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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ARDYCE R. CATHEY,

Plaintiff,

v.

BERNADINE A. WILSON, Guardian
of the Person for Phillip Cathey, an
incapacitated person,

Defendant.

NO: 2:14-CV-0045-TOR

ORDER REMANDING CASE

The Court here *sua sponte* considers its subject matter jurisdiction and finding that it is lacking, remands the case to Spokane County Superior Court.

DISCUSSION

This case involves a *pro se* party, Ardyce Cathey, and filings the intent of which is not entirely clear.¹ The Court must first determine whether this matter

¹ On February 10, 2014, Ardyce Cathey filed an application to proceed *in forma pauperis*, ECF No. 1, which was granted, ECF No. 3. However, less than a month

1 constitutes a case originally filed with the Court in which Ms. Cathey is a plaintiff,
2 or whether Ms. Cathey is a defendant in a case which she properly removed from
3 state court. On February 10, 2014, Ms. Cathey filed a form titled “Complaint”
4 stating, in addition to the form language, that “Plaintiff alleges: No estate, but
5 Guardian and her Attorney are moving the court for an order directing payment of
6 Guardians Attorney fees. The only money my son receives is Federal Funds.” ECF
7 No. 2 at 1. Ms. Cathey’s name is listed next to “Plaintiff.” *Id.* On the attached Civil
8 Cover Sheet, Ms. Cathey again listed herself as plaintiff. *Id.* at 2. She checked the
9 “Federal Question” box as the basis of jurisdiction. *Id.* at 2. Under “Nature of
10 Suit,” Ms. Cathey checked the “Amer. w/Disabilities-Other” box. *Id.* And under
11 “Origin,” she checked the “Removed from State Court” box. Under Cause of
12 Action, she cited the statute under which she was filing as “42 U.S.C. 407,” and
13 described her cause again as “No Estate, but Guardian and her Attorney are
14 moving the court for an order directing payment of Guardians Attorney fees by my
15 son Philip V. L. Cathey.” *Id.* Ms. Cathey also submitted documents from Spokane
16 County Superior Court. ECF No. 4. Though Ms. Cathey listed herself as plaintiff
17 and submitted a complaint, her reference to the case in Spokane County Superior
18

19 later, Ms. Cathey paid the filing fee. Thus, she is no longer proceeding *in forma*
20 *pauperis*, and the Court did not perform its standard *in forma pauperis* screening.

1 Court and submission of state court documents associated with that case indicates
2 that this case should be treated as a removal. Ms. Cathey's statements as to the
3 nature of the case bolster this conclusion, as they refer to the state court case and
4 offer no grounds for an independent cause of action in this Court.

5 "It is a fundamental precept that federal courts are courts of limited
6 jurisdiction." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978)
7 (limits on federal jurisdiction "must be neither disregarded nor evaded"); *see also*
8 *United States v. Bravo-Diaz*, 312 F.3d 995, 997 (9th Cir. 2002) ("a court of the
9 United States may not grant relief absent a constitutional or valid statutory grant of
10 jurisdiction"). Thus, it is presumed that a federal court lacks jurisdiction" unless
11 the contrary affirmatively appears." *Stock West, Inc. v. Confederated Tribes of the*
12 *Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). A court may consider
13 subject matter jurisdiction *sua sponte*. *United Investors Life Ins. Co. v. Waddell &*
14 *Reed Inc.*, 360 F.3d 960, 967 (9th Cir. 2004) (the district court had a duty to
15 establish subject matter jurisdiction over the removed action *sua sponte*, whether
16 the parties raised the issue or not). "If at any time before final judgment it appears
17 that the district court lacks subject matter jurisdiction, the case shall be remanded."

18 28 U.S.C. § 1447(c). As the Supreme Court explained:

19 Only state-court actions that originally could have been filed in federal court
20 may be removed to federal court by the defendant. Absent diversity of
citizenship, federal-question jurisdiction is required. The presence or
absence of federal-question jurisdiction is governed by the "well-pleaded

1 complaint rule,” which provides that federal jurisdiction exists only when a
2 federal question is presented on the face of the plaintiff’s properly pleaded
complaint.

3 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (internal citations omitted).

4 Although the file does not contain the complaint from the state court, the
5 nature of the case does not implicate a federal question. In the document titled
6 “Notice of Removal,” Ms. Cathey asserts that “[t]he Guardian Bernadine A.
7 Wilson is petitioning the Spokane County Superior Court to have her legal fees
8 paid, from my son’s Federal Funds and is asking The court to have me removed as
9 Guardian of the estate.” ECF No. 5 at 3. She states that “[g]arnishment of these
10 funds violates Section 207 of the Social Security Act (42 U.S.C. 407).” *Id.* But
11 this assertion indicates that Ms. Cathey invokes the Social Security Act in defense
12 to the petition for fees; defenses cannot form the basis for federal question
13 jurisdiction. None of the documentation Ms. Cathey submitted provide grounds for
14 federal question jurisdiction. And, as evidenced by the Civil Cover Sheet, the
15 parties are both citizens of this state, ECF No. 2 at 2, so the Court does not have
16 diversity jurisdiction over the matter. Accordingly, the Court finds that it does not
17 have subject matter jurisdiction over the removed case. Thus, under 28 U.S.C.
18 § 1447(c), the matter must be remanded to the state court.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 This case is hereby **REMANDED** to the Spokane County Superior Court for
3 all further proceedings.

4 The District Court Executive is hereby directed to enter this Order, furnish
5 copies to counsel and Ardyce Cathey at her address of record, mail a certified copy
6 to the Spokane County Superior Court, and **CLOSE** the file.

7 **DATED** May 30, 2014.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge