

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

\_\_\_\_\_  
No. 16-20328  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**

March 29, 2017

Lyle W. Cayce  
Clerk

D. PATRICK SMITHERMAN,

Plaintiff - Appellant

v.

BAYVIEW LOAN SERVICING, L.L.C.,

Defendants - Appellees

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:16-CV-798  
\_\_\_\_\_

Before SMITH, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

D. Patrick Smitherman, proceeding *pro se*, brought suit against Bayview Loan Servicing, LLC in Texas state court, alleging various state law claims regarding foreclosure proceedings related to Smitherman's mortgage loan. Bayview removed to federal court under a diversity jurisdiction theory. The district court denied Smitherman's motion to remand and then dismissed Smitherman's claims with prejudice.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 16-20328

We ordered a limited remand to the district court to permit supplementation of the record and to make findings regarding Bayview's citizenship. The district court then issued an order vacating its judgment and remanding the case to state court. Because the district court lacked the authority to do so, we construe its order to be an indicative ruling made pursuant to Federal Rule of Civil Procedure 62.1(a)(3).

Accordingly, we REMAND this case to the district court and DISMISS the appeal as moot and relinquish jurisdiction pursuant to Federal Rule of Appellate Procedure 12.1(b).