

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001298-MR

WILLIAM D. PRIDDY, JR.

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE HUGH ROARK, JUDGE
ACTION NO. 94-CI-001227

CITY OF WEST POINT, KENTUCKY,
AND GENE SMITH

APPELLEES

OPINION
AFFIRMING IN PART, REVERSING IN PART
** **

BEFORE: GUIDUGLI, HUDDLESTON, AND McANULTY, JUDGES.

McANULTY, JUDGE: This case involves a question of whether the Hardin Circuit Court retained jurisdiction over a case after it was removed to federal district court on federal question jurisdiction and the federal court dismissed the state law claims without prejudice. We agree that the Hardin Circuit Court does not have jurisdiction over the state law claims, and so we affirm.

William D. Priddy, Jr. (hereinafter, appellant) filed an action in the Hardin Circuit Court on September 12, 1994, alleging the common law torts of malicious prosecution and intentional interference with prospective business advantage, as

well as various federal constitutional claims against the City of West Point, Kentucky, and Gene Smith (hereinafter, appellees). On October 13, 1994, appellees filed a notice of removal to the United States District Court for the Western District of Kentucky, Louisville Division pursuant to 28 U.S.C. § 1441.

On February 6, 1996, the federal district court issued an order in which it dismissed all of appellant's federal constitutional claims except for his first amendment claims, and denied summary dismissal of appellant's state law claims. The defendants moved for reconsideration, and on June 20, 1996, the U.S. District Court dismissed appellant's first amendment claims. The federal court then determined that since it had dismissed all of appellant's federal claims before trial, the pendent state claims should be dismissed as well (citing United Mine Workers of Amer. v. Gibbs, 383 U.S. 715, 726 (1966)). The court entered an order dismissing the malicious prosecution and interference with prospective business advantage claims without prejudice. Appellant moved for reconsideration of the dismissal of his federal claims, which was denied on July 29, 1996. He appealed only the dismissal of the federal claims. The United States Court of Appeals for the Sixth Circuit affirmed on December 19, 1997, and denied appellant's petition for rehearing en banc on January 30, 1998.

On March 23, 1998, appellant filed a motion in the Hardin Circuit Court to set for trial his state law claims of malicious prosecution and interference with prospective business advantage. Appellees objected to the motion on the ground that

the Hardin Circuit Court had lost jurisdiction over these claims when they were removed to federal court. Appellees asserted that appellant was required to refile his action, and further claimed that he was barred from doing so by not filing within 90 days as required by KRS 413.270(1). On May 13, 1998, the Hardin Circuit Court denied the motion for a trial date. The court found that upon removal to the federal court, jurisdiction of the state court over the matter terminated, and that since appellant did not refile within 90 days of the federal court's dismissal, he could not pursue the action further. Appellant appeals this order.

We agree with the circuit court that a state court's jurisdiction over a cause of action terminates as soon as removal proceedings are completed. This Court in Green Seed Co. v. Harrison Tobacco Warehouse, Inc., Ky. App., 663 S.W.2d 755 (1988) stated:

Federal, not state, law governs all removal proceedings (citation omitted). Removal of jurisdiction is effected after the movant files a petition and bond, gives notice to all adverse parties, and files a copy of the petition with the clerk of the state court. 28 U.S.C. § 1446(e). Once these steps are completed, the state court loses jurisdiction over the case unless and until the case is remanded by the federal court. Id.

See also Little Sandy Cooperage Co. v. Chesapeake & O. Ry. Co., Ky., 214 S.W. 912, 185 Ky. 161 (1919) (when proper petition for removal is filed, state court has duty to order removal as "its jurisdiction is then at an end.")

Appellees correctly assert that the state court would have had jurisdiction if the federal court had remanded the state

law claims. See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 98 L. Ed. 2d 720, 108 S. Ct. 614 (1988). Whether to remand pendent state law claims is in the discretion of the federal court. Id. at 357, 108 S. Ct. at 622, 98 L. Ed. 2d at 734. However, when a federal court instead dismisses the pendent claims without prejudice, the litigant must refile in state court, and the state court will have to reprocess the case. Id. at 353, 108 S. Ct. at 620, 98 L. Ed. 2d at 731-732. As a result, we find that the Hardin Circuit Court was correct in concluding that appellant had to refile his remaining claims in order to proceed following the federal court's dismissal.

We do not agree, however, that KRS 413.270(1) required appellant to file his claim within 90 days of the federal court's dismissal. That statute provides:

If an action is commenced in due time and in good faith in any court of this state and the defendants or any of them make defense, and it is adjudged that the court has no jurisdiction of the action, the plaintiff or his representative may, within ninety (90) days from the time of that judgment, commence a new action in the proper court. The time between the commencement of the first and last action shall not be counted in applying any statute of limitation. (Emphasis added).

This provision does not apply to appellant's case because there was no determination that the Hardin Circuit Court did not have jurisdiction over these claims. Rather, the state court had jurisdiction (a prerequisite for removal) but the case was removed to federal court (which had federal question jurisdiction to decide the federal constitutional questions as well as the pendent state law claims). Thus, it has not been adjudged that

either court did not have jurisdiction, and the Hardin Circuit Court should not have applied KRS 413.270(1) to this case. Appellant is required to refile his claims in state court, but he is not subject to the 90 day limitation period of KRS 413.270(1) in which to do so.

Wherefore, we affirm the holding of the Hardin Circuit Court which denied appellant's motion to set a trial date, and reverse the trial court's holding that he was required by KRS 413.270(1) to file within 90 days.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

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