

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION

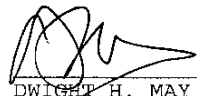
NANCY B. CORMIER	*	CIVIL CASE NO. 6:04-CV-30
Plaintiff	*	
vs.	*	Assigned To: WLS
DENNY C. CORMIER	*	
Defendant	*	

MOTION TO REMAND

Comes Now NANCY B. CORMIER, by and through her counsel of record, and moves this Honorable Court to summarily remand this case to the originating state court based upon lack of subject matter jurisdiction as set forth in the attached brief.

Respectfully submitted,

P.O. Box 1660
Moultrie, GA 31776
229/985-1724



DWIGHT H. MAY
GA BAR NO. 478950
ATTORNEY FOR PLAINTIFF

on federal questions grounds. (28 U.S.C.A. Sec. 1331; Weatherall v. Weatherall, 83 F.Supp.2d 1003).

The fact that the plaintiff wife, a resident of Georgia at the time she filed the divorce action, moved to Florida after the action was filed was insufficient to create diversity jurisdiction as would permit the defendant husband to remove the action to federal court. (28 U.S.C.A. Sec. 1332, 2241(a); Kanzelberger v. Kanzelberger, 782 F. 2d 774, 776 [7th Cir. 1986]).

The defendant husband has asserted a number of grounds for removal, 'alimony provisions [of Georgia law] impermissibly infringe U.S. Constitution Fourteenth Amendment Due Process Right to Privacy, Right to Property and Equal Protection'. However, the defendant must show that he will be denied or cannot enforce his rights in the state courts. (28 U.S.C.A. Sec. 1443(1); Neal v. Wilson, 112 F. 3d 351, 355 [8th Cir. 1997]). The defendant has made no allegations to suggest that if in fact his rights have been violated, an appeal to the Georgia appellate courts would be ineffective to vindicate those rights. (City of Greenwood v. Peacock, 384 U.S. 808, 828; 86 S. Ct. 1800; 16 L. Ed. 2d 944 [1966]). Therefore, the defendant's Notice of Removal does not state any valid basis for federal court jurisdiction.

The defendant husband filed his Notice of Removal several months AFTER he was served with the original summons and complaint,

in violation of 28 U.S.C.A. Sec. 1446(b).

The defendant husband has failed to set forth any facts which would confer subject matter jurisdiction in this action for divorce in this Honorable Court, and the case should be remanded to the state court.

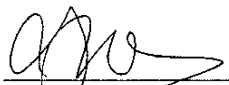
The defendant husband wrongfully removed this case from the state court and has caused the plaintiff wife unnecessary trouble and expense as a result thereof.

CONCLUSION

Based upon the foregoing, the plaintiff wife submits that this Honorable Court lacks subject matter jurisdiction in this action for divorce, and respectfully requests the Court to summarily remand this action to the state court in which it originated, to-wit: Superior Court of Colquitt County, Georgia, and to require the defendant husband to pay plaintiff's reasonable attorney's fees incurred as a result of the removal.

Respectfully submitted, this 14th day of September, 2004.

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

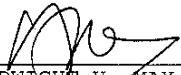
I hereby certify that I have served the within and foregoing MOTION TO REMAND and BRIEF IN SUPPORT OF MOTION TO REMAND upon the defendant and defendant's state court counsel of record by placing a copy of same in the United States Postal Service, postage prepaid, in envelopes properly addressed to:

Denny C. Cormier, 1000 Mallery Street #38, St. Simons Island, GA 31522;

Guyton O. Terry, III, Esq., P.O. Box 1185, Valdosta, GA 31603.

This 12/14 day of September, 2004.

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ATTORNEY FOR PLAINTIFF