

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

ROGER N. SMITH and SHERRY SMITH,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. 2:07-cv-194-MEF
	)	
DEPARTMENT OF HUMAN RESOURCES	)	(WO- Not for Publication)
OF THE STATE OF ALABAMA, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

In February of 2007, Plaintiffs filed the Complaint in the Circuit Court of Montgomery County, Alabama. (Doc. # 1-2, Compl.). On March 5, 2007, the DHR Defendants (namely the Alabama Department of Human Resources, Carolyn Bryson, Alicia Sexton, Angela Sampson, Ben Jones, Jenny Story, Tarilton Benton, and Commissioner Nancy Buckner) removed the action to this Court invoking its subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367. (Doc. # 1). In August of 2009, long after the Court imposed deadline for the filing of dispositive motions, several of the DHR Defendants filed a variety of motions to dismiss and motions for summary judgment. Additionally, despite having been the parties to remove this action and invoke this Court's subject matter jurisdiction, the DHR Defendants filed a Motion to Dismiss or Remand Case or Reconsider Denial and for Leave to File Motion for Summary Judgment Based Upon Abstention (Doc. # 79). By this motion, the DHR Defendants contend that this Court should dismiss or remand

this case on the grounds of lack of subject matter jurisdiction based upon the doctrine of abstention. Plaintiffs oppose dismissal of this action, but agree that the case should be remanded. Furthermore, Plaintiffs represent that the defendants, other than the DHR Defendants, have no objection to the remand of this action. Plaintiffs further contend that the Court should issue an order requiring the DHR Defendants to pay costs and expenses incurred as a result of the removal pursuant to 28 U.S.C. § 1447(c). Thus, there is not a single party to this action who contends that this Court has subject matter jurisdiction or who opposes remand of this action.

Accordingly, it is hereby ORDERED as follows:

1. The Motion to Dismiss or Remand Case or Reconsider Denial and for Leave to File Motion for Summary Judgment Based Upon Abstention (Doc. # 79) is GRANTED to the extent that it seeks remand of this case to the Circuit Court for Montgomery County, Alabama, but DENIED in all other respects.

2. The above-styled lawsuit is REMANDED to the Circuit Court of Montgomery County, Alabama.

3. Plaintiffs' request for the award of costs and expenses pursuant to 28 U.S.C. § 1447(c) (Doc. # 95) is DENIED.

4. All pending motions other than those mentioned above are left for resolution by the Circuit Court of Montgomery County, Alabama after remand. All hearings in this matter, including the trial and the pretrial are CANCELLED.

5. The Clerk of the Court is DIRECTED to take all steps necessary to effect this remand and close this file.

Done this the 27<sup>th</sup> day of August 2009.

/s/ Mark E. Fuller  
CHIEF UNITED STATES DISTRICT JUDGE