

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-60433

GLADYS MADISON, Guardian for Viola Williams,
Plaintiff,

versus

VINTAGE PETROLEUM, INC., ET AL.,
Defendants.

* * * * *

HENRY LEE WILLIAMS,
Plaintiff-Appellee,

versus

VINTAGE PETROLEUM, INC., ET AL.,
Defendants,

VINTAGE PETROLEUM, INC.,
Defendant-Appellant.

* * * * *

No. 96-60585

GLADYS MADISON, Guardian for Viola Williams, Et Al.,
Plaintiffs,

versus

VINTAGE PETROLEUM, INC., ET AL.,

Defendants.

* * * * *

HENRY LEE WILLIAMS,

Plaintiff-Appellant,

versus

VINTAGE PETROLEUM, INC., ET AL.,

Defendants,

PLACID OIL CO.,

Defendant-Appellee.

Appeals from the United States District Court for the
Southern District of Mississippi
(3:93-CV-663 & 3:93CV663LN)

July 22, 1997

Before REAVLEY, JOLLY, and BENAVIDES, Circuit Judges.

PER CURIAM:*

This consolidated appeal challenges the district court's grant of summary judgment in favor of Placid Oil Co. ("Placid") against Henry Lee Williams. A panel of this court recently concluded that the district court lacked jurisdiction over Williams's claims and ordered the matter remanded to state court. *See Madison v. Vintage*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Petroleum, Inc., 1997 WL 381236 (5th Cir. July 10, 1997). Accordingly, we vacate the judgment of the district court and grant the appellant's motion to dismiss the appeal (No. 96-60585).¹

Pursuant to the same authority, we maintain federal diversity jurisdiction over Vintage Petroleum, Inc.'s ("Vintage") appeal from the contempt order entered by the district court for its failure to comply with a discovery order (No. 96-60433). See *id.* The plaintiff argues that the protections otherwise provided to Vintage and its attorneys by the work product doctrine were waived when Southeastern Norm Environmental, Inc. ("Southeastern Norm"), a non-testifying, consulting expert witness hired by Vintage, disclosed its reports to the Mississippi State Department of Health ("DOH"). Under the circumstances of this case, we disagree. First, neither Vintage nor its attorneys voluntarily disclosed Southeastern Norm's reports to DOH. Rather, it is undisputed that the holders of the privilege did not authorize the disclosure or know that it had occurred. Second, nothing in the record establishes that the plaintiff in the instant case was privy to the disclosure of the subject reports. This court has recognized that the work product doctrine exists "to promote the adversary system by safeguarding the fruits of an attorney's trial preparations from the discovery

¹ The panel also held that there is federal jurisdiction over the claims brought by Gladys Madison, as guardian for Viola Williams. See *id.* Because the plaintiff in that matter did not appeal the district court's grant of summary judgment in favor of Placid, that decision remains in full force.

attempts of an opponent." *Shields v. Sturm, Ruger & Co.*, 864 F.2d 379, 382 (5th Cir. 1989). We believe that the doctrine's goal will be served most effectively in this case by continuing to protect the reports from discovery. Accordingly, we REVERSE the contempt order entered by the district court against Vintage.