

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-41044
Summary Calendar

KELLY BENTLEY, Individually and as Independent
Executor of the Estate of B. W. Bentley, Jr., Deceased,

Plaintiff-Appellee,

VERSUS

TARRANT COUNTY WATER CONTROL AND
IMPROVEMENT DISTRICT NUMBER ONE,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(6:94-CV-421)

(July 25, 1995)

Before WISDOM, JOLLY, and JONES, Circuit Judge.

WISDOM, Circuit Judge.*

The plaintiff/appellee Kelly Bentley filed suit seeking damages against the defendant/appellant Tarrant County Water Control and Improvement District Number One ("Water District") alleging that the Water District was responsible for flood damage

* Local Rule 47.5.1 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Pursuant to that Rule, the Court has determined that this opinion should not be published.

on her land. The Water District appeals from the district court order granting Bentley leave to amend her complaint to remove all federal claims and remanding the case to the state courts of Texas. We affirm.

I.

Kelly Bentley owns 603 acres of land in Anderson County, Texas. The Water District, a creation of Texas law, is responsible for constructing and operating the Richland Chambers and Cedar Creek Reservoirs. On May 12, 1994, Bentley filed a complaint in state court alleging that the Water District was responsible for flood damage on her land. Bentley maintains several state law causes of action, including inverse condemnation and negligence. She also asserted a claim under the Uniform Declaratory Judgement Act of Texas¹ which included an inquiry into whether the Water District's actions violated the Constitution of the United States or her civil rights.

The Water District, in accordance with 28 U.S.C. §1441(b), removed the case to the United States District Court for the Eastern District of Texas on June 16, 1994. Bentley filed a motion seeking leave to amend her complaint in an effort to remove the federal claims and moved for a remand of the case to state court. The trial court granted leave to amend, but denied the motion to remand because the complaint still contained a federal claim.

On August 9, 1994, Bentley filed a second motion for leave to

¹ Tex. Civ. Prac. & Rem. Code Ann. §37.001 et seq. (West 1986).

amend and a second motion for remand. The trial court granted the leave to amend, and remanded the case because all of the federal claims had been deleted from the complaint.

The Water District raises two issues in its appeal of the district court order: (1) whether the district court erred by granting a second leave to amend when the purpose was to remove all federal claims in an effort to obtain a remand of the case, and (2) whether the district court erred in remanding the case.

II.

A.

The Water District argues that the second leave to amend should not have been granted because the amendment was a bad faith attempt at forum manipulation. We find that the district court acted properly in granting leave to amend.

Federal Rule of Civil Procedure 15(a) provides that leave to amend "shall be freely given when justice so requires". The Supreme Court has held:

In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc. -- the leave sought should, as the rules require, be "freely given."²

We review the grant or denial of leave to amend for abuse of discretion.³

² *Foman v. Davis*, 371 U.S. 178, 182 (1962); see also *Louisiana v. Litton Mortgage Co.*, 50 F.3d 1298, 1303 (5th Cir. 1995).

³ *Wimm v. Jack Eckerd Corp.*, 3 F.3d 137, 139 (5th Cir. 1993).

The trial court considered the Water District's arguments and found that there was no bad faith on the part of Bentley. Because denial of leave to amend would have forced Bentley to litigate a claim that she no longer wished to pursue, and there was no evidence that Bentley sought the amendment in bad faith, we find that the trial court was justified in granting the leave to amend.

The Water District maintains that the trial court failed to consider Bentley's attempt at forum manipulation when it granted leave to amend. An amendment cannot be used to destroy the basis for federal jurisdiction.⁴ Even when a complaint is amended to remove all federal claims, the district court has discretion to hear the pendent state claims under its supplemental jurisdiction.⁵

Amending Bentley's complaint to remove all federal claims did not automatically guarantee the remand of the case to the Texas courts. The district court still had the option either to keep or to remand the case. In Carnegie-Mellon University v. Cohill, the Supreme Court held that the district court must consider the interests of judicial economy, fairness, convenience, and comity before it can order a remand.⁶ These factors ensure that any possibility of improper forum manipulation will be considered

⁴ *Henry v. Independent American Savings Ass'n.*, 857 F.2d 995, 998 (5th Cir. 1988). Whether the court has a basis to remove a case is determined at the time of removal. When that basis is later deleted, the court still has the discretion to hear or to remand the remaining claims. *Brown v. Southwestern Bell*, 901 F.2d 1250, 1254-5 (5th Cir. 1990).

⁵ See 28 U.S.C. §1367(c).

⁶ 484 U.S. 343, 350 (1988).

before a remand is ordered. We conclude that the district court did not abuse its discretion in granting Bentley's second leave to amend.

B.

The Water District argues that the district court acted improperly when it chose to remand the case instead of exercising its supplemental jurisdiction to hear the remaining state-law claims. In deciding whether to exercise supplemental jurisdiction to hear state claims after all federal claims have been dismissed, the Supreme Court in Carnegie-Mellon set out four factors which should be considered: judicial economy, convenience, fairness, and comity in having state courts decide state issues.⁷ The possibility of forum manipulation should also be considered when making the determination of whether remand is appropriate.⁸ An improper attempt at manipulating the forum may justify the denial of a request for remand,⁹ but concerns of forum manipulation do not in themselves remove the decision of whether remand is within the court's discretion.¹⁰

⁷ 484 U.S. at 350.

⁸ *Id.* at 357. This Court has also expressed its disapproval of forum manipulation. See *Burks v. Amerada Hess Corp.*, 8 F.3d 301 (5th Cir. 1993).

⁹ See *Brown*, 901 F.2d at 1250.

¹⁰ In a sense, any attempt to obtain a remand is an attempt at manipulating the forum because it is a motion to have the case heard in a different and presumably before a more favorable court. If seeking to have the case decided in a different forum removes the court's discretion to grant a remand, then the court would never be able to remand a case under Carnegie-Mellon. Instead of such a blanket requirement, the court has used the Carnegie-Mellon

The review of a Carnegie-Mellon remand is for abuse of discretion.¹¹ Before exercising its discretion to remand this case to the Texas courts, the district court considered the Carnegie-Mellon factors. Because little time had been spent on the case, the trial court concluded that judicial economy did not require the district court to keep the case. Because the land and all of the parties are located in Anderson County, where the suit was originally filed, it would be more convenient to hear the case there. Because the Water District is a creation of the State of Texas, it would not be unfair to require the Water District to defend itself in Texas courts. Finally, comity favors having the state courts decide the remaining questions of state law. Because the trial court properly considered all of the Carnegie-Mellon factors, we cannot find that the trial court abused its discretion.

The district court's remand of this case and its refusal to exercise supplemental jurisdiction over the remaining state claims is also consistent with 28 U.S.C. §1367(c). A district court may decline to exercise its supplemental jurisdiction over state claims when those claims predominate or when the original basis for the

factors to determine if remand is appropriate. When the motives for seeking a change in forum are improper, such as attempting to obtain a different judgment or to delay the case by going to a different court, the analysis under the four Carnegie-Mellon factors will address the reasons for seeking the forum change.

¹¹ *Hook v. Morrison Milling Co.*, 38 F.3d 776, 780 (5th Cir. 1994). This remand is a non-statutory remand because it is not based upon 28 U.S.C. §1447, and is directly reviewable. *Bogle v. Phillips Petroleum Co.*, 24 F.3d 758, 761 (5th Cir. 1994).

court's jurisdiction has been removed.¹² Both of these situations are present in this case. Because all of the federal claims have been withdrawn, the state claims clearly predominate, and the original basis for the court's jurisdiction has been removed. Therefore, under 28 U.S.C. §1367(c), the trial court was justified in using its discretion to remand this case to the Texas courts.

III.

We hold that the district court did not abuse its discretion in granting the second leave to amend and in remanding the case to the state court. Accordingly, the order of the district court is AFFIRMED.

¹² 28 U.S.C. §1367 (c)2 and (c)3. *See, e.g., Noble v. White*, 996 F.2d 797 (5th Cir. 1993).