IP 06-0438-C H/K Bramble v Howse
Judge David F. Hamilton Signed on 5/15/06

NOT INTENDED FOR PUBLICATION IN PRINT

KELLY J. BRAMBLE,	)	
	)	
Petitioner,	)	
v.	)	CASE NO. 1:06-cv-0438-DFH-TAB
	)	
TORM L. HOWSE,	)	
	)	
Respondent.	)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

KELLY J. BRAMBLE,	)	
	)	
Petitioner,	)	
v.	)	CASE NO. 1:06-cv-0438-DFH-TAB
	)	
TORM L. HOWSE,	)	
	)	
Respondent.	)	

ENTRY DISCUSSING MOTION TO VACATE AND FOR FINDINGS OF FACT

On March 15, 2006, the court rejected Torm Howse's attempt to avoid a contempt hearing scheduled in the state courts. That contempt hearing was scheduled for the morning of March 16th, the day after Mr. Howse filed his notice of removal in this court in the afternoon. This action was only the most recent of several efforts by Mr. Howse to take his divorce case out of the state courts. This court concluded that there was no basis for his most recent effort and hence promptly remanded the action. In doing so, the court explained that federal courts lack jurisdiction over divorce and child custody matters.

Mr. Howse does not believe the court gave sufficient consideration to the due process features of the proceedings he sought to have removed to this court. He insists that the action was removable under 28 U.S.C. § 1443(1), and remands of removals under § 1443 can be reviewed, unlike most remands to state court.

See 28 U.S.C. § 1447(d). He has therefore filed a motion to correct errors and a formal request for findings of fact and conclusions of law. This post-judgment motion is treated as a motion to alter or amend judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. All motions that substantively challenge the judgment, filed within 10 business days of the entry of judgment, will be treated as based on Rule 59 "no matter what nomenclature the movant employs." *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 957 F.2d 515, 517 (7th Cir. 1992). "Altering or amending a judgment under Rule 59(e) is permissible when there is newly discovered evidence or there has been a manifest error of law or fact." *Harrington v. City of Chicago*, 433 F.3d 542, 546 (7th Cir. 2006), citing *Bordelon v. Chicago School Reform Bd. of Trustees*, 233 F.3d 524, 529 (7th Cir. 2000).

Mr. Howse contends that this court overlooked § 1443(1) when it relied on the domestic relations exception to the court's subject matter jurisdiction. Section 1443(1) provides for the removal of a civil action commenced in state court "Against 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. . . ." 28 U.S.C. §1443(1). Mr. Howse's removal is based on an expansive approach to section 1443(1) that the Supreme Court has rejected.

The Supreme Court established a two-part test for section 1443(1) removal petitions in *Johnson v. Mississippi*, 421 U.S. 213 (1975): "First, it must appear

that the right allegedly denied the removal petitioner arises under a federal law 'providing for specific civil rights stated in terms of racial equality.'" 421 U.S. at 219, quoting *Georgia v. Rachel*, 384 U.S. 780, 792 (1966). A state court defendant's claim that "prosecution and conviction will violate rights under constitutional or statutory provisions of general applicability or under statutes not protecting against racial discrimination" is insufficient for removal. *Johnson,* 421 U.S. at 219. Second, it must appear "that the removal petitioner is 'denied or cannot enforce' the specified federal rights 'in the courts of [the] State.'" *Id.*, quoting 28 U.S.C. § 1443(1).

Mr. Howse's effort to remove his divorce case under § 1443(1) clearly fails the first prong of the test. Mr. Howse has not alleged or shown that the state court's handling of the divorce, of the ancillary child custody or support, or of the contempt issues that had arisen prior to March 15, 2006, was associated with laws relating to racial equality. As in *People of Colorado v. Lopez*, 919 F.2d 131 (10th Cir. 1990), Mr. Howse sought removal of a matter from a state court based solely on the assertion that the state court has given him inadequate procedural protections and had made or could continue to make erroneous rulings. If such allegations were sufficient to support removal under § 1443(1), virtually any litigant unhappy with a state court's rulings would be able to remove a civil case to federal court. Such allegations do not satisfy the first portion of the *Johnson* test, however, so removal under § 1443(1) was not available in this case.

Mr. Howse's sarcastic Rule 59 motion criticizes the court for the speed with which his case was remanded to state court. Such speed was entirely appropriate to prevent Mr. Howse's unjustified misuse of removal in an effort to delay an important state court hearing. Tactics like Mr. Howse's are familiar to most federal judges. Contested divorce cases can generate strong feelings and sometimes extraordinary efforts to avoid or delay court action. The automatic removal of jurisdiction when a removal notice is filed can be a powerful tool, and it is subject to misuse. This court therefore tries to address such efforts as quickly as possible, particularly when the removal is attempted literally on the eve of a scheduled state court hearing. Such prompt attention was also justified by Mr. Howse's record of litigation in this court, which includes two prior efforts to remove his divorce case under § 1443(1) in Case No. 1:04-cv-443 and Case No. 1:04-cv-915, and an attempted *pro se* class action challenge to Indiana family law, *Howse, et al. v. Indiana*, Case No. 1:04-cv-1530. Accordingly, Mr. Howse's motion to correct errors, treated as a motion to alter or amend judgment under Rule 59(e), is denied. As to the request for findings of fact and conclusions of law, no additional such findings and conclusions are needed to explain either the initial decision or the ruling on the motion to correct errors.

So ordered.

Date: May 15, 2006

DAVID F. HAMILTON, Judge
United States District Court

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