

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
SOUTHERN DIVISION  
AT LONDON**

**CIVIL ACTION NO. 14-139-DLB-HAI**

**ARIZONA WILSON, AS ADMINISTRATOR OF THE ESTATE  
OF LEO MICHAEL COX, INC.**

**PLAINTIFF**

**vs.**

**ORDER ADOPTING REPORT & RECOMMENDATION**

**HIRSCHBACH MOTOR LINES, INC., ET AL**

**DEFENDANTS**

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This matter is before the Court upon the Report and Recommendation (“R&R”) of the United States Magistrate Judge, wherein he recommends that Plaintiff’s Motion to Remand be denied. No objections to the Magistrate Judge’s R&R have been filed, and the time do so has now expired. Thus, the R&R is ripe for this Court’s consideration.

Plaintiff Arizona Wilson originally filed this action in Knox Circuit Court on April 1, 2014, against Defendants Hirschbach Motor Lines, Inc. and Anthony A. Wilson. (Doc. # 1-1). Defendant Hirschbach Motor Lines, Inc. (“Hirschbach”) subsequently removed the action to this Court on June 13, 2014. (Doc. # 1). In the notice of removal, Hirschbach insisted this Court had diversity jurisdiction pursuant to 28 U.S.C. § 1332. (*Id. at 2*). Hirschbach noted the amount in controversy was satisfied because Plaintiff was seeking \$8,506,820.75 in damages. (*Id.*) Moreover, regarding diversity, Hirschbach asserted that it is a citizen of Illinois and Iowa, the state of its principal place of business and the state of its incorporation, respectively, while Plaintiff is a citizen of Kentucky. (*Id.*) Hirschbach

also noted that Defendant Wilson (“Wilson”) had yet to be served, but in any case resided in Ohio and thus would not destroy complete diversity. (*Id.*)

On June 13, 2014, Plaintiff filed a Motion to Remand to Knox Circuit Court, Knox County, Kentucky, asserting a lack of complete diversity because Wilson was “domiciled in the State of Kentucky at the time this action was filed on April 1, 2014.” (Doc. # 9 at 1). In support of this assertion, Plaintiff attached the affidavit of his attorney, as well as records from the Transportation Cabinet demonstrating that Wilson retains a Kentucky commercial driver’s license. (Doc. #9-2; Doc. #9-3). Defendants filed a joint response, contending that Wilson moved to Ohio on March 21, 2014. (Doc. # 13). Defendants attached an employment application submitted by Wilson to an Ohio company, in addition to Wilson’s affidavit stating his intent to remain in Ohio. (Doc. # 13-1; Doc. 13-3).

On July 10, 2014, this Court referred Plaintiffs’ Motion to Remand to Magistrate Judge Hanly A. Ingram, pursuant to 28 U.S.C. § 636(b)(1)(B), for review and preparation of an R&R. (Doc. #10). After careful consideration of the parties’ respective arguments, the Magistrate Judge issued his R&R on August 22, 2014, concluding that Wilson was indeed domiciled in Ohio, both on April 1, 2014, when the action was initially filed, and on June 13, 2014, when it was removed to this Court. (Doc. #16, at 6). As a result, the Magistrate Judge recommends that Plaintiff’s Motion to Remand be denied. (*Id.*)

Having reviewed the Magistrate Judge’s thorough and well-reasoned R&R, the Court concurs in the recommended disposition of Plaintiff’s motion. As the R&R explains, for purposes of diversity jurisdiction, a party’s domicile is determined at the time of removal. (*Id.* at 3). Based on his affidavit and application for employment, Wilson’s domicile was properly found to be Ohio on June 13, 2014, when the action was removed. (*Id.* at 6).

Seeing as Defendants have established the Court's subject matter jurisdiction pursuant to 28 U.S.C. § 1332, there is no basis to remand this action. Accordingly,

**IT IS ORDERED** as follows:

- (1) The Magistrate Judge's Report and Recommendation (Doc. # 16) is hereby **ADOPTED** as the Opinion of the Court; and
- (2) Plaintiffs' Motion to Remand (Doc.# 9) is hereby **DENIED**.

This 1st day of October, 2014.



**Signed By:**

**David L. Bunning** *DB*

**United States District Judge**

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