

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CASE NUMBER 06-0752-CV-W-GAF

Harold Stanley,
Plaintiff,

v

Honorable Jack Grate et al.,
Defendants

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ,
SUGGESTION IN SUPPORT OF THIS MOTION AND,
PLAINTIFF'S AFFIDAVIT OF MATERIAL FACTS**

Plaintiff, *pro se*, with assistance of counsel, pursuant to Fed. Rules Civil. Proc. Rule 56 moves this court to grant partial summary judgment on the issue of liability, preserving the issue of damages for trial, in his favor against remaining defendant Marcia E. Stanley.

There are no material facts in dispute in this action. Attached is Plaintiff's affidavit attesting to the accuracy of the material facts at issue in this action.

Wherefore the Plaintiff moves this court to grant partial summary judgment against defendant Marcia E. Stanley declaring her liable for civil damages pursuant to her violation of the Plaintiff's civil rights when she initiated and participated in state court ultra vires proceedings, execution of an ultra vires civil contempt/commitment order, and issuance of a still active arrest warrant. Such conduct was performed with the state actor Judge Jack Grate. The Plaintiff lost his liberty and was deprived of his civil rights by the conduct of the defendant contrary to federal law 28 U.S.C §§ 1446,1447.

Respectfully submitted,

Harold Stanley, Plaintiff, *pro se with* assistance of counsel
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August 14, 2007

SUGGESTIONS TO DENY MOTION TO DISMISS
(Memorandum of Law)

A. Introduction

Plaintiff seeks partial summary judgment against the Defendant Marcia E. Stanley for his claim that she deprived him of his liberty and civil rights when she deliberately and knowingly acted with state actor Judge Jack Grate, contrary to 28 U.S.C. §1447 (d). Her conduct has resulted in an ultra vires arrest warrant that is still active against the Plaintiff. The arrest warrant has deprived him his liberty and civil rights.

Your Honor is familiar with both the removed action (Case Number 05-281-CV-W-GAF and this action Case Number 06-0752-CV-W-GAF) as he is/was presiding judge in both actions.

B. Statement of Undisputed Facts

On March 24, 2005 the Plaintiff properly effected removal of his state court alleged alimony arrearages state action (Case No. 96-08993) to the United States District Court for the Western District of Missouri, Western Division (Case Number 05-281-CV-W-GAF) by filing a notice of removal in the federal district court and filing a Notice of Filing of Notice of Removal with the clerk of the state court where the state action was pending. (Exhibit A - 24 March 2005 Notice of Filing of Notice of Removal) pursuant to 28 U.S.C. § 1446. Adverse parties were also noticed, i.e. the Defendant through her attorney Les Wight (Exhibit A Certificate of Service)

On October 31, 2005 the defendant, through her counsel before state actor Judge Jack Grate initiated and participated in notice to have a state court contempt/commitment hearing.

On November 28, 2005 the Plaintiff informed the state court that the action had been removed to federal court (Exhibit E – Former Husband’s Answer to Application for Review of Contempt and Answer to Notice of Hearing). The hearing resulted in a contempt/commitment order on December 9, 2005 (Exhibit F - Judgment Entry, Review of Contempt). The Order resulted in the issuance of an arrest warrant that is still active.

On July 19, 2005 the defendant’s counsel moved for dismissal of the removed state action. The federal court dismissed the action on October 25, 2005.

On January 9 2007 the federal district court remanded the dismissed removed action to state court. (Exhibit J – 9 January 2007 Order of Remand).

To repeat, the arrest warrant is currently active.

C. Summary of Argument

The Plaintiff carefully followed 28 U.S.C. § 1446 i.e. the law on the procedure of removal of a state action to federal court. The defendant acted with her counsel and the state court judge in clear absence of all jurisdiction and contrary to 28 U.S.C. § 1446 (d). They participated in state court proceeding contrary to the statute, i.e. before the removed action was remanded to state court. The conduct of all defendants resulted in an ultra vires commitment order and arrest warrant. The commitment order and arrest warrant have deprived the Plaintiff of his liberty interest and civil rights—even up until today.

D. Argument

1. 28 U.S.C. § 1446

This action all revolves around this statute. It states the terms for a proper removal. Removal is proper if the procedural steps in this statute are followed. Whether or not a federal court has jurisdiction to entertain a removed action relates to a different statute, e.g. 25 U.S.C §1441, 28 U.S.C. § 1331. State actions may be properly removed and removal may be effected and yet a federal court may claim it lacks jurisdiction and remand for lack of subject matter jurisdiction.

The crux of the statute at issue is 28 U.S.C. 1446 (d),

(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice 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.**

Removal is effected by the removing party filing a copy of the notice of removal with the clerk of the relevant state court where the action was pending.

2. Facts in the Action Relating to 28 U.S.C. § 1446

The statement of the facts above, supported by the Plaintiff's affidavit and the attached exhibits leave no doubt that the defendant along with her attorney and the state actor Judge Jack Grate acted contrary to 28 U.S.C. § 1446 (d).

The state court proceedings and the resulting order are ultra vires, i.e. lacked all jurisdiction.

Certainly the state court generally had jurisdiction to rule on alleged alimony arrearages but only up to the time removal to federal court was effected. 28 U.S.C. § 1446 (d) unambiguously terminated the state court jurisdiction when removal was effected by filing the Notice of Notice of Removal with the state court clerk on March 24, 2005.

The affidavit and attached order show not only that the removed action was dismissed but was not remanded until January 9, 2007.

3. Law of 28 U.S.C. § 1446

The Plaintiff reiterates the same law he did in his motion to deny dismissal.

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).

E. Conclusion

Removal of the state court action was effected March 24, 2005. The conduct resulting in the deprivation of the Plaintiff's liberty interest and civil rights took place December 2005 and January 2006 when the defendant initiated and participated in state court proceedings in the same action lacking all jurisdiction in violation of 28. U.S.C. § 1446 (d). Remand did not occur until January 9, 2007, and that was nineteen months after the federal court had dismissed the removed action.

F. Prayer for Relief

The Plaintiff prays this court will grant him partial summary judgment against defendant Marcia E. Stanley on her liability for deprivation of his civil rights by initiating ultra vires state court proceeding resulting in the continued active arrest warrant against him contrary to 28 U.S.C § 1446. Further he requests jury trial on the damages portion of his claims.

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing motion to deny dismissal and memorandum of law was sent via first-class U.S. Mail, postage pre-paid, this 14 th day of August 2007 to

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