

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 15, 2013

Elisabeth A. Shumaker
Clerk of Court

PRI-YA N. CHEN,

Plaintiff - Appellant,

v.

ROSAMOND COBERLY COLONIUS,
Personal Representative of the Estate of
Kenneth Price,

Defendant - Appellee.

No. 13-2177
(D.C. No. 1:13-CV-00677-WJ-ACT)

ORDER

Before **KELLY, TYMKOVICH**, and **MATHESON**, Circuit Judges.

We raise *sua sponte* the question of whether this court has jurisdiction to consider this appeal. Appellant Pri-Ya N. Chen seeks to appeal the district court’s order remanding her case to New Mexico state court for lack of subject matter jurisdiction.

An order remanding a case for lack of subject matter jurisdiction is not reviewable on appeal. *See* 28 U.S.C. § 1447(d) (“An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise”); *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 127 (1995) (holding that § 1447(d)’s jurisdictional limitation applies to remands based on subject matter jurisdiction). This court’s inquiry is restricted to a superficial determination that the “basis for the district court’s decision can be ‘colorably characterized as subject matter jurisdiction.’” *Moody*

v. Great Western Ry. Co., 536 F.3d 1158, 1162 (10th Cir. 2008) (quoting *Powerex Corp. v. Reliant Energy Servs.*, 551 U.S. 224, 234 (2007)). The limitation on appellate jurisdiction applies “regardless of whether the district court’s decision to remand was based on an erroneous legal conclusion.” *Id.* (citing *Kircher v. Putnam Funds Trust*, 547 U.S. 633, 642 (2006)).

Here, the district court concluded that the action Ms. Chen sought to remove was a state probate proceeding, and not a civil action for copyright infringement, and stated that it had “absolutely no jurisdiction whatsoever to consider the subject matter of Ms. Chen’s claims made in the Probate case.” Because the district court’s decision to remand the case was clearly based on subject matter jurisdiction, the remand order is not reviewable on appeal.

Accordingly, this appeal is dismissed for lack of appellate jurisdiction.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Jane K. Castro". The signature is written in black ink and is positioned below the typed name of the Clerk.

by: Jane K. Castro
Counsel to the Clerk