

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 94-20812
Summary Calendar

ROGER BAUCUM, Plaintiff-Appellee,
versus
BAYLOR COLLEGE OF MEDICINE and Defendants-Appellants.
WILLIE BOHUSLAV,

Appeal from the United States District Court for the
Southern District of Texas
(CA-H-94-0869)

(April 10, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM*:

Defendants-Appellants appeal the district court's order granting Plaintiff-Appellee's motion to remand the case to state court. The district court exercised its discretion in remanding the case because only pendent state-law claims remained. We affirm.

I.

In March 1992, Plaintiff-Appellee Roger Baucum ("Baucum")

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

filed suit in state court in Texas alleging wrongful termination and negligent and intentional infliction of emotional distress for reporting unlawful acts to law enforcement officials. Discovery proceeded in state court until Defendants-Appellants moved for summary judgment on February 15, 1994, asserting that no state law cause of action existed for wrongful discharge based upon whistleblowing.

In response to the summary judgment motion, Baucum amended his petition to allege violations of the False Claims Act, 31 U.S.C. § 3729, which in turn precipitated removal of the case to the federal district court based upon federal question jurisdiction under 28 U.S.C. § 1331. On March 17, 1994, Baucum filed a motion to remand.

On August 5, 1994, the district court held a scheduling conference pursuant to FED. R. CIV. P. 16. During the conference, Baucum further moved orally for leave to amend his complaint in order to specifically delete reference to the False Claim Act, which the court granted. Following Baucum's filing of his second amended complaint, the court, relying on the Supreme Court's decision in *Carnegie-Mellon Univ. v. Cohill*¹, entered an order remanding the case to the state court.

On August 10, 1994, Defendants-Appellants filed their motion to reconsider the remand order, which the district court denied. Defendants-Appellants timely filed a notice of appeal on October 25, 1994.

While on appeal to this Court, Baucum filed a motion to

¹ 484 U.S. 343, 108 S.Ct. 614, 98 L.Ed.2d 720 (1988).

dismiss the appeal for lack of jurisdiction on the ground that the district court's order to remand was not appealable. The Court denied the motion, finding that district court's discretionary decision not to exercise jurisdiction over pendent state-law claims was appealable because it was not a ground for remand under 28 U.S.C. § 1447(c).²

II.

Having already concluded that no federal claim exists that would require the district court to maintain jurisdiction, we review the court's decision not to exercise its jurisdiction over pendent state-law claims for an abuse of discretion. *Hook v. Morrison Milling Co.*, 38 F.3d 776, 780 (5th Cir. 1994). In *Cohill*, the Supreme Court discussed the factors the federal district court should consider in deciding whether to retain jurisdiction over pendent state-law claims:

...[A] federal court should consider and weigh in each case and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case brought in that court involving pendent state-law claims.

Brown v. Southwestern Bell Telephone Co., 901 F.2d 1250, 1255 (5th Cir. 1990) (quoting *Cohill*, 484 U.S. at 350, 108 S.Ct. at 618). *Cohill* also instructed the court to consider whether the plaintiff has "attempted to manipulate the forum," and if so, to deny the motion to remand. *Id.*

² *Bogle v. Phillips Petroleum Co.*, 24 F.3d 758, 761-62 (5th Cir. 1994); *Burks v. Amerada Hess Corp.*, 8 F.3d 301, 303-04 & n.4 (5th Cir. 1993).

The district court concluded that retaining jurisdiction over the pendent state-law claims was not in the interest of the efficient administration of justice because the case was "substantially prepared for trial over a period of some two years and was ready to proceed to trial or for hearing on Motion for Summary Judgment in state court." Furthermore, the court concluded that Baucum did not engage in manipulative tactics in order to guaranty remand to state court. We can find no abuse of discretion in the district court's conclusions. Discovery is virtually complete in state court, and the state court has set the case for trial pending our resolution of the appeal. Judicial economy, convenience, comity and fairness all weigh in favor of remand to the state court for final resolution of the merits of the case.

III.

Therefore, for the reasons articulated above, the district court's order remanding the case to state court is AFFIRMED.