UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1480

JULIO LACAYO,

Plaintiff - Appellee,

v.

NATALIA DALTON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:24-cv-00653-LMB-WBP)

Submitted: December 5, 2024 Decided: December 9, 2024

Before GREGORY and RICHARDSON, Circuit Judges, and FLOYD, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

Natalia Dalton, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Natalia Dalton appeals the district court's orders dismissing her notice of removal and denying her motion for reconsideration. This case stems from child support proceedings between Dalton and her child's father, Julio Lacayo, that were initiated in the Juvenile and Domestic Relations District Court for Fairfax County, Virginia, and that have been ongoing for nearly a decade. As relevant here, in June 2023, Dalton moved that court to modify her child support obligations. In March 2024, the court granted in part Dalton's motion and decreased Dalton's child support obligations. Lacayo immediately appealed that order to the Fairfax County Circuit Court. Thirty days later, Dalton filed a notice of removal in the Eastern District of Virginia seeking to remove Lacayo's state circuit court appeal to federal court. In her notice of removal, Dalton alleged several claims under the United States Constitution and attacked the legitimacy of Virginia's courts. The district court sua sponte dismissed the notice of removal for several reasons, including that federal subject matter jurisdiction was lacking.[1] And the district court later denied Dalton's reconsideration motion.

[1] The district court also appropriately recognized that "[f]amily relations are a traditional area of state concern." *Moore v. Sims*, 442 U.S. 415, 435 (1979); *see J.B. v. Woodard*, 997 F.3d 714, 723 (7th Cir. 2021) ("The adjudication of [the plaintiff's] due process claims threaten interference with and disruption of local family law proceedings—a robust area of law traditionally reserved for state and local government—to such a degree as to all but compel the federal judiciary to stand down.").

Assuming without deciding that Dalton could remove a state court action in this posture,[2] we agree with the district court that it lacked federal subject matter jurisdiction.[3] *See Republican Nat'l Comm. v. N.C. State Bd. of Elections*, 120 F.4th 390, 398 (4th Cir. 2024) ("We review de novo questions of subject-matter jurisdiction, including removal."). Starting with diversity jurisdiction, Dalton and Lacayo are both residents of Virginia, so diversity of citizenship does not exist. *See* 28 U.S.C. § 1332(a) (establishing diversity jurisdiction); *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005) (explaining diversity of citizenship requirement).

Turning to federal question jurisdiction, Dalton did not demonstrate that Lacayo's appeal—the action that she sought to remove—involved a federal question. *See* 28 U.S.C. § 1331 (establishing federal question jurisdiction); *In re Blackwater Sec. Consulting, LLC*, 460 F.3d 576, 583 (4th Cir. 2006) ("The party seeking removal bears the burden of demonstrating that removal jurisdiction is proper."). Moreover, Dalton could not manufacture federal question jurisdiction by raising a federal question in response to Lacayo's appeal or by including federal claims in her notice of removal.[4] *See Merrell Dow*

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[2] Federal law authorizes the filing of a notice of removal after the service or filing of "the initial pleading." 28 U.S.C. § 1446(b)(1). It is unclear that Lacayo's state court notice of appeal is an "initial pleading."

[3] Because the district court never remanded this case to state court, we have jurisdiction to review the district court's orders. *Cf.* 28 U.S.C. § 1447(d) (explaining that remand order is not reviewable on appeal absent limited exceptions).

[4] On appeal, Dalton maintains that her motion to modify her child support obligations presented unspecified federal questions and thus authorized removal. Even if Dalton's motion presented a federal question, she could not have removed her own motion (Continued)

Pharms. Inc. v. Thompson, 478 U.S. 804, 808 (1986) ("Under our longstanding interpretation of the current statutory scheme, the question whether a claim arises under federal law must be determined by reference to the well-pleaded complaint. A defense that raises a federal question is inadequate to confer federal jurisdiction. Since a defendant may remove a case only if the claim could have been brought in federal court . . . the question for removal jurisdiction must also be determined by reference to the well-pleaded complaint." (citations and internal quotation marks omitted)); *Gully v. First Nat'l Bank*, 299 U.S. 109, 113 (1936) ("[T]he controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal."); *Hunt v. Lamb*, 427 F.3d 725, 727 (10th Cir. 2005) ("Generally speaking, a case may not be removed to federal court solely because of a defense or counterclaim arising under federal law." (internal quotation marks omitted)).

At bottom, the district court correctly concluded that Dalton's removal attempt was improper given the absence of federal subject matter jurisdiction. We are constrained, however, to vacate the district court's orders because the court failed to remand this action to state court as required by statute. *See* 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."); *Roach v. W. Va. Reg'l Jail & Corr. Facility Auth.*, 74 F.3d 46, 49 (4th Cir.

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to federal court in the first place. *See* 28 U.S.C. § 1446(a) (providing that only defendant may remove state court action to federal court). Apparently recognizing as much, Dalton's notice of removal relied on Lacayo's appeal. But as explained above, Dalton did not establish that Lacayo's appeal involved a federal question.

1996) (explaining that § 1447(c) requires district court to remand to state court rather than dismiss action when federal subject matter jurisdiction is lacking).

We therefore vacate the district court's orders and remand with instructions for the district court to remand this action to state court. *See Hunt*, 427 F.3d at 727. 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.

VACATED AND REMANDED

FILED: December 9, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1480
(1:24-cv-00653-LMB-WBP)

JULIO LACAYO

Plaintiff - Appellee

v.

NATALIA DALTON

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the district court orders entered April 24, 2024 and May 2, 2024, are vacated. This case is remanded to the district court for further proceedings consistent with the court's decision.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JULIO LACAYO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:24-cv-653 (LMB/WBP)
	)	
NATALIA DALTON,	)	
	)	
Movant.	)	

ORDER

Before the Court is a letter from pro se movant Natalia Dalton ("movant" or "Dalton"), [Dkt. No. 7], which the Court will construe as a motion for reconsideration of the Court's April 24, 2024 Order dismissing the above-captioned civil action, [Dkt. No. 5]. In her letter, Dalton explains that she is "a bit confused" and that she does not "understand why this U.S. District Court is sending [her] to the U.S. Court of Appeals for the Fourth Circuit and why this U.S. District Court DENIED [her] Motion to Proceed in forma pauperis as MOOT." [Dkt. No. 7].

On April 19, 2024, Dalton attempted to remove an ongoing Virginia state-court proceeding to this Court, [Dkt. No. 1] ("Notice of Removal"), and on April 24, 2024, the Court dismissed the civil action because Dalton failed to comply with the requirements of the federal removal statutes—28 U.S.C. § 1441 and 28 U.S.C. § 1446—and because the Court lacked subject-matter jurisdiction over the state-court complaint. See [Dkt. No. 5] (explaining the reasons for the Court's decision). After dismissing the civil action, the Court denied Dalton's motion to proceed in forma pauperis because no live controversy remained for which she was a litigant. Finally, the Court advised Dalton that if she disagrees with the decision of this Court, she may appeal the decision to a higher level court that has jurisdiction over this Court's

determinations, specifically, the United States Court of Appeals for the Fourth Circuit. Dalton was also advised that if she wishes to notice an appeal, she must do so within thirty (30) days of April 24, 2024, the date of the Order dismissing the civil action. As of the date of this Order, Dalton is still well within the timeframe in which she can appeal the Court's Order dismissing her Notice of Removal and closing the civil action.

Having explained the basis for the Court's previous decision, and finding no argument in Dalton's letter sufficiently persuasive to warrant amendment of the Court's April 24, 2024 Order, it is hereby

ORDERED that the Clerk docket Dalton's letter, [Dkt. No. 7], as a Motion for Reconsideration; and it is further

ORDERED that Dalton's Motion for Reconsideration be and is DENIED.

To appeal this decision, Dalton must file a written notice of appeal with the Clerk of the Court within thirty (30) days of the date of entry of this Order. A notice of appeal is a short statement indicating a desire to appeal, including the date of the order Dalton wants to appeal. Dalton need not explain the grounds for appeal until so directed by the United States Court of Appeals for the Fourth Circuit. Failure to file a timely notice of appeal waives Dalton's right to appeal this decision.

The Clerk is directed to forward copies of this Order to Natalia Dalton, pro se.

Entered this 2ND day of May, 2024.

Alexandria, Virginia

/s/

Leonie M. Brinkema
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JULIO LACAYO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:24-cv-653 (LMB/WBP)
	)	
NATALIA DALTON,	)	
	)	
Movant.	)	

ORDER

Before the Court is a Notice of Removal from state court, [Dkt. No. 1], and Motion for Leave to Proceed in forma pauperis, [Dkt. No. 3], filed by movant Natalia Dalton ("movant" or "Dalton"), in which she invokes federal and state constitutional provisions in an attempt to challenge her child support payments that were assessed by the "Juvenile and Domestic Relations District Court for Fairfax County" and to request an audit of all such payments. [Dkt. No. 1] at 4. According to Dalton, she filed a "Motion to Modify" her child support obligations in state court on June 27, 2023, which was resolved by the state court on March 12, 2024, through the issuance of a revised child support order. Id. Thereafter, Dalton filed an appeal of the state court's decision in the Circuit Court for Fairfax County, which scheduled a hearing on the appeal for May 27, 2024. Id. (citing Case No. JA-2024-85). Dalton now attempts to "remove the [ ] Trial/Appeal to the U.S. District Court for the Eastern District of Virginia." Id.

The right to remove a case from state to federal court derives solely from 28 U.S.C. § 1441, which provides in relevant part:

> (a) . . . 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.

Moreover, 28 U.S.C. § 1446, prescribes the procedure for removal of civil actions and provides in relevant part:

> (b)(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant . . . of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, ...

Dalton's attempt to remove her pending state-court motion and appeal fails in three respects. First, her Notice of Removal is procedurally improper because it does not comport with the requirements of 28 U.S.C. § 1446(b)(1). Specifically, Dalton has attempted to remove her own state-court motion and ongoing appellate proceeding, not an "initial pleading" filed by the named state-court plaintiff, Julio Lacayo. Moreover, Dalton claims that her state-court domestic relations proceeding has been ongoing since at least May 1, 2023, thus any attempt to remove the action on April 19, 2024, is well outside the thirty-day window provided in § 1446.[1] In her Notice of Removal, Dalton asks the Court to start the thirty-day clock from the date on which she appealed the state-court child support order to the Circuit Court of Fairfax County—March 30, 2024—thus making her April 19, 2024 removal timely. This request demonstrates Dalton's fundamental misunderstanding of the federal removal statute's requirements and contravenes the text of § 1446(b)(1).

Second, because Dalton is attempting to modify her child support obligations—and domestic relations is traditionally an area of state concern[2]—the Court must be satisfied that it

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[1] Dalton further states that the child support computation she wishes to challenge originated on August 3, 2015, which would be approximately nine years before her attempt to remove the state-court domestic relations action to this Court. [Dkt. No. 1] at 3-4.

[2] The Court acknowledges that the domestic-relations exception to federal court jurisdiction is a limit on diversity jurisdiction and "has no generally recognized application as a limitation on

has subject-matter jurisdiction over the matter. Although Dalton claims that she is raising eight federal constitutional questions, see [Dkt. No. 1] at 2-3, she has provided no authority as to how she may collaterally attack her own state-court motion on federal constitutional grounds through the procedures set forth in the federal removal statute. See In re Blackwater Sec. Consulting, LLC, 460 F.3d 576, 583 (4th Cir. 2006) ("The removal statute is strictly construed against removal jurisdiction, and any doubts as to jurisdiction weigh in favor of remand.").

Third, the doctrine of abstention articulated in Younger v. Harris, 401 U.S. 37 (1971), requires a federal court to abstain from interfering in state proceedings, even if jurisdiction exists, if there is: 1) an ongoing state judicial proceeding, instituted prior to any substantial progress in the federal proceeding; 2) implicates important, substantial, or vital state interests; and 3) provides an adequate opportunity for the plaintiff to raise the federal constitutional claim advanced in the federal lawsuit. Laurel Sand & Gravel, Inc. v. Wilson, 519 F.3d 156, 165 (4th Cir. 2008) (citations omitted). Here, all three Younger factors support abstention, as the Court is "unwilling to conclude that the state processes are unequal to the task of accommodating the various interests and deciding the constitutional questions that may arise" in the litigation surrounding Dalton's child support obligations. See Moore v. Sims, 442 U.S. 415, 435 (1979) (explaining that "[f]amily relations are a traditional area of state concern"); Harper v. Pub. Serv. Comm'n of W. Va., 396 F.3d 348, 355 (4th Cir. 2005) ("Constitutional questions—commonly involved in Younger abstention cases—generally can be resolved by state courts.").

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federal question jurisdiction," United States v. Johnson, 114 F.3d 476, 481 (4th Cir. 1997) (citation omitted); however, the Court's finding as to the improper procedural posture of Dalton's attempted removal is sufficient to conclude that no federal question is properly before the Court.

For these reasons, it is hereby

ORDERED that Dalton's Notice of Removal, [Dkt. No. 1], be and is DISMISSED and her Motion to Proceed in forma pauperis, [Dkt. No. 3], be and is DENIED AS MOOT.

To appeal this decision, movant must file a written notice of appeal with the Clerk of the Court within thirty (30) days of the date of entry of this Order. A notice of appeal is a short statement indicating a desire to appeal, including the date of the order movant wants to appeal. Movant need not explain the grounds for appeal until so directed by the United States Court of Appeals for the Fourth Circuit. Failure to file a timely notice of appeal waives movant's right to appeal this decision.

The Clerk is directed to forward copies of this Order to movant Natalia Dalton, pro se, and close this civil action.

Entered this 24th day of April, 2024.

Alexandria, Virginia

/s/ LMB

Leonie M. Brinkema
United States District Judge

FILED: January 22, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1480
(1:24-cv-00653-LMB-WBP)

JULIO LACAYO

Plaintiff - Appellee

v.

NATALIA DALTON

Defendant - Appellant

ORDER

The petition for rehearing en banc and the motion to stay judgment was circulated to the full court. No judge requested a poll under Fed. R. App. P. 40. The court denies the petition for rehearing en banc and the motion to stay judgment.

For the Court

/s/ Nwamaka Anowi, Clerk

Additional material from this filing is available in the Clerk's Office.