

Brown v. Keene, NH, et al. CV-04-306-SM 11/30/04  
UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Margaret Brown  
and Melissa Brown,  
Plaintiffs

v.

Civil No. 04-306-SM  
Opinion No. 2004 DNH 173

City of Keene; Keene Police  
Department; Officer Darryl  
Madden; Trooper Joseph  
DiRusso; and Richard Flynn,  
Director Department of Safety,  
Defendants

### **O R D E R**

Margaret and Melissa Brown sued the City of Keene, the Keene Police Department, and Officer Darryl Madden ("the Keene defendants"), as well as Trooper Joseph DiRusso and Richard Flynn, Director of the New Hampshire Department of Safety ("the State defendants") in the New Hampshire Superior Court. Because plaintiffs' claims implicate federal subject matter jurisdiction, the Keene defendants removed the case to this court.

The Keene defendants served the State defendants with a copy of their petition for removal, but did not obtain the State defendants' consent to remove the case. See Mem. of Law in

Support of Mot. to Dismiss (attachment no. 1 to document no. 4) at 4. Indeed, the State defendants mildly complain that they were not consulted by the Keene defendants before the case was removed.

It is well established that "removal statutes are strictly construed" against removal. Danca v. Private Health Care Sys., Inc., 185 F.3d 1, 4 (1st Cir. 1999) (citing Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941)). "Where there are multiple defendants, all must consent or join in the petition for removal." Hill v. Phillips, Barratt, Kaiser Eng'g Ltd, 586 F. Supp. 944, 945 (D.N.H. 1984) (citations omitted). Here, removal was plainly improper given the absence of prior consent by the State defendants. The time period in which the State defendants could properly join in the removal petition has long since passed. See 28 U.S.C. § 1446(b). Accordingly, this case is remanded to the New Hampshire Superior Court on grounds of improper removal. The State defendants' pending motion to dismiss (document no. 5) is moot given the order of remand.

**SO ORDERED.**

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Steven J. McAuliffe  
United States District Judge

November 30, 2004

cc: Kathleen M. Mulcahey-Hampson, Esq.  
Donald E. Gardner, Esq.  
Nancy J. Smith, Esq.