United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
June 3, 2021
Lyle W. Cayce
Clerk

No. 20-11083

VICTOR LEAL; PATRICK VON DOHLEN; KIM ARMSTRONG,

Plaintiffs—Appellants,

versus

XAVIER BECERRA, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HEALTH AND HUMAN SERVICES; JANET YELLEN, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE TREASURY; MARTIN WALSH, IN HIS OFFICIAL CAPACITY AS SECRETARY OF LABOR; UNITED STATES OF AMERICA; DOUG SLAPE, IN HIS OFFICIAL CAPACITY AS TEXAS COMMISSIONER OF INSURANCE; TEXAS DEPARTMENT OF INSURANCE,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:20-CV-124

Before DENNIS and ENGELHARDT, *Circuit Judges*, and HICKS, *Chief District Judge*. *

* Chief Judge of the Western District of Louisiana, sitting by designation.

PER CURIAM:

This case presents a constitutional challenge to 42 U.S.C. § 300gg-13(a)(4), the provision of the Affordable Care Act (ACA) that provides the statutory basis for what is commonly known as the "contraceptive-coverage mandate."

Plaintiffs originally filed their claims in Texas state court, naming as defendants the Secretaries of Health and Human Services, Labor, and the Treasury.[1] Defendants removed the suit to the Northern District of Texas under the federal officer removal statute, 28 U.S.C. § 1442. When a case is removed under § 1442, "the jurisdiction of the federal court is derived from the state court's jurisdiction." *Lopez v. Sentrillon Corp.*, 749 F.3d 347, 350 (5th Cir. 2014). Thus, if "the state court lacks jurisdiction of the subject matter or of the parties, the federal court acquires none," even if "in a like suit originally brought in a federal court it would have had jurisdiction." *Id.* (internal quotation marks omitted). The district court concluded that sovereign immunity shielded these federal defendants from the state court's jurisdiction, and thus that it lacked derivative jurisdiction to hear Plaintiffs' claims.[2]

Plaintiffs challenge that ruling here, arguing that the state court's jurisdiction over Defendants was proper under the exception to sovereign

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[1] Plaintiffs originally named the United States as an additional defendant but conceded below that the United States is shielded by sovereign immunity in state court. They do not challenge the district court's ruling that it lacked derivative jurisdiction over their claims against the United States.

[2] Plaintiffs also challenged Texas's "contraceptive equity laws," TEX. INS. CODE §§ 1369.101–.109, naming as defendants Texas Commissioner of Insurance, Kent Sullivan, in his official capacity and the Texas Department of Insurance. Because it found no jurisdiction over the federal claims Plaintiffs asserted, the district court found that there was no basis for it to exercise supplemental jurisdiction, and it therefore remanded the state-law claims back to state court. We do not review or disturb the district court's ruling as to the state-law claims.

immunity established in *Ex Parte Young*, 209 U.S. 123 (1908), and hence that the district court should have exercised derivative jurisdiction.

As a threshold matter, Defendants assert that this appeal is moot. They point out that Plaintiffs have already filed directly in the Northern District of Texas (and had dismissed with prejudice on other grounds) challenges to the ACA against these same defendants that are substantially identical to the underlying claims they raise here. *See Leal v. Becerra*, No. 2:20-cv-185 (N.D. Tex.). They argue that a decision by this court that the district court did have jurisdiction over Plaintiffs' underlying claims in this action could allow only for the district court to hear the merits of Plaintiffs' claims, and since that has already occurred in Plaintiffs' parallel suit, it is unclear how such a ruling could provide any relief.

We agree. As the Supreme Court held in *Campbell-Ewald Co. v. Gomez*, "a case becomes moot . . . when it is impossible for a court to grant any *effectual* relief whatever to the prevailing party." 577 U.S. 153, 161 *as revised* (Feb. 9, 2016) (citing *Knox v. Serv. Emps.*, 132 S. Ct. 2277, 2287 (2012)) (internal quotation marks omitted) (emphasis added). Our precedents indicate that where a plaintiff has filed a parallel suit that renders any relief this court may grant in the action before it redundant, that potential relief is ineffectual, and thus the case is moot. *See Lowrey v. Texas A&M Univ. Sys.*, 117 F.3d 242, 246 (5th Cir. 1997) (holding that plaintiff's challenge to district court's denial of leave to amend was rendered moot "[i]nsofar as [she] ha[d] successfully refiled the same causes of action that she sought to allege in her proposed amended complaint"); *Woods v. Resol. Tr. Co.*, 71 F.3d 875 (5th Cir. 1995) (per curiam) (unpublished)[3] (dismissing appeal from

[3] Unpublished opinions of this Court issued before January 1, 1996 "are precedent." 5TH CIR. R. 47.5.3.

district court's dismissal for failure to exhaust administrative remedies as moot where plaintiff, during pendency of appeal, exhausted his administrative remedies and refiled his suit).

Plaintiffs attempt to argue that this appeal is not moot only by pointing to the potential collateral-estoppel effects of the district court's ruling on unspecified future lawsuits that they may potentially file in state court against these federal defendants, and that *Lowery*, 117 F.3d 242, and *Woods*, 71 F.3d 875, are inapposite because the challenges mooted on appeal in those cases were to district court rulings with no collateral-estoppel effects in future litigation. They argue that their standing to request relief is no different than that of an appellant who seeks vacatur of a lower court ruling after a case has become moot, citing *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

But in *Munsingwear*, the Supreme Court stated that where, as here, a "civil case from a court in the federal system . . . has become moot while on its way [to an appellate court] or pending [a] decision on the merits," the "duty of the appellate court" is to "reverse or vacate the judgment below and remand with a direction to dismiss" to avoid such collateral effects. 340 U.S. at 39 (1950) (footnote omitted) (citing *Duke Power Co. v. Greenwood Cnty.*, 299 U.S. 259, 267 (1936)). Thus, even if Plaintiffs are correct that the potential collateral-estoppel effects on an as-yet unfiled and speculative future lawsuit constitute a "concrete interest . . . in the outcome of the litigation[,]" *Chafin v. Chafin,* 133 S. Ct. 1017, 1023 (2013)—a necessary predicate to prevent a case from becoming moot—such an interest would not allow us to reach the merits in this case if we follow the dictate of *Munsingwear*. We thus decline to issue an advisory opinion on the jurisdictional question before us.

Accordingly, we DISMISS this appeal as moot, VACATE the order of the district court as to the federal defendants, and REMAND with instructions to dismiss.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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June 03, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-11083 Leal v. Becerra
USDC No. 2:20-CV-124

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Laney Lampard

By: _____
Laney L. Lampard, Deputy Clerk
504-310-7652

Mr. Matthew Tyler Bohuslav
Mr. Charles William Fillmore
Mr. Hartson Dustin Fillmore III
Mr. Christopher Lee Jensen
Mr. Jonathan F. Mitchell
Ms. Karen S. Mitchell
Ms. Karen Schoen
Mr. Brian Walters Stoltz