United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 10, 2026
Thomas B. Plunkett, III
Clerk

No. 25-11146

RUBIDIA BENITEZ DE CHAVEZ, *Individually and as the Independent Administrator of* THE ESTATE OF JUAN CHAVEZ; DEYSI PATRICIA CHAVEZ DE FLAMENCO; ELSA RUTH CHAVEZ BENITEZ,

Plaintiffs—Appellees,

versus

UNITED PARCEL SERVICE, INCORPORATED,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:25-CV-2399

Before STEWART, HIGGINSON, and HO, *Circuit Judges*.

JAMES C. HO, *Circuit Judge*:

Federal diversity jurisdiction turns on citizenship, not residency. *See* 28 U.S.C. § 1332(a). One can reside in a state without being a citizen of that state, and vice versa. So if residency is insufficient to prove citizenship, then it's also insufficient to establish federal diversity jurisdiction.

Attorneys are thus well-advised to plead jurisdictional facts carefully. And that's especially so when it's *the defendant* who seeks to establish federal

diversity jurisdiction, in order to remove a case filed by the plaintiff in state court.

That's because, in the removal context, "Congress has severely circumscribed the power of federal appellate courts to review remand orders." *Schexnayder v. Entergy La., Inc.*, 394 F.3d 280, 283 (5th Cir. 2004). Under 28 U.S.C. § 1447(d), "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." 28 U.S.C. § 1447(d).

But "[d]espite the plain language of [§ 1447(d)] and the clear directive it provides to federal appellate courts, the Supreme Court has created a limited class of cases that may be reviewed." *Schexnayder*, 394 F.3d at 283.

Section 1447(d) bars review *only* if the remand order is an exercise of the district court's authority under § 1447(c). *See id.* As the Court has made clear, "'§ 1447(d) must be read *in pari materia* with § 1447(c).'" *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 711 (1996) (quoting *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 127 (1995)). So "'only remands based on grounds specified in § 1447(c) are immune from review under § 1447(d).'" *Id.* at 712 (quoting *Things Remembered*, 516 U.S. at 127).

And when we construe § 1447(d) in light of § 1447(c), it means that we lack jurisdiction to review a remand order if that order is based on "either a lack of subject matter jurisdiction or a defect in removal procedure." *Schexnayder*, 394 F.3d at 283.

But there's yet another wrinkle in this admittedly arcane corner of federal civil procedure. Understanding this wrinkle requires a careful parsing of the first two sentences of § 1447(c).

The first sentence of § 1447(c) refers to a "*motion* to remand" based on "any defect *other* than lack of subject matter jurisdiction." 28 U.S.C. §

1447(c) (emphasis added). So the first sentence applies to motions, and it applies to motions for remand for reasons *other* than subject matter jurisdiction.

The second sentence of § 1447(c), by contrast, is not limited to motions. It also contrasts from the first sentence because it refers to remand only where "it appears that the district court lacks subject matter jurisdiction." 28 U.S.C. § 1447(c).

Our circuit precedent makes clear that Congress's express reference to a "motion" means that the first sentence of § 1447(c) does *not* encompass remand orders that a district court issues *sua sponte*. We have held that "the better reading [of the first sentence of § 1447(c)] precludes the existence of discretion in the district court to remand for procedural defects on its own motion." *In re Allstate*, 8 F.3d 219, 223 (5th Cir. 1993). We explained how this curious dichotomy might make sense: "Section 1447(c)'s second sentence assigns to the court concern for its jurisdictional prerequisites; the first consigns procedural formalities to the care of the parties." *Id.* "In sum, both the language of the statute and policy considerations compelled the conclusion that Congress intended for the parties to control the choice of forum and that a district court that usurps that decisionmaking role, with respect to procedural defects, acts outside of its authority." *Schexnayder*, 394 F.3d at 284.

So the question here is whether the district court's *sua sponte* remand order was based on lack of subject matter jurisdiction (and thus immune from appellate review), or on purely procedural defects (and thus subject to appellate review).

We conclude that the remand order here was based on purely procedural defects, and that we therefore have jurisdiction to review the

remand order. We vacate the remand order and remand this case for further proceedings.

I.

Rubidia De Chavez and others brought a state tort suit against several defendants—namely, United Parcel Service, Inc.; Wastebuilt Environmental Solutions, LLC; Compactor Rentals of America, LLC; and Rubicon Technologies, Inc.—following the tragic death of her husband.

One of those defendants, Compactor Rentals, removed the action to federal court based on complete diversity between each plaintiff and each defendant.

In response, De Chavez voluntarily dismissed the suit. She then filed the instant suit in state court against the same group of defendants, as well as an additional named defendant: Fusion Recycling, LLC.

This time, UPS removed the suit to federal court, claiming complete diversity between each plaintiff and defendant. Fusion is a Texas company, and De Chavez contended that the inclusion of Fusion as a defendant defeated complete diversity. UPS countered that Fusion was improperly joined as a defendant, and thus should not be counted for purposes of establishing diversity jurisdiction.

But the district court *sua sponte* remanded the case to Texas state court, on the ground that UPS had failed to establish Plaintiffs' Texas citizenship in the first place.

UPS pointed to Plaintiffs' original petition. But in that petition, Plaintiffs claimed merely to "reside" in Texas. The district court noted that residency is not synonymous with citizenship. Accordingly, UPS's notice of removal failed to conclusively establish subject matter jurisdiction based on diversity of citizenship.

The district court thus remanded the action to state court—without giving UPS an opportunity to cure the jurisdictional deficiency.

UPS now appeals, arguing that the district court erred by remanding the case for procedural defects. De Chavez counters that we lack jurisdiction to hear this appeal, because 28 U.S.C. § 1447(d) bars review of the order below remanding this case to state court.

II.

The remand order that we review today states that, based on UPS's notice of removal, the district court was "unable to confirm whether complete diversity of citizenship exists between the parties." The order did not state that the district court affirmatively found that complete diversity of citizenship *did not* exist between the parties.

So the remand order here was based, not on a determination of subject matter jurisdiction, but on a deficiency in UPS's pleading in its notice of removal. And under our decision in *Allstate*, that's a procedural defect, not a jurisdictional one.

In *Allstate*, the defendant "fail[ed] to allege, in its notice of removal, the plaintiff's citizenship at the time the original petition was filed." 8 F.3d at 221. We noted that "a 'procedural defect' within the meaning of § 1447(c) refers to 'any defect that does not go to the question of whether the case originally could have been brought in federal district court.'" *Id.* (quoting *Baris v. Sulpicio Lines*, 932 F.2d 1540, 1544 (5th Cir. 1991)). The defect in *Allstate* was "procedural, rather than jurisdictional," we explained, because although the defendant "failed conclusively to *demonstrate* diversity, the record disclose[d] no dispute that it in fact *existed*." *Id.*

So too here. The district court did not find record evidence that negated the existence of diversity jurisdiction—rather, the factual allegations

in UPS's pleadings were simply insufficient to demonstrate diversity jurisdiction. And under *Allstate*, such a defect is procedural, not jurisdictional.

Plaintiffs counter that this court should nevertheless affirm the remand order, because UPS has not proven fraudulent joinder. But the remand order gave no indication that the district court had considered the fraudulent joinder claim. The only basis provided was the deficiency in UPS's jurisdictional pleadings. The district court should consider the parties' fraudulent joinder arguments in the first instance on remand.

Plaintiffs also argue that *Allstate* is inapposite because that case involved a mandamus proceeding, rather than an appeal. But the logic of our jurisdictional reasoning in *Allstate* applies whether the issue arises in a mandamus proceeding or an appeal. Moreover, in any event, "'[t]his court has the discretion to treat an appeal as a petition for a writ of mandamus.'" *In re Deepwater Horizon*, 793 F.3d 479, 491 n.12 (5th Cir. 2015) (quoting *In re Grand Jury Subpoena*, 190 F.3d 375, 389 n.16 (5th Cir. 1999)). *See also*, *e.g.*, *Whole Woman's Health v. Smith*, 896 F.3d 362, 368 n.6 (5th Cir. 2018) (same).

In sum, we have jurisdiction to review the district court's remand order.

III.

Having established our jurisdiction to review the remand order, we now conduct that review. We are not persuaded that UPS made the egregious error suggested by the district court.

In its notice of removal, UPS alleged "[u]pon information and belief" that Plaintiffs were "domiciled in" and were "citizens of" Texas or El Salvador. As evidence supporting these allegations, UPS pointed to Plaintiff's original petition which stated Plaintiffs' respective residences.

Of course, residence is only part of the evidence necessary to establish domicile. *See*, *e.g.*, *Preston v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 793, 798 ("Domicile requires residence in [a] state and an intent to remain in the state.") (citation omitted). UPS's pleading of residency alone was not enough to conclusively prove citizenship. But UPS evidently knew that. Its notice of removal demonstrates that UPS knew what it was required to allege—not merely residence, but also domicile and citizenship—because it alleged both domicile and citizenship "upon information and belief."

This court has previously found that "allegations [of citizenship] based on information and belief may establish jurisdiction." *PNC Bank, Nat'l Assoc. v. 2013 Travis Oak Creek, L.P.*, 136 F.4th 568, 576 (5th Cir. 2025). While such allegations are not always sufficient, they may be sufficient "in the nascency of litigation." *Id.*

Plaintiffs filed the current state court action in August 2025, and UPS removed one month later. The district court issued its remand order six days after receiving UPS's notice of removal. Even counting from the filing of Plaintiff's original state court petition in April 2025, before its voluntary dismissal, that is a far cry from the five-year delay in *PNC Bank* that we found to be too long for allegations based "on information and belief" to support jurisdiction. *Id.*

UPS's allegations demonstrate that it knew it needed to allege citizenship, not merely residence, to establish diversity jurisdiction. It did so upon information and belief supported by the additional fact of Plaintiffs' residences. As our precedent indicates, that is likely enough at this stage. *Id.*

* * *

"Lawyers' work is careful work. Attention to detail is critical. A mistake that might be immaterial in other professions can be devastating for

attorneys and their clients." *United States v. Davis*, 137 F.4th 349, 351 (5th Cir. 2025).

So when it comes to pleading diversity jurisdiction, lawyers should be careful to plead diversity of citizenship, not residency.

The mistake that counsel made here could have been fatal to Defendant's choice of forum. Had Plaintiffs moved for remand, we would be barred from reviewing the remand order under § 1447(d).

But the district court acted *sua sponte*. And it turns out that, fortunately for UPS, that's enough to avoid the bar on appellate review that § 1447(d) would otherwise impose.

We vacate the remand order and remand this case for further proceedings.