

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-1887  
Summary Calendar

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HENRY MITCHELL, Next friend for on  
behalf of William Devon Mitchell and  
DONNA MITCHELL, Next friend for on  
behalf of William Devon Mitchell,

Plaintiffs-Appellants,

versus

METROPOLITAN LIFE INSURANCE COMPANY,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas

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May 26, 1993

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:<sup>1</sup>

Henry and Donna Mitchell, as next friend for William Devon Mitchell, a minor, sued Metropolitan Life Insurance Company after it fell into arrears on monthly payments under an annuity for the benefit of the Mitchells' son. In their pro se complaint, they sought various forms of contractual relief and rescission for

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<sup>1</sup>Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Metropolitan's alleged breaches of contract. Although the parties stipulated in a pretrial order to the court's jurisdiction, several months later, the court dismissed sua sponte for lack of subject matter jurisdiction. From this decision and other orders of the court, the Mitchells have appealed. We affirm in part and reverse in part.

Apart from the jurisdictional question, the Mitchells principally complain that the district court abused its discretion in failing to grant a default judgment and failing to award sanctions in their behalf when Metropolitan Life tardily responded to their interrogatories.<sup>2</sup> Neither of these complaints has merit.

Metropolitan Life was served with process pursuant to Fed. R. Civ. P. 4(c)(2)(C)(ii) and Form 18-A, acknowledgment of service by mail. Form 18-A states: "You must complete the acknowledgement part of this form and return one copy of the completed form to sender within twenty days." According to the green certified mail return receipt card filed by the Mitchells, Metropolitan Life received the summons and complaint on October 7, 1991, and it acknowledged receipt on October 21, within the twenty-day time period. Metropolitan Life answered the complaint within twenty days of the date of acknowledgement. This court has held that Rule 4(c)(2)(C)(ii) must be construed together with Form 18-A

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<sup>2</sup> The Mitchells' statement of issues in their brief also complains that the district court should not have backdated the order of denial of default judgment and that the court should not have dismissed for lack of prosecution. The first complaint presents no relevant legal question. The second complaint is groundless, because the district court dismissed for lack of jurisdiction, not want of prosecution.

and consequently, "the defendant's return and acknowledgement are an essential part of that procedure. . . . The requirements of the Rule must be fully satisfied if the benefits of the Rule are claimed." Delta Steamships Line, Inc. v. Albano, 768 F.2d 728, 730 (5th Cir. 1985). Service upon Metropolitan Life did not occur until it returned the acknowledgement to the Mitchells. Their argument that service was effected on October 7 is wrong and was properly rejected by the court.

The Mitchells also object to the district court's failure to award sanctions when Metropolitan Life admittedly did not respond timely to their request for document production. The district court concluded that an appropriate sanction for this late compliance would be an award of appellants' costs. Fed. R. Civ. P. 37. The court directed appellants to furnish an affidavit enumerating their costs. The appellants furnished neither a proper affidavit nor a direct statement of costs. Instead, they estimated "liquidated damages" at \$3,000, an inconceivable sum under the circumstances. The district court has considerable discretion to award sanctions for discovery abuse, but he also has discretion to control the reasonableness of those sanctions, especially if they are limited to costs incurred by the requesting party. Here, the Mitchells made no realistic effort to comply with the court's order stipulating how costs would be calculated. He did not abuse his discretion in denying their cost request.

The court erred, however, in dismissing sua sponte for failure of the Mitchells' complaint to satisfy the \$50,000

jurisdictional amount in controversy requirement. 28 U.S.C. § 1332(b).<sup>3</sup> Their complaint alleged claims for breach of contract, rescission, and exemplary damages and it sought millions of dollars in damages. In a pre-trial hearing, however, Mr. Mitchell admitted to the court that the case was really brought about because Metropolitan delayed in making four monthly payments, in the amount of \$1,119.46 each, on an annuity for the care of their child. The court evidently took these statements as an admission that the outer limit of the Mitchells' contract claim against Metropolitan was no more than the sum of the lost payments.

We believe that the district court leaped ahead to a ruling on the merits of the case in dismissing on this basis. Because the Mitchells sought punitive damages, the court must have concluded that this part of their claim was totally unfounded in deciding that the jurisdictional limit had not been met. In determining whether to dismiss a case for failure to meet the amount in controversy requirement, a court must first determine "from the face of the pleadings, [whether] it is apparent to a legal certainty, that the plaintiff can not recover the amount claimed . . ." St. Paul Mercury Indemnity Company v. Red Cab Company, 303 U.S. 283, 289 (1938). The Wright & Miller hornbook on federal procedure, when discussing the amount in controversy requirement, describes the legal certainty test as follows:

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<sup>3</sup> The court was entitled to consider sua sponte whether the jurisdictional amount in controversy requirement had been fulfilled, and the parties' agreement in the pretrial stipulation could not confer jurisdiction where none exists. In re Kutner, 656 F.2d 1107 (5th Cir. 1981), cert. denied, 455 U.S. 1982)).

Generally speaking, the legal certainty test makes it very difficult to secure a dismissal of a case on the ground that it does not appear to satisfy the jurisdictional amount requirement. Only three situations clearly meet the legal certainty standard: (1) when the terms of a contract limit the plaintiff's possible recovery; (2) when a specific rule of law or measure of damages limits the amount of damages recoverable; and (3) when independent facts show that the amount of damages was claimed merely to obtain federal court jurisdiction.

14A Wright, Miller and Cooper, Federal Practice and Procedure, Jurisdiction, § 3702 at 48-50 (2d Ed. 1985). Although the annuity contract in this case provided a limit on plaintiffs-appellants' contractual damages, that limit did not prevent the Mitchells from attempting to claim other sources of damages, e.g. punitive damages for malicious conduct, under state law. The consequence of such extra-contractual recovery could arguably, even if not very likely, result in a verdict or judgment above the court's jurisdictional limit. Moreover, the court had to give considerable weight to the fact that the Mitchells pleaded, apparently in good faith, damages well above the jurisdictional minimum. See St. Paul Mercury, 58 S. Ct. at 590; see also, Asociacion Nacional de Pescadores etc. v. Dow Quimica, \_\_\_ F.2d \_\_\_, slip op. pp. 3531 (5th Cir. Apr. 15, 1993). In any event, as neither we nor the district court know all of the facts of the case, we are unable to say "to a legal certainty" that plaintiff could under no circumstances recover in excess of \$50,000 on their claims.<sup>4</sup>

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<sup>4</sup> We do note that to the extent the Mitchells rely on their "rescission" claim to support damages of \$267,476, the amount that funded the annuity, Texas law does not afford rescission damages

For these reasons, the judgment of the district court is **REVERSED** insofar as it dismissed for lack of jurisdiction and **AFFIRMED** on the other grounds. The case is **REMANDED** for further proceedings.

**AFFIRMED** in part, **REVERSED** in part and **REMANDED**.

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unless there were allegations of fraud in the case. Corpus Christi v. S.S. Smith and S. Masonry, 736 S.W.2d 247, 251 (Tex. App. 1987). We have not relied on this claim to support the amount in controversy requirement. Compare Kahn v. Hotel Ramada of Nevada, 799 F.2d 199 (5th Cir. 1986) (where plaintiffs sought recovery above the statutory maximum \$750.00 for innkeeper's liability, federal court had no jurisdiction over contract claim).