

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-11817
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
August 17, 2017

Lyle W. Cayce
Clerk

VIRGINIA T. DUNN,

Plaintiff - Appellee

v.

BRADLEY B. MILLER,

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:16-CV-3213

Before JOLLY, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

In 2013, Virginia Dunn filed a petition for divorce from Bradley Miller. An agreed judgment was entered in 2014, but thereafter, Dunn filed an application in state court seeking to modify child custody arrangements. After a 2016 trial regarding same, Miller filed a notice of removal to a federal district court citing, among other statutes, 28 U.S.C. § 1443 in support. The district

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

court concluded that it lacked removal jurisdiction and remanded the case to state court. Miller appeals.

At the outset, we must limit our decision to the only matter over which we have appellate jurisdiction: whether 28 U.S.C. § 1443 provides removal jurisdiction over this case. 28 U.S.C. § 1447(d). We lack jurisdiction over any other potential grounds for federal jurisdiction, including any potential jurisdiction over a lawsuit filed under a federal statute; to the extent the appeal relates to any such grounds, we dismiss for want of jurisdiction.

The Supreme Court has construed the “equal civil rights” language of 28 U.S.C. § 1443 to be limited to those rights grounded in racial equality. *Georgia v. Rachel*, 384 U.S. 780, 792 (1966); *see also Peltier v. Peltier*, 548 F.2d 1083, 1084 (1st Cir. 1977); *Wilkins v. Rogers*, 581 F.2d 399, 403 (4th Cir. 1978); *Robertson v. Ball*, 534 F.2d 63, 66 (5th Cir. 1976); *Hunt v. Lamb*, 427 F.3d 725, 727 (10th Cir. 2005); *Jimenez v. Wizel*, 644 F. App’x 868, 870 (11th Cir.), *cert. denied*, 137 S. Ct. 203 (2016). Miller makes no such claim. Accordingly, the district court lacked jurisdiction over this removed action under § 1443.

AFFIRMED in part; DISMISSED in part.

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

VIRGINIA T. DUNN,

Plaintiff,

v.

BRADLEY B. MILLER,

Defendant.

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Civil Action No. **3:16-CV-3213-L**

ORDER

Before the court is Petitioner’s Rule 59(e) Motion to Correct Plain Errors and Motion to Reconsider (Doc. 21), filed December 16, 2016; Petitioner’s Verified Motion to Disqualify (Doc. 20), filed December 16, 2016; and the Motion for Leave to File Amicus Curiae Brief of Families Civil Liberties Union (Doc. 22), filed December 19, 2016.

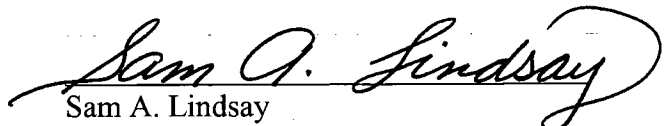
Pro se Defendant Bradley B. Miller (“Miller”) requests that the court reconsider its order in which it sua sponte remanded this case to state court on November 18, 2016. Miller also contends that the undersigned should disqualify himself because the speed at which the court sua sponte remanded the case demonstrates bias and a failure to consider all materials filed by him that reference federal statutes. Miller further asserts that the court’s remand of the case “represents yet another violation of [his] constitutional rights.” Mot. to Disqualify 5. The Families Civil Liberties Union seeks leave under Rule 26.1 of the Federal Rules of Appellate Procedure to file its amicus curiae brief in which it requests the Court of Appeals for the Fifth Circuit to reverse this court’s remand order on the ground that federal court intervention is necessary to determine whether Congress has overstepped its limits and whether such alleged overstepping has undermined Miller’s right of access to an impartial tribunal in violation of his due process rights.

As noted in the court's prior memorandum opinion and order, the underlying state court action, according to Miller's removal papers ("Notice of Removal"), was brought by Plaintiff Virginia T. Dunn ("Dunn") and involves a divorce proceeding and dispute regarding child support and custody that has been pending since 2013. As a basis for removal, Miller relies on an October 18, 2016 state court order that denied a motion to recuse or disqualify filed by him. The court explained that it lacked jurisdiction over the removed case, notwithstanding Miller's contention that the state court's denial of his motion to recuse or disqualify the state court judge and award of various relief to Dunn supports his claims in this case for alleged violations of various federal statutes and the United States Constitution.

Specifically, the court explained that Miller's removal of the state court action is in essence an attempt to appeal orders entered below in the state court action in favor of Dunn. The court further explained that federal question and diversity jurisdiction are lacking because it is clear that the state court action brought by Dunn does not involve any federal claims that would support federal question jurisdiction, and Miller's Notice of Removal contains no information regarding the parties' citizenship or the amount in controversy needed to establish jurisdiction based on diversity. Moreover, Miller's attempt to recharacterize the state court proceedings by alleging federal statutory and constitutional violations in his removal papers and recently-filed motions does not change the court's analysis or determination that it lacks subject matter jurisdiction to hear this action. Additionally, as the court's remand of this case was not based on a procedural defect in Miller's removal but instead on a determination that subject matter jurisdiction is lacking, sua sponte remand was appropriate.

Accordingly, for the reasons herein stated, the court **denies** Petitioner's Rule 59(e) Motion to Correct Plain Errors and Motion to Reconsider (Doc. 21) the court's order remanding this case. The court's determination that remand was appropriate and its denial of Miller's motion to reconsider moots his motion for disqualification. The court, therefore, **denies as moot** Petitioner's Verified Motion to Disqualify (Doc. 20). Further, the court **denies without prejudice** as premature the Motion for Leave to File Amicus Curiae Brief of Families Civil Liberties Union (Doc. 22), as no appeal has been taken of the court's remand order and the motion appears to have been filed in the wrong court.

It is so ordered this 22nd day of December, 2016.


Sam A. Lindsay
United States District Judge

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

VIRGINIA T. DUNN,

Plaintiff,

v.

BRADLEY B. MILLER,

Defendant.

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Civil Action No. **3:16-CV-3213-L**

MEMORANDUM OPINION AND ORDER

For the reasons herein explained, the court lacks subject matter jurisdiction over this action and *sua sponte* **remands** the action to the 330th Judicial District Court, Dallas County, Texas, from which it was removed.

This action was removed to federal court by pro se Defendant Bradley B. Miller (“Miller”) on November 17, 2016. According to Miller’s removal papers (“Notice of Removal”), the underlying state court action brought by Plaintiff Virginia T. Dunn (“Dunn”) involves a divorce proceeding and dispute regarding child support and custody that has been pending since 2013. As a basis for removal, Miller relies on an October 18, 2016 state court order that denied a motion to recuse or disqualify filed by him. Miller contends that the state court’s denial of his motion to recuse or disqualify the state court judge and award of various relief to Dunn supports his claims in this case for alleged violations of various federal statutes and the United States Constitution.

Federal courts are courts of limited jurisdiction and must have statutory or constitutional power to adjudicate a claim. *See Home Builders Ass’n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). Absent jurisdiction conferred by statute or the Constitution, they lack the power to adjudicate claims and must dismiss an action if subject matter jurisdiction is lacking.

Id.; *Stockman v. Federal Election Comm'n*, 138 F.3d 144, 151 (5th Cir. 1998) (citing *Veldhoen v. United States Coast Guard*, 35 F.3d 222, 225 (5th Cir. 1994)). Federal courts have an independent duty “to examine the basis of subject matter jurisdiction sua sponte.” *Lane v. Halliburton*, 529 F.3d 548, 565 (5th Cir. 2008) (quoting *Union Planters Bank Nat’l Ass’n v. Salih*, 369 F.3d 457, 460 (5th Cir. 2004)). “[A]ny doubt about the propriety of removal must be resolved in favor of remand.” *Gasch v. Hartford Acc. & Indent. Co.*, 491 F.3d 278, 281-82 (5th Cir. 2007).

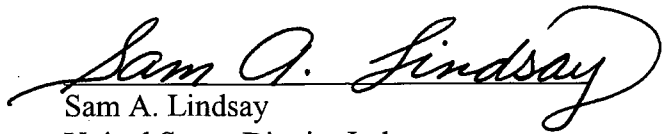
Miller’s removal of the state court action is in essence an attempt to appeal orders entered below in the state court action in favor of Dunn. Miller’s Notice of Removal shows that he recently filed an appeal of the state court action, and, in an apparent attempt to avoid the entry of a final order and hearing scheduled for November 17, 2016, he removed the case to federal court on November 17, 2016. The court, however, lacks jurisdiction to hear any appeal of orders by the state court judge. Under the *Rooker–Feldman* doctrine, a federal district court lacks subject matter jurisdiction to review a final state court decision arising out of a judicial proceeding unless a federal statute specifically authorizes such review. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983) (Federal courts lack jurisdiction “over challenges to state court decisions . . . arising out of judicial proceedings even if those challenges allege that the state court’s action was unconstitutional.”); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 414-16 (1923) (holding that federal district courts do not have appellate jurisdiction to reverse or modify judgment of state court).

Moreover, it is clear that the state court action brought by Dunn does not involve any federal claims to support federal question jurisdiction, and Miller’s Notice of Removal contains no information regarding the parties’ citizenship or the amount in controversy needed to establish jurisdiction based on diversity. To the extent Miller asserted any defensive federal claims in the state

court action or removed the state court action in an attempt to assert such claims, they are insufficient to support subject matter jurisdiction. “[A] case may *not* be removed to federal court on the basis of a federal defense . . . even if the defense is anticipated in the plaintiff’s complaint, and even if both parties concede that the federal defense is the only question truly at issue.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987). “A defense that raises a federal question is inadequate to confer federal jurisdiction.” *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 808 (1986) (citation omitted). “Even an inevitable federal defense does not provide a basis for removal jurisdiction.” *Bernhard*, 523 F.3d at 551 (citations omitted). Instead, the plaintiff’s state court petition must “raise[] issues of federal law sufficient to support federal question jurisdiction.” *Rodriguez v. Pacificare of Tex., Inc.*, 980 F.2d 1014, 1017 (5th Cir. 1993) (citation omitted). Again, there is nothing in the Notice of Removal that indicates that Dunn’s pleadings in the state court divorce and custody action raised any federal issues.

Accordingly, subject matter jurisdiction is lacking. The court, therefore, *sua sponte* **remands** the action to the 330th Judicial District Court, Dallas County, Texas, from which it was removed. The clerk of the court is **directed** to effect the remand in accordance with the usual procedure and term all pending motions in this case.

It is so ordered this 18th day of November, 2016.


Sam A. Lindsay
United States District Judge