

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

RONNIE DAVIS

CIVIL ACTION NO. 12-1828

VERSUS

JUDGE S. MAURICE HICKS, JR.

TRINIDAD DRILLING LP, d/b/a
TRINIDAD DRILLING LLC, ET AL

MAGISTRATE JUDGE HAYES

MEMORANDUM RULING

Before the Court is a Motion and Written Statement of Appeal [Rec. Doc. 46] from Magistrate Judge Karen Hayes' Order [Rec. Doc. 33], denying both Plaintiff's motion for leave of court to file an amended complaint and Plaintiff's motion to remand. Based on the following, Magistrate Judge Karen Hayes' Order is **AFFIRMED**.

I. Background

This tort suit stems from an incident which occurred while Plaintiff Ronnie Davis worked at a drill site in Frierson, Louisiana. See Petition, Rec. Doc. 1-1. Davis alleges that on June 3, 2011, while working as a truck driver, an employee of Trinidad or Exco improperly loaded one or more sections of drill pipe on to Davis' truck, which caused Davis to fall some ten feet from the flatbed trailer to the ground. Id. Davis suffered disabling and permanent injuries as a result of Defendants' alleged negligence, and seeks compensatory, special, exemplary, and punitive damages. Id.

On July 3, 2012, Trinidad removed this case to federal court on the basis of diversity jurisdiction under 28 U.S.C. § 1332. See Notice of Removal; Rec. Doc. 1. After discovery began, Trinidad identified Sam Lee as the operator of the forklift and employee of Trinidad at the time of Davis' injury. Trinidad also revealed that Lee's last known contact information was for an address in Rayville, Louisiana. Davis subsequently filed a motion for leave to

amend his petition to join as defendant, Sam Lee, who, per the proposed amended complaint, is domiciled in Louisiana. This proposed joinder would destroy the Court's diversity jurisdiction. Accordingly, Davis filed a motion to remand along with his motion for leave to amend. After a full analysis of the "Hensgens factors,"¹ Magistrate Judge Hayes denied both motions. Rec. Doc. 45. Davis appealed this decision focusing much of its opposition on the argument that Lee is a necessary party to this litigation so that he can participate in discovery. See Rec. Doc. 46. Additionally, Davis also expressed concern that Defendants may withdraw the admission that Lee was working as their employee in the course and scope of his employment at the time of the incident. Id.

II. Analysis

Any party may appeal a magistrate judge's ruling on a non-dispositive matter to a district court judge under Rule 72(a) of the Federal Rules of Civil Procedure and Local Rule 74.1 M & W. The decision by Magistrate Judge Hayes to deny the plaintiff's motion to stay is a non-dispositive matter. In reviewing a non-dispositive pretrial matter, the Court must determine whether the Magistrate Judge's order was clearly erroneous or contrary to law.

¹ See Hensgens v. Deere & Co., 833 F.2d 1179, 1182 (5th Cir. 1987)(The court must balance the defendant's interest in maintaining a federal forum, with the competing interest of avoiding parallel lawsuits by considering the following:

[1] the extent to which the purpose of the amendment is to defeat federal jurisdiction,

[2] whether the plaintiff has been dilatory in asking for amendment,

[3] whether plaintiff will be significantly injured if amendment is not allowed, and

[4] any other factors bearing on the equities. The district court, with input from the defendant, should then balance the equities and decide whether amendment would be permitted. If it permits the amendment of the non-diverse defendant, it must remand to the state court. If the amendment is not allowed, the federal court maintains jurisdiction.

Fed. R. Civ. Proc. 72(a).

Magistrate Judge Hayes' analysis of the Hensgens factors was not clearly erroneous or contrary to law. As expounded upon by Magistrate Judge Hayes, the Complaint alleges Lee acted negligently during the *course and scope of his employment*, ensuring any potential liability is imputed to his employer(s). She also found no indication that the existing defendants are insolvent or otherwise incapable of funding a judgment or settlement. Lee is not a necessary and/or indispensable party to this litigation, as Lee's inclusion as a party in no way alters Defendants' scope of potential liability stemming from allegations in Davis's complaint. Lee's inclusion as a party also does not affect Davis' ability to collect on any judgment rendered. Accordingly, this Court agrees with Magistrate Judge Hayes that Lee is neither a necessary nor indispensable party to this litigation.

Furthermore, the evidence and arguments now included in the instant appeal do not change the Court's analysis. Davis places great weight on his argument that Lee is a necessary party and that Lee's inclusion as a defendant is essential so that he can participate in discovery. Davis also argues that Defendants could potentially retract their concession that Lee was acting within the course and scope of his employment, leaving Davis without a remedy. Neither of these arguments render Magistrate Judge Hayes' ruling clearly erroneous or contrary to law. Furthermore, the Court finds obvious fault with both of Plaintiff's arguments.

First, Davis does not cite any statute or case standing for the proposition that a party, who is not personally liable per the complaint,² must be included as a party defendant so that they can participate in discovery. As is evident by the information submitted to this

² Davis's proposed complaint specifically alleges that Lee was acting during the course and scope of his employment; thus, even if Davis prevails on all claims, Lee's negligence would be imputed to his employer(s).

Court by Plaintiff, Lee's inclusion as a party defendant is not necessary to subject him to the subpoena power of this Court. Davis states Lee is domiciled at 831 Charleston Drive, Rayville, Louisiana 71269: an address within the jurisdiction of the Western District of Louisiana. Davis has also failed to produce any evidence that he unsuccessfully sought letters rogatory or a subpoena in order to secure the deposition of Lee. Contrary to Davis's assertion, including Lee as a party is not the only available channel to conduct discovery related to Lee. Accordingly, this Court is not inclined allow a non-labile party to be forced into this litigation as a defendant solely for ease of conducting discovery.

Davis' second argument that Defendants could potentially withdraw their admission that Lee was acting in the course and scope of employment is not only speculative, but lacks legal merit. Defendants have consistently admitted throughout this entire litigation that Lee was an employee acting in the course and scope of employment at the time of the incident. To withdraw this admission now would require both extenuating, extraordinary circumstances and Court approval; a highly unlikely scenario.

III. Conclusion

For the reasons set forth above, this Court finds that the Magistrate's decision denying Davis's Motion to Amend Complaint and Motion to Remand was neither clearly erroneous nor contrary to law. The Order of March 8, 2013 issued by Magistrate Judge Karen Hayes is **AFFIRMED**.

An order consistent with the terms of this Memorandum Ruling shall issue herewith.

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 16th day of April, 2013.



S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE