

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-10617
Non-Argument Calendar

KIMBERLY GALVIN,

As the Personal Representative of the Estate of Diane Bruno,

Plaintiff-Appellee,

versus

MOLIERE DIMANCHE, JR.,

An Individual,

Defendant-Appellant,

UNKNOWN PARTY IN POSSESSION,

Defendant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:25-cv-02311-JSS-LHP

Before ROSENBAUM, GRANT, and MARCUS, Circuit Judges.

PER CURIAM:

Moliere Dimanche, Jr., proceeding pro se, appeals the district court's order remanding his underlying unlawful-detainer action to state court on the basis that the court lacked subject matter jurisdiction. On appeal, Dimanche argues that: (1) removal was proper under 28 U.S.C. § 1443(1) because his notice of removal, as a liberally construed pro se filing, invoked 42 U.S.C. § 1981 and alleged discrimination on the basis of race, indigence, and pro se status related to his designation as a vexatious litigant under the Florida Vexatious Litigant Law, Fla. Stat. § 68.093; (2) the district court abused its discretion by remanding the case to state court based on lack of subject matter jurisdiction, rather than dismissing the case with prejudice under Federal Rule of Civil Procedure 41(b); and (3) appellee Kimberly Galvin's counsel filed the underlying action in state court without Galvin's knowledge or authorization. After careful review, we affirm.¹

We review issues of removal jurisdiction de novo. *Georgia v. Clark*, 119 F.4th 1304, 1307 (11th Cir. 2024). Although a pro se litigant's filings are construed liberally, they must still comply with procedural rules. *McNair v. Johnson*, 143 F.4th 1301, 1307 (11th Cir. 2025), *cert. denied*, (U.S. May 4, 2026) (No. 25-808). "[T]he party

¹ Because we affirm the district court's order remanding the case back to Florida state court, Dimanche's "Emergency Unopposed Motion for Writ of Restoration or Alternative Extraordinary Writ," "Unopposed Emergency Motion to Supplement the Record," and "Unopposed Verified Emergency Motion to Expedite Ruling on Motion for Writ of Restoration" are DENIED AS MOOT.

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invoking the court’s jurisdiction bears the burden of proving, by a preponderance of the evidence, facts supporting the existence of federal jurisdiction.” *McCormick v. Aderholt*, 293 F.3d 1254, 1257 (11th Cir. 2002). The subject matter jurisdiction of federal courts is limited by the Constitution and Congress and cannot be waived or conferred upon the court by the parties to a case. *Univ. of S. Alabama v. Am. Tobacco Co.*, 168 F.3d 405, 409–10 (11th Cir. 1999). These principles apply to federal removal jurisdiction. *Id.* at 410.

Federal district courts have removal jurisdiction over civil actions against any person who is “denied or cannot enforce” their civil rights in state court, as well as over “any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.” 28 U.S.C. § 1443(1)–(2). If the district court remands a case initially removed under § 1443, that order is reviewable on appeal. *Id.* § 1447(d).

To satisfy § 1443(1)’s requirements for removal jurisdiction based on the denial of civil rights, the defendant must show that (1) the right upon which he relies arises under federal law providing for specific civil rights stated in terms of racial equality, and (2) he has been denied or cannot enforce that right in state court. *Alabama v. Conley*, 245 F.3d 1292, 1295 (11th Cir. 2001). An invocation of civil rights under § 1981 satisfies the first prong of the test. *Id.* at 1296. By contrast, generally applicable rights available to all persons or citizens do not qualify. See *Georgia v. Rachel*, 384 U.S. 780, 792 (1966) (holding that rights under the First Amendment and the

Fourteenth Amendment's Due Process Clause do not qualify); *Conley*, 245 F.3d at 1295–96 (holding that rights to equal protection, fair trial, and rights under 42 U.S.C. § 1983 do not qualify). The denial of civil rights under the second prong of the test is usually found only if it is “manifest in a formal expression of state law.” *Conley*, 245 F.3d at 1296 (citation modified). A narrow exception to this rule exists where a denial of civil rights can be found with a facially neutral state law “if the very act of bringing the state court proceedings will constitute a denial of the rights conferred by the federal statute.” *Id.*

Under the Florida Vexatious Litigant Law, a “vexatious litigant” is a person, proceeding pro se, who (1) in the immediately preceding seven-year period, has commenced, prosecuted, or maintained five or more pro se actions that have been finally and adversely determined against them, except actions the court finds were in good faith; (2) after an action has been finally and adversely determined against the person, repeatedly relitigates or attempts to relitigate either the validity of the determination, or the cause of action, claim, controversy, or any of the issues of fact or law determined by the final and adverse determination, against the same party; (3) repeatedly files pleadings, requests for relief, or other documents that have been the subject of previous rulings by the court in the same action; (4) repeatedly files unmeritorious pleadings, requests, or documents, conducts unnecessary discovery, or engages in other frivolous tactics; or (5) has been previously found to be a vexatious litigant under this section by another state or federal court. Fla. Stat. § 68.093(2)(c)1–5.

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Under § 1981, “[a]ll persons within the jurisdiction of the United States shall have the same right . . . to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens” 42 U.S.C. § 1981(a).

Here, the district court did not err in remanding Dimanche’s case to Florida state court for lack of subject matter jurisdiction. As the record reflects, Dimanche has not established that his designation as a vexatious litigant under Florida law has denied his ability to exercise his civil rights in state court. *See Conley*, 245 F.3d at 1295. As for prong one of the *Rachel* test, the district court correctly determined that Dimanche’s notice of removal had invoked § 1981. *See id.* at 1296. Nevertheless, as for prong two, the district court also correctly found that Dimanche had not shown how the Florida law frustrated the exercise of his rights under § 1981. The Florida Vexatious Litigant Law is facially neutral concerning race because it applies equally to all pro se litigants who meet any of the statute’s five criteria, and, therefore, it is not a “manifest” denial of civil rights. *See id.*; Fla. Stat. § 68.093(2)(c)1–5. Additionally, even liberally construing Dimanche’s notice of removal, Florida’s facially neutral law does not meet the narrow exception to the rule because Dimanche has not shown that the very act of appearing in state court proceedings while deemed a vexatious litigant constitutes a denial of his equal rights to sue or be a party under § 1981. *See Conley*, 245 F.3d at 1296; 42 U.S.C. § 1981(a).

As for Dimanche's remaining arguments, they have no merit. Among other things, the district court did not err by remanding the case to state court, rather than dismissing the case with prejudice against Galvin, because the district court lacked subject matter jurisdiction over the case. Therefore, it did not have jurisdiction to address the merits. *See Am. Tobacco Co.*, 168 F.3d at 409–10.

AFFIRMED.