

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

FAMILY COURT
NINTH JUDICIAL CIRCUIT
CASE NO. 95-DR-10-4755

CONSTANCE MILLS
(Now Known as Constance Mills Haeseley)
Plaintiff

v

DALE WAYNE MILLS,
Defendant

**DEFENDANT’S MEMORADUM OF LAW TO SHOW THIS COURT
LACKS JURISDICTION**

Comes now the Defendant, *pro se*, to offer this memorandum of law to show this court is without jurisdiction to entertain motions and proceed in any fashion in this case.

28 U.S.C § 1446 (d) unambiguously states this court was divested of all jurisdictions after a proper removal was effected. 28 U.S.C. 1446 (d),

"Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and **the State court shall proceed no further unless and until the case is remanded.**"

Furthermore, 28 U.S.C. § 1446 governs the procedure for Removal of a state action to a federal court. The facts in the accompanying motion demonstrate full compliance with the federal statute.

A defendant seeking removal must “file in the district court of the United States for the district and division within which such action is pending a notice of removal....”

28 U.S.C. § 1446(a) (2004). In a civil action, the filing of the notice “shall effect the

removal and the State court shall proceed no further unless and until the case is remanded.” Id. at § 1446(d). In fact, a state court has a "duty ... to proceed no further in the cause.” Steamship Co. v. Tugman, 106 U.S. 118, 122 (1882); Hyde Park Partners, L.P. v. Connolly, 839 F.2d 837, 842 (1st Cir. 1988).

Since 1882, courts have consistently held that upon the filing of the petition for removal, the jurisdiction of the state court absolutely ceases, and that of the federal court immediately attaches. Steamship, 106 U.S., at 122-23. Accordingly, upon the filing of the notice of removal, unless and until remand, all further proceedings in state court are void *ab initio* because they are in fact *coram non judice*. Id.; see Hyde Park Partners, 839 F.2d, at 842 (hearing and temporary restraining order issued by state court void *ab initio* where entered following removal to federal court); Polyplastics, Inc. v. Transconex, Inc., 713 F.2d 875, 880 (1st Cir. 1983) (citing E.D. Systems Corp. v. Southwestern Bell Telephone, 674 F.2d 453, 458 (5th Cir. 1982) and Arango v. Guzman Travel Advisers Corp., 621 F.2d 1371, 1374, 1375 (5th Cir. 1980) for the proposition that post-removal Civil No. 04-2288(DRD) 3 proceedings in state court are void *ab initio* once the case is removed); Sweeney v. Resolution Trust Corp., 16 F.3d 1, 4 (1st Cir. 1994) (“purported judgment” entered by state court void *ab initio* where entered following removal to federal court); Hernandez-Lopez v. Com. of Puerto Rico, 30 F.Supp.2d 205, 211 (D. P.R. 1998); accord In re Diet Drugs, 282 F.3d 220, 231-232 (3d Cir. 2002); State of South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir. 1971); Lowe v. Jacobs, 243 F.2d 432, 433 (5th Cir. 1957); Ward v. Resolution Trust Corp., 972 F.2d 196, 198 (8th Cir. 1992); California ex rel. Sacramento Metropolitan Air Quality Management Dist., v. United States, 215 F.3d 1005, 1011 (9th Cir. 2000).

The removal of a case from state court to federal court effects a transfer of the entire action, including all the parties and all the claims, to the federal court. City of Gainesville v. Brown-Crummer Investment Co., 277 U.S. 54, 60 (1928); Arango v. Guzman Travel Advisors Corp., 621 F.2d 1371, 1376 (5th Cir. 1980); Murphy v. Kodz, 351 F.2d 163, 167 (9th Cir. 1965); Hartlein v. Illinois Power Co., 601 N.E.2d 720, 726 (Ill. 1992). A defendant, upon filing a notice of removal, “shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk” of the state court, which effects the removal, 28 U.S.C. § 1446(d). At that point, “the [s]tate court shall proceed no further unless and until the case is remanded.” *Id.*

“After compliance with the removal statute[,] the jurisdiction of the [s]tate court is suspended until there has been a remand.” Levine v. Lacy, 204 Va. 297, 300, 130 S.E.2d 443, 445 (1963); accord Yarnevic v. Brink’s, Inc., 102 F.3d 753, 754 (4th Cir. 1996); Maseda v. Honda Motor Co., 861 F.2d 1248, 1254 (11th Cir. 1988); Allman v. Hanley, 302 F.2d 559, 562 (5th Cir. 1962). “Any subsequent proceedings in state court on the case are void ab initio.” Maseda, 861 F.2d at 1254-55 (citing Steamship Co. v. Tugman, 106 U.S. 118, 122 (1882)); accord South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir. 1971). A later determination that the removal petition was not proper does not change that outcome. See Maseda, 861 F.2d at 1254 n.11; Moore, 447 F.2d at 1073; United States v. Silberglitt, 441 F.2d 225, 227 (2d Cir. 1971); Lowe v. Jacobs, 243 F.2d 432, 433 (5th Cir. 1957).

A proper filing of a notice of removal immediately strips the state court of its jurisdiction. 28 U.S.C. § 1446(d), State of South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir. 1971).

CONCLUSION

For the above reasons this court lacks jurisdiction to proceed.

PRAYER FOR RELIEF

Wherefore the Defendant requests this court rescind its order on the Hearing to Shoe Cause and proceed absolutely no further until remand. Declare all proceedings in this case in this court void ab initio since removal.

Respectfully submitted,

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DATED this 31st day of August, 2005

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing motion has been served via U.S. mail this 31st day of August, 2005 to

The Honorable Henry McMaster,
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