

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Wallace v. Hastings

76 F. App'x 907 · Decided September 25, 2008

SUMMARY

The Tenth Circuit dismissed an appeal for lack of jurisdiction after a district court remanded six guardianship and trust cases to state court. The court held that the remand orders were unreviewable under 28 U.S.C. §§ 1452(b) and 1447(d), including because the remands were based on equitable grounds and procedural defects in removal.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	McKay
JURISDICTION	Federal
DECIDED	September 25, 2008
DISPOSITION	dismissed
PROCEDURAL POSTURE	Pro se appellant appealed a district court minute order remanding six removed state guardianship and trust cases to state court.
STANDARD OF REVIEW	Jurisdictional review; the court independently determined whether it had appellate jurisdiction over the remand orders.
PRECEDENTIAL VALUE	Nonbinding unpublished order and judgment
PARTIES	Wallace v. Hastings

TOPICS

appellate jurisdiction bankruptcy subject matter jurisdiction civil procedure appellate procedure

PRACTICE AREAS

Bankruptcy Civil procedure Appellate jurisdiction Removal and remand

QUESTIONS PRESENTED

1. Whether the Tenth Circuit had appellate jurisdiction to review district court orders remanding claims removed under the bankruptcy-removal statute.

2. Whether 28 U.S.C. § 1447(d) independently barred appellate review of remand orders based on procedural defects or lack of subject-matter jurisdiction.

HOLDINGS

1. A district court order remanding a claim or cause of action on any equitable ground under 28 U.S.C. § 1452(b) is not reviewable by the court of appeals.
2. Section 1447(d) bars appellate review of remand orders based on defects in removal procedure or lack of subject-matter jurisdiction.

KEY QUOTATIONS

“The remand at issue falls squarely within § 1447(d), and the order is not reviewable on appeal.” (76 F. App'x at 908)

“The appeal is DISMISSED for lack of jurisdiction.” (76 F. App'x at 908)

FACTUAL BACKGROUND

Wallace sought to remove six pending state guardianship and trust cases to federal court. His notices of removal referred to a bankruptcy proceeding and attempted to join all six state cases into one federal case. The district court found the notices facially infirm, noted a history of wrongful filings and abuse of process, and remanded the cases to state court on equitable and procedural grounds.

PROCEDURAL HISTORY

Wallace attempted to remove six state guardianship and trust cases to federal court, apparently invoking the bankruptcy-removal statute, 28 U.S.C. § 1452(a). The district court entered separate orders remanding each case based on equitable considerations and procedural defects in the notices of removal. The Tenth Circuit reviewed the minute order together with the six substantive remand orders and dismissed the appeal for lack of appellate jurisdiction.

DISPOSITION

dismissed

CASES CITED

- *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 129, 116 S. Ct. 494, 133 L. Ed. 2d 461 (1995)

OPINION

MCKAY, J.

ORDER AND JUDGMENT* MCKAY, Circuit Judge. After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R.App. P. 34(a)(2); 10th Cir. R. 34.1(G).

The case is therefore ordered submitted without oral argument. Mr. Wallace, proceeding pro se, filed a notice of removal attempting to remove six guardianship/trust state cases to federal court. In his Notice of Removal, Appellant referenced a bankruptcy proceeding apparently intending to invoke 28 U.S.C. § 1452(a).

In separate orders dated June 7, 2002, the district court ordered each of the six cases remanded to the state court. In its orders, the district court noted that “the notice of removal is infirm on its face” and it improperly tries to join the six pending state cases into a single federal case. Rec., Vol. I, Docs. 16-21, at 1.

The court also noted “the history of wrongful filings and abuse of process in this matter.” Id. For these reasons, the court found that “equity demands” all six cases *908to be remanded back to state court. Id. at 2. Mr. Wallace has appealed from the district court’s minute order remanding all six cases to state court. Mr. Wallace has not identified any specific issues for appellate review.

On June 17, 2002, we ordered the parties to serve and file jurisdictional memorandum briefs. We conclude that we lack jurisdiction over this appeal. We will review the minute order in conjunction with the six substantive orders of remand. Our review of the record reveals that the district court intended to remand the cases based on equitable factors pursuant to 28 U.S.C. § 1452(b).

Section 1452(b) provides: The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

Id. The district court also based its remands in part on procedural defects in the notice of removal. Therefore, we are also precluded from exercising our jurisdiction based on 28 U.S.C. § 1447(c). Section 1447(c) provides in pertinent part that [a] motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 80 days after the filing of the notice of removal under section 1446(a).

If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. Id. Section 1447(d) then states that “[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise.” Id. The Supreme Court has held that § 1447(d) is a bar against appellate review of any remand order based on defects in removal regardless of the statute or rule forming the basis for removal.

Things Remembered, Inc. v. Petrarca, 516 U.S. 124, 129, 116 S.Ct. 494, 133 L.Ed.2d 461 (1995). The Court stated: If an order remands a bankruptcy case to state court because of a timely raised defect in removal procedure or lack of subject-matter jurisdiction, then a court of appeals lacks

jurisdiction to review that order under § 1447(d) regardless of whether the case was removed under § 1441(a) or § 1452(a).

The remand at issue falls squarely within § 1447(d), and the order is not reviewable on appeal. Id. The appeal is DISMISSED for lack of jurisdiction. Appellant's emergency requests are DENIED. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.

The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.