

United States Court of Appeals For the First Circuit

Nos. 18-1297
18-1398

HAMID R. ARDANEH,

Plaintiff, Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS; DAVID MERFELD; BONNIE FRIEDMAN;
SANAZ SIYONIT; JACOB BABAI,

Defendants, Appellees.

Before

Torruella, Thompson and Barron,
Circuit Judges.

ORDER OF COURT

Entered: October 1, 2018

Plaintiff-Appellant Hamid Ardaneh's request for appointment of counsel is denied. His "Motion for Relief" is construed as a petition for panel rehearing and is denied.

By the Court:

/s/ Maria Hamilton, Clerk

cc:
Hamid Reza Ardaneh
Maura T. Healey

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SANAZ SIYONIT; JACOB BABAI,

Defendants, Appellees.

Before

Torruella, Thompson and Barron,
Circuit Judges.

JUDGMENT

Entered: August 28, 2018

After careful review of the record, we affirm the district court's judgment remanding to state court, substantially for the reasons stated in the district court's decision entered on March 20, 2018. All pending motions are denied as moot.

Affirmed. See 1st Cir. R. 27.0(c).

By the Court:

/s/ Margaret Carter, Clerk

cc:
Hamid Reza Ardaneh
Maura T. Healey

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HAMID R. ARDANEH

Plaintiff

CIVIL ACTION

v.

NO. 18-10385-NMG

COMMONWEALTH OF MASSACHUSETTS et al.,

Defendants.

ORDER OF REMAND

GORTON, D. J.

In accordance with the court's Order of Summary Remand dated March 20, 2018, it is hereby ORDERED that the above-entitled action be and hereby is REMANDED and this action is CLOSED.

By the Court,

March 21, 2018

/s/ Daniel C. Hohler

Date

Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HAMID R. ARDANEH

v.

CIVIL ACTION NO. 18-10385-NMG

COMMONWEALTH OF MASSACHUSETTS

ORDER OF SUMMARY REMAND
PURSUANT TO 28 U.S.C. §1455(b)(4)

GORTON, J.

1. Hamid R. Ardaneh's motion for leave to proceed in forma pauperis (ECF No. 7) is hereby DENIED without prejudice because no filing fee is due. Although the case was opened as a "civil action," the defendant is attempting to remove his state criminal proceeding to this court. The First Circuit has not addressed the issue, but "[b]ecause filing fees are not required for removal of a criminal action under 28 U.S.C. § 1443, it is not necessary to grant Petitioner *in forma pauperis* status in this action." Georgia v. Castaneira, No. 1:11-CV-3054-TWT-JFK, 2011 WL 5514000, at *1 (N.D. Ga. Oct. 11, 2011), report and recommendation adopted, No. 1:11-CV-3054-TWT, 2011 WL 5514011 (N.D. Ga. Nov. 9, 2011)(citing Lefton v. City of Hattiesburg, Miss., 333 F.2d 280, 285 (5th Cir.1964); Brevard Cty., Fla. v. Smaldore, No. 6:14-CV-2041-ORL-41, 2015 WL 3830737, at *1 (M.D. Fla. June 19, 2015).

2. Ardaneh's removed criminal action, styled Commonwealth v. Ardaneh, No. 1681cr00418, is hereby SUMMARILY REMANDED back to Middlesex County Superior Court pursuant to 28 U.S.C. § 1455(b)(4) where "it clearly appears on the face of the notice that removal should not be permitted." On February 26, 2018, Ardaneh filed what the Court construes as a notice of removal of a state criminal action pursuant to 28 U.S.C. §1455(a). As an

initial matter, the petition does not appear timely under 28 U.S.C. §1455(b)(1)(requiring notice of removal to be filed within 30 days of the earlier of arraignment or before trial) where the documents indicate that he has been in custody for over a year. The notice also does not include all of the “process, pleadings and orders served upon the defendant.” 28 U.S.C. §1455(a). But even if timely, Ardaneh’s request for removal under 28 U.S.C. §1443(2) is meritless. That provision of the removal statute provides, among other things, that a state criminal prosecution may be removed by a defendant to this court for “any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.” 28 U.S.C. § 1443(2). “Despite the somewhat broad language of the statute, the Supreme Court has held that it ‘confers a privilege of removal only upon federal officers or agents and those authorized to act with or for them in affirmatively executing duties under any federal law providing for equal civil rights.’” Commonwealth of Massachusetts v. Martin, No. CV 16-11028-FDS, 2016 WL 3461189, at *2 (D. Mass. June 21, 2016)(quoting City of Greenwood v. Peacock, 384 U.S. 808, 824 (1966)). Ardaneh does not allege that he is a federal officer or agent, and therefore does not fall within the statute.¹

3. The Clerk shall enter an order REMANDING this criminal action to Middlesex County Superior Court and CLOSING this action. The Clerk shall mail a copy of this Order and the Clerk’s Order of Remand to the Clerk of the Middlesex Superior Court.

4. Petitioner is notified that his contingent “notice of appeal” (ECF No. 3) is premature and insufficient. See Ridley v. Conley, No. 5:16-CV-00192-MP-GRJ, 2016 WL

¹ Ardaneh does not claim removal based upon 28 U.S.C. §1443(1).

6634905, at *1 (N.D. Fla. Nov. 8, 2016)(striking notice of appeal contingent upon denial of motion and dismissal of claim improper). If Ardaneh wishes to appeal this Order, he must file a new notice of appeal and comply with the Federal Rules of Appellate Procedure. See F.R.A.P. 3 and 4; 28 U.S.C. §1447(d)(permitting appeal of order of remand under 28 U.S.C. §1443).

5. To the extent that Ardaneh is attempting to bring a civil action in this removal matter, he may not do so in this proceeding. Rather, he must file a separate civil action and either pay the \$400 filing fee or move for leave to proceed in forma pauperis. Because Ardaneh is a prisoner, to the extent that he brings such an action even if he is permitted to proceed in forma pauperis, he will be assessed an initial filing fee and be required to pay the balance of the \$350 filing fee pursuant to 28 U.S.C. §1915(b).

SO ORDERED.

DATED: March 20, 2018

/s/ Nathaniel M. Gorton
NATHANIEL M. GORTON
UNITED STATES DISTRICT JUDGE

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