

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ERIC DAVID KELLER,

Plaintiff,

v.

AT&T INC.,

Defendant.

Case No. 16-2243-CM

MEMORANDUM AND ORDER

On January 12, 2016, plaintiff Eric David Keller, a pro se prisoner, sued defendant AT&T Inc., in the District Court of Douglas County, Kansas. On April 13, 2016, plaintiff filed a “notice of removal” in this court. He also sought to pursue the action in forma pauperis. Judge O’Hara issued a Report and Recommendation (Doc. 5) that the undersigned deny plaintiff’s motion to proceed without prepayment of fees, and that the court dismiss the case for improper removal.

Plaintiff failed to timely object to Judge O’Hara’s Report and Recommendation and therefore waived any right to object. After reviewing the Report and Recommendation, the court determines that, with respect to the portion relating to plaintiff’s motion to proceed in forma pauperis, the recommendation is supported in law and fact.

Judge O’Hara is also correct that plaintiff cannot remove his own case to federal court. 28 U.S.C. § 1446 provides that *defendants* may remove an action from state court. The statute does not allow for a plaintiff to remove his own case. *See Baby C v. Price*, 138 F. App’x 81, 84 (10th Cir. 2005); *Alexander v. Tulsa Pub. Schs.*, 133 F. App’x 581, 582 (10th Cir. 2005). Generally, the remedy for an improper removal is remand—not dismissal. *Cf.* 28 U.S.C. § 1447(c) (“If at any time before

final judgment it appears that the case lacks subject matter jurisdiction, the case shall be remanded.”).

The court will therefore remand the case to the District Court of Douglas County, Kansas.

IT IS THEREFORE ORDERED that the court adopts in part the Report and Recommendation (Doc. 5) of Judge O’Hara. Plaintiff’s motion to proceed in forma pauperis is denied. The case is remanded to the District Court of Douglas County, Kansas.

The case is closed.

Dated this 18th day of May, 2016, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge