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May 3, 2019

VIA ECF

Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *County of San Mateo v. Chevron Corp.*, No. 18-15499, consolidated with *City of Imperial Beach v. Chevron Corp.*, No. 18-15502; *County of Marin v. Chevron Corp.*, No. 18-15503; *County of Santa Cruz v. Chevron Corp.*, No. 18-16376

Dear Ms. Dwyer:

Appellees are writing pursuant to Federal Rule of Appellate Procedure 28(j) to notify the Court of the Eleventh Circuit's recent decision in *Dixit v. Dixit*, No. 18-12945, 2019 WL 1857116 (11th Cir. Apr. 25, 2019) (per curiam) (attached as Exhibit A). The decision is relevant to the scope of this Court's jurisdiction to review the district court's remand order in this case.

In *Dixit*, the defendant had removed a case to federal court on multiple grounds, including under 28 U.S.C. § 1441 (federal question jurisdiction) and 28 U.S.C. § 1443 (civil rights removal). When the district court remanded, the defendant attempted to appeal. Consistent with this Court's precedent in *Patel v. Del Taco, Inc.*, 446 F.3d 996 (9th Cir. 2006), the Eleventh Circuit "dismissed the appeal in part for lack of jurisdiction," reasoning that it "lacked jurisdiction to review 'the district court's conclusion that it lacked diversity or federal question jurisdiction'" but that it had jurisdiction to "review the district court's conclusion that a remand under 28 U.S.C. § 1443 was improper." 2019 WL 1857716, at *2 (describing and quoting earlier order (attached as Exhibit B)); see also Exhibit B at 2 (earlier order explaining, "[w]here a defendant asserts multiple bases for removal, including § 1443, and the district court remands for lack of subject matter jurisdiction, we may review the district court's decision only to the extent the defendant challenges the district court's conclusion that removal under § 1443 was improper") (citing *Alabama v. Conley*, 245 F.3d 1292, 1293 n.1 (11th Cir. 2001) (per curiam)).

The decision is relevant to the jurisdictional question addressed in Appellees' Motion for Partial Dismissal (Doc. 41 at 14-15) and to Appellants' assertion that the Eleventh Circuit's

decision in *Conley* should be disregarded because it “predate[s] the Removal Clarification Act of 2011.” Appellants’ Opening Br. 21-22 & n.7.

Sincerely,

/s/ Kevin K. Russell
Kevin K. Russell
Goldstein & Russell, P.C.
Counsel for Appellees
in Nos. 18-15499, 18-15502,
and 18-15503

cc: All counsel of record (via ECF)

Exhibit A

2019 WL 1857116
Only the Westlaw citation
is currently available.

This case was not selected for
publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure
32.1 generally governing citation
of judicial decisions issued on or
after Jan. 1, 2007. See also U.S.
Ct. of App. 11th Cir. Rule 36-2.
United States Court of
Appeals, Eleventh Circuit.

TANYA SINGH DIXIT,
Plaintiff-Appellee,
v.
AKASH DIXIT, Defendant-Appellant.

No. 18-12945
|
(April 25, 2019)

D.C. Docket No. 1:18-cv-01717-TWT

Appeal from the United States District
Court for the Northern District of Georgia

Before WILLIAM PRYOR, JILL PRYOR
and ANDERSON, Circuit Judges.

Opinion

PER CURIAM:

*1 Akash Dixit, a native and citizen of India, appeals *pro se* the remand of a domestic relations action commenced by his wife to the state court where she filed it. The district court remanded the action to state court for lack of subject matter jurisdiction. Dixit argues that he was entitled to remove

the action to protect his civil rights, *see* 28 U.S.C. § 1443, and that the district court should have granted his motion to amend the judgment. Dixit also moved to amend his brief and to amend an attached affidavit. We affirm the order to remand and deny as moot Dixit's motions to amend.

A Georgia court granted Dixit's wife a divorce from him and awarded her custody of their minor son and ownership of their family home in Georgia. When Dixit refused to relinquish the home to his former wife, she filed in the state court a motion to hold Dixit in contempt. Dixit filed a notice of removal to the district court based on diversity of citizenship, *id.* § 1441(b), a federal question regarding immigration law and a divorce between citizens of India, *id.* § 1441(c), and the violation by the state court of his rights to due process and equal protection under the Fourteenth Amendment, *id.* § 1443. Dixit alleged that the state court judge acted "inequitabl[y]" and discriminated against him based on his "race and/or national origin" in violation of the Civil Rights Act of 1964 by denying four motions to recuse, by displaying xenophobia when stating that it might not be safe for Dixit's wife to travel alone in India, and by granting her motion to hold Dixit in contempt for taking their child's toys and clothing.

The district court *sua sponte* remanded the domestic relations action to state court. The district court ruled that it lacked jurisdiction based on diversity of citizenship or a federal question. The district court also ruled that Dixit's "broad, conclusory allegations" under the Equal Protection and

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Due Process Clauses failed to provide a basis for removal under section 1443, *see Georgia v. Rachel*, 384 U.S. 780 (1966), and that Dixit’s notice of removal was untimely, *see* 28 U.S.C. § 1446(b).

Dixit filed a postjudgment motion that the district court treated as a motion to reconsider. *See* Fed. R. Civ. P. 59(e). Dixit argued that *Rachel* and the statute that shielded orders of removal from judicial review, 28 U.S.C. § 1447(d), were unconstitutional. The district court ruled that Dixit was improperly attempting to use his postjudgment motion to champion a new argument and that he had failed to “show any error, much less a clear error of law” in the decision to remand.

After Dixit filed his written notice of appeal, we *sua sponte* dismissed the appeal in part for lack of jurisdiction. Our order stated that we lacked jurisdiction to review “the district court’s conclusion that it lacked diversity or federal question jurisdiction.” The order also stated that “we [could] review the district court’s conclusion that remand under 28 U.S.C. § 1443 was improper and, if necessary, its alternative conclusion that the late filing of the notice of removal was a procedural defect that justified remand.”

*2 Dixit responded to the order by filing two motions. He moved for leave to amend his brief to challenge the ruling that his notice of removal was untimely. And he moved to amend the affidavit attached to his brief.

This appeal is governed by two standards of review. We review *de novo* whether the district court had subject matter jurisdiction. *See Pintando v. Miami-Dade Hous. Agency*, 501 F.3d 1241, 1242 (11th Cir. 2007). Ordinarily, we cannot review a decision to remand an action to state court, but because Dixit removed the action based on section 1443, we have jurisdiction to determine whether remand was appropriate based on an implicit finding that grounds did not exist for removal under section 1443. *See Alabama v. Conley*, 245 F.3d 1292, 1293 n.1 (11th Cir. 2001); 28 U.S.C. § 1447(d). We review for abuse of discretion the denial of Dixit’s motion to amend the judgment. *See Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007).

Dixit failed to allege grounds for removal under section 1443. A defendant may remove a civil action from a state court to the district court if the action is “[a]gainst any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States or of all persons within the jurisdiction thereof.” 28 U.S.C. § 1443(1). To remove his case under section 1443, Dixit had to satisfy a two-part test: he had to establish that removal was based on “a federal law providing for specific civil rights stated in terms of racial equality” and that he had been denied or cannot enforce that right in the state courts. *Conley*, 245 F.3d at 1295, 1298 (quoting *Rachel*, 384 U.S. at 792, 804–05). Dixit contradicted his own argument that the state court was biased against him because of his race or nationality by alleging that the state court sided with his

spouse who is the same race and nationality. Dixit's grievances about conduct and rulings in the state action did not provide a basis on which to make a "firm prediction" that he could not enforce his civil rights. *See Rachel*, 384 U.S. at 804. Dixit's allegations were insufficient to support removal under section 1443.

We deny as moot Dixit's motions. Dixit moves to amend his brief to include a challenge to the alternative ruling that his notice of removal was untimely, but we need not review that ruling because we affirm on the ground that Dixit failed to establish that his removal satisfied section 1443. Dixit also moves to amend an affidavit he attached to his brief, but we will not consider evidence that is not part of the record on appeal. *See Selman v. Cobb Cty. Sch. Dist.*, 449 F.3d 1320, 1332 (11th Cir. 2006) ("In deciding issues on appeal we consider only evidence that was part of the record before the district court.").

The district court did not abuse its discretion when it denied Dixit's motion to reconsider. Dixit could not use his postjudgment motion to "raise [an] argument ... that could have been raised prior to the entry of judgment" about the validity of *Rachel* and section 1447(d), both of which govern our review in any event. *See Arthur*, 500 F.3d at 1343. And Dixit identified no newly-discovered evidence or manifest errors of law in the decision to remand, which provide "[t]he only grounds for granting a Rule 59 motion" *See id.* (quoting *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999)).

***3 We AFFIRM** the order to remand. We **DENY** as **MOOT** Dixit's motions to amend his brief and his affidavit.

All Citations

--- Fed.Appx. ----, 2019 WL 1857116

Exhibit B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12945-DD

TANYA SINGH DIXIT,

Plaintiff-Appellee,

versus

AKASH DIXIT,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

Before: TJOFLAT, MARCUS, and NEWSOM, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED IN PART, *sua sponte*, for lack of jurisdiction. Akash Dixit appeals from the district court's May 7, 2018, *sua sponte* order remanding the instant action to state court and its June 12, 2018, order denying a motion to alter or amend judgment. In Dixit's notice of removal, he asserted that removal to federal court was proper pursuant to 28 U.S.C. §§ 1441(b), (c) and 1443. The district court remanded the case because Dixit failed to establish diversity jurisdiction under 28 U.S.C. § 1332(a), federal question jurisdiction under 28 U.S.C. § 1331, or an equal rights violation under 28 U.S.C. § 1443(1). The district court alternatively concluded that Dixit's notice of removal was untimely.

Generally, we lack jurisdiction to review a district court's order remanding a case to state court for lack of subject matter jurisdiction. *See* 28 U.S.C. § 1447(d), (c); *New v. Sports &*

Recreation, Inc., 114 F.3d 1092, 1095 (11th Cir. 1997) (noting that this Court lacks jurisdiction to review an order remanding a case to the state court from which it was removed, if the basis for the remand is a ground listed in § 1447(c)); *see also Whole Health Chiropractic & Wellness, Inc. v. Humana Med. Plan, Inc.*, 254 F.3d 1317, 1319 (11th Cir. 2001) (stating that Section 1447(c) remands, for which review is barred, are remands based on (1) a lack of subject matter jurisdiction, or (2) a motion to remand, filed within 30 days of the notice of removal, alleging a defect in the removal procedure). An exception to § 1447(d)'s review-bar exists for remand orders in cases removed pursuant to 28 U.S.C. § 1443, which are reviewable on appeal. *See* 28 U.S.C. § 1447(d); *Alabama v. Conley*, 245 F.3d 1292, 1293 n.1 (11th Cir. 2001). Where a defendant asserts multiple bases for removal, including § 1443, and the district court remands for lack of subject matter jurisdiction, we may review the district court's decision only to the extent the defendant challenges the district court's conclusion that removal under § 1443 was improper. *Conley*, 245 F.3d at 1293 n.1. Further, § 1447(d)'s review bar does not extend to a *sua sponte* remand order based on a defect in the removal procedure. *Whole Health Chiropractic & Wellness, Inc.*, 254 F.3d at 1321.

Here, § 1447(d) deprives us of jurisdiction to review the district court's conclusion that it lacked diversity or federal question jurisdiction, but we can review the district court's conclusion that remand under 28 U.S.C. § 1443 was improper and, if necessary, its alternative conclusion that the late filing of the notice of removal was a procedural defect that justified remand. *See* 28 U.S.C. § 1447(d); *Whole Health Chiropractic & Wellness, Inc.*, 254 F.3d at 1319, 1321; *Alabama*, 245 F.3d at 1293 n.1; *New*, 114 F.3d at 1095. Therefore, this appeal may proceed only to the extent that Dixit challenges those portions of the district court's remand order and order denying his motion to alter or amend judgment.

No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir. R. 27-2 and all other applicable rules.