

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

AMIR H SANJARI,)
)
 Plaintiff,)
)
 v.) CAUSE NO. 3:04-CV-470 CAN
)
 ALISON GRATZOL,)
)
 Defendant.)

ORDER

On July 19, 2004, Amir Sanjari filed a notice of removal, seeking to remove cause number 20D05-0010-DR-00640 from the Elkhart County Superior Court. Pursuant to 28 U.S.C. § 1446(c)(4), this Court promptly examined the notice of removal. Upon examination, this Court finds that it lacks subject matter jurisdiction and **REMANDS** the case to the Elkhart County Superior Court.

I. RELEVANT BACKGROUND

Amir Sanjari and Alison Gratzol's marriage dissolved on August 23, 2000, when the Elkhart Circuit Court, in cause number 20C01-9908-DR-140, issued a Decree of Dissolution.¹ On December 19, 2000, the Elkhart Superior Court, in cause number 20D05-0010-DR-00640, modified the Decree of Dissolution. Parties are currently disputing the balance due on a judgment awarded to Gratzol, child support, child custody, the parenting time of Sanjari, and allegations of contempt against Gratzol for failure to comply with court orders.

¹Sanjari lists himself as Plaintiff in this case. However, in the state case, he was listed as the Defendant and Gratzol was listed as the Plaintiff. Because of this confusion, parties will be referred to by their last names.

On May 28, 2004, Sanjari filed a notice of removal as to the Elkhart Superior Court case, with the United States District Court for the Western District of Michigan. The court remanded the case back to the Elkhart Superior Court pursuant to 28 U.S.C. § 1447(c) for lack of subject matter jurisdiction. The court stated that it lacked subject matter jurisdiction because the dispute involved child custody issues and because Sanjari removed the case to the wrong district.

On July 19, 2004, Sanjari filed a notice of removal with this Court, again seeking to remove the child custody case from the Elkhart County Superior Court. However, Sanjari asserts the basis for this Court's jurisdiction is 28 U.S.C. § 1331, federal question jurisdiction. Sanjari alleges that this case is not just about child custody issues, but about alleged violations of his and his children's civil and constitutional rights in the state court proceeding. This Court has the authority to rule on this matter pursuant to the parties' consent and 28 U.S.C. § 636(c).

II. APPLICABLE LAW

The removal statute, 28 U.S.C. § 1441(b), states the following:

Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

When a notice of removal is filed, a district court must promptly examine the notice to see if removal is proper. 28 U.S.C. § 1446(c)(4). If removal is not proper, the court shall summarily remand the case. Id.

Courts should interpret the removal statute narrowly and presume that the plaintiff may choose his or her forum. Doe v. Allied-Signal, Inc., 985 F.2d 908, 911 (7th Cir. 1993). A case will not be removable if the complaint does not affirmatively allege a federal claim. Magyery v.

Transamerica Financial Advisors, Inc., 315 F.Supp.2d 954, 956 (N.D. Ind. 2004). In addition, cases may not be removed when the only presence of a federal question is raised in a defense argument. Doe, 985 F.2d at 911.

While 28 U.S.C. § 1441(b) allows for the removal of cases which could have been originally filed in federal court, 28 U.S.C. § 1443(1) allows for the removal of cases where equal civil rights of citizens are denied or cannot be enforced in state court. However, 28 U.S.C. § 1443(1) only applies to civil rights stated in terms of racial neutrality, and not to the entire gamut of constitutional rights. State of Ga. v. Rachel, 384 U.S. 780, 792 (1966) (holding that First Amendment and Due Process rights were not rights that were removable under 28 U.S.C. § 1443(1)).

The Rooker-Feldman doctrine may serve as a limitation as to what cases may be removed to federal court. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). Under Rooker-Feldman, district courts do not have the authority to hear a case that in essence is an appellate-like review of a state court determination. Ritter v. Ross, 992 F.2d 750, 753 (7th Cir. 1993). See also Frederiksen, et al. v. City of Lockport, et al., No. 03-2678 (7th Cir. Sept. 16, 2004). A party may not seek review of a state court determination by simply casting the claim as a civil rights issue. Id. In addition, district courts do not have jurisdiction over matters that are inextricably interwoven with matters already determined by state courts. Id. While difficult to define, matters are inextricably interwoven when the district court in essence, is being called to review the state-court determination. Id.

In addition, a “domestic relations exception” exists even for those cases which might otherwise be properly removed to federal court under diversity jurisdiction because the entire subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States. Ankenbrandt v. Richards, 504 U.S. 689, 703 (1992). Thus, in cases involving the granting of a divorce or an annulment, an award of child custody, or a decree of alimony or child support, removal is not proper. Friedlander v. Friedlander, 149 F.3d 739, 740 (7th Cir. 1998). Furthermore, ancillary proceedings, “such as a suit for the collection of unpaid alimony, that state law would require to be litigated as a tail to the original domestic relations proceeding” are also not removable. Id.

III. ANALYSIS

This Court lacks subject matter jurisdiction for many reasons. First, Sanjari alleges that this Court has subject matter jurisdiction because a federal question is present. Sanjari’s alleged federal question is that his constitutional rights, as well as those of his children, are being denied in the state court proceedings. However, looking at the dissolution decree which initiated the state court proceeding, there is no federal claim present. Neither Sanjari nor Gratzol ever alleged constitutional violations in the early stages of this proceeding as this began as a purely domestic issue. Thus, this Court lacks subject matter jurisdiction based upon the federal question assertion.

Sanjari also alleges that removal is proper under 28 U.S.C. § 1443(1) because his constitutional and civil rights are being denied in state court through the misconduct and bias of the presiding judge and the Elkhart County Clerk’s office. As previously stated, removal under this statute is extremely limited and relates only to those cases of alleged racial inequality.

Sanjari does not allege racial inequality, but states that it is his due process rights which are being violated. Due process rights are not within the spectrum of rights that allow a case to be removed under 28 U.S.C. § 1443(1). However, even if Sanjari were to allege racial inequality, the Rooker-Feldman doctrine would bar this Court from reviewing the state court determinations. Sanjari must exhaust the entire state court appeals process. If Sanjari still wants to challenge these issues after reaching the Indiana Supreme Court, his only redress would be to file *certiorari* with the Supreme Court.

In alleging a violation of his constitutional rights and questioning the actions of the state court judge, Sanjari is asking this Court to review the state court determinations and discretionary decisions on when to hold hearings in the case. Under the Rooker-Feldman doctrine, this Court does not have the authority to review state court determinations even if the claim is alleging constitutional violations. The district court is not the appropriate forum to raise such concerns.

Finally, because Sanjari's allegations of federal question jurisdiction are misplaced, this Court must look at the original filings to determine whether jurisdiction exists. The state court proceeding originally started out as a modification of a dissolution decree. Through this modification, it appears that ancillary disputes have arisen as to issues concerning child custody, child support, and alleged violations of court orders. Each of these issues fall within the domestic relations exception and should be left to the Elkhart County Superior Court to resolve the disputes. Thus, after fully examining Sanjari's notice of removal as required under 28 U.S.C. § 1446(c)(4), it clearly appears that removal should not be permitted because this Court lacks subject matter jurisdiction.

IV. CONCLUSION

For the foregoing reasons, this Court finds that because it lacks subject matter jurisdiction, this case may not proceed as a federal case. Therefore, pursuant to 28 U.S.C. § 1447(c), this Court must **REMAND** this case to the Elkhart County Superior Court.

SO ORDERED.

Dated this 13th Day of October, 2004.

s/Christopher A. Nuechterlein
Christopher A. Nuechterlein
United States Magistrate Judge

cc: Sanjari; Counsel of Record