

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Kunzi v. Pan American World Airways, Inc.

833 F.2d 1291 (9th Cir. 1987) · Decided November 23, 1987

SUMMARY

The Ninth Circuit held that a district court's remand order based on a determination that removal was improvident and without jurisdiction under 28 U.S.C. § 1447(c) was not reviewable on appeal or by mandamus under § 1447(d). The court concluded that the district court had remanded the entire action based on its perceived lack of jurisdiction over claims involving the Kuhl defendants. The appeal was dismissed.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Ferguson, Circuit Judge; Anderson; Ferguson; Noonan
JURISDICTION	Federal
DECIDED	November 23, 1987
DISPOSITION	dismissed
PROCEDURAL POSTURE	The defendants appealed a district court order remanding a removed state-law action to state court and separately petitioned for a writ of mandamus requiring rescission of the remand order. The matters were consolidated.
STANDARD OF REVIEW	Whether a remand order was reviewable on appeal or by mandamus under 28 U.S.C. §§ 1447(c) and 1447(d).
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Pan American World Airways, Inc., Linda Kelly, Anna F. Kuhl, Anna F. Kuhl & Associates v. Beverly Kunzi, Steve Matthaeus, Sandra Travis

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QUESTIONS PRESENTED

1. Whether the district court's remand order was based on 28 U.S.C. § 1447(c) and therefore unreviewable under § 1447(d).
2. Whether the Ninth Circuit could review the remand order by appeal or mandamus because the district court allegedly applied erroneous substantive or jurisdictional legal principles.
3. Whether Ninth Circuit decisions recognizing removal jurisdiction over at least one claim in a multi-claim complaint required review of the remand order.

HOLDINGS

1. The district court's remand order was issued pursuant to § 1447(c) because the court determined that removal was improper and that it lacked subject matter jurisdiction over the entire case.
2. A remand order issued pursuant to § 1447(c) and based on the grounds specified in that statute is not reviewable on appeal or by mandamus, even if the district court's jurisdictional analysis was erroneous.
3. The Ninth Circuit's decisions involving federal jurisdiction over at least one claim in a multi-claim complaint did not make this remand order reviewable because the district court did not find that it had original jurisdiction over any claim.

KEY QUOTATIONS

“In sum, we hold that the district court issued the remand order in PK & K’s case pursuant to, and based on the grounds specified in, 28 U.S.C. § 1447(c). Under section 1447(d), Thermtron, and Gravitt, we are thus barred from reviewing it. The appeal is DISMISSED.” (833 F.2d at 1295)

“Despite PK&K’s arguments to the contrary, we find that this is a jurisdictional determination that falls within section 1447(c), and is thus unreviewable.” (833 F.2d at 1294)

FACTUAL BACKGROUND

Beverly Kunzi, Steve Matthaeus, and Sandra Travis were Pan Am flight attendants suspended after an incident involving an airplane's oxygen supply. After an investigation involving Pan Am manager Linda Kelly and psychologist Anna Kuhl, Pan Am terminated their employment, but an adjustment board arbitration later ordered their reinstatement with back pay. The employees then filed state-law defamation, emotional-distress, and interference claims against Pan Am, Kelly, Kuhl, and Kuhl's corporation.

PROCEDURAL HISTORY

The plaintiffs filed state-law claims in the California Superior Court for San Mateo County. The defendants removed the action to federal court, asserting federal-question jurisdiction under the Railway Labor Act, and moved for summary judgment based on lack of subject matter jurisdiction and RLA preemption. The district court remanded the entire case after questioning whether removal was proper, particularly as to the claims against the Kuhl defendants. The Ninth Circuit held that the remand was jurisdictional and therefore dismissed the appeal as unreviewable under 28 U.S.C. §§ 1447(c) and 1447(d).

DISPOSITION

dismissed

CASES CITED

- Gravitt v. Southwestern Bell Telephone Co., 430 U.S. 723, 97 S. Ct. 1439, 52 L. Ed. 2d 1 (1977) (per curiam)
- Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336, 346, 351, 96 S. Ct. 584, 591, 593, 46 L. Ed. 2d 542 (1976)
- Tolefree v. Ford Motor Credit Co., 571 F.2d 1088 (9th Cir. 1977)
- Price v. PSA, 829 F.2d 871 (9th Cir. 1987)
- Scott v. Machinists Automotive Trades District Lodge No. 190, 827 F.2d 589 (9th Cir. 1987)
- Paige v. Henry J. Kaiser Co., 826 F.2d 857 (9th Cir. 1987)
- Survival Systems Division of the Whittaker Corp. v. United States District Court, 825 F.2d 1416 (9th Cir. 1987)
- In re Weaver, 610 F.2d 335, 337 (5th Cir. 1980)

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