

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

	*	
VANESSA GRAY, as mother of	*	
deceased Briana Arford, and as guardian	*	
for Austin Arford	*	
	*	
Plaintiff	*	
VS.	*	NO: 3:09CV00010 SWW
	*	
Burlington Northern Santa Fe Railway	*	
Company, Dewayne A. Graves, Hosie	*	
Gladney, and Kim Williams	*	
	*	
Defendants	*	
	*	

ORDER

Before the Court is Plaintiff Vanessa Gray’s motion to remand this action to state court (docket entry #8) and a response in opposition by Defendant Burlington Northern Santa Fe Railway Company (“BNSF”) (docket entry #19). After careful consideration, and for reasons that follow, the motion for remand will be denied.

Gray, a resident of Arkansas, commenced this wrongful death case in state court on August 26, 2008. According to the complaint allegations, at all times material to this action, Defendant Burlington Northern Santa Fe Railway Company (“BNSF”) was a Delaware corporation with a principal place of business in Texas, Defendants Randy Buckner and Dewayne A. Graves were residents of Missouri, and Defendants Hosie Gladney and Kim Williams were residents of Arkansas. It is undisputed that Defendants Gladney and Williams have not received service of the complaint and summons.

Gray served BNSF with the complaint and summons on January 2, 2009, and on January 20, 2009, BNSF removed the case to this federal court with the consent of all named defendants who have been served. Although Gray alleges in the complaint that she and Defendants Gladney and Williams are co-residents of Arkansas, BNSF removed this action based on diversity of citizenship between the parties and an amount in controversy exceeding \$75,000.

On February 27, 2009, Gray filed a motion to remand, asserting that Gladney and Williams are residents of Arkansas, thus diversity of citizenship between the parties is lacking. Gray further argues that BNSF was precluded from removing the case regardless of service or non-service on Gladney and Williams.

As the party seeking removal and opposing remand, Defendants have the burden of establishing subject matter jurisdiction. *See Bor-Son Bldg. Corp. v. Heller*, 572 F.2d 174, 181 n.13 (8th Cir. 1978). For purposes of jurisdiction, diversity of citizenship is determined at the time the action is filed. *See Sheehan v. Gustafson*, 967 F.2d 1214, 1215 (8th Cir. 1992). BNSF presents sworn affidavits by Defendants Gladney and Williams. Gladney states that he is not a resident of Arkansas, and he currently resides in Memphis, Tennessee, the same place he resided when Gray commenced this action. Williams states that he is not a resident of Arkansas, and he currently resides in West Fargo, North Dakota, the same place he resided when Gray commenced this action.

Based on the undisputed affidavits, the Court finds that BNSF has met its burden to show diversity jurisdiction and further finds that the motion to remand (docket entry #8) should be, and it is hereby, DENIED.

IT IS SO ORDERED THIS 24TH DAY OF MARCH, 2009.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE