

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4099
Summary Calendar

ROBERT LEE BASSINGTHWAIGHTE,
Plaintiff-Appellee,

v.

MCDERMOTT INTERNATIONAL, INC., and
MCDERMOTT, INC.,

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Texas
(90-CV-263)

(November 19, 1992)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

This is an interlocutory appeal from an order denying the appellants' motion to dismiss under the doctrine of forum non conveniens. Although we originally granted the appellants' motion to appeal interlocutorily, upon reconsideration we dismiss the appeal as improvidently granted and remand to the district court for further proceedings.

*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 Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

Defendants-appellants, McDermott, Inc., and McDermott International, Inc., are affiliated companies. McDermott International, Inc., is chartered in Panama, but has executive offices in New Orleans, Louisiana. McDermott, Inc., is a Delaware corporation whose principal place of business is New Orleans. McDermott International, Inc., employed plaintiff-appellee, Robert Bassingthwaighte, a United States citizen, as a deep sea diver. While working offshore in England in 1987, Bassingthwaighte was injured. He originally filed suit in 1989 in Scotland, where he was then residing. He subsequently filed an action in federal district court in 1990 in Beaumont, Texas, where he had moved upon his return to the United States, and dismissed his action pending in Scotland.

In a multifaceted Rule 12(b) motion, the appellants asked the district court to dismiss the case on a number of grounds, including lack of personal jurisdiction, lack of subject matter jurisdiction, and on forum non conveniens grounds. In November 1991, the district court addressed only the forum non conveniens objection. The court rejected the appellants' argument, but granted their request to appeal the denial interlocutorily pursuant to 28 U.S.C. § 1292(b). On January 30, 1992, we granted appellants' petition for leave to appeal the district court's interlocutory order.

II.

We are of the opinion that we improvidently granted the appellants' motion to appeal interlocutorily. Section 1292(b) permits an appellate court to grant an interlocutory appeal when the appeal "may materially advance the ultimate termination of the litigation." While a reversal of the district court's order in this case would terminate the litigation, we believe that the district court nevertheless erred in certifying this interlocutory appeal, at least at this particular juncture in the case.

Because the appellants' Rule 12(b) motion raised a number of grounds for dismissal, we believe that all other Rule 12(b) defenses raised by appellants should have been addressed by the district court before it certified the forum non conveniens issue for interlocutory appeal. A dismissal based on a Rule 12(b) defense such as lack of personal jurisdiction would have obviated the need for a district or appellate court to address the forum non conveniens question. While dismissal for forum non conveniens would have obviated the need to reach any other Rule 12(b) defenses raised, the district court did not dismiss on that ground; rather, the court found that the Eastern District of Texas was a convenient forum. Thus, the court should have addressed all Rule 12(b) defenses before the case was certified for interlocutory appeal. Certifying only one Rule 12(b) defense, while others remain pending, presents the undesirable possibility of a piecemeal appellate process.

III.

For the foregoing reasons, we dismiss appellants' interlocutory appeal as improvidently granted and remand to the district court for further proceedings. Should the appellants' Rule 12(b) motions be denied, the appellants may at that point pursue a § 1292(b) appeal of the forum non conveniens order. Costs shall be borne by the appellants.

DISMISSED.