

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50075  
Summary Calendar

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JAMES R. NEAL, ET AL.,

Plaintiffs-Appellees,

versus

SKY CHEFS, INC.,

Defendant-Appellant.

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Appeal from the United States District Court for the  
Western District of Texas  
(EP-93-CV-248)

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(October 26, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.\*

PER CURIAM:

Plaintiffs-appellees James and Dora Neal filed suit in a Texas court against defendant-appellant Sky Chefs, Inc. (Sky Chefs), seeking damages arising out of Sky Chefs' termination of James Neal's employment. Sky Chefs removed the case to federal court on ERISA preemption grounds. Plaintiffs subsequently amended their

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

complaint to delete the federal question claim and allege only a state law claim for wrongful discharge. The district court granted plaintiffs' motion to remand the remaining claim to state court. We affirm.

### **Facts and Proceedings Below**

The relevant facts in this case are undisputed. Plaintiffs James and Dora Neal filed suit against Sky Chefs in the El Paso County Court at Law, alleging several claims arising out of Sky Chefs' termination of Mr. Neal's employment, including an allegation that Sky Chefs wrongfully denied Mr. Neal certain pension and welfare benefits.<sup>1</sup> On June 3, 1993, Sky Chefs removed the case to federal district court on ERISA preemption grounds. The district court subsequently denied plaintiffs' motion to remand, finding that plaintiffs' claims related to benefits under an ERISA plan. On appeal, plaintiffs do not contest the propriety of this initial removal.

Although a June 4, 1993 scheduling order originally set an October trial date, the district court, on plaintiffs' motion, extended the time to complete discovery and established a January 18, 1994 trial date. On December 13, 1993, plaintiffs sought to amend their complaint based on facts developed during discovery. The district court granted plaintiffs' motion on December 27, 1993, and plaintiffs amended their complaint to delete the federal question claim and pleaded only a state law wrongful discharge

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<sup>1</sup> Mrs. Neal was never employed by Sky Chefs; her claims are derivative.

claim.<sup>2</sup> The district court denied Sky Chefs' motion to reconsider its order granting plaintiffs' motion to file an amended complaint. On January 10, 1993, plaintiff filed a motion to remand on the basis that no federal question existed. On January 12, 1993, the parties filed the Joint Pretrial Order with the district court. On January 13, 1993, Sky Chefs filed a motion for summary judgment and its opposition to plaintiffs' motion to remand.

On January 13, 1994, five days before the scheduled trial date, the district court granted plaintiffs' motion to remand based on its discretion under 28 U.S.C. § 1367(c)(3). Sky Chefs appeals, arguing that the district court's remand order constituted an abuse of discretion.

#### **Discussion**

We must first determine whether the district court's remand order is appealable. Although 28 U.S.C. § 1447(d) appears to preclude appellate review of any remand order,<sup>3</sup> the Supreme Court has held that section 1447(d) applies only to remand orders based on section 1447(c). *Thermtron Products, Inc. v. Hermansdorfer*, 96 S.Ct. 584, 593-94 (1976). Section 1447(c) contains two grounds for

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<sup>2</sup> In their brief, plaintiffs deny that their motive was forum manipulation. Rather, plaintiffs explain that they deleted the ERISA claims in response to Sky Chefs' payment of their medical bills and Sky Chefs' continued maintenance of their life insurance coverage. The record does not reflect any remedial measures allegedly taken by Sky Chefs. Sky Chefs did not file a reply brief challenging plaintiffs' allegations concerning remedial measures.

<sup>3</sup> 28 U.S.C. § 1447(d) reads: "An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise."

remand: (1) a defect in the removal procedure and (2) a lack of subject matter jurisdiction. 28 U.S.C. § 1447(c). Because the district court did not base its remand order on either of the two grounds set forth in section 1447(c), we can review the remand order. *Burks v. Amerada Hess Corp.*, 8 F.3d 301, 303-04 (5th Cir. 1993).

28 U.S.C. § 1367(a) delineates the limited circumstance under which a federal court may exercise jurisdiction over state law claims:

"[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a).

While section 1367(a) permits a district court to exercise supplemental jurisdiction over state law claims arising from the same case or controversy, section 1367(c)(3) provides that a district court "may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . the district court has dismissed all claims over which it has original jurisdiction . . . ." 28 U.S.C. § 1367(c)(3). Sky Chefs does not argue that any of the claims in the amended complaint are ones over which the district court would have original (as distinguished from supplemental or pendent) jurisdiction.

In *Carnegie-Mellon Univ. v. Cohill*, 108 S.Ct. 614, 619 (1988), the Supreme Court held that a district court should consider and weigh the values of judicial economy, convenience, fairness, and comity in deciding whether to retain jurisdiction over state law

claims once the federal claims are eliminated, as Sky Chefs concedes they have been here. The Court in *Carnegie-Mellon* also noted that a district court should consider any attempts by the plaintiff to manipulate the forum. *Id.* at 623-24. The Court further stated that "in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims." *Id.* at 619, n.7. Accordingly, our general rule is to dismiss state claims when the federal claims to which they are pendent are eliminated prior to trial. *Parker & Parsley Petroleum v. Dresser Industries*, 972 F.2d 580, 585 (5th Cir. 1992); *Wong v. Stripling*, 881 F.2d 200, 204 (5th Cir. 1989).

We review a district court's decision whether to retain jurisdiction over pendent state claims for abuse of discretion. *Cinel v. Connick*, 15 F.3d 1338, 1344 (5th Cir. 1994), *petition for cert. filed*, 63 U.S.L.W. 3065 (U.S. July 5, 1994) (No. 94-55). We are hesitant to disturb a district court's section 1367(c)(3) decision to remand state law claims. *Noble v. White*, 996 F.2d 797, 799 (5th Cir. 1993).<sup>4</sup> As we observed in *Parker & Parsley Petroleum*, "[n]o single factor—such as whether the case is in an 'an early stage' or involves novel issues of state law—is

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<sup>4</sup> The Commentary to section 1367(c)(3) explains: "The idea here is that once the crutch is removed—the claim that supports the supplemental jurisdiction of the other claim or claims—the other should not remain for adjudication. . . . [I]n this category judicial discretion is a particularly important element." 28 U.S.C. § 1367 Practice Commentary (emphasis added).

dispositive. Rather, we look to all the factors under the specific circumstances of a given case." 972 F.2d at 587.

In *Newport Ltd. v. Sears, Roebuck and Co.*, 941 F.2d 302, 307-08 (5th Cir. 1991), *cert. denied*, 112 S.Ct 1175 (1992), we reversed a district court's refusal to exercise pendent jurisdiction on the eve of trial over state law claims remaining after the dismissal of plaintiff's RICO claim. In finding an abuse of discretion, we noted that 4 years of protracted litigation produced 23 volumes and thousands of pages of record, a pretrial order exceeding 200 pages, 157 depositions in 24 cities in 12 states, and the production of 211,495 documents. *Id.* at 307-08. Based on these facts, we found that judicial economy, convenience, and fairness all weighed massively in favor of exercising jurisdiction over the state law claims.

In *Parker & Parsley Petroleum*, we held that a district court abused its discretion by *retaining* jurisdiction over state law claims after it had dismissed plaintiff's RICO claims. Although substantial developments had occurred in the case, we emphasized that the case had been pending for only nine months and that the district court was not "so intimately involved in, and familiar with, the case that proceeding further in federal court would have prevented redundancy and would have conserved substantial judicial resources." *Parker & Parsley Petroleum*, 972 F.2d at 587. In addition, we pointed out that discovery, the most expensive part of trial preparation, was largely usable in the state proceeding. *Id.* at 588.

The facts of the instant case are more analogous to *Parker &*

*Parsley Petroleum* than to *Newport*. This case, like *Parker & Parsley Petroleum*, had been pending for only nine months when the district court remanded it to state court. By contrast, in *Newport*, the case had been pending some four years when the district court dismissed the remaining state law claims without prejudice. The scope and extent of the discovery in this case also distinguishes it from *Newport*. Here, the record consists of 1 volume of 225 pages. The pretrial order, with the plaintiffs' exhibit list, plaintiffs' proposed findings of fact and conclusions of law, and plaintiffs' witness list attached is fifteen pages. Although Sky Chefs described pretrial discovery that included "multiple depositions," the record reveals only two depositions, that of plaintiff James Neal and Ms. Diane Emanuel, Sky Chefs' human resource manager.<sup>5</sup> As we pointed out in *Parker & Parsley Petroleum*, these depositions will be largely usable in the state court proceeding.

After considering judicial economy, convenience, fairness, and comity, the district court in this case held that none of the *Carnegie-Mellon* factors weighed in favor of retaining supplemental jurisdiction over the remaining state law claim. In addition, the district court, consistent with *Carnegie-Mellon*, considered plaintiffs' alleged forum manipulation and decided that it did not warrant the retention of supplemental jurisdiction over the remaining state law claim. Although we might have decided the

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<sup>5</sup> The record refers to the proposed deposition of plaintiff Dora Neal, but it apparently never took place due to Dora Neal's medical condition stemming from her August 19, 1993 surgery.

matter differently, we are unable to say that the district court's remand order constituted an abuse of discretion.

**Conclusion**

For the foregoing reasons, the order of the district court is

AFFIRMED.