completion of the Medical Affidavit(s) attached to this Order as Exhibit A, the same shall be transmitted to the office of Chancellor Chad Smith via USPS, at P.O. Box 1977 Hattiesburg, MS. 39403; or via email to Kristin McGee, Staff Attorney for Chancellor Smith at kmcgee@co.forrest.ms.us

IT IS FURTHER ORDERD AND ADJUDGED, that this action shall be continued and reset for a future date upon which the proposed Ward, Jessica Smith, shall be summoned and

commanded to appear before this Court and have the opportunity to present testimony on her own behalf and that all process is preserved until said date.

SO ORDERED AND ADJUDGED, this the 2nd day of August, 2023.



CHAD SMITH, CHANCELLOR

Prepared by:

/s/ Morgan D. Bishop

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