

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

THEODORE DAVIS, JR.,

Plaintiff,

v.

Case No.: 2:23-cv-57-SPC-NPM

KIM M. DAVIS,

Defendant.

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**ORDER**<sup>1</sup>

Before the Court is pro se Plaintiff Theodore Davis, Jr.'s Removal of Civil Action (Doc. 1), and Emergency Motion for Preliminary Injunction Against Garnishment (Doc. 3). Defendant Kim Davis is Theodore's ex-wife. The Clerk construed Theodore's filing as a "Complaint," because he had no case pending when he filed these papers. Because the initial filing suffers from several defects explained below, the Court dismisses the case, and denies the Emergency Motion (Doc. 3) as moot.

First, Theodore states his initial filing is a "Removal of Civil Action," and that he is bringing his case under 28 U.S.C. § 1441. But, 28 U.S.C. § 1441 allows a defendant to remove a state court civil case to "the district court of the

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<sup>1</sup> Disclaimer: Papers hyperlinked to CM/ECF may be subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or their services or products, nor does it have any agreements with them. The Court is not responsible for a hyperlink's functionality, and a failed hyperlink does not affect this Order.

United States *for the district and division and embracing the place where such action is pending.*” 28 U.S.C. § 1441 (emphasis added). Theodore does not allege he has a pending state court case within the Middle District of Florida, Fort Myers Division. Rather, he seeks removal from state court in Butler County, Ohio.<sup>2</sup> So, to the extent he is trying to remove something, it is not the right district and division. And he should know this—Judge Steele explained this in an Order dismissing a case Theodore previously filed in this Division one day before he filed this case. *See* 2:23-cv-30-JES-NPM.

Second, Theodore’s initial filing is not a complaint, but a motion to vacate. He “moves this court to vacate all lower court orders in Butler County, Ohio, case DR2013-12-1277.” (Doc. 1). He cites to Fed. R. Civ. P. 60’s standard for when a party may obtain relief from a final judgment. (Doc. 1). He also brought this motion in 2:23-cv-30-JES-NPM. As Judge Steele explained, Theodore has “initiated a motion for reconsideration without an underlying case in the Fort Myers division that could be reconsidered.” 2:23-cv-30-JES-NPM Doc. 4. The Court finds it has no jurisdiction to entertain the motion.

Accordingly, it is now

**ORDERED:**

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<sup>2</sup> It’s unclear if Theodore has a pending Butler County, Ohio state court case. His filing (Doc. 1) is not clear. Two weeks ago, in 2:23-cv-00030-JES-NPM, a previously filed case on some of the same issues, Theodore states that the Ohio action is “presently pending.” (2:23-cv-00030-JES-NPM Doc. 1-6).

1. Plaintiff Theodore K. Davis, Jr.'s Removal of Civil Actions and Motion to Vacate Judgement is **DISMISSED** for lack of jurisdiction.

2. Plaintiff Theodore K. Davis, Jr.'s Emergency Motion for Preliminary Injunction against Garnishment is **DENIED** as moot.

3. The Clerk is **DIRECTED** to terminate all deadlines and close the case.

**DONE** and **ORDERED** in Fort Myers, on January 26, 2023.

  
**SHERI POLSTER CHAPPELL**  
**UNITED STATES DISTRICT JUDGE**

Copies: All Parties of Record