

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-30655
Summary Calendar

GAIL BELONEY,

Plaintiff-Appellant,

versus

WINN DIXIE LOUISIANA, INCORPORATED,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA No. 97-CV-839)

November 13, 1997

Before WIENER, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Gail Beloney appeals from a final judgment dismissing for lack of subject matter jurisdiction her slip-and-fall diversity action against Winn Dixie Louisiana, Inc. (WDL). She contends that the district court erred (1) in determining that WDL has its principal place of business in Louisiana, rather than in Florida, and is therefore not diverse from Beloney for purposes of 28 U.S.C. § 1332; (2) in not permitting additional discovery on the diversity

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

issue; and (3) in permitting WDL to take the position that no diversity existed, in the light of claimed prior inconsistent positions in other litigation.

We review *de novo* a dismissal for lack of subject matter jurisdiction, applying the same standard as the district court. ***International Paper Co. v. Denkmann Assocs.***, 116 F.3d 134, 136 (5th Cir. 1997). Pursuant to that review, we conclude that the district court was (1) not clearly erroneous in determining that WDL's principal place of business is Louisiana, ***Grinter v. Petroleum Operation Support Serv., Inc.***, 846 F.2d 1006, 1007 (5th Cir.), *cert. denied*, 488 U.S. 969 (1988); (2) did not abuse its discretion in not permitting discovery on the diversity issue (we note that, although discovery was requested in the opposition to the motion to dismiss, it does not appear that a motion seeking additional discovery was filed), ***Villar v. Crowley Maritime Corp.***, 990 F.2d 1489, 1495 (5th Cir. 1993), *cert. denied*, 510 U.S. 1044 (1994); and did not err in permitting WDL to assert that it was not diverse from Beloney, ***Coury v. Prot***, 85 F.3d 244, 249 (5th Cir. 1996).

AFFIRMED