

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA,
MISSOULA DIVISION

Sarah McClure and Colton Wheeler v. Michael W. Futrell and Lost
Boys Construction

No. CV 25-210-M-KLD (D. Mont. Jan. 23, 2026) · No. CV 25-210-M-KLD · Decided January 23, 2026

SUMMARY

The United States District Court for the District of Montana remanded an action to the Confederated Salish and Kootenai Tribes Tribal Court for lack of subject matter jurisdiction. The court held that removal under 28 U.S.C. § 1443(1) is expressly limited to cases commenced in a state court and does not authorize removal from a tribal court. The court also denied as moot a pending motion for leave to intervene and appear as amicus curiae.

CASE DETAILS

COURT	United States District Court for the District of Montana, Missoula Division
WRITING FOR THE COURT	Kathleen L. DeSoto
JURISDICTION	United States District Court for the District of Montana, Missoula Division
DECIDED	January 23, 2026
DOCKET	CV 25-210-M-KLD
DISPOSITION	remanded
PROCEDURAL POSTURE	Defendant removed a breach-of-contract action from the Tribal Court of the Confederated Salish and Kootenai Tribes under 28 U.S.C. § 1443(1), asserting civil-rights discrimination and constitutional objections to tribal-court jurisdiction. The federal district court sua sponte determined that § 1443(1) does not authorize removal of an action originating in tribal court and remanded the case for lack of subject matter jurisdiction.
STANDARD OF REVIEW	The court independently and sua sponte reviewed whether subject matter jurisdiction existed.
PRECEDENTIAL VALUE	Unknown

PARTIES

Michael W. Futrell v. Sarah McClure, Colton Wheeler, Lost Boys Construction

TOPICS

subject matter jurisdiction

tribal jurisdiction

civil rights

federalism

civil procedure

PRACTICE AREAS

civil procedure

federal jurisdiction

tribal law

civil rights

QUESTIONS PRESENTED

1. Whether 28 U.S.C. § 1443(1) authorizes removal to federal district court of an action originally commenced in tribal court.
2. Whether the federal court had subject matter jurisdiction over the removed action.
3. Whether the pending motion for leave to intervene and appear as amicus curiae should be resolved after remand.

HOLDINGS

1. Section 1443(1) does not authorize removal of an action originating in tribal court because the statute expressly limits civil-rights removal to cases commenced in a state court.
2. The federal court lacked subject matter jurisdiction because the action could not be properly removed under § 1443(1).
3. The motion for leave to intervene and appear as amicus curiae was denied as moot because the case was being remanded for lack of subject matter jurisdiction.

KEY QUOTATIONS

“The Court declines to do so. Civil rights removal is explicitly limited by statute to cases “commenced in a State court.”” (at 3)

“Because this case cannot be properly removed, there is no federal subject matter jurisdiction over this matter.” (at 4)

FACTUAL BACKGROUND

The underlying action concerns an alleged breach of contract involving home renovations. It was commenced in the CSKT Tribal Court. Futrell, who asserted that he was not a member of the Confederated Salish and Kootenai Tribes, claimed that he had been denied equal participation and representation in the tribal proceedings because of his nontribal status and sought federal removal under 28 U.S.C. § 1443(1).

PROCEDURAL HISTORY

Plaintiffs commenced the action in the CSKT Tribal Court concerning home renovations. Defendant Michael Futrell filed an initial and then an amended notice of removal to the United States District Court for the District of Montana under 28 U.S.C. § 1443(1). The court declined Futrell's request to extend civil-rights removal jurisdiction to tribal-court proceedings, remanded the case to the CSKT Tribal Court, and denied as moot a pending motion for leave to intervene and appear as amicus curiae.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The action is remanded to the CSKT Tribal Court for lack of federal subject matter jurisdiction. The motion for leave to intervene and appear as amicus curiae is denied as moot.

CASES CITED

- Kokkonen v. Guardian Life Insurance Co. of America, 511 U.S. 375, 377 (1994)
- Allstate Insurance Co. v. Hughes, 358 F.3d 1089, 1093 (9th Cir. 2004)
- Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999)
- Ethridge v. Harbor House Restaurant, 861 F.2d 1389, 1394 (9th Cir. 1988)
- Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987)
- Deutsche Bank National Trust Co. v. Young, No. C-14-3170 EMC, 2014 WL 7336696, at *1 (N.D. Cal. Dec. 23, 2014)
- City of Greenwood, Mississippi v. Peacock, 384 U.S. 808, 824-828 (1966)
- Guam v. Landgraf, 594 F.2d 201, 202 (9th Cir. 1979)

OPINION

McClure

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

SARAH MCCLURE and COLTON

WHEELER, CV 25-210-M-KLD

Plaintiffs,

ORDER

vs.

MICHAEL W. FUTRELL and LOST

BOYS CONSTRUCTION,

Defendants, This action was commenced in the Tribal Court of the Confederated Salish and

Kootenai Tribes of the Flathead Reservation (“CSKT Tribal Court”). Plaintiffs’ complaint alleges a breach of contract concerning home renovations. (Doc. 1-1 at 7). On December 9, 2025, Defendant Michael Futrell filed a notice of removal with this Court. (Doc. 1). Futrell later filed a first amended notice of removal. (Doc. 9). Both notices indicate 28 U.S.C. § 1443(1) as a basis for removal and are styled as a “Rule 11(b)(2) Argument to Extend, Modify, or Reverse Existing Law, and/or Make New Law Applying, Construing, or Defining Civil Rights Removal under 28 U.S.C. 1443(1).” (Doc. 1 at 1; Doc. 9 at 1). Futrell alleges that, as someone who is not a member of the Confederated 1 Salish and Kootenai Tribes (“CSKT”), he has been unable to secure representation in CSKT Tribal Court and has been subject to unfair treatment. He states, “I have been absolutely and unquestionably denied the right to equal participation in court proceedings on account of my non-tribal race and/or ‘political’ identity in violation of 42 U.S.C. § 1981.” (Doc. 9 at 1). Futrell further challenges the CSKT Tribal Court’s exercise of jurisdiction, stating that “[to] force me to trial under these circumstances is utterly inconsistent with the due process and equal protection guarantees of the Fifth, Ninth, and Fourteenth Amendments.” (Doc. 9 at 22). In light of these allegations, Futrell seeks removal to federal court pursuant to 28 U.S.C. § 1443(1). Federal district courts are “courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Their jurisdictional scope is empowered by the Constitution and federal statute. *Kokkonen*, 511 U.S. at 377. Federal subject matter jurisdiction is typically established by either the diversity of the parties, pursuant to 28 U.S.C. § 1332, or the presence of federal questions in the complaint, pursuant to 28 U.S.C. § 1331. The Court has a sua sponte obligation to consider whether it has subject matter jurisdiction. See *Allstate Ins. Co. v. Hughes*, 358 F.3d 1089, 1093 (9th Cir. 2004) (citing *Dittman v. California*, 191 F.3d 1020, 1025 (9th Cir. 1999)). If at any time before judgment it appears that the 2 district court lacks subject matter jurisdiction over a case removed from state court, the case must be remanded. 28 U.S.C. § 1447(c). The diversity jurisdiction statute, 28 U.S.C. § 1332, requires (1) complete diversity of citizenship between the parties and (2) an amount in controversy exceeding \$75,000. 28 U.S.C. § 1332(a). In contrast, the federal question jurisdiction statute provides, “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. “The presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded’ complaint rule, which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1394 (9th Cir. 1988) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)). However, 28 U.S.C. § 1443(1) “provides an exception to the well-pleaded complaint rule, allowing a party to remove an otherwise unremovable action where the party is asserting a federal claim of race discrimination that ‘cannot [be] enforce[d]’ in the state courts.” *Deutsche Bank Natl. Tr. Co. v. Young*, No. C-14- 3170 EMC, 2014 WL 7336696, at *1 (N.D. Cal. Dec. 23, 2014) (citing 28 U.S.C. § 1443(1) and *City of Greenwood, Miss. v. Peacock*, 384 U.S. 808, 824-28 (1966)). 3 Removal under 28 U.S.C. § 1443 is commonly described as “civil rights

removal.” Section 1443 provides that certain civil or criminal cases “commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending.” 28 U.S.C. § 1443. Cases which may be removed include those “[a]gainst 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, or of all persons within the jurisdiction.” 28 U.S.C. § 1443(1). Futrell acknowledges that there is no precedent of federal courts accepting jurisdiction for removal from tribal to federal court under 28 U.S.C. § 1443. “I am aware that Civil rights removal of proceedings from tribal courts to US District Courts has never been allowed to succeed in Montana or any other jurisdiction.” Instead, Futrell requests that the Court accept jurisdiction and sustain removal “as a matter of first impression.” (Doc. 9 at 2). The Court declines to do so. Civil rights removal is explicitly limited by statute to cases “commenced in a State court.” 28 U.S.C. § 1443. Having considered Futrell’s arguments in support of extending jurisdiction to actions originating in tribal court, this Court declines to do so and finds that removal under section 1443 is improper. To do so would violate the statutory text of section 1443 and would constitute improper removal. 4 See *Guam v. Landgraf*, 594 F.2d 201, 202 (9th Cir. 1979) (confirming that removal under section 1443(1) is expressly limited to state courts). Because this case cannot be properly removed, there is no federal subject matter jurisdiction over this matter. Given the Court’s ongoing, sua sponte obligation to consider whether it has subject matter jurisdiction, the Court finds that remand is the only appropriate course of action. Accordingly, IT IS ORDERED that this case is remanded to the CSKT Tribal Court for lack of subject matter jurisdiction. Because this Court lacks subject matter jurisdiction, IT IS FURTHER ORDERED that the pending motion for leave to intervene and appear as amicus curiae (Doc. 6) is DENIED as moot. DATED this 23rd day of January, 2026. Kita) Defy Kathleen L. = beh b United States Magistrate Judge