

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12945
Non-Argument Calendar

D.C. Docket No. 1:18-cv-01717-TWT

TANYA SINGH DIXIT,

Plaintiff-Appellee,

versus

AKASH DIXIT,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(April 25, 2019)

Before WILLIAM PRYOR, JILL PRYOR and ANDERSON, Circuit Judges.

PER CURIAM:

Akash Dixit, a native and citizen of India, appeals *pro se* the remand of a domestic relations action commenced by his wife to the state court where she filed it. The district court remanded the action to state court for lack of subject matter jurisdiction. Dixit argues that he was entitled to remove the action to protect his civil rights, *see* 28 U.S.C. § 1443, and that the district court should have granted his motion to amend the judgment. Dixit also moved to amend his brief and to amend an attached affidavit. We affirm the order to remand and deny as moot Dixit's motions to amend.

A Georgia court granted Dixit's wife a divorce from him and awarded her custody of their minor son and ownership of their family home in Georgia. When Dixit refused to relinquish the home to his former wife, she filed in the state court a motion to hold Dixit in contempt. Dixit filed a notice of removal to the district court based on diversity of citizenship, *id.* § 1441(b), a federal question regarding immigration law and a divorce between citizens of India, *id.* § 1441(c), and the violation by the state court of his rights to due process and equal protection under the Fourteenth Amendment, *id.* § 1443. Dixit alleged that the state court judge acted "inequitabl[y]" and discriminated against him based on his "race and/or national origin" in violation of the Civil Rights Act of 1964 by denying four motions to recuse, by displaying xenophobia when stating that it might not be safe

for Dixit's wife to travel alone in India, and by granting her motion to hold Dixit in contempt for taking their child's toys and clothing.

The district court *sua sponte* remanded the domestic relations action to state court. The district court ruled that it lacked jurisdiction based on diversity of citizenship or a federal question. The district court also ruled that Dixit's "broad, conclusory allegations" under the Equal Protection and Due Process Clauses failed to provide a basis for removal under section 1443, *see Georgia v. Rachel*, 384 U.S. 780 (1966), and that Dixit's notice of removal was untimely, *see* 28 U.S.C. § 1446(b).

Dixit filed a postjudgment motion that the district court treated as a motion to reconsider. *See* Fed. R. Civ. P. 59(e). Dixit argued that *Rachel* and the statute that shielded orders of removal from judicial review, 28 U.S.C. § 1447(d), were unconstitutional. The district court ruled that Dixit was improperly attempting to use his postjudgment motion to champion a new argument and that he had failed to "show any error, much less a clear error of law" in the decision to remand.

After Dixit filed his written notice of appeal, we *sua sponte* dismissed the appeal in part for lack of jurisdiction. Our order stated that we lacked jurisdiction to review "the district court's conclusion that it lacked diversity or federal question jurisdiction." The order also stated that "we [could] review the district court's conclusion that remand under 28 U.S.C. § 1443 was improper and, if necessary, its

alternative conclusion that the late filing of the notice of removal was a procedural defect that justified remand.”

Dixit responded to the order by filing two motions. He moved for leave to amend his brief to challenge the ruling that his notice of removal was untimely. And he moved to amend the affidavit attached to his brief.

This appeal is governed by two standards of review. We review *de novo* whether the district court had subject matter jurisdiction. *See Pintando v. Miami-Dade Hous. Agency*, 501 F.3d 1241, 1242 (11th Cir. 2007). Ordinarily, we cannot review a decision to remand an action to state court, but because Dixit removed the action based on section 1443, we have jurisdiction to determine whether remand was appropriate based on an implicit finding that grounds did not exist for removal under section 1443. *See Alabama v. Conley*, 245 F.3d 1292, 1293 n.1 (11th Cir. 2001); 28 U.S.C. § 1447(d). We review for abuse of discretion the denial of Dixit’s motion to amend the judgment. *See Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007).

Dixit failed to allege grounds for removal under section 1443. A defendant may remove a civil action from a state court to the district court if the action is “[a]gainst any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States or of all persons within the jurisdiction thereof.” 28 U.S.C. § 1443(1). To

remove his case under section 1443, Dixit had to satisfy a two-part test: he had to establish that removal was based on “a federal law providing for specific civil rights stated in terms of racial equality” and that he had been denied or cannot enforce that right in the state courts. *Conley*, 245 F.3d at 1295, 1298 (quoting *Rachel*, 384 U.S. at 792, 804–05). Dixit contradicted his own argument that the state court was biased against him because of his race or nationality by alleging that the state court sided with his spouse who is the same race and nationality. Dixit’s grievances about conduct and rulings in the state action did not provide a basis on which to make a “firm prediction” that he could not enforce his civil rights. *See Rachel*, 384 U.S. at 804. Dixit’s allegations were insufficient to support removal under section 1443.

We deny as moot Dixit’s motions. Dixit moves to amend his brief to include a challenge to the alternative ruling that his notice of removal was untimely, but we need not review that ruling because we affirm on the ground that Dixit failed to establish that his removal satisfied section 1443. Dixit also moves to amend an affidavit he attached to his brief, but we will not consider evidence that is not part of the record on appeal. *See Selman v. Cobb Cty. Sch. Dist.*, 449 F.3d 1320, 1332 (11th Cir. 2006) (“In deciding issues on appeal we consider only evidence that was part of the record before the district court.”).

The district court did not abuse its discretion when it denied Dixit’s motion to reconsider. Dixit could not use his postjudgment motion to “raise [an] argument . . . that could have been raised prior to the entry of judgment” about the validity of *Rachel* and section 1447(d), both of which govern our review in any event. *See Arthur*, 500 F.3d at 1343. And Dixit identified no newly-discovered evidence or manifest errors of law in the decision to remand, which provide “[t]he only grounds for granting a Rule 59 motion” *See id.* (quoting *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999)).

We **AFFIRM** the order to remand. We **DENY** as **MOOT** Dixit’s motions to amend his brief and his affidavit.