

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1752

PATRICIA RICHARD,

Plaintiff - Appellee,

v.

ELIZABETH S. TALLANT,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Kenneth D. Bell, District Judge. (5:20-cv-00029-KDB-DCK)

Submitted: January 31, 2022

Decided: July 7, 2022

Before KING, WYNN, and RUSHING, Circuit Judges.

Dismissed in part, vacated in part, and remanded by unpublished per curiam opinion.

Elizabeth S. Tallant, Appellant Pro Se. Christina Evans Clodfelter, CLODFELTER LAW, PLLC, Statesville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Patricia Richard filed a declaratory judgment action in North Carolina state court seeking a judgment against her daughter, Elizabeth S. Tallant, regarding a dispute over the amount owed on a deed of trust, and seeking an order cancelling the deed of trust upon payment. Tallant timely filed a notice of removal to the District Court for the Western District of North Carolina. Tallant also filed original and amended counterclaims against Richard alleging various tort claims, breach of contract claims, and violations of federal civil and criminal statutes, including several provisions of the federal tax code. Richard moved to dismiss Tallant’s counterclaims for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) and to remand the case to the state court. The district court granted Richard’s motions, finding that Tallant failed to state a cognizable federal claim, and remanded the matter to the state court pursuant to 28 U.S.C. § 1447(c) on the basis that the district court lacked subject matter jurisdiction. Tallant timely appealed. We dismiss in part, vacate in part, and remand.

“Congress has placed broad restrictions on the power of federal appellate courts to review district court orders remanding removed cases to state court.” *Doe v. Blair*, 819 F.3d 64, 66 (4th Cir. 2016) (internal quotation marks omitted); *see* 28 U.S.C. § 1447(d) (providing that remand orders generally are “not reviewable on appeal or otherwise”). Section 1447(d) prohibits this court from reviewing remand orders based on the grounds specified in § 1447(c)—i.e., “(1) a district court’s lack of subject matter jurisdiction or (2) a defect in removal other than lack of subject matter jurisdiction that was raised by the motion of a party within 30 days after the notice of removal was filed.”

Ellenburg v. Spartan Motors Chassis, Inc., 519 F.3d 192, 196 (4th Cir. 2008) (internal quotation marks omitted). Here, the district court expressly determined that it lacked subject matter jurisdiction over this case. Therefore, we may not review the district court’s decision to remand the case to the state court. Accordingly, we dismiss the appeal of the remand portion of the district court’s order for lack of jurisdiction.

Turning to the dismissal portion of the order, “every federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review, even though the parties are prepared to concede it.” *Di Biase v. SPX Corp.*, 872 F.3d 224, 232 (4th Cir. 2017) (cleaned up). “When the lower federal court lacks jurisdiction, we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit.” *Id.* (cleaned up). Because we conclude that the district court lacked jurisdiction to consider Tallant’s counterclaims, we have jurisdiction to correct the error.

Federal district courts have jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Under the longstanding well-pleaded complaint rule, however, “a suit arises under federal law only when the plaintiff’s statement of [her] own cause of action shows that it is based upon federal law.” *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009) (cleaned up). Therefore, “a federal counterclaim, even when compulsory, does not establish ‘arising under’ jurisdiction.” *Id.*; see *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 830-32 (2002) (holding federal question jurisdiction depends on contents of well-pleaded complaint and may not be predicated on counterclaims).

Here, as the district court recognized, Tallant removed the state action to federal court based on her federal counterclaims.* However, Tallant’s counterclaims “do[] not establish ‘arising under’ jurisdiction.” *Vaden*, 556 U.S. at 60. Because the district court lacked subject matter jurisdiction to consider Tallant’s counterclaims, we vacate the dismissal portion of the order and remand to the district court with instructions to remand the entire case, including Tallant’s counterclaims, to the state court. We deny Tallant’s motion to appoint counsel. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*DISMISSED IN PART,
VACATED IN PART,
AND REMANDED*

* Both parties were North Carolina residents when Richard filed the state action and when Tallant filed her notices of removal; thus, there was no basis for federal diversity jurisdiction. *See* 28 U.S.C. § 1332(a); *Rowland v. Patterson*, 882 F.2d 97, 99 (4th Cir. 1989) (“[T]o support diversity jurisdiction in removed cases, diversity must have existed both at the time the action was originally commenced in state court and at the time of filing the petition for removal.”).