

No. 11-4265

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 26, 2012
LEONARD GREEN, Clerk

In re: SHANNON McCONNELL)
)
Petitioner.) ORDER
)
)

Before: MERRITT, ROGERS, and DONALD, Circuit Judges.

The Judicial Panel on Multidistrict Litigation (the “MDL Panel”) has transferred plaintiff Shannon McConnell’s products liability case from the United States District Court for the Southern District of Florida to the United States District Court for the Northern District of Ohio for consolidated pretrial proceedings in MDL No. 2197, *In re DePuy Orthopaedics, Inc., ASR Hip Implant Prods. Liab. Litig.*, 753 F. Supp. 2d 1378 (J.P.M.L. 2010). *See* 28 U.S.C. § 1407(a). At the time of transfer, McConnell had a motion pending in the Southern District of Florida to remand her case to the state court from which it was removed. She is seeking a writ of mandamus directing the MDL Panel to vacate its transfer order and return her case to the Southern District of Florida for consideration of her motion to remand. The transferee judge in the Northern District of Ohio has submitted a letter in response. The defendants move for leave to file an opposing brief. McConnell does not oppose the motion, provided she is given 30 days in which to file a reply.

This court may issue a writ of mandamus pursuant to the All Writs Statute, 28 U.S.C. § 1651. *In re Bendectin Prods. Liab. Litig.*, 749 F.2d 300, 303 (6th Cir.1984). “In an effort to distinguish between errors that are merely reversible and not subject to mandamus, and those errors that are of such gravity that mandamus is proper, this court balances five factors.” *In re Metro. Gov’t of*

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Nashville and Davidson Cnty., Tn., 606 F.3d 855, 863 (6th Cir. 2010) (internal quotation marks and citation omitted). These factors are balanced, often in opposition to each other. They need not all be met. *Id.* at 864.

“No proceedings for review of an order of the [MDL] Panel may be permitted except by extraordinary writ pursuant to the provisions of title 28 U.S.C. § 1651, United States Code.” 28 U.S.C. § 1407(e). Petitions to review an order to transfer “shall be filed only in the court of appeals having jurisdiction over the transferee district.” *Id.* Mandamus is the sole means through which McConnell can seek review of the MDL Panel’s transfer order, and this court is the proper venue for her mandamus petition.

Based on this court’s holding in *BancOhio Corp. v. Fox*, 516 F.2d 29 (6th Cir. 1975), McConnell argues that the MDL panel “clearly had no authority to transfer this action to MDL #2197 prior to the District Court’s determination of the threshold issue of jurisdiction.” We do not read *BancOhio* so broadly. The writ in *BancOhio* was addressed to the transferor judge, not the MDL Panel as provided in § 1407(e), and was issued *after* the transferor judge had ruled on the merits of the petitioners’ motion to dismiss for lack of jurisdiction. The court was not asked, and did not consider, whether the MDL Panel is authorized to transfer a case *before* the transferor court has ruled on a pending jurisdictional issue. The court was “compelled” to issue the writ because the transferor judge’s ruling was “manifestly erroneous,” and the court was careful to note that “[t]his is not to say that mandamus is appropriate at any time there is an issue of subject matter jurisdiction.” *Id.* at 32- 33. Inasmuch as *BancOhio* is not directly on point, McConnell has not demonstrated that the MDL Panel’s transfer order is clearly erroneous.

“The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations where the petitioner can show a clear and indisputable right to the relief sought.” *In re Am.*

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President Lines, Ltd., 929 F.2d 226, 227 (6th Cir. 1991) (order) (citations omitted). The transfer order does not prevent McConnell from challenging the defendants' removal of her case from state court because, pursuant to the transferee court's scheduling orders, McConnell may re-file her motion to remand and obtain a ruling by the transferee judge on the merits of her motion. This leads us to conclude that the extraordinary circumstances necessary to utilize a writ of mandamus are not present in this case.

The petition for a writ of mandamus is **DENIED**. The defendant's motion for leave to file an opposing brief is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT



Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Leonard Green
Clerk

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Filed: April 26, 2012

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Re: Case No. 11-4265, *In re: Shannon McConnell*
Originating Case No. : 1:11-DP-22200 : 1:11-DP-22025

Dear Sir or Madam,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Jill Colyer
Case Manager
Direct Dial No. 513-564-7024

cc: Lauren D. Godfrey
Ms. Irene C. Keyse-Walker
Ms. Kristen L. Mayer
Mr. Michael James Ruttinger
Ms. Susan M. Sharko
Ms. Geri M. Smith
Mr. Robert C. Tucker

Enclosure

No mandate to issue