

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Bartakian v. County of Clark

354 F. App'x 287 (9th Cir. 2009) · Decided July 8, 2009

SUMMARY

The Ninth Circuit affirmed the dismissal of Jackie S. Bartakian’s federal claims against Clark County and county managerial employees after she failed to amend her complaint. The court held that removal was proper because the complaint raised constitutional claims, and that the federal claims were insufficiently pleaded; it affirmed dismissal of those claims and remand of the remaining state-law claim.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Paez; Smith; Tallman
JURISDICTION	Federal
DECIDED	July 8, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Pro se appeal from the district court's judgment dismissing the action against Clark County and county managerial employees after Bartakian failed to amend her complaint.
STANDARD OF REVIEW	De novo review of dismissal for failure to state a claim; the court may affirm on any basis fairly supported by the record.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Jackie S. Bartakian v. County of Clark, Managerial employees of Clark County

TOPICS

appellate procedure

subject matter jurisdiction

pleadings

motions to dismiss

civil procedure

PRACTICE AREAS

civil procedure

constitutional law

civil rights

federal jurisdiction

QUESTIONS PRESENTED

1. Whether removal to federal court was proper because the complaint raised constitutional claims.
2. Whether the district court properly dismissed the federal claims for failure to allege facts sufficient to state a federal claim after Bartakian failed to amend.
3. Whether the district court properly remanded the pendent state-law claim after dismissing the federal claims.

HOLDINGS

1. Removal was proper because Bartakian raised constitutional claims presenting federal-question jurisdiction.
2. The district court properly dismissed Bartakian's federal claims because the complaint failed to allege facts sufficient to state a federal claim, and Bartakian failed to amend after being given the opportunity to do so.
3. After dismissing the federal claim, the district court properly remanded the remaining pendent state-law claim.

KEY QUOTATIONS

“Removal of this action to federal court was not improper because Bartakian raised constitutional claims.”
(354 F. App'x at 287)

“The district court did not err by dismissing Bartakian’s federal claims, and remanding the state law claim, because the complaint failed to allege facts sufficient to state a federal claim.” (354 F. App'x at 287)

FACTUAL BACKGROUND

Bartakian sued Clark County and various managerial employees of Clark County, asserting federal constitutional and state-law claims. The action was removed to federal court because the pleadings raised constitutional claims. After the district court dismissed the complaint with leave to amend, Bartakian failed to amend, and the court dismissed the federal claims and remanded the remaining state-law claim.

PROCEDURAL HISTORY

The action was removed from state court to federal court based on constitutional claims. The district court dismissed the federal claims after Bartakian failed to amend her complaint and remanded the remaining state-law claim. The Ninth Circuit reviewed the judgment and affirmed.

DISPOSITION

affirmed

CASES CITED

- Vestar Development II, LLC v. General Dynamics Corp., 249 F.3d 958, 960 (9th Cir. 2001)
- Sparta Surgical Corp. v. National Ass'n of Securities Dealers, Inc., 159 F.3d 1209, 1213 (9th Cir. 1998)

- Foster v. Wilson, 504 F.3d 1046, 1050-52 (9th Cir. 2007)
- Williams v. Costco Wholesale Corp., 471 F.3d 975, 977 (9th Cir. 2006)

OPINION

PER CURIAM.

MEMORANDUM ** Jackie S. Bartakian appeals pro se from the district court’s judgment dismissing her action against Clark County and various managerial employees of Clark County (“Clark County defendants”) after she failed to amend her complaint.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo dismissal for failure to state a claim, *Vestar Development II, LLC v. General Dynamics Corp.*, 249 F.3d 958, 960 (9th Cir.2001), can affirm on any basis fairly supported by the record, *id.*, and affirm. Removal of this action to federal court was not improper because Bartakian raised constitutional claims.

See 28 U.S.C. § 1441(a) (allowing removal of “any civil action brought in a State court of which the federal courts of the United States have original jurisdiction”); 28 U.S.C. § 1331 (conferring original jurisdiction on district court in “all civil actions arising under the Constitution, laws, or treaties of the United States”); *Sparta Surgical Corp. v. National Ass’n of Securities Dealers, Inc.*, 159 F.3d 1209, 1213 (9th Cir.1998) (“ [Jurisdiction must be analyzed on the basis of the pleadings filed at the time of removal without reference to subsequent amendments!!]”).

The district court did not err by dismissing Bartakian’s federal claims, and remanding the state law claim, because the complaint failed to allege facts sufficient to state a federal claim. See *Foster v. Wilson*, 504 F.3d 1046, 1050-52 (9th Cir.2007) (affirming dismissal of federal claims with prejudice where plaintiffs declined to amend complaint even though district court had dismissed with leave to amend because allegations were insufficient to state a claim); *Williams v. Costco Wholesale Corp.*, 471 F.3d 975, 977 (9th Cir.2006) (“Dismissal of the federal claim... ordinarily... authorize^] the district court to remand the pendent state law claims.”).

Bartakian’s remaining contentions lack merit. **AFFIRMED.** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.