

FILED

April 13, 2006

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 03-30365

JENIFER ARBAUGH,

Plaintiff-Appellant,

VERSUS

Y&H CORPORATION, d.b.a. The Moonlight Café;
and YAACLIN HATIPOGLU,

Defendants-Appellees.

Appeal From the United States District Court
for the Eastern District of Louisiana

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before GARZA, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:

On August 2, 2004, we affirmed the district court's dismissal of Arbaugh's suit for lack of subject matter jurisdiction under our binding precedent, which held that a failure to qualify as an "employer" with fifteen employees under Title VII deprives a district court of subject matter jurisdiction. *Arbaugh v. Y&H Corp.*, 380 F.3d 219, 224 (5th Cir. 2004). The Supreme Court granted

certiorari and on February 22, 2006, reversed and remanded, holding that the threshold number of employees for application of Title VII is an element of a plaintiff's claim for relief, not a jurisdictional issue. *Arbaugh v. Y&H Corp.*, 126 S. Ct. 1235, 1245 (2006). Thus, the Supreme Court has overruled the basis for the district court's dismissal and our affirmance. Accordingly, we REVERSE the decision of the district court and REMAND this case for further proceedings consistent with the Supreme Court's opinion.