

UNITED STATES COURT OF APPEALS

Filed 6/20/96

TENTH CIRCUIT

N. LYNN PERLS,

Petitioner - Appellee,

v.

ROBERT L. DIMOND,

Respondent - Appellant.

No. 96-2009
(D. Ct. No. CIV 95-584 SC)
(D. N. Mex.)

ORDER AND JUDGMENT*

Before TACHA, BALDOCK, and BRISCOE, Circuit Judges.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

This appeal is from an order of the district court granting appellee's motion to remand this action to the district court on the ground that the case presents no basis for federal jurisdiction and, further, from an order of the district court granting petitioner's application for an award of expenses incurred as a result of the removal of this case from state court. We affirm.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

The underlying dispute in this case is clearly a fee dispute between petitioner Perls and her former client, respondent Dimond. Petitioner Perls represented Mr. Dimond in an employment dispute between him and his former employer, the United States Postal Service. The parties in this case are not diverse. There is no federal question alleged on the face of the complaint that would support federal jurisdiction. The record in this case is clear that, despite related claims brought in the EEOC and referred to in the state court complaint based on federal anti-discrimination statutes, this case is grounded entirely in state contract law that will be applied in the dispute between petitioner and respondent. We therefore agree with the district court that the federal courts have no jurisdiction and that the motion to remand was properly granted.

Upon an application for the award of expenses filed by petitioner, the district court found that the reasons that respondent removed the case to federal court were groundless. The district court found that the removal was improper and that an award of costs was appropriate. We review the district court's decision for an abuse of discretion. Under the circumstances of this case, where no meritorious grounds exist for removal of the case to federal court, we cannot say that the district court abused its discretion. We have reviewed the record, the briefs, and the district court orders, and **AFFIRM** for substantially the reasons given by the district court.

The mandate shall issue forthwith.

ENTERED FOR THE COURT,

Deanell Reece Tacha
Circuit Judge