IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3883
Conference Calendar

GLENN LUCAS, SR., and
EVA LUCAS ET AL.

Plaintiffs-Appellants,

versus

VINCENTINE ACKER ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-93-1860-M-4

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(July 19, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

On June 7, 1993, Glen and Eva Lucas filed their third lawsuit based on a 1986 accident in which a motor vehicle struck and damaged the Lucases' rented apartment. The Lucases alleged both "civil rights" and diversity jurisdiction. Four of the five defendants filed a motion to dismiss the complaint, arguing, inter alia, that the Lucases lacked federal jurisdiction because they had failed to allege a violation of the constitution, or any federal law, and because all plaintiffs and defendants were

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

residents of the State of Louisiana. The district court granted the motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6).

The Lucases argue that the district court's judgment dismissing the defendants is void because it does not meet the requirements of Fed. R. Civ. P. 52. Alternatively, they argue that they should have been allowed to amend their lawsuit to establish diversity jurisdiction by dropping the alleged tortfeasors "as misjoinder from the suit and asserting the Louisiana Direct Action statute."

Rule 52 requires that "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon[.]" Rule 52 is applicable when a case is "tried upon the facts" by the court; it is not applicable to a district court's dismissal pursuant to a motion under Fed. R. Civ. P. 12. Nor are any findings necessary to aid this Court's review, as jurisdiction is lacking and the case is patently frivolous.

The diversity jurisdiction statute, 28 U.S.C. § 1332(c)(1), provides that, in any direct action against the insurer . . . such insurer shall be deemed a citizen of the State of which the insured is a citizen," in addition to its other states of citizenship. See Evanston Ins. Co. v. Jimco, Inc., 844 F.2d 1185, 1188 (5th Cir. 1988). Thus, even assuming that the district court would have allowed the Lucases to drop the alleged tortfeasors as defendants and proceed only against the insurance companies under Louisiana's direct action statute, the Lucases would not have established diversity jurisdiction. Accordingly,

the appeal is frivolous and is thus DISMISSED. 5th Cir. R. 42.2; see Buck v. United States, 967 F.2d 1060 (5th Cir. 1992), cert. denied, 113 S.Ct. 1052 (1993)(a frivolous appeal is an appeal in which the result is obvious or the arguments of error are wholly without merit).

This Court previously has warned the Lucases that further efforts to prolong litigation relating to the 1986 car accident would expose them to sanctions. Because the Lucases have not heeded this Court's warning, IT IS ORDERED that a monetary sanction in the amount of $1,000 be imposed against the Lucases, payable to the Clerk of the United States Fifth Circuit Court of Appeals for deposit into the United States treasury. See Smith v. McCleod, 946 F.2d 417, 418 (5th Cir. 1991). It is also ORDERED that the Lucases are barred from filing any further appeals in this Court until (1) the sanction awarded by this Court is fully paid; and (2) a district court certifies their appeal as having some arguable merit. Id.