

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MERLE WHITE,

Plaintiff,

vs.

Case No. 16-1241-JTM

JASON A. JUSTICE, AND SANDY G. JUSTICE,
Defendants.

MEMORANDUM AND ORDER

This is a state court eviction proceeding commenced by landlord Merle White against tenants Sandy Justice and her son, Jason Justice, which was removed to this court. The United States Magistrate Judge has issued a Report and Recommendation (Dkt. 4) stating that in forma pauperis status should be denied, and the matter should be remanded to state court for two reasons. First, contrary to 28 U.S.C. § 1446(b)(2)(A), the record indicates that only one of the state court defendants, Jason Justice, commenced the removal. The removal statute requires the consent of “all defendants” in a state proceeding. Second, the court lacks subject matter jurisdiction. The only rationale for federal jurisdiction cited in the Notice of Removal, 42 U.S.C. § 242, deals with prosecutions for drug crimes, and provides no basis for federal jurisdiction over landlord-tenant disputes.

Defendant Jason Justice has filed no objection to the Report and Recommendation, and the certified mail copy of the Report mailed to Justice has been returned marked “UNCLAIMED” and “UNABLE TO FORWARD.” (Dkt. 5).

Without objection, the court hereby adopts the Report and Recommendation, denies the Motion for Leave to Proceed (Dkt. 3), and remands the action to the Sedgwick County District Court.

IT IS SO ORDERED this 7th day of September, 2016.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE