

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 CA 1611

OSCAR DANTZLER, JR.

VERSUS

KATHY MONTICINO, INDIVIDUALLY AND IN HER CAPACITY AS CITY COUNCILMEN, NICKY MUSCARELLO, INDIVIDUALLY AND IN HIS CAPACITY AS CITY COUNCILMEN, CURTIS WILSON, INDIVIDUALLY AND IN HIS CAPACITY AS CITY COUNCILMEN, TONY LICCIARDI, INDIVIDUALLY AND IN HIS CAPACITY AS CITY COUNCILMEN, AND WILLIE GRANT JACKSON, INDIVIDUALLY AND IN HIS CAPACITY AS CITY COUNCILMEN, LANITA JOHNSON, INDIVIDUALLY AND IN HER CAPACITY AS CITY COUNCILMEN'S SECRETARY, THE CITY OF HAMMOND, THROUGH THE MAYOR, MAYSON FOSTER, INDIVIDUALLY AND IN HIS CAPACITY AS MAYOR, THROUGH THE HAMMOND POLICE DEPARTMENT AND RODDY DEVAL, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS CHIEF OF POLICE OF THE HAMMOND POLICE DEPARTMENT, THE CITY OF HAMMOND AND THE HAMMOND MUNICIPAL FIRE AND POLICE CIVIL SERVICE BOARD, JOSH FLETCHER, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS CIVIL SERVICE BOARD'S CHAIRMAN, GREGORY LAWRENCE, INDIVIDUALLY AND IN HIS CAPACITY AS CIVIL SERVICE BOARD MEMBER, DAVID ATKINS, INDIVIDUALLY AND IN HIS CAPACITY AS CIVIL SERVICE BOARD MEMBER, JOHN PEARSON, INDIVIDUALLY AND IN HIS CAPACITY AS CIVIL SERVICE BOARD MEMBER, JANET DAVIS, INDIVIDUALLY AND IN HER CAPACITY AS CIVIL SERVICE BOARD MEMBER, MARGARET BANKSTON, INDIVIDUALLY AND IN HER CAPACITY AS BOARD'S SECRETARY, THE CITY OF HAMMOND, THROUGH THE CITY ATTORNEY, ANDRE COUDRAIN, INDIVIDUALLY AND IN HIS CAPACITY AS CITY ATTORNEY, THE CITY OF HAMMOND, THROUGH THE CITY ATTORNEY, GUS A. FRITCHIE, INDIVIDUALLY AND IN HIS CAPACITY AS CITY ATTORNEY, THE CITY OF HAMMOND, THROUGH THE HAMMOND MUNICIPAL FIRE AND POLICE CIVIL SERVICE BOARD'S ATTORNEY, JOHN FEDUCCIA, INDIVIDUALLY AND IN HIS CAPACITY AS CITY SERVICE BOARD'S ATTORNEY, MELINDA B. LIVINGSTON, INDIVIDUALLY AND IN HER CAPACITY AS THE STATE OF LOUISIANA CIVIL SERVICE EXAMINER, ET AL

*Carter J. concurs in result only by JEW
Welch J. concurs w/o reasons*

Judgment rendered June 6, 2008.

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Appealed from the
21st Judicial District Court
in and for the Parish of Tangipahoa, Louisiana
Trial Court No. 2006-003906
Honorable Elizabeth P. Wolfe, Judge

* * * * *

OSCAR DANTZLER
HAMMOND, LA

PRO SE
PLAINTIFF-APPELLANT

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ATTORNEY FOR
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THE CITY OF HAMMOND

* * * * *

BEFORE: CARTER, C.J., PETTIGREW, AND WELCH, JJ.

PETTIGREW, J.

This case centers around plaintiff's allegation that he was terminated from his employment as a police officer for the City of Hammond ("the City") without a hearing and subsequently denied a civil service hearing in violation of 42 U.S.C. §1983. According to the record, plaintiff, Oscar Dantzler, was hired by the City in January 1996, as a police officer, attained classified civil service status, and was terminated two years later for alleged insubordination. On December 1, 2006, Mr. Dantzler filed a petition for damages in the 21st Judicial District Court for the Parish of Tangipahoa ("21st JDC") against the City and various municipal agencies and officials, including members of the City council, the mayor, the City attorney, the Civil Service Board, and Melinda Livingston, state examiner for the Municipal Fire and Police Civil Service. Because of the numerous violations of federal law alleged by Mr. Dantzler in his petition, the City removed the action to the United States District Court for the Eastern District of Louisiana on December 13, 2006. A "Notice Of Removal To State Court Clerk" was filed into the record in the 21st JDC on December 20, 2006, by counsel for the City.

On January 10, 2007, Melinda Livingston filed exceptions raising the objections of lack of subject matter jurisdiction, no cause of action, no right of action, and prescription in the 21st JDC. Following a hearing before the trial court on March 5, 2007, a judgment granting the exceptions was issued April 5, 2007. It is from this judgment that Mr. Dantzler has filed the instant appeal, assigning numerous specifications of error for our review. However, based on the procedural posture of the instant case, and for the reasons discussed more fully below, we vacate and set aside the judgment rendered by the trial court and dismiss the appeal filed by Mr. Dantzler.

On August 29, 2007, this court issued an order to the parties to show cause, by briefs, as to whether there was a proper judgment on appeal based on the removal to federal court. The parties filed briefs arguing their respective positions. Thereafter, on October 29, 2007, a different panel of this court issued a rule to show cause why the appeal should not be dismissed and referred the rule to the merits of the appeal. Subsequently, on January 4, 2008, that same panel issued the following interim order:

The above matter hereby before this Court, it is hereby **ORDERED** that this matter is remanded to the trial court for the limited purpose of determining whether 28 USCA sec. 1446(d) was complied with insofar as the record does not show that all adverse parties were given written notice of the removal of the action to federal court. The trial court is to make this determination on or before February 6, 2008, and is to notify this Court of its determination within two weeks of its ruling.

Briefing delays are suspended pending further orders of this Court.

In response to said order, the trial court issued reasons on January 22, 2008, as follows:

From the record, it appears that on December 20, 2006, Mr. Guy Fritchie III, attorney for the City of Hammond, filed a notice of removal to the state court, through the 21st Judicial District Clerk of Court's office regarding this case, as required by 28 USCA 1446 (d). In that same notice, Mr. Fritchie included a certificate of service which stated that he had served the notice of removal "...upon counsel for all parties to this proceeding..." The record reflects that not all parties were represented by counsel, so unless Mr. Fritchie notified the adverse parties directly of the removal by written notice, he did not comply with the statute. Therefore, the Court finds Mr. Fritchie did not comply with 28 USCA 1446 (d) in that Mr. Fritchie did not give written notice of removal to all adverse parties.

We disagree with the trial court on the notice issue. According to Mr. Fritchie, he sent Mr. Dantzler written notice and a copy of the "Notice Of Removal To State Court Clerk" by letter dated December 13, 2006. In response, Mr. Dantzler filed a document entitled "Opposition To Defendant's Notice Of Removal And Notice Of Removal To State Court Clerk" on January 4, 2007. Thus, based on our review of the record before us, along with the numerous briefs filed by the parties, it is clear that Mr. Dantzler, the only adverse party in this matter, received timely notice of the removal.

With regard to the trial court's actions after the City filed the notice of removal, it is well settled that once a matter is removed from state court to federal court, "the State court shall proceed no further unless and until the case is remanded." 28 U.S.C. §1446(d). Thus, after removal, the jurisdiction of the state court absolutely ceases and the state court has a duty not to proceed any further in the case. **National S.S. Co. v. Tugman**, 106 U.S. 118, 122, 1 S.Ct. 58, 60, 27 L.Ed. 87 (1882). Any subsequent proceedings in state court on the case are void *ab initio*. **Maseda v. Honda Motor Co., Ltd.**, 861 F.2d 1248, 1254-1255 (11th Cir. 1988).

There is no evidence in the instant record to suggest that after the City removed this matter to federal court it was ever remanded to state court. Rather, the matter

remains pending in federal court bearing docket number 06-10924. Therefore, the state court no longer had jurisdiction and was required to halt all proceedings in this matter. By continuing to act in spite of removal, any orders or decisions rendered by the state court are null and void. See **New York State Nat. Organization For Women v. Terry**, 697 F.Supp. 1324, 1330 n.5 (S.D.N.Y. 1988).

For the above and foregoing reasons, we vacate and set aside the April 5, 2007 judgment issued by the trial court for lack of subject matter jurisdiction and dismiss the appeal filed by Mr. Dantzler. We issue this memorandum opinion in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.1B and assess all costs associated with this appeal against Mr. Dantzler.

JUDGMENT VACATED AND SET ASIDE; APPEAL DISMISSED.