

SUPREME COURT OF VIRGINIA

Gerry R. Lewis, Administrator of the Estate of Willie Benjamin Lewis, Deceased v. C.J. Langenfelder & Son, Jr., Inc., 266 Va. 513

587 S.E.2d 697 (2003) · No. Record No. 022543 · Decided October 31, 2003

SUMMARY

The Supreme Court of Virginia held that removal of the action to federal court transferred the entire case, including the Jones Act claim, and suspended the state courts’ jurisdiction. Because the federal district court had not remanded the case, the Supreme Court dismissed the appeal without prejudice. The court did not reach the merits of the Jones Act claim or the underlying assignments of error.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Cynthia D. Kinser; All the Justices
JURISDICTION	Virginia
DECIDED	October 31, 2003
DOCKET	Record No. 022543
DISPOSITION	dismissed
PROCEDURAL POSTURE	After the circuit court dismissed with prejudice the plaintiff's Jones Act claim on partial summary judgment, the defendant removed the action to the United States District Court for the Eastern District of Virginia. The Supreme Court of Virginia dismissed the plaintiff's appeal without prejudice because removal transferred the entire action to federal court and the federal court had not remanded it.
STANDARD OF REVIEW	Jurisdiction was reviewed as a threshold legal issue; a court independently determines its own jurisdiction.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Virginia; precedential.
PARTIES	Gerry R. Lewis, Administrator of the Estate of Willie Benjamin Lewis, Deceased v. C.J. Langenfelder & Son, Jr., Inc.

TOPICS

- appellate jurisdiction
- appellate procedure
- admiralty
- federalism
- civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

admiralty

federalism

QUESTIONS PRESENTED

1. Whether the Supreme Court of Virginia had jurisdiction to hear an appeal from the circuit court after the entire action had been removed to federal district court.
2. Whether removal transferred the entire action, including the Jones Act claim and claims already dismissed by the state circuit court, and suspended further state-court proceedings until remand.

HOLDINGS

1. The Supreme Court of Virginia lacked jurisdiction to hear the appeal because removal of the action to federal district court transferred the entire case and suspended the state courts' jurisdiction until the federal court remanded the case.
2. The fact that a Jones Act claim is generally nonremovable did not preserve state-court jurisdiction after removal; the propriety of removal had to be determined by the federal court, and the removal bar could be waived if not timely challenged by a motion to remand.
3. Removal did not vacate the circuit court's pre-removal orders or proceedings; those orders remained effective unless dissolved or modified by the federal district court.

KEY QUOTATIONS

“Because removal of an action from state court to federal court effects a transfer of the entire case, this Court has no jurisdiction to hear the appeal.” (699)

“The removal of a case from state court to federal court effects a transfer of the entire action, including all the parties and all the claims, to the federal court.” (700)

“Unless and until there is a remand of this case from the federal district court, neither the circuit court nor this Court can proceed any further with the action.” (701)

FACTUAL BACKGROUND

The decedent allegedly worked as a seaman aboard Langenfelder's tugboat while it was in navigation on navigable waters and died in an accident. His estate sought wrongful-death damages under the Jones Act and general maritime law. Langenfelder denied that an employer-employee relationship existed and obtained partial summary judgment dismissing the Jones Act claim. After that dismissal, Langenfelder removed the action to federal district court.

PROCEDURAL HISTORY

Lewis filed a wrongful-death motion for judgment in Virginia circuit court asserting Jones Act and general maritime-law claims. The circuit court granted partial summary judgment to Langenfelder and dismissed the Jones Act claim with prejudice. Langenfelder then removed the action to the federal district court, which stayed

the removed action but did not remand it. The Supreme Court of Virginia dismissed the appeal without prejudice for lack of jurisdiction and did not reach the merits.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The appeal was dismissed without prejudice. The opinion did not direct the federal district court to remand the case; it stated that the state courts could proceed only after a federal remand.

CASES CITED

- Morrison v. Bestler, 239 Va. 166, 170, 387 S.E.2d 753, 755 (1990)
- Higgins v. E.I. DuPont de Nemours & Co., 863 F.2d 1162, 1166 (4th Cir. 1988)
- American Dredging Co. v. Miller, 510 U.S. 443, 445, 114 S.Ct. 981, 127 L.Ed.2d 285 (1994)
- Engel v. Davenport, 271 U.S. 33, 37, 46 S.Ct. 410, 70 L.Ed. 813 (1926)
- Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 455, 121 S.Ct. 993, 148 L.Ed.2d 931 (2001)
- Pate v. Standard Dredging Corp., 193 F.2d 498, 500 (5th Cir. 1952)
- Keegan v. Sterling, 610 F.Supp. 789, 790 (S.D. Fla. 1985)
- Stokes v. Victory Carriers, Inc., 577 F.Supp. 9, 11 (E.D. Pa. 1983)
- Moltke v. Intercontinental Shipping Corp., 86 F.Supp. 662, 663 (S.D.N.Y. 1949)
- Lirette v. N.L. Sperry Sun, Inc., 820 F.2d 116, 117 (5th Cir. 1987)
- Albarado v. Southern Pac. Transp. Co., 199 F.3d 762, 765 (5th Cir. 1999)
- Cades v. H & R Block, Inc., 43 F.3d 869, 873 (4th Cir. 1994)
- In re Digicon Marine, Inc., 966 F.2d 158, 160 (5th Cir. 1992)
- State ex rel. Allis-Chalmers Mfg. Co. v. Boone Circuit Court, 227 Ind. 327, 86 N.E.2d 74, 78 (1949)
- State ex rel. Gremillion v. NAACP, 90 So.2d 884, 886-87 (La. Ct. App. 1956)
- City of Gainesville v. Brown-Crummer Investment Co., 277 U.S. 54, 60, 48 S.Ct. 454, 72 L.Ed. 781 (1928)
- Arango v. Guzman Travel Advisors Corp., 621 F.2d 1371, 1376 (5th Cir. 1980)
- Murphy v. Kodz, 351 F.2d 163, 167 (9th Cir. 1965)
- Hartlein v. Illinois Power Co., 151 Ill. 2d 142, 176 Ill. Dec. 22, 601 N.E.2d 720, 726 (1992)
- Yarnevich v. Brink's, Inc., 102 F.3d 753, 754 (4th Cir. 1996)
- Allman v. Hanley, 302 F.2d 559, 562 (5th Cir. 1962)
- Steam-Ship Co. v. Tugman, 106 U.S. 118, 122, 1 S.Ct. 58, 27 L.Ed. 87 (1882)
- South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir. 1971)
- United States v. Silberglitt, 441 F.2d 225, 227 (2d Cir. 1971)
- Lowe v. Jacobs, 243 F.2d 432, 433 (5th Cir. 1957)
- Duncan v. Gegan, 101 U.S. 810, 812, 25 L.Ed. 875 (1879)

- Resolution Trust Corp. v. Nernberg, 3 F.3d 62, 68 (3d Cir. 1993)

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