NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 5, 2025*
Decided March 12, 2025

Before

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-2582

GORMIDOU Y. LAVELA,
Plaintiff-Appellant,

v.

VALICIA GILBERT, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 24-cv-350-jdp

James D. Peterson,
Chief Judge.

O R D E R

Gormidou Lavela, in quick succession, voluntarily dismissed two civil-rights suits under Federal Rule of Civil Procedure 41(a)(1). After the second dismissal, the district court pronounced that the dismissal would be "on the merits." *See* FED. R. CIV. P. 41(a)(1)(B). We affirm the judgment but modify the dismissal to be without prejudice.

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*We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Lavela brought his first suit in federal court in 2023, alleging that his commercial landlord and several of its employees violated the Fair Housing Act, *see* 42 U.S.C. §§ 3601–31, and Wisconsin state law, by discriminating against him based on his race, national origin, and disability. In early 2024, he voluntarily dismissed his first suit under Rule 41(a)(1).

Two months later, Lavela served the same defendants with a second, similar suit in Chippewa County, Wisconsin Circuit Court. The defendants removed that case to federal district court on May 24, 2024. Shortly thereafter, Lavela moved to remand that case, arguing that the defendants' notice of removal was untimely and that Wisconsin state court was the proper forum to hear that case. The district court disagreed and denied Lavela's motion.

On June 10, 2024, Lavela voluntarily dismissed his second suit under Rule 41(a)(1). The defendants, who had yet to file a responsive pleading, promptly asked the federal district court to dismiss the second suit on the merits because Lavela had, in the words of Rule 41(a)(1)(B), "previously dismissed [a] federal- or state-court action based on or including the same claim." The district court agreed and dismissed the second case on the merits, adding that the decision "means that Lavela cannot refile this case in federal court."

Lavela appeals, but the defendants raise a threshold jurisdictional argument concerning standing. The defendants argue that Lavela lacks standing to appeal because he offered no basis to show that he has been—or might someday be—harmed by the district court's actions in connection with the federal suits he voluntarily dismissed. As we have noted, "[t]he problem that some voluntary dismissals present on appeal is that '[l]itigants aren't aggrieved when the [court] does what they want.'" *Levy v. W. Coast Life Ins. Co.*, 44 F.4th 621, 626 (7th Cir. 2022) (citation omitted). That is, "[i]t is difficult to see how a party has an 'injury in fact' for purposes of Article III standing to sue when it receives exactly the judgment it requests." *Id.*

But considering the way the case unfolded here, we conclude that the voluntary-dismissal rule does not foreclose our review of the merits. Lavela can show a continuing injury-in-fact, as he got "less than what [he] wanted." *Id.* The district court denied his motion to remand. That he later voluntarily abandoned his second federal suit does not mean that he acquiesced to the court's denial of his remand motion, let alone the court's decision to dismiss his complaint with prejudice. *See id*. (concluding that plaintiffs' voluntary dismissal of one last contractual argument did "not transform this into an agreed disposition" over previously rejected arguments).

We turn, then, to Lavela's principal arguments. He first challenges the district court's denial of his motion to remand on procedural grounds, arguing that the defendants filed their notice of removal after the deadline for doing so had passed. But his timeline is mistaken: The defendants filed their notice of removal on May 24, 2024—within the requisite 30 days of being served with the complaint and summons on April 26, 2024. *See* 28 U.S.C. § 1446(b)(1). So, the district court correctly denied this challenge.

Lavela also substantively disputes the district court's denial of his motion to remand. He argues that his state-law-based claims—which, he says, predominated over his federal claims—should have been decided by the state court. But a district court's decision to accept or decline supplemental jurisdiction over state-law claims under 28 U.S.C. § 1367(c) rests within its discretion, *West v. Hoy*, 126 F.4th 567, 573 (7th Cir. 2025), and the district court here was entitled to exercise supplemental jurisdiction over Lavela's state-law claims, given the considerable overlap between the federal and state discrimination claims, *see* 28 U.S.C. § 1367(a).

Lavela finally argues that the district court lacked the authority to dismiss his second suit on the merits under Rule 41(a)(1)(B) because his notice of dismissal was self-executing.[†] That section of that rule reads:

> *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

FED. R. CIV. P. 41(a)(1)(B). Rule 41(a)(1)(B) is applied differently across the federal circuits. Some courts apply the rule in a manner akin to a res judicata inquiry after the plaintiff has filed a third lawsuit. *See, e.g., Rose Ct., LLC v. Select Portfolio Servicing, Inc.*, 119 F.4th 679, 685 (9th Cir. 2024) ("[W]hether the second voluntary dismissal is subject to the two-dismissal rule ... is an issue that becomes ripe (and can be determined) only in a third action, if and when one is filed." (internal citation omitted)). Other courts, like

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[†] The defendants assert that Lavela waived this argument because he did not raise it first in the district court. But we have a threshold obligation to ensure that we have jurisdiction to hear an appeal, for "[w]ithout jurisdiction [we] cannot proceed at all in any cause." *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1869); *see Craig v. Ontario Corp.*, 543 F.3d 872, 875 (7th Cir. 2008).

the district court here, apply the rule and dismiss a complaint on the merits when the plaintiff files a notice of voluntary dismissal under Rule 41(a)(1) for the second time.

We leave for another day whether one or two previous Rule 41(a)(1) dismissals are required before a case should be dismissed with on the merits. Here, we decide that the Rule 41(a)(1) notice that Lavela gave as to his second suit "effected the dismissal of the suit; the case was gone; no action remained for the district [court] to take." *Smith v. Potter*, 513 F.3d 781, 782–83 (7th Cir. 2008) (citing cases). "It is as if the suit had never been brought." *Id.* at 783 (internal citation omitted). Because Lavela filed his notice of voluntary dismissal before any defendant had answered (or moved for summary judgment), at that moment Lavela's second case ended, so any further orders by the district court were without effect. *Id.*

We also note that Lavela has a state court case currently pending in Chippewa County which concerns the same or similar events as in the two cases discussed above. *See Lavela v. Tapp*, No. 24-CV-000169 (Wis. Cnty. Ct. 2024). While this case will be dismissed without prejudice, the parties may continue to litigate that state court case.

We therefore MODIFY the judgment to reflect a dismissal without prejudice. As so modified, the judgment is AFFIRMED.