

Appendix A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

MARY L. MURSE,	:	
Plaintiff,	:	
	:	
v.	:	No. 23-cv-3448
	:	
CHARLES R. MURSE, JR.,	:	
Defendant.	:	

ORDER

AND NOW, this 18th day of October, 2023, upon consideration of Defendant Charles R. Murse Jr.'s Motion to Proceed *In Forma Pauperis* (ECF No. 1) and Notice of Removal (ECF No. 2), it is ORDERED that:

1. This case is REMANDED to the Court of Common Pleas for Lancaster County pursuant to 28 U.S.C. § 1447(c) because this Court lacks subject matter jurisdiction.¹

¹ Defendant Charles R. Murse Jr. seeks to remove to this Court a complaint for divorce filed against him by Mary L. Murse in the Court of Common Pleas for Lancaster County. (ECF No. 2-4 at 1-8.) A defendant "may remove to the appropriate federal district court 'any civil action brought in a State court of which the district courts of the United States have original jurisdiction.'" *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 163 (1997) (quoting 28 U.S.C. § 1441(a)). "In order for a case to be removable under § 1441 and § 1331, the well-pleaded complaint rule requires the federal question be presented on the face of the plaintiff's properly pleaded complaint." *Krashna v. Oliver Realty, Inc.*, 895 F.2d 111, 113 (3d Cir. 1990) (quotations omitted); *see also Aetna Health, Inc. v. Davila*, 542 U.S. 200, 207 (2004). In contrast, a defendant's intention to raise federal defenses to the claims against her, or to file a third-party complaint, does not establish a basis for removal. *See Bracken v. Matgouranis*, 296 F.3d 160, 163-64 (3d Cir. 2002). "The party asserting jurisdiction bears the burden of showing the action is properly before the federal court." *Sikirica v. Nationwide Ins. Co.*, 416 F.3d 214, 219 (3d Cir. 2005).

The jurisdictional basis for Murse's Notice of Removal is his assertion that in the course of the divorce action, several federal laws have allegedly been violated including alleged violations of his civil rights, which justifies the exercise of jurisdiction under § 1441 and § 1331. (ECF No. 2 at 1.) However, as noted above, a defendant's intention to raise federal defenses to state law claims does not provide a basis for removal. Inasmuch as the complaint in this case is a divorce complaint brought under state law, it is not removable pursuant to the Court's federal question jurisdiction. *See Burns v. Burns*, 46 F.3d 1133 (7th Cir. 1995) (unpublished table

2. The Motion for Leave to Proceed *In Forma Pauperis* is **DENIED AS MOOT**.
3. The Clerk of Court is **DIRECTED** to **CLOSE** this case.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.

JOSEPH F. LEESON, JR.
United States District Judge

disposition) (divorce action was not removable because it “concerns purely domestic issues and jurisdiction does not lie with federal district courts”). Nor is there any other jurisdictional basis for removal. *See Matusow v. Trans-Cnty. Title Agency, LLC*, 545 F.3d 241, 245 (3d Cir. 2008) (“[F]ederal courts have no jurisdiction over suits for divorce or the allowance of alimony.”); *Davis v. Glanton*, 107 F.3d 1044, 1047 (3d Cir. 1997) (removal pursuant to 28 U.S.C. § 1443(1) requires a showing that equal rights are being denied in terms of racial equity); *see also Milligan v. Milligan*, 484 F.2d 446, 447 (8th Cir. 1973) (*per curiam*) (no jurisdictional basis for removal of divorce action). Since subject matter jurisdiction is lacking, and the Court will remand this case to the Lancaster County Court of Common Pleas.

Appendix B

DLD-058

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 23-2909

MARY L. MURSE

VS.

CHARLES R. MURSE, JR., Appellant

(E.D. Pa. Civ. No. 5:23-cv-03448)

Present: JORDAN, PORTER, and PHIPPS, Circuit Judges

Submitted by the Clerk for possible dismissal due to a jurisdictional defect
in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant seeks to appeal the District Court's order remanding an action he sought to remove from state court. However, subject to exceptions that are not applicable here, “[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise.” 28 U.S.C. § 1447(d). “[R]emands based on grounds specified in § 1447(c) are immune from review under § 1447(d).” Things Remembered, Inc. v. Petrarca, 516 U.S. 124, 127 (1995). As relevant here, § 1447(c) provides that “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” Because the District Court's remand order was “based upon a lack of subject matter jurisdiction,” see A.S. ex rel. Miller v. SmithKline

Beecham Corp., 769 F.3d 204, 209 (3d Cir. 2014), this Court lacks jurisdiction to review it, see Cook v. Wikler, 320 F.3d 431, 439 (3d Cir. 2003).

By the Court,

s/ Kent A. Jordan
Circuit Judge



A True Copy:

Patricia S. Dodsweat

Patricia S. Dodsweat, Clerk
Certified Order Issued in Lieu of Mandate

Dated: February 12, 2024

PDB/KR/cc: Charles R. Murse, Jr.

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790

Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

February 12, 2024

Mr. Charles R. Murse Jr.
3513 Rothsville Road
Ephrata, PA 17522

RE: Mary Murse v. Charles Murse, Jr.

Case Number: 23-2909

District Court Case Number: 5-23-cv-03448

ENTRY OF JUDGMENT

Today, February 12, 2024 the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3),

Appendix C

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 23-2909

MARY L. MURSE

v.

CHARLES R. MURSE, JR., Appellant

(E.D. Pa. Civ. No. 5:23-cv-03448)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, and CHUNG, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is DENIED.

BY THE COURT

s/ Kent A. Jordan
Circuit Judge

DATED: March 8, 2024

kr/cc: Charles R. Murse, Jr.