

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

March 26, 2012

No. 11-60363

Lyle W. Cayce
Clerk

BARBARA ELAM; BOBBY ELAM,

Plaintiffs - Appellees

v.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY; RONALD L.
MICHAEL,

Defendants - Appellants

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 1:08-CV-304

Before JOLLY, DAVIS, and BARKSDALE, Circuit Judges.

PER CURIAM:*

This is the second appeal in this matter. *See Elam v. Kan. City S. Ry. Co.*, 635 F.3d 796 (5th Cir. 2011). After reviewing the briefs, hearing oral argument, reviewing the parties' supplemental briefs, and considering pertinent parts of the record, we have concluded that, on remand following the first appeal, the district court committed no error in remanding all claims remaining in federal court to state court. We further conclude that we lack appellate jurisdiction over

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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the district court's order denying summary judgment in favor of Kansas City Southern Railway (KCSR) on the grounds that although the order denying summary judgment preceded the remand order in both logic and fact, the order is not conclusive of any claim and that KCSR's asserted defenses may be properly considered and addressed in state court. *See Regan v. Starcraft Marine, LLC*, 524 F.3d 627 (5th Cir. 2008).

AFFIRMED in part; DISMISSED in part.