

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 10-11022
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT SEPTEMBER 1, 2010 JOHN LEY CLERK
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D. C. Docket No. 9:09-cv-82395-WPD

RICHARD RAGALI,
Individually, and as a Parent and Natural
Guardian of Joseph R. Ragali, a minor,
JOSEPH R. RAGALI,
a minor,

Plaintiffs-Appellees,

versus

SHELL OIL COMPANY,
SHELL OIL PRODUCTS COMPANY, LLC,
MOTIVA ENTERPRISES, LLC.,

Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Florida

(September 1, 2010)

Before EDMONDSON, MARTIN, and ANDERSON, Circuit Judges.

PER CURIAM:

Appellants appeal the district court's grant of Appellees' motion to dismiss without prejudice. As a condition of dismissal, the district court required Appellees to reimburse Appellants for filing fees Appellants incurred in removing the suit to federal court, but refused to impose a condition requiring Appellees to refile the suit in federal court. Appellants now argue that the district court abused its discretion in so granting the dismissal because: (1) Appellants were legally prejudiced by the dismissal, (2) Appellees should have been required to follow the procedure to join additional defendants set forth in 28 U.S.C. § 1447, and (3) at a minimum, the district court should have required Appellees to refile their new complaint in federal court. After careful review of the parties' briefs and the record, we discern no reversible error in the district court's dismissal without prejudice.

Federal Rule of Civil Procedure 41(a)(2) provides that "an action may be dismissed at the plaintiff's request only by court order, on terms the court considers proper." We review the district court's decision to dismiss without prejudice for an abuse of discretion. *McCants v. Ford Motor Co.*, 781 F. 2d 855, 857 (11th Cir. 1986); *see also Pontenberg v. Boston Scientific Corp.*, 252 F.3d 1253, 1256 (11th Cir. 2001) ("A district court enjoys broad discretion in

determining whether to allow a voluntary dismissal under Rule 41(a)(2).”). We have held that “in most cases a dismissal should be granted unless the defendant will suffer clear legal prejudice, other than the mere prospect of a subsequent lawsuit, as a result.” *McCants*, 781 F. 2d at 857. In exercising its discretion, the district court “should keep in mind the interests of the defendant, for Rule 41(a)(2) exists chiefly for protection of defendants.” *Fisher v. Puerto Rico Marine Mgmt., Inc.*, 940 F. 2d 1502, 1503 (11th Cir. 1991). The court must “weigh the relevant equities and do justice between the parties in each case, imposing such costs and attaching such conditions to the dismissal as are deemed appropriate.” *McCants*, 781 F. 2d at 857. However, “it is no bar to a voluntary dismissal that the plaintiff may obtain some tactical advantage over the defendant in future litigation.” *Id.*

In deciding to grant the dismissal in this case, the district court pointed out that the litigation was at an early stage, and that the parties had not yet undertaken significant discovery or other preparation for litigation. The court further determined that much of the preparation the Appellants had already undertaken would be useful in any subsequent litigation after refiling. Based on these findings, the district court determined that equity weighed in favor of granting the dismissal without prejudice.

The Appellants have pointed to no evidence that persuades us that they were

legally prejudiced by the district court's dismissal of the case without prejudice as such an early stage of litigation. Furthermore, we reject Appellants' argument that Appellees were bound to follow the procedure set out in 28 U.S.C. § 1447. While 28 U.S.C. § 1447(e) provides a permissible method of joining additional defendants, neither the text of that statute nor any authority cited by the Appellants leads us to believe that 28 U.S.C. § 1447 bars dismissal in this case. Nor do we credit Appellants' argument that the district court should have required Appellees to refile in federal court. Absent a clear abuse of discretion, the district court may "impos[e] such costs and attach[] such conditions to the dismissal as are deemed appropriate." *McCants*, 781 F.2d at 857. We see no reason to disturb the district court's decision to require the Appellees to reimburse the Appellant's for their filing costs, but to refuse to require the Appellees to refile in federal court.

For the foregoing reasons, the district court's dismissal without prejudice is affirmed.¹

AFFIRMED.

¹ Appellants' motion to supplement the record with documents that were not before the district court is denied.