

From: 609-5099

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United States District Court

Western District of Oklahoma

Notice of Order or Judgments
Fed R. Civ. P. 77 (d)

Date/Time: Thursday, Aug 7, 2003 02:53PM

To: STEVEN M HARRIS
DOYLE & HARRIS

Re: 5:03-CV-838, DOC: 17, QUE ID: 233279

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Number of pages including cover 6

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

PAYNE COUNTY BANK, et al.,)
)
Petitioners/Plaintiffs,)
)
v.)
)
PAYNE COUNTY RURAL WATER)
DISTRICT NO. 3,)
)
Defendant.)

CIV-03-838-R

FILED
AUG 06 2003
ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY DEPUTY

ORDER

Before the Court is the joint motion to remand this action to the Payne County Board of County Commissioners filed by Plaintiffs. In support of their motion, Plaintiffs assert that no federal question appears on the face of their well-pleaded Complaint and that this case was not removable based upon the federal statute cited by Defendant on which its defense is predicated. Plaintiffs further assert that this action is not governed by 7 C.F.R. § 1942.17(n)(2)(vii) because Plaintiffs' allegations specifically negate one of the principal elements of a right of action thereunder. Plaintiffs point out that they have alleged that their properties "have not been serviced in the past by the facilities of Rural Water District No. 3" and that the District "cannot adequately service the needs of the above described lands," Petition at ¶¶ 5 & 6, whereas Section 1942.17(n)(2)(ii) only protects "persons within the service area who can feasibly and legally be served." 7 C.F.R. § 1942(n)(2)(vii). Thus, Plaintiff contend they have no remedy under that Section. Finally, Plaintiffs assert that neither complete preemption nor direct preemption applies to their claims to create a basis

for removal jurisdiction. In support of their contention that the complete preemption doctrine does not apply, Plaintiffs cite *Hazel v. U.S. Alarm Monitoring, Inc.*, 2002 WL 31505677 (W.D. Okla. July 23, 2002); *Schmeling v. Nordam*, 97 F.3d 1336 (10th Cir. 1996); and *City of Park City v. Rural Water District No. 2*, 960 F. Supp. 255, 257-58 (D. Kan. 1997). Plaintiffs also cite a number of cases which they contend show that Congress did not intend to preempt state laws governing the boundaries of cities and rural water districts.

Defendant in response to Plaintiffs' Joint Motion to Remand asserts that federal law completely preempts the right of the state to remove customers from the service area of an association indebted to the federal government, citing 7 U.S.C. § 1926(b); *Glenpool Utility Services Authority v. Creek County Rural Water District No. 2*, 861 F.2d 1211, 1216 (10th Cir. 1988), *cert. denied*, 490 U.S. 1067, 109 S.Ct. 2068, 104 L.Ed.2d 633 (1989) and *City of Madison v. Bear Creek Water Association*, 816 F.2d 1057, 1059 (5th Cir. 1987). Defendant furthers states as follows:

While it is true the Courts have traditionally looked to state law to determine the legal right to serve, the time for this determination is at the time the loan is obtained and such right is pledged to the federal government as collateral and any attempt to take away that right thereafter is preempted. *Rural Water System #1 v. City of Sioux Center*, 967 F. Supp. 1483, 1529 (N.D. Iowa 1997).

Defendant's Response at p. 8.

Defendant also cites *Sequoyah County Rural Water District No. 7 v. Town of Muldrow*, 191 F.3d 1192 (10th Cir. 1999), *cert. denied*, 529 U.S. 1037, 120 S.Ct. 1532, 146 L.Ed.2d 346 (2000) in support of that proposition.

Defendant further asserts that Plaintiffs' statement that the issue of whether federal law preempts state law deannexation proceedings has never been decided by federal courts is not accurate, and cites the following cases as holding that § 1926(b) preempts state law: *Rural Water System No. 1 v. City of Sioux Center, Iowa*, 967 F. Supp. 1483, 1529 (N.D. Iowa 1997), *aff'd*, 202 F.3d 1035 (8th Cir. 2000); *City of Park City v. Rural Water District No. 2*, 960 F. Supp. 255, 258 (D. Kan. 1997). Moreover, Defendant cites the following cases as holding that even after annexation by a city, the city cannot invoke state laws to take over services in a rural water district: *Glenpool Utility Services Authority v. Creek County Rural Water District No. 2, supra* and *City of Madison v. Bear Creek Water Association, supra*. Defendant argues that Plaintiffs' reliance on *Rural Water System #1 v. Sioux Center*, 29 F. Supp.2d 975, 994 (N.D. Iowa 1998), *aff'd in part and reversed in part*, 202 F.3d 1035 (8th Cir. 2000), *cert. denied*, 531 U.S. 820, 121 S.Ct. 61, 148 L.Ed.2d 28 (2000), is misplaced because that case did not address the legal right issue or the service issue but concerned only whether the service provided by the association was adequate, noting that "questions as to the adequacy of water service to be provided is within the exclusive jurisdiction of the appropriate regulatory agencies." Additionally, Defendant asserts that the case of *City of Park City v. Rural Water District No. 2*, 960 F. Supp. 255 (D. Kan. 1997) on which Plaintiffs rely is distinguishable because the state court case therein was filed in a state court of general jurisdiction where the federal statute could be asserted as a defense whereas the Board of

County Commissioners herein “have no jurisdiction to decide important issues of federal law which are determinative of Plaintiffs’ claims.” Defendant’s Response at p. 11.

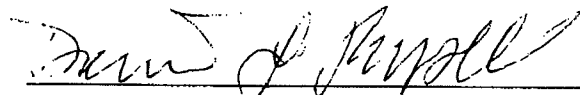
Defendant also asserts that Plaintiffs have a federal cause of action to enforce their rights to water service under 7 C.F.R. § 1942.17(n)(2)(vii). Finally, Defendant asserts that the merits of Plaintiffs’ claims turn on an important federal question over which the Board of County Commissioners lack jurisdiction, making removal proper, citing, *inter alia*, Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction 3d* § 3731 & § 3722 and *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 164, 118 S.Ct. 523, 529 (1997).

This Court does not address the issues of whether or not there is complete preemption or direct (conflict or express) preemption because it concludes that Plaintiffs’ petition shows that their right to relief under state law requires resolution of a substantial question of federal law. *See City of Chicago v. International College of Surgeons*, 522 U.S. 156, 164, 118 S.Ct. 523, 529, 139 L.Ed.2d 525, 535 (1997) (quoting *Franchise Tax Board of California v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 13, 103 S.Ct. 2841, 77 L.Ed.2d 420, ___ (1983)); *Morris v. City of Hobart*, 39 F.3d 1105, 1111 (10th Cir. 1994), *cert. denied*, 514 U.S. 1109, 115 S.Ct. 1960, 131 L.Ed.2d 852 (1995). *See generally* 14B C.A. Wright, A.R. Miller & E.H. Cooper, *Federal Practice and Procedure: Jurisdiction 3d* § 3722 (1998) at 448. In this case, Plaintiffs seek deannexation from the territory of Rural Water District No. 3 on the grounds that that District has not serviced their lands in the past

and “cannot adequately service the needs” of their lands. See Petition at ¶¶ 5-7. Whether a rural water district has provided service or has made service available to certain customers is a federal question which arises under 7 U.S.C. § 1926(b). See *Sequoyah County Rural Water No. 7 v. Town of Muldrow*, 191 F.3d 1192, 1201-06 (10th Cir. 1999), *cert. denied*, 529 U.S. 1037, 120 S.Ct. 1532, 146 L.Ed.2d 346 (2000); *Bell Arthur Water Corp. v. Greenville Util. Commission*, 173 F.3d 517, 526 (4th Cir. 1999). Resolution of Plaintiffs’ state law claim for deannexation will necessarily depend on resolution of the substantial federal question of whether Defendant Payne County Rural Water District No. 3 has provided service or made service available to Plaintiffs. See *id.* Accordingly, removal to this Court was proper.

In accordance with the foregoing, Plaintiffs’ motion to remand is DENIED.

IT IS SO ORDERED this 17 day of August, 2003.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE