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Mays v. City of Flint, Michigan

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Mays v. City of Flint, Michigan, 871 F.3d 437 (6th Cir. 2017)

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In *Mays v. City of Flint Michigan*, Michigan Department of Environmental Quality employees removed a class action against them in the Michigan state court to federal court under the federal-officer removal statute. This court ruled in favor of the residents of Flint, determining that the federal officer removal statute did not give the federal court jurisdiction over a state agency simply because the agency must follow federal rules. The court held that Michigan Department of Environmental Quality employees could not have been "acting under" the federal government even though the state agency's enforcement authority could be trumped by the EPA. In addition, the court held that a state law tort claim relying on the violation of federal law is not a substantial question of federal law. This ruling reinforced the ability of individuals to hold their local agencies accountable in local courts.

I. INTRODUCTION

Mays v. City of Flint, Michigan arose out of the poor condition of drinking-water in Flint, Michigan.[1] The plaintiffs were Flint residents who also sought to represent others harmed by the Flint drinking-water crisis.[2] The defendants were state officials from Flint (collectively "City") and employees of the Michigan Department of Environmental Quality (collectively "MDEQ").[3] After the plaintiffs filed their complaint in Michigan state court, MDEQ filed a removal notice in federal district court on two grounds: (1) the federal-officer removal statute,[4] and (2) federal-question jurisdiction under 28 U.S.C. § 1441.[5] The plaintiffs opposed removal, and their motion to remand back to state court was granted by the United States District Court for the Eastern District of Michigan.[6] On review, the United States Court of Appeals for the Sixth Circuit affirmed the district court's decision, holding that state court was the proper forum because MDEQ failed to meet its burden of demonstrating that federal court jurisdiction was proper.[7]

1. Mays v. City of Flint, Mich., 871 F.3d 437, 440 (6th Cir. Sept. 11, 2017).
2. *Id*.
3. *Id.*
4. *Id.* (citing 28 U.S.C. § 1442(a)(1) (2012)).
5. *Id.* (citing 28 U.S.C. § 1441).
6. *Id.*
7. *Id*. at 450.

II. FACTUAL AND PROCEDURAL BACKGROUND

In April 2014, the City switched its drinking water source from the City of Detroit to the Flint River to save money.[8] Despite a City-commissioned report in 2011 that concluded the Flint River water was "highly corrosive and unsafe" for drinking, MDEQ failed to introduce corrosion-control treatment to the water.[9] The plaintiffs contend that MDEQ and the City knew that changing the Flint drinking water source would cause substantial negative health effects, but did so anyway for fiscal purposes.[10] The plaintiffs also assert that after months of citizen complaints, MDEQ and the City failed to inform the public of health issues caused by the drinking water and did nothing to remedy the water quality.[11]

In January 2016, several of the plaintiffs filed a class action lawsuit against the City and MDEQ in Genesee Circuit Court.[12] The plaintiffs alleged that MDEQ "deliberately ignored" information about the unsafe, corrosive nature of the water, and "falsely reassured the public… that the water was safe to drink."[13] The complaint contained "state-law claims of gross negligence, fraud, assault and battery, and intentional infliction of emotional distress."[14]

In April 2016, MDEQ filed a notice of removal in United States District Court for the Eastern District of Michigan.[15] In response, the plaintiffs filed a motion to remand the case back to state court.[16] The plaintiffs' motion to remand was granted, and MDEQ appealed the decision to the United States Court of Appeals for the Sixth Circuit.[17]

III. ANALYSIS

The central question before the court was whether the district court properly remanded the case to the Genesee County Circuit Court instead of allowing removal to federal court.[18] Removal is proper when the party seeking removal meets its burden of showing that the federal court has subject matter jurisdiction over the claims at issue.[19] Here, MDEQ asserted two grounds for why federal jurisdiction was proper: (1) the actions of MDEQ were taken under the direction of the Environmental Protection Agency ("EPA"), therefore invoking the federal-officer

8. *Id*. at 440.
9. *Id*. at 440-41.
10. *Id.* at 440.
11. *Id.* at 441.
12. *Id*. at 440.
13. *Id*. at 441 (citations omitted).
14. *Id*. at 440.
15. *Id*. at 441.
16. *Id*. at 442.
17. *Id*.
18. *Id*.
19. *Id*.

removal statute under 28 U.S.C. § 1442(a)(1); and (2) the complaint involved issues entitling MDEQ to federal-question jurisdiction under 28 U.S.C. § 1441.[20]

A. The Federal-Officer Removal Statute

The federal-officer removal statute allows civil actions to be removed to federal court when the defendant is a federal officer.[21] The statute also allows other defendants, such as MDEQ, to remove lawsuits from state court to federal district court when the defendant establishes: (1) they "acted under" a federal officer; (2) the action was "performed under color of federal office"; and (3) the defendant raises a "colorable federal defense."[22] The court primarily focused on whether MDEQ "acted under" the EPA when they caused the alleged harm.[23]

MDEQ argued that it acted under a federal officer because it was sued for actions taken while under the EPA's control.[24] The EPA delegated enforcement to MDEQ to implement the EPA's Lead and Copper Rule ("LCR") and the Safe Drinking Water Act ("SDWA").[25] The defendants argued that because MDEQ mandatorily reported compliance with SDWA and LCR to the EPA, MDEQ was "acting under" the EPA.[26] MDEQ felt that the EPA's ability to withdraw MDEQ's primary enforcement authority of these regulations also indicated that the EPA had control over MDEQ.[27] In addition, MDEQ asserted that the emergency order issued by the EPA to MDEQ in January 2016, which directed MDEQ to take specific actions in relation to the water quality crisis, proved MDEQ "acted under" the EPA and satisfied the federal-officer removal statute.[28]

The court rejected MDEQ's argument for two primary reasons.[29] First, the court found that the relationship between MDEQ and the EPA could not be accurately described as "acting under" for the purpose of the statute.[30] In the most recent Supreme Court discussion of the statute, *Watson v. Philip Morris Cos.*, the Court explained that "[s]imply complying with a regulation is insufficient, even if the regulatory scheme is 'highly detailed' and the defendant's 'activities are highly supervised and monitored.'"[31] The Court in *Watson* also indicated that the federal government must act as the defendant's superior to satisfy the "acting

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20. *Id*. at 441.
21. *Id*. at 442 (citing 28 U.S.C. § 1442(a)(1)).
22. *Id*. at 442-43 (citing Bennett v. MIS Corp., 607 F.3d 1076, 1085 (6th Cir. 2010).
23. *Id*. at 449.
24. *Id*. at 441.
25. *Id*.
26. *Id*.
27. *Id*.
28. *Id*.
29. *Id*. at 444, 447.
30. *Id*. at 444.
31. *Id.* (quoting Watson v. Philip Morris Cos., 551 U.S. 142, 153 (2007)).

under" requirement.[32] In cases where a non-federal government defendant was successfully removed to district court in other circuit courts, this court found an agreement between the parties that specified the inferior-superior relationship between the defendant and the federal government.[33] Here, the court concluded the defendant's mandatory compliance reports were not enough to satisfy the phrase "acting under."[34] MDEQ and the EPA had "no contract, no employer/employee relationship, nor any other indication of a principal/agent arrangement."[35] The EPA was also not involved in approving the decision to switch Flint's water supply.[36] The court agreed that the defendant's clearest indicator that MDEQ may have acted on behalf of the EPA was the EPA-issued emergency order on January 21, 2016.[37] However, the court noted that the order was issued two days after the plaintiffs filed their complaint, and therefore it had no impact on the actions that the plaintiffs challenged.[38] The court found that the EPA's ability to intervene if a state failed to meet regulatory requirements was not convincing because the state retains its rights to enforce its own laws until that state failed.[39] The plaintiffs' complaint arose from actions by MDEQ while the state was enforcing its own laws and regulations.[40] Therefore, the court concluded that MDEQ was not "acting under" the EPA.[41]

The court also rejected MDEQ's argument because MDEQ was not the type of defendant the federal-officer removal statute was intended to protect.[42] The federal-officer removal statute was written to protect federal agents enforcing federal policies from potential bias in state courts.[43] The court felt that there was no reason for the local courts to be biased toward MDEQ because it was not enforcing the federal SDWA; rather, MDEQ was enforcing Michigan's own version of the federal law.[44]

The court noted that the defendants in all three cases *Watson* cited to support its broad interpretation of "acting under" were federal officers or employees of a federal officers.[45] In this case, however, the defendants were state officials sued under state tort law for actions taken while

32. *Id.* (citing *Watson*, 551 U.S. at 151).

33. *Id.* at 445 (citing Isaacson v. Dow Chem. Co., 517 F.3d 129, 134, 137–38 (2d Cir. 2008)).

34. *Id*. at 446 (citing *Watson*, 551 U.S. at 156).

35. *Id*. at 444.

36. *Id*. at 446.

37. *Id*. at 447.

38. *Id*.

39. *Id*.

40. *Id*.

41. *Id*. at 449.

42. *Id*. at 447.

43. *Id*. at 448.

44. *Id*.

45. *Id*. (citing *Watson*, 551 U.S. at 147; Arizona v. Manypenny, 451 U.S. 232, 234–36 (1981); Willingham v. Morgan, 395 U.S. 402, 403 (1969); Colorado v. Symes, 286 U.S. 510, 514–16 (1932)).

enforcing state law.[46] The court found that the federal-officer removal statute was not enacted to protect the type of defendant in this case, and that precedent did not allow the court to define "acting under" so broadly as to include MDEQ's actions in relation to the EPA.[47]

B. Federal Question Removal

28 U.S.C. § 1441 allows removal to district court when the state-law claim contains a federal issue that is: (1) necessarily raised; (2) actually disputed; (3) substantial; and (4) "capable of resolution in federal court without disrupting the federal-state balance."[48] MDEQ argued that that because the plaintiffs' complaint cited the LCR and SDWA to establish that MDEQ breached its duties, federal interpretation issues were implicated.[49] However, the court stated that a state tort claim relying on the violation of a federal statute as an element of the tort is "insufficiently 'substantial' to confer federal-question jurisdiction."[50] In addition, situations where Congress has not provided a private right of action in federal law are less likely to favor removal.[51] Because the plaintiffs' claims only relied on federal law to prove elements of torts and there is no private right of action under SDWA or LCR, the court concluded that there was no federal question jurisdiction in this case.[52]

IV. CONCLUSION

In *Mays v. City of Flint, Mich.*, the court ruled in favor of Flint residents, determining that the district court properly held that it did not have jurisdiction over the complaint filed against MDEQ. The court held that MDEQ was not "acting under" the EPA in accordance with the federal-removal statute when it made the decision to change the drinking-water source. Although the court noted that a state officer has never been able to invoke the federal officer removal statute in the past, the court seemed convinced that a federal order to a state agency, like the emergency order issued by the EPA in this case, could allow federal officer removal for state officers. The complaint also did not raise substantial federal issues, even though the plaintiffs' tort claims relied on violations of federal law.

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46. *Id*. at 449.
47. *Id*. at 448.
48. *Id*. (quoting Gunn v. Minton, 568 U.S. 251, 258 (2013)).
49. *Id*.
50. *Id*. (quoting Merrell Dow Pharm. Inc. v. Thompson, 478 U.S. 804, 814 (1986) (citations omitted)).
51. *Id*. at 450 (citing Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 318 (2005)).
52. *Id*. (citing Harding–Wright v. D.C. Water & Sewer Auth., 350 F.Supp.2d 102, 106–07 (D.D.C. 2005)).