

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STATE OF WISCONSIN,

Plaintiff,

v.

JUDY K. ZIMMERMAN,

Defendant.

OPINION and ORDER

14-cv-239-jdp¹

Defendant Judy K. Zimmerman has filed a notice of removal of a state court criminal case filed in the Dunn County Circuit Court in which she is charged with three counts of simulating legal process. Under 28 U.S.C. § 1455(b)(4), “[t]he United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.” After examining Zimmerman’s notice of removal, I conclude that the case must be remanded.

A notice of removal of a state court criminal prosecution must contain “a short and plain statement of the grounds for removal.” 28 U.S.C. § 1455(a). In her notice, Zimmerman states that this court has diversity jurisdiction over the case under both 28 U.S.C. §§ 1330 (“Actions against foreign states”) and 1332 (“Diversity of citizenship”), and that “[j]urisdiction also exists under 28 U.S.C. § 1602 et seq because [she] has given notice of foreign status to Plaintiff” These theories are grounded in Zimmerman’s assertions that

¹ This case was reassigned to me pursuant to a May 16, 2014 administrative order. Dkt. 13.

she is “the Registered Owner of ‘Judy K Zimmerman’ a foreign trust,” and that “‘Judy K Zimmerman’ is a foreign state, pursuant to 28 U.S.C. § 1603.”

Zimmerman’s attempt at removal fails for two reasons. First, the removal and jurisdictional statutes she cites refer to civil, not criminal, actions. 28 U.S.C. §§ 1330 (“The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state”) and 1332 (discussing situations in which diversity jurisdiction applies to “civil actions.”). To remove a state criminal prosecution there must be a basis under 28 U.S.C. §§ 1442 (“Federal officers or agencies sued or prosecuted”); 1442a (“Members of armed forces sued or prosecuted”); or 1443 (“Civil rights cases”). Nothing in Zimmerman’s notice of removal suggests that she falls under any of these categories.

Second, to the extent that Zimmerman raises “sovereign citizen”-type arguments that she is a foreign state entitling her to have her case heard in federal court, such arguments have been rejected repeatedly by federal courts as frivolous. *See, e.g., United States v. Hilgeford*, 7 F.3d 1340, 1342 (7th Cir. 1993) (“defendant . . . apparently hold[ing] a sincere belief that he is a citizen of the mythical ‘Indiana State Republic’ . . . is, of course, incorrect.”); *Westby Co-Op Credit Union v. Hertler*, 2012 WL 6195992 (W.D. Wis. Dec. 12, 2012) (Case remanded where removing defendants claimed to be “‘Foreign Sovereign’ citizens of ‘the Republic for the united [sic] States of America de jure State of Wisconsin.’”). Because Zimmerman has not identified a cognizable basis for removal, I will remand the case to state court.

Zimmerman has also filed a document titled “Affidavit in Support of Claimant’s Right to Court Without Fees,” Dkt. 2, that I understand to be a motion to waive the filing fee for

her notice of removal. I will deny that motion as unnecessary, as the federal statute providing for filing fees does not include a fee for filing a removal of a criminal case. 28 U.S.C. § 1914; *see also Lefton v. City of Hattiesburg, Miss.*, 333 F.2d 280, 285 (5th Cir. 1964) (“Such fees are regulated by statute, and a comparison of the present statute with its predecessor shows that there is now no authority for the clerk to charge fees in such proceedings.”); *Georgia v. Castancira*, 2011 WL 5514000 (N.D. Ga. Oct. 11, 2011), *rep. and rec. adopted*, 2011 WL 5514011 (N.D. Ga. Nov. 9, 2011).

ORDER

IT IS ORDERED that

1. This case is REMANDED to the Dunn County Circuit Court.
2. Defendant Judy K. Zimmerman’s motion to waive the filing fee, Dkt. 2, is DENIED as unnecessary.

Entered this 26th day of June, 2014.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge