

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-4822
Summary Calendar

FELTON JAMES LEDET,

Plaintiff-Appellant,

VERSUS

15TH JUDICIAL DISTRICT COURT, ET AL.,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
(89-CV-0475)

(January 19, 1994)

Before GARWOOD, DAVIS and JONES, Circuit Judges.

PER CURIAM:¹

Ledet appeals the district court's order dismissing some of his § 1983 claims and remanding to the state court his action against other defendants. We affirm in part, vacate in part and remand.

I.

Felton James Ledet sued several state and federal judges and

¹Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

clerks in Louisiana state court alleging that they had committed various acts of misfeasance and malfeasance in connection with his state and federal habeas petitions. The federal defendants petitioned for removal of the action to the federal district court and moved to substitute the United States as party-defendant. The district court dismissed the United States pursuant to Fed. R. Civ. P. 12(b)(6) because the defendant judges were immune from suit and because Ledet had failed to exhaust his administrative remedies on his claims against the federal court employees.

The magistrate judge recommended that the claims remaining against the state defendants be remanded to Louisiana's 15th Judicial District Court. After conducting a de novo review, the district court adopted the recommendation of the magistrate judge and remanded the remaining claims to the state court. Ledet moved for rehearing, which was denied. The district court granted Ledet's motion for leave to proceed in forma pauperis on appeal.

II.

A.

We first consider the district court's dismissal of Federal Judges Shaw and Duhé and federal deputy clerks of court, Baker and Weathers. Taking the plaintiff's factual allegations as true, we agree with the district court that plaintiff has not stated a claim.

In his state court petition, Ledet claimed that United States District Judges Shaw and Duhé had failed to provide him with a "proper level of judicial review" of a civil action filed by him in

the Western District of Louisiana against several officials of the State of Louisiana. Judges are absolutely immune from civil suit for actions taken within their judicial capacity. **Brewer v. Blackwell**, 692 F.2d 387, 396 (5th Cir. 1982). This immunity shields judges unless they act either in the clear absence of all jurisdiction over the subject matter or in a non-judicial capacity. **Id.** Ledet did not allege that Judge Shaw and Judge Duhé acted in the absence of jurisdiction or in a non-judicial capacity. The district court properly dismissed the claims against Judge Shaw and Judge Duhé.

Ledet also named as defendants Mildred A. Baker and Ronald Weathers, Deputy Clerks of Court for the United States District Court for the Western District of Louisiana. Ms. Baker allegedly failed to "respond with any certificates of services on the answers that were sent to her office [in violation of] the policies of the code of cannons." Mr. Weathers allegedly failed to "take any steps to respond to any motions that were sent to the defendants in this case, failed to "fulfill [his] duties as a deputy to the court system," and his conduct was alleged to be "against the policies of the bar association." The district court determined that Ledet had failed to exhaust his administrative remedies as to these claims. Ledet argues that he was not required to exhaust administrative remedies before filing his civil action.

Although Ledet arguably was not required to exhaust his administrative remedies against Ms. Baker and Mr. Weathers, we conclude that he nevertheless has failed to state a claim against

these two defendants. **See McCarthy v. Madigan**, __ U.S. __, 112 S.Ct. 1081, 1088 (1992). Deputy clerks of court do not "respond to motions or certificates of service". We are unable to discern the nature of Ledet's complaint against the deputy clerks of court or any set of facts under his complaint that would entitle him to relief. The district court therefore correctly dismissed the action against the United States based upon the claims against Baker and Weathers.

III.

Ledet makes two complaints about the removal and remand of the action against the state officers. He argues first that the case against the state employees was improvidently removed because the state defendants did not participate in the removal. Ledet waived this procedural claim by failing to raise it within the thirty day time limit for filing remand motions. **See** 28 U.S.C. § 1447(c); **see also In re Shell Oil Co.**, 932 F.2d 1523, 1527 (5th Cir. 1991).

Ledet also contends that his claims against the state defendants should not have been remanded to the state courts. The district court's remand order was predicated on its conclusion that it had no independent basis of jurisdiction over Ledet's delictual claims against the state officials. Ledet's petition, liberally construed, alleges that the state defendants denied Ledet access to the courts in violation of the Sixth Amendment. Therefore, Ledet's claims against the state defendants allege violations of his civil rights, **see** 42 U.S.C. § 1983, and the district court had jurisdiction under 28 U.S.C. § 1343(a)(3).

Because the district court's remand order was not entered prior to final judgment, the order is reviewable by this Court. **See Hays County Guardian v. Supple**, 969 F.2d 111, 124-25 (5th Cir. 1992) (applying 28 U.S.C. § 1447(c) and (d)), **cert. denied**, 113 S. Ct. 1067 (1993). The district court's authority to remand is limited. **See Buckner v. FDIC**, 981 F.2d 816, 819-20 (5th Cir. 1993). Because it had federal question jurisdiction over Ledet's civil rights claims against the state defendants, the district court did not have discretion to remand those claims. **Id.** Therefore, the remand order is vacated and the action against the state defendants is remanded for further proceedings.²

AFFIRMED in part, VACATED and REMANDED in part, motion for appointment of counsel DENIED.

² Ledet has moved for appointment of counsel. Because the facts are relatively uncomplicated and the legal theories are not novel, the exceptional circumstances required for appointment of counsel are not present. The motion is therefore denied.