

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

JOSEPH V. FOSTER JR. (#75808)

VERSUS

CIVIL ACTION

RICHARD STALDER, ET AL

NUMBER 11-650-JJB-SCR

ORDER OF SUMMARY REMAND

Before the court is the plaintiff'S Notice of Removal which shall be treated as a Petition for Removal of State Civil Action pursuant to 28 U.S.C. § 1443.

Pro se plaintiff sought to remove Civil Action Number 19,012, filed in the Twentieth Judicial District Court for the Parish of West Feliciana Parish, Louisiana. On September 19, 2011, the plaintiff filed a notice of removal. Plaintiff argued that he instituted a civil action in the state trial court against various prison officials and employees for illegally seizing and holding his property in violation of his constitutional rights and state law. Plaintiff complained that he was assessed an initial partial filing fee and the matter was stayed pursuant to state law until he made full payment of court costs. Plaintiff appealed the stay order which was affirmed by the Louisiana Supreme Court. Plaintiff complained that because his state court complaint is subject to dismissal for want of payment of litigation costs in advance, he has no adequate state law avenue to redress the violation of his

constitutional rights.

Section 1443 permits a **defendant** to remove any civil action or criminal prosecution commenced in a state court when the action or prosecution is:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

28 U.S.C. § 1443.

Section 1443 allows removal of certain civil actions and criminal prosecutions if a person is denied or cannot enforce in state court a right under any law providing for equal civil rights. The Supreme Court has interpreted the statute to apply only if the right alleged arises under a federal law providing for civil rights based on race and the petitioner must show that he cannot enforce the federal right due to some formal expression of state law. See, *Georgia v. Rachel*, 384 U.S. 780, 792, 800, 86 S.Ct. 1783 (1966); *City of Greenwood v. Peacock*, 384 U.S. 808, 824, 826-27, 832, 86 S.Ct. 1800 (1966); *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 621, 99 S.Ct. 1905, 1917-18 (1979). Plaintiff failed to show sufficient grounds to support his invocation of § 1443.

Plaintiff Joseph V. Foster, Jr. was a plaintiff and not a defendant to the state civil action.

The only appropriate disposition of plaintiff's notice of

removal is summary remand. See 28 U.S.C. § 1446(c)(4).

IT IS ORDERED that pursuant to 28 U.S.C. § 1446(c)(4), the case is summarily remanded to the Twentieth Judicial District Court for the Parish of West Feliciana, Louisiana.

Baton Rouge, Louisiana, September 26<sup>th</sup>, 2011.



JAMES J. BRADY  
UNITED STATES DISTRICT JUDGE