

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

SARA MUNSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 11-2015-WEB
	)	
PEGGY VOLKER,	)	
	)	
Defendant.	)	
_____	)	

**Memorandum and Order**

Plaintiff Sara Munson filed this action on December 9, 2010, in the District Court of Johnson County, Kansas. The petition asserts a claim of negligence arising from an automobile accident. Doc. 1, Exh. 1. On January 1, 2011, defendant Peggy Volker filed a Notice of Removal to this court. The Notice asserts that the court has diversity jurisdiction over the action because, as shown by the petition, plaintiff is a citizen of Nebraska, defendant is a citizen of Kansas, and the amount in controversy exceeds \$75,000. Doc. 1.

The matter is now before the court on plaintiff's timely motion to remand the action to state court. Doc. 8. The motion correctly points out that because defendant is a citizen of Kansas, where this action is brought, the action is not removable. *See* 28 U.S.C. § 1441(b) ("Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.").

Defendant's response to the motion concedes this point, although she notes that courts have said the "forum defendant rule" is a procedural matter that may be waived. She argues the action was properly removed initially but is appropriately remanded now that plaintiff "has

exercised her right to seek remand to state court, rather than acquiesce in her right to remain in federal court.” Doc. 10 at 1.

The motion to remand is thus uncontested and will be granted. “An order remanding the case may require payment of just costs and any actual expenses, including attorney’s fees, incurred as a result of the removal.” 28 U.S.C. § 1447(c). The court will order that plaintiff recover any such costs incurred here. *Cf. TCF Nat. Bank v. W & A Bldg., LLC*, 2010 WL 4791454 (N.D. Ill., Nov. 17, 2010) (no reasonable basis for removal).

Conclusion.

Plaintiff Sara Munson’s Motion to Remand to State Court (Doc. 8) is GRANTED. The action is hereby REMANDED to the District Court of Johnson County, Kansas. The Clerk shall mail a certified copy of this remand order to the clerk of the State court.

The court orders that plaintiff Sara Munson shall recover of defendant Peggy Volker any costs and actual expenses, including attorney’s fees, incurred in connection with the removal and the motion to remand the action.

IT IS SO ORDERED this 11th Day of February, 2011, at Wichita, Ks.

s/Wesley E. Brown  
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Wesley E. Brown  
U.S. Senior District Judge