UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

STATE OF MISSOURI, ex rel., JEREMIAH W. NIXON, Attorney General, State of Missouri,	)	
Plaintiff,	)	
v.	)	No. 2:07 CV 6 DDN
WILLIAM C. JACKSON,	)	
Defendant.	)	

MEMORANDUM AND ORDER REMANDING ACTION TO STATE COURT

This action is before the court on the motion of plaintiff State of Missouri to remand the action back to the Missouri circuit court. (Doc. 4.) The parties have consented to the exercise of plenary authority by the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

Background

Plaintiff State of Missouri commenced this action in the Circuit Court of Cole County, Missouri, under the Missouri Incarceration Reimbursement Act (MIRA), Mo. Rev. Stat. §§ 217.825 to 217.841 (2000). Plaintiff seeks to recover from the assets of defendant William C. Jackson, a Missouri state prisoner, the defendant's cost of care while incarcerated in the Missouri Department of Corrections. The assets of defendant that plaintiff seeks to reach are alleged to be casino gaming revenue distributed to defendant by the Prairie Bank PotaWatomi Nation of Kansas because defendant is a member of the tribe entitled to this distribution.

Defendant Jackson removed the action to this court, alleging diversity of citizenship and an amount in controversy exceeding $75,000.00, under 28 U.S.C. § 1332; and alternatively that questions of federal law exist as a basis for jurisdiction under 28 U.S.C. § 1331. Defendant alleges that he is a member of the Prairie Band Potawatomi Nation of Mayetta, Kansas.

Plaintiff seeks remand of this action to the state court in effect on the ground that this court does not have subject matter jurisdiction. Defendant argues the contrary.

Discussion

A defendant can remove an action to federal district court only if the action could have been brought there originally. 28 U.S.C. § 1441(b); Peters v. Union Pac. R.R. Co., 80 F.3d 257, 260 (8th Cir. 1996). Removal is proper when the claim falls within the scope of the district court's original subject matter jurisdiction. See 28 U.S.C. § 1441(b). Removal statutes are strictly construed; any doubts about the propriety of removal are resolved in favor of state court jurisdiction and remand. Transit Cas. Co. v. Certain Underwriters at Lloyd's of London, 119 F.3d 619, 625 (8th Cir. 1997).

Diversity of citizenship

Jackson argues in his Petition for Removal that diversity of citizenship jurisdiction exists. Diversity of citizenship subject matter jurisdiction requires that the matter in controversy exceed the sum of $75,000, exclusive of interest and costs, and that the dispute must be between citizens of different states. 28 U.S.C. § 1332(a). Regarding the amount in controversy, plaintiff alleges defendant's incarceration has cost the state at least $61,295.47; defendant alleges in the removal petition that by 2008 the cost of his incarceration will exceed $75,000. Thus, at the outset the amount in controversy may be insufficient to support jurisdiction at this time.

More importantly, however, regardless of the amount in controversy, diversity of citizenship does not exist, and will not exist in the future between these parties. The reason is that a state is not a citizen for subject matter jurisdiction purposes. Postal Telegraph Cable Co. v. Alabama, 155 U.S. 482, 487 (1894). Diversity of citizenship cannot exist between a state and another party. Id. Therefore, this court does not have subject matter jurisdiction based on diversity of citizenship.

Federal question

Defendant argues that the court has federal question jurisdiction over this action under 28 U.S.C. § 1331. Under the "well-pleaded complaint rule," an action cannot be removed unless the "federal question is presented on the face of the *plaintiff's* properly pleaded complaint." Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). Federal jurisdiction cannot be premised on anticipated defenses or responsive pleadings. Gaming World Intern., Ltd. v. White Earth Band of Chippewa Indians, 317 F.3d 840, 847 (8th Cir. 2003).

Defendant argues that there are federal law issues underlying the action. Specifically, he argues that litigation of this action raises questions of federal law: (a) would a judgment in plaintiff's favor violate the Indian Child Welfare Act, 25 U.S.C. §§ 1901 et seq.? (b) does federal law and a treaty between the United States and the Prairie Band Potawatomi Nation preempt Missouri law regarding the state taking his alleged assets? and (c) would recovery in this action violate the Indian Gaming Regulatory Act, 18 U.S.C. §§ 1166 to 1168, 25 U.S.C. §§ 2701 to 2721? (Id.) Plaintiff argues that the action arises solely under MIRA, a Missouri state statute, and does not require the litigation of these issues. The court agrees with plaintiff.

Defendant's arguments about federal questions of law are without merit. The doctrine of "complete preemption" by a federal statute can, for jurisdictional purposes, establish more than merely a defense to a state law claim. Chapman v. Lab One, 390 F.3d 620, 625 (8th Cir. 2004). In fact, the Supreme Court has found that the pre-emptive force of a federal statute can be so "extraordinary" that it can convert an ordinary state common law claim into a federal claim. Caterpillar, 482 U.S. at 393. However, none of the statutory issues raised by defendant qualifies for jurisdictional consideration.

Indian Child Welfare Act

Defendant Jackson argues that a federal question is presented by the need to interpret the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901 to 1963, as it pertains to his child support payments which are

funded by the same source the plaintiff State of Missouri wants to use. Specifically, defendant argues that the ICWA protects his assets from seizure under the Missouri Incarceration Reimbursement Act if the assets are used to satisfy child support payments.

The ICWA is not applicable here. By its own language, the statute covers only "child custody proceedings." 25 U.S.C. §§ 1901, 1902. The ICWA defines "child custody proceedings" as "foster care placement," "termination of parental rights," "preadoptive placement," and "adoptive placement." Id. at 1903(1). The express subject matter of the Act does not include child support. Rather, the Act deals with the adoption and foster care of Native American children. State Dept. of Human Services v. Jojola, 660 P.2d 590, 592 (N.M. 1983), appeal dismissed, cert. denied, Jojola v. New Mexico, 464 U.S. 803 (1983).

Indian Gaming Regulatory Act

Defendant argues that a federal question is presented by the Indian Gaming Regulatory Act (IGRA), 18 U.S.C. §§ 1166 to 1168, 25 U.S.C. §§ 2701 to 2721. More specifically he argues that under the IGRA his per-capita payments from tribal gaming revenues cannot be seized to pay his incarceration debts under MIRA. The provision in IGRA pertaining to per-capita payments simply gives Native American tribes the authority to issue per-capita payments to their members under certain conditions. See 25 U.S.C. § 2710(b)(3). Tribes are not required to provide per-capita payments, and there is no provision which protects these per-capita payments from assignment or otherwise. Id.

While the IGRA completely preempts state law within its scope, its scope is limited to gaming on Native American lands. 25 U.S.C. § 2702(3); Gaming Corp. of America v. Dorsey & Whitney, 88 F.3d 536, 544 (8th Cir. 1996)(citing S.Rep. No. 446, 100th Cong., 2d Sess. 6 (1988), reprinted in 1988 U.S.C.C.A.N. 3071, 3076). The case at bar does not at all involve the regulation of gaming activities.

Defendant's invocation of Hankins v. Finnel, 964 F.2d 853, 855 (8th Cir. 1992), is to no avail. While the Court of Appeals concluded that a federal statute could completely preempt MIRA without expressly so providing, the rationale behind that decision does not apply in the

instant case. In that case, a plaintiff prisoner obtained a judgment against a state employee under 42 U.S.C. § 1983. The State of Missouri then invoked MIRA to recoup the prisoner's recovery. The Court of Appeals concluded that even when no provision of the federal statute expressly conflicted with the state's right to attach a prisoner's assets, MIRA could thwart the objectives of § 1983 which included compensation of victims and deterring future violations of federal constitutional rights. Hankins 964 F.2d at 855.

In this case, nothing about plaintiff's recoupment of the costs of incarceration from defendant's assets would adversely affect in any way the proper application of the federal statutes to which defendant has adverted.

Because this court does not have subject matter jurisdiction over the action,

IT IS HEREBY ORDERED that the motion of plaintiff to remand the action (Doc. 4) is sustained. The action is remanded to the Circuit Court of Cole County.

/S/ David D. Noce
DAVID D. NOCE
UNITED STATES MAGISTRATE JUDGE

Signed on April 26, 2007.