

In the District Court of the United States

For the District of South Carolina

CHARLESTON DIVISION

CONSTANCE MILLS)	
a/k/a CONSTANCE MILLS HAESELEY,)	
)	Civil Action No. 2:04-23286-DCN-GCK
Plaintiff,)	
)	
v5.)	
)	ORDER OF REMAND
DALE WAYNE MILLS,)	
)	
Defendant.)	
_____)	

I. FACTS AND PROCEDURAL HISTORY

In 1996, Constance Mills a/k/a Constance Mills Haeseley (the "Plaintiff") initiated divorce proceedings against her husband, Dale Wayne Mills (the "Defendant") in the Family Court for the Ninth Judicial Circuit, County of Charleston. Subsequently, a final Decree of Divorce was issued by that Court on December 19, 1996, which awarded permanent alimony to the Plaintiff in the amount of \$1 ,500.00 per month.

On September 14, 2004, the Family Court found the Defendant in civil contempt following Plaintiffs motion for a rule to show cause. The Court issued an order, dated December 1, 2004, which held that the Defendant could purge himself of contempt by paying attorney's fees in the amount of \$2,055.00 within ten (10) days of said hearing and by becoming current on his alimony payments.

On December 16, 2004, the Defendant, *pro se*, filed a Notice of Removal! [Item # 1], alleging the presence of federal question jurisdiction pursuant to 28 U.S.C. § 1331. In response, on January 4, 2005, Plaintiff filed a Motion to Dismiss or in the Alternative, Motion to Remand. [Item # 4]

Pursuant to 28 U.S.C. §§ 636(b)(1)(A) & (B), Fed. R. Civ. P. 72(a) & (b), and Local Rule 73.02(B)(2)(e), D.S.C., the undersigned United States Magistrate Judge is authorized to review Plaintiff's Motion to Dismiss or in the Alternative, Motion to Remand and, as appropriate, submit findings and recommendations to the District Court, or order remand if appropriate. Having carefully considered the record and the applicable law, the undersigned orders that this case be remanded to the Family Court for the Ninth Judicial Circuit, County of Charleston.

II. WHETHER REMOVAL JURISDICTION EXISTS

"Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 541 (1986). As such, subject-matter jurisdiction cannot be conferred by the parties, nor can a defect in subject-matter jurisdiction be waived by the parties. ~ United States v. Cotton, 535 U.S. 625, 630 (2002). A question of subject-matter jurisdiction may be raised at any point during the proceedings and may even be raised by the Court, *sua sponte*. 28 U.S.C. § 1447(c).

"In order for removal jurisdiction to exist, a federal court must have original jurisdiction." Besse v. General Motors Com., 317 F.Supp. 2d 646, 648 (D.S.C. 2004), *citing* 28 U.S.C. §

¹ Defendant contends that this matter was not removable until the Family Court Order (attached as Exhibit 1 to Plaintiff's Motion [Item #4]) was issued on December 1, 2004 and therefore his removal was timely. The undersigned disagrees, finding that the Family Court Order does not present an issue that would be subject to removal pursuant to 28 U.S.C. § 1446. Defendant's removal is not timely, as the Order which Defendant essentially is challenging is the Decree of Divorce dated December 19, 1996, attached as Exhibit 2 to Plaintiff's Motion. [Item #4]

1441(a). "Typically, an action initiated in a state court can be removed to federal court only if it might have been brought in federal court originally." ~, 317 F.Supp.2d at 648, *citing* Sonoco Prods. Co. v. Physicians Health Plan. Inc., 338 F.3d 366,370 (4th Cir.2003) .

A federal court's jurisdiction under the removal statutes amounts to an infringement upon state sovereignty. ~ Shamrock Oil Com. v. Sheets, 313 U.S. 100,108-09 (1941). As removal jurisdiction raises significant federalism concerns, it must be strictly construed. ~ at 109; Schlumberger Indus.. Inc. v. Nat'l Sur. Com., 36 F.3d 1274, 1284 (4th Cir.1994); Mulcahey v. Columbia Organic Chern. Co., 29 F.3d 148, 151 (41h Cir. 1994). "The burden of demonstrating jurisdiction resides with 'the party seeking removal. '" Dixon v. Coburg Dairy. Inc., 369 F .3d 811,816 (4th Cir. 2004) (*en banc*), *quoting* Mulcahey, 29 F.3d at 151; *see also* Lovern v. Edwards, 190 F .3d 648, 654 (4th Cir.1999) ("It is elementary that the burden is on the party asserting jurisdiction to demonstrate that jurisdiction does, in fact, exist.").

To ensure that federal courts do not overstep constitutional bounds and delve into matters that are purely state law, federal precedent "scrupulously confine[s]" removal jurisdiction. Shamrock Oil, 313 U.S. at 109. Indeed, the Fourth Circuit maintains that "remand is necessary" where any doubt exists for removal jurisdiction. Mulcahey, 29 F.3d at 151; ~ ~ Handxman Network. Inc. v. Westin!house Savannah River Co., 868 F.Supp. 151, 153 (D.S.C. 1994) ("If federal jurisdiction is doubtful, a remand is necessary.") (Citations omitted). "[C]ourts should resolve all doubts about the propriety of removal in favor of retained state court jurisdiction." Hartley v. CSX Trans~.. Inc., 187 F.3d 422,425 (4th Cir.1999).

Defendant has removed this case from state court and has the burden of demonstrating federal question jurisdiction, which provides that "[t]he district courts shall have original jurisdiction of all civil action arising under the Constitution, laws, or treaties of the United

States." 28 V.S.C. § 1331. Accordingly, a defendant in a state court action may remove an action to a federal district court if the case rests "upon a claim or right arising under the Constitution, treaties, or laws of the United States" and originally could have been brought in federal court. ~28U.S.C. §§ 1441 (a) & (b).

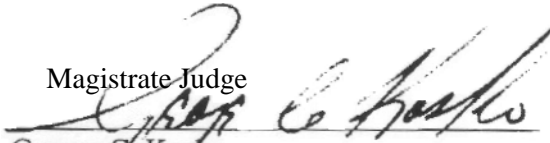
Defendant, in support of his argument that this Court has federal question jurisdiction, alleges that South Carolina Code Annotated Sections 20-3-120 and 20-3-130 are unconstitutional and violate his civil rights under 42 V.S.C. § 1983.2 The Defendant is attempting to challenge the validity of the Decree of Divorce issued by the Honorable J.P. Segars-Andrews, Family Court Judge for the Ninth Judicial Circuit, County of Charleston. However, it is well-settled that domestic relations matters fall within the purview of the state courts. As the United States Supreme Court recently observed, "[o]ne of the principal areas in which this Court has customarily declined to intervene is the realm of domestic relations." Elk Grove Unified School District v. Newdow, 542 U.S. 1, 124 S.Ct. 2301, 2309 (2004). "[T]he whole subject of the domestic relations of husband and wife. . . belongs to the laws of the States and not to the laws of the United States." 1Q., *citing In re Burrus*, 136 U.S. 586, 593-594 (1890); *see also Wilkins v. Rogers*, 581 F.2d 399, 403-404 (4th Cir. 1978). A federal question is not presented that would permit this Court to assert jurisdiction, and this case must be remanded.

THEREFORE, IT IS ORDERED that Plaintiff's Motion to Dismiss [Item #4-1] is denied and Plaintiffs Motion to Remand [Item #4-2] is granted; that this matter is remanded to the Family Court for the Ninth Judicial Circuit, County of Charleston, pursuant to 28 V.S.C. §

². Even assuming that complete diversity of the parties exists in this case, a federal court nevertheless would decline to exercise jurisdiction in this matter because of the domestic relations exception to the diversity statute. ~Wasserman v. Wasserman, 671 F.2d 832, 834 (4th Cir.), *cert. denied*, 459 U.S. 1014 (1982); Wilkins v. Roaers, 581 F.2d 399, 403-405 & n.4 (4th Cir. 1978); Thrower v. Cox, 425 F. Supp. 570, 571-574 (D.S.G.

1 447(c); that a certified copy of this Order of Remand shall be mailed by the clerk to the clerk of said Family Court so that the Family Court may proceed with the disposition of this case; that all pleadings filed in this matter be made a part of the case on remand; and that the Defendant pay to the Plaintiff the just costs and any actual expenses, including attorney fees, incurred by reason of these removal proceedings, as provided by 28 V.S.C. § 1447(c).

IT IS SO ORDERED. June 16, 2005

Magistrate Judge

George C. Kosko
United States

June 16, 2005 Charleston, South Carolina