No. 17A_____

IN THE
SUPREME COURT OF THE UNITED STATES

BILL G. NICHOLS, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED,
Applicant,

v.

CHESAPEAKE OPERATING, LLC AND CHESAPEAKE EXPLORATION, LLC,
Respondents.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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May 25, 2018

PARTIES TO THE PROCEEDINGS BELOW

Applicant Bill G. Nichols, on behalf of himself and all others similarly situated, was the plaintiff and the appellant in the proceedings below.

Respondents Chesapeake Operating, LLC and Chesapeake Exploration, LLC were the defendants and the appellees in the proceedings below.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Tenth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.3 of the Rules of this Court, applicant Bill G. Nichols, on behalf of himself and all others similarly situated, respectfully requests a 59-day extension of time, up to and including August 3, 2018, within which to file a petition for a writ of certiorari in this case to review the judgment of the Tenth Circuit.

The Tenth Circuit entered its judgment on March 7, 2018 (the court's order and judgment is unpublished, but it is available at 718 F. App'x 736 and is attached hereto as Exhibit A). The petition would be due on June 5, 2018, and this application is made at least 10 days before that date. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. This case involves an important issue of statutory interpretation that has produced an acknowledged split of authority among the federal courts of appeals. The Class Action Fairness Act of 2005 ("CAFA") grants federal district courts subject-matter jurisdiction over certain class-action suits in which the parties are minimally diverse and the amount in controversy exceeds $5,000,000. *See* 28 U.S.C. § 1332(d). As an exception to that general rule, CAFA provides that a "district court shall decline to exercise jurisdiction" where more than two-thirds of the members of the proposed class and the defendant are citizens of the forum state.

Id. § 1332(d)(4). The question presented in this case is whether a court considering a motion to remand pursuant to this home-state mandatory abstention provision should apply the generally applicable and rebuttable presumption of citizenship from allegations or proof of residence, such that a class defined in terms of state residence would presumptively qualify for mandatory abstention where the defendant was also a citizen of the forum state.

The Sixth Circuit has held that such a presumption applies. *See Mason v. Lockwood, Andrews & Newnam, P.C.*, 842 F.3d 383, 390-91 (6th Cir. 2016), *cert. denied*, 137 S. Ct. 2242 (2017). Six other circuits, including the Tenth Circuit below, have held that the presumption does not, or at least does not automatically, apply. *See Nichols v. Chesapeake Operating, LLC*, 718 F. App'x 736, 741 (10th Cir. 2018); *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1166 (11th Cir. 2006); *Preston v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 793, 798-800 (5th Cir. 2007); *In re Sprint Nextel Corp.*, 593 F.3d 669, 673-74 (7th Cir. 2010); *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 884 (9th Cir. 2013); *Hood v. Gilster-Mary Lee Corp.*, 785 F.3d 263, 265-66 (8th Cir. 2015).

This conflict is important and ripe for resolution by this Court. The question whether to remand a class action is threshold in a substantial percentage of class actions removed to federal court. The confusion present in the lower courts muddles that threshold jurisdictional question. Further consideration of this issue by the federal circuits is unlikely to resolve the conflict: Not only have a majority of the circuits expressed their views, but also those views are badly fractured into at least three camps. While some circuits have definitively ruled that the presumption of

citizenship either does or does not apply, several circuits have adopted an intermediate position allowing use of the presumption where it is justified by "the entire record." *See Mondragon*, 736 F.3d at 886 ("We do not think, as the Seventh Circuit suggested, that evidence of residency can never establish citizenship. We agree with the observation of the Fifth Circuit that a court should consider 'the entire record' to determine whether evidence of residency can properly establish citizenship."); *Preston*, 485 F.3d at 800 (similar). This Court's guidance will help ensure uniformity in the approach taken by the lower courts in the many cases that address remand issues under CAFA.

2. This case is an ideal vehicle for the Court to resolve the statutory question. Plaintiff Bill Nichols filed this putative class action in Oklahoma court and defined the class as comprising royalty owners in Oklahoma natural gas wells who were also Oklahoma residents, defined according to a four-part test for residence. 718 F. App'x at 738. Defendants Chesapeake Operating, LLC and Chesapeake Exploration, LLC removed the case to the U.S. District Court for the Western District of Oklahoma, alleging subject-matter jurisdiction under CAFA. *Id.* In moving to remand, Plaintiff offered evidence showing that it was more likely than not that at least two-thirds of the class members were Oklahoma citizens. First, Plaintiff presented Defendant's monthly royalty-payment records showing each putative class member's residency, from which Plaintiff randomly selected sample of 100. *Id.* at 738-39. Then, Plaintiff conducted a statistical survey and skip-trace investigations of that random sample. *Id.* Those investigations tended to show that 95% of the sample were Oklahoma citizens. *Id.* at 739. Finally, Plaintiff employed

a statistician, who opined that, based on the results of the sample, it was more likely than not that two-thirds of the proposed class members were Oklahoma citizens. *Id.*

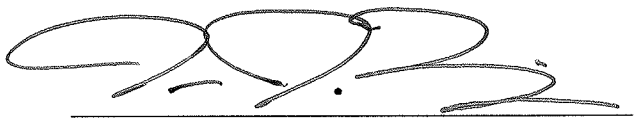
The district court denied the motion to remand, holding in relevant part that Plaintiff failed to carry his burden of showing by a preponderance of the evidence that at least two-thirds of the proposed class members were Oklahoma citizens. *Id.* Plaintiff sought leave to appeal pursuant to 28 U.S.C. § 1453(c)(1). Such leave was initially denied but granted upon Plaintiff's motion for panel reconsideration. In affirming the district court's denial of remand, the court of appeals acknowledged the circuit split and joined the majority of circuits holding that the rebuttable presumption of citizenship from allegations of residence does not apply to CAFA. 718 F. App'x at 741. That holding was outcome-determinative: Only after determining that such a presumption did not apply did the Tenth Circuit consider the particular evidence Plaintiff submitted below, which the court of appeals found lacking. *Id.* at 741-42. This case therefore presents the question cleanly, and the question is ripe for resolution by this Court.

3. The 59-day extension to file a certiorari petition is necessary because undersigned counsel was only very recently retained in this matter and needs the additional time to review the record and to prepare the petition and appendix, and because of other, previously engaged matters, including: (1) participation in a five-and-a-half-week trial in the U.S. District Court for the District of Columbia in *United States v. AT&T Inc., et al.*, Case No. 1:17-cv-02511-RJL (Mar. 22-Apr. 30, 2018); (2) an ongoing and active inquiry before the Federal Trade Commission's Division of

Enforcement; and (3) various pleadings in *In re Dealer Management Systems Antitrust Litigation*, MDL No. 2817 (N.D. Ill.).

Accordingly, applicant respectfully requests a 59-day extension of time, up to and including August 3, 2018, within which to file a certiorari petition in this case to review the judgment of the Tenth Circuit.

Respectfully submitted,



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May 25, 2018

EXHIBIT A

718 Fed.Appx. 736
This case was not selected for publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 10th Cir. Rule 32.1.
United States Court of Appeals, Tenth Circuit.

Bill G. NICHOLS, on behalf of himself and all others similarly situated, Plaintiff-Appellant,
v.
CHESAPEAKE OPERATING, LLC; Chesapeake Exploration, LLC, Defendants-Appellees.

No. 18-6006
|
FILED March 7, 2018

Synopsis

Background: Royalty owner in Oklahoma natural gas wells brought putative class-action suit in state court against wells' owner, asserting claims for breach of lease, breach of fiduciary duty, fraud, deceit and constructive trust. Well owner removed action to federal court under Class Action Fairness Act (CAFA). The United States District Court for the Western District of Oklahoma, No. 5:16–CV–01073–M, Vicki Miles-LaGrange, J., 2017 WL 4052810, denied royalty owner's motion to abstain and remand to state court. Royalty owner appealed.

Holdings: The Court of Appeals, Carlos F. Lucero, Circuit Judge, held that:

[1] there was no rebuttable presumption of class members' home-state citizenship that arose based on mere allegation of class members' residence, and

[2] district court did not clearly err in finding that royalty owner failed to prove at least two-thirds of proposed class members were Oklahoma citizens by preponderance of evidence, as required to obtain remand to state court under home-state exception to CAFA jurisdiction.

Affirmed.

West Headnotes (9)

[1] **Federal Courts**
Class actions

Court of Appeals reviews de novo the district court's interpretation of the Class Action Fairness Act's (CAFA) home-state exception to jurisdiction. 28 U.S.C.A. §§ 1332(d)(2)(A), 1332(d)(4)(B), 1332(d)(5)(B).

Cases that cite this headnote

[2] **Removal of Cases**
Evidence

Once a defendant establishes Class Action Fairness Act (CAFA) removal is proper, a party seeking remand to the state court bears the burden of showing by a preponderance of the evidence that jurisdiction in federal court is improper under one of CAFA's exclusionary provisions. 28 U.S.C.A. §§ 1332(d)(2)(A), 1332(d)(5)(B).

Cases that cite this headnote

[3] **Evidence**
Preponderance of Evidence

Preponderance of the evidence standard requires the party with the burden of proof to support its position with the greater weight of the evidence.

Cases that cite this headnote

[4] **Removal of Cases**
Evidence

In an action removed by a defendant to federal court under the Class Action Fairness Act

(CAFA), when the plaintiff invokes an exception to CAFA jurisdiction there is no rebuttable presumption of the class members' home-state citizenship that arises based on the mere allegation of the class members' residence. 28 U.S.C.A. §§ 1332(d)(2)(A), 1332(d)(5)(B).

Cases that cite this headnote

[5] **Removal of Cases**
Constitutional and statutory provisions

There is a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant under the Class Action Fairness Act (CAFA). 28 U.S.C.A. §§ 1332(d)(2)(A), 1332(d)(5)(B).

Cases that cite this headnote

[6] **Federal Courts**
Domicile and residence in general
Removal of Cases
Want of jurisdiction or of cause for removal

Individual's residence is not equivalent to his domicile, which requires both residence in a State and intent to remain there indefinitely, and it is domicile that is relevant for determining citizenship on a motion to remand an action to state court based on the home-state exception to Class Action Fairness Act (CAFA) jurisdiction. 28 U.S.C.A. §§ 1332(d)(2)(A), 1332(d)(4)(B), 1332(d)(5)(B).

Cases that cite this headnote

[7] **Federal Courts**
Class actions

Court of Appeals reviews for clear error the district court's factual findings concerning the applicability of the home-state exception to jurisdiction under the Class Action Fairness Act (CAFA). 28 U.S.C.A. §§ 1332(d)(2)(A), 1332(d)(4)(B), 1332(d)(5)(B).

Cases that cite this headnote

[8] **Federal Courts**
Class actions

Under the clear-error standard of appellate review for the district court's factual findings concerning the applicability of the home-state exception to jurisdiction under the Class Action Fairness Act (CAFA), Court of Appeals may reverse only if the district court's finding lacks factual support in the record or if, after reviewing all the evidence, Court of Appeals had a definite and firm conviction that the district court erred. 28 U.S.C.A. §§ 1332(d)(2)(A), 1332(d)(4)(B), 1332(d)(5)(B).

Cases that cite this headnote

[9] **Removal of Cases**
Evidence

District court did not clearly err in finding that royalty owner in Oklahoma natural gas wells failed to prove at least two-thirds of proposed class members were Oklahoma citizens by preponderance of evidence, as required to obtain remand to state court under home-state exception to jurisdiction under Class Action Fairness Act (CAFA) in removed action for breach of lease against wells' owner; royalty owner's citizenship evidence was extrapolated from statistically flawed sample that did not properly account for royalty owners that were trusts, sample included deceased individuals without providing further identifying citizenship information, and information in royalty owner's skip-trace reports was inconsistent with Oklahoma citizenship for some of sample's members. 28 U.S.C.A. §§ 1332(d)(2)(A), 1332(d)(4)(B), 1332(d)(5)(B).

Cases that cite this headnote

(W.D. Oklahoma) (D.C. No. 5:16–CV–01073–M)

Attorneys and Law Firms

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Timothy J. Bomhoff, Laura J. Long, Patrick L. Stein, McAfee & Taft, Oklahoma City, OK, for Defendants-Appellees.

Before LUCERO, BALDOCK, and BACHARACH, Circuit Judges.

ORDER AND JUDGMENT*

Carlos F. Lucero, Circuit Judge

***738** Bill Nichols appeals from a district court order denying his motion to abstain and remand to state court in this putative class-action suit against Chesapeake Operating, LLC and Chesapeake Exploration, LLC (collectively, "Chesapeake"). Exercising jurisdiction under 28 U.S.C. § 1453(c)(1), we affirm.

I

Nichols is a royalty owner in Oklahoma natural gas wells owned in part or operated by Chesapeake. In August 2016, he sued Chesapeake in Oklahoma state court for underpayment or non-payment of royalties. He sought class certification of certain "Oklahoma Residents," which he defined using a four-part test:

> Persons to whom, from January 1, 2015 to the date suit was filed herein, (a) Chesapeake mailed or sent each monthly royalty check on an Oklahoma well to an Oklahoma address (including direct deposit); (b) Chesapeake mailed or sent a 1099 for both 2014 and 2015 to an Oklahoma address; (c) the Settlement Administrator in Fitzgerald Farms, LLC v. Chesapeake Operating, Inc., Case No. CJ–10–38, Beaver County, Oklahoma mailed or sent a distribution check and 1099 to an Oklahoma address; and[ ] (d) except for charitable institutions, were not subject to the Oklahoma Withholding Tax for Nonresidents on royalties paid in 2014 to the date suit was filed.

Chesapeake removed the case to federal court based on the Class Action Fairness Act ("CAFA"), which grants district courts original jurisdiction over class actions involving at least 100 proposed class members, more than $5,000,000 in controversy, and the presence of any plaintiff class member who is a citizen of a State different from any defendant. See 28 U.S.C. § 1332(d)(2)(A), (d)(5)(B). In regard to citizenship, Chesapeake pointed out that its principal place of business is in Oklahoma, thereby making it an Oklahoma citizen, see § 1332(d)(10), and that there was a class member that met Nichols' resident definition—Austin College, a Texas citizen.

Nichols soon filed a motion arguing that CAFA's home-state exception required the district court to remand the case to state court. This exception requires a district court to decline jurisdiction if "two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed." § 1332(d)(4)(B). Nichols proffered evidence to show that at least two-thirds of the proposed class members shared Chesapeake's Oklahoma citizenship, including the declaration of statistician Joseph Kadane, Ph.D., who randomly selected 100 royalty owners from "a spreadsheet containing 28,929 unique records of royalty owners paid from Oklahoma wells and who have an Oklahoma address." Of the 100 royalty owners comprising Kadane's sample, there were 13 trusts, 7 entities, and 80 individuals.

To obtain citizenship information about those royalty owners, Nichols employed a marketing research firm and a private investigator. The research firm successfully surveyed 54 of the sample's royalty owners. ***739** It asked individuals whether they considered themselves to be Oklahoma citizens and whether they planned to move from Oklahoma in the near future. And it asked businesses whether they were organized or headquartered in Oklahoma. The firm did not propose any questions

about trustees or trust beneficiaries.

Based on the survey results, Nichols' counsel determined that 95% of the sample's royalty owners were Oklahoma citizens "because the data shows indicia of Oklahoma citizenship with no conflicting data of citizenship elsewhere." Based on that 95% determination, Kadane performed a statistical analysis and concluded that "it is more likely than not that more than 67% of the members of the [entire] proposed plaintiff class are Oklahoma citizens."

The district court was not persuaded, finding three significant flaws in the evidence. First the district court noted that neither the survey data nor the skip-trace investigation provided information as to the citizenship of trust beneficiaries or trustees—important components of a trust's citizenship.[1] Second, the district court found that a number of individuals identified as Oklahoma citizens were actually deceased, with no information provided as to heirs' citizenship. Finally, the district court found that Nichols' counsel had an "insufficient basis" for determining that some members of the random sample were Oklahoma citizens.[2] Accordingly, the district court denied Nichols' motion to abstain and remand, finding he had not shown the applicability of CAFA's home-state exception by a preponderance of the evidence. Nichols now appeals.

II

[1] [2] [3]We review de novo the district court's interpretation of CAFA's home-state exception to jurisdiction. See Woods v. Standard Ins. Co., 771 F.3d 1257, 1262 (10th Cir. 2014). "CAFA was enacted to respond to perceived abusive practices by plaintiffs and their attorneys in litigating major class actions with interstate features in state courts." Id. (quotation omitted). Thus, "once a defendant establishes [CAFA] removal is proper, a party seeking remand to the state court bears the burden of showing jurisdiction in federal court is improper under one of CAFA's exclusionary provisions." Id. Because Nichols concedes the propriety of removal, he must show the applicability of a CAFA exception by a preponderance of the evidence. See Mondragon v. Capital One Auto Fin., 736 F.3d 880, 884 (9th Cir. 2013); Vodenichar v. Halcón Energy Props., Inc., 733 F.3d 497, 503 (3d Cir. 2013); In re Sprint Nextel Corp., 593 F.3d 669, 673 (7th Cir. 2010); see also Dutcher v. Matheson, 840 F.3d 1183, 1189, 1190 (10th Cir. 2016).[3] ***740** "The preponderance of the evidence standard requires the party with the burden of proof to support its position with the greater weight of the evidence." Nutraceutical Corp. v. Von Eschenbach, 459 F.3d 1033, 1040 (10th Cir. 2006) (footnote omitted).

Nichols contends that a rebuttable presumption of citizenship arises from his allegation that the proposed class members are Oklahoma residents. And because Chesapeake did not offer evidence that more than one-third of the proposed class members are not Oklahoma residents, Nichols says, the district court was required to abstain. To support this contention, he cites the Sixth Circuit's majority opinion in Mason v. Lockwood, Andrews & Newnam, P.C., 842 F.3d 383 (6th Cir. 2016), cert. denied, —— U.S. ——, 137 S.Ct. 2242, 198 L.Ed.2d 678 (2017). The Mason majority reasoned that because "the law affords a rebuttable presumption that a person's residence is his domicile," id. at 390, and because state citizenship is based on domicile, citizenship could be presumed from residence—a transitive proposition (i.e., if A = B and B = C, then A = C). The majority stated that this proposition was compelling from a policy standpoint: "Affording the moving party a rebuttable presumption of citizenship based on residency avoids the exceptional difficulty of proving the citizenship of a class of over 100 individuals, given the nature and timing of the citizenship inquiry under the local controversy exception." Id. at 392–93.

The dissent pointed out that triggering a CAFA exception based on the mere allegation of residence conflicted with the federal courts' "strict duty to exercise the jurisdiction that is conferred upon them by Congress." Id. at 397 (Kethledge, J., dissenting) (quotation omitted). And given that abstention had long been considered "an extraordinary and narrow exception to that duty," id. (quotation omitted), the dissent concluded the better approach was to follow other circuits and require "at least some facts in evidence from which the district court may make findings regarding the class members' citizenship." Id. at 397–98 (quotation omitted). It cited, among other cases, the Tenth Circuit's unpublished decision in Reece v. AES Corp., in which a panel of this court applied in the CAFA-exception context the longstanding view that "allegations of mere residence may not be equated with citizenship." 638 Fed.Appx. at 769 (unpublished) (quotations omitted). Thus, the Reece panel said, such allegations must be accompanied by "some persuasive substantive evidence (extrinsic to the amended petition) to establish the [requisite] citizenship of the class members." Id.

The Eighth Circuit has similarly "read the historical citizenship/residency distinction into" the CAFA mandatory exception statute and rejected the assertion

that "presumptions alone may transform a challenged ***741** allegation of residency into the establishment of citizenship." Hargett v. RevClaims, L.L.C., 854 F.3d 962, 966 & n.2 (8th Cir. 2017) (citing Mason, 842 F.3d at 397–99 (Kethledge, J., dissenting); Reece, 638 Fed.Appx. at 769–70; and Mondragon, 736 F.3d at 884).

[4] [5] [6]We agree with the dissent in Mason, this court's non-precedential decision in Reece, and the other circuits that reject the applicability of a rebuttable presumption of citizenship in the context of a CAFA exception invoked based on the mere allegation of residence. There is a "strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant." Dutcher, 840 F.3d at 1190 (quotation omitted). Further, "[a]n individual's residence is not equivalent to his domicile and it is domicile that is relevant for determining citizenship." Siloam Springs Hotel, L.L.C. v. Century Sur. Co., 781 F.3d 1233, 1238 (10th Cir. 2015); see, e.g., Bingham v. Cabot, 3 U.S. (3 Dall.) 382, 383, 1 L.Ed. 646 (1798) ("A citizen of one state may reside for a term of years in another state, of which he is not a citizen; for, citizenship is clearly not co-extensive with inhabitancy.").[4] Congress no doubt "mean[t] to incorporate the established meaning of these terms," NLRB v. Amax Coal Co., 453 U.S. 322, 329, 101 S.Ct. 2789, 69 L.Ed.2d 672 (1981), into the CAFA exceptions premised on "citizenship," 28 U.S.C. § 1332(d)(4). See Hargett, 854 F.3d at 966. We therefore turn to the evidence Nichols submitted to show that two-thirds or more of the proposed plaintiff class members were Oklahoma citizens.

III

[7] [8]We review for clear error the district court's factual findings concerning the applicability of CAFA's home-state exception. See Mondragon, 736 F.3d at 886; see also Middleton v. Stephenson, 749 F.3d 1197, 1201 (10th Cir. 2014) (indicating that domicile and citizenship findings are reviewed for clear error). Under the clear-error standard, "we may reverse only if the district court's finding lacks factual support in the record or if, after reviewing all the evidence, we have a definite and firm conviction that the district court erred." Middleton, 749 F.3d at 1201.

[9]Nichols maintains that he provided enough evidence of the putative class members' Oklahoma citizenship to require remand. He presented business records provided by Chesapeake of its royalty owners along with their Oklahoma addresses; identified class members as being exempt from non-resident withholding tax; selected a representative sample of class members and obtained citizenship data on those members; and employed a statistician to draw conclusions about the composition of the class based on a random sample. Further, he stresses that his evidence was unrebutted.

We acknowledge the significant effort Nichols employed to show that at least two-thirds of the class members shared Chesapeake's Oklahoma citizenship. But we note that the need for this evidence was of Nichols' own making: he chose to define the class in terms of residence rather than citizenship. See In re Sprint Nextel Corp., 593 F.3d at 676 (stating that CAFA's home-state exception would have been satisfied had the plaintiffs simply limited the class to Kansas citizens because "it doesn't take any evidence to establish that Kansas citizens make up at least two-thirds of the members of a class that is open only to Kansas citizens"). By defining ***742** the class in terms of residence, Nichols saddled himself with an evidentiary burden, one which he sought to meet through admittedly imperfect evidence.

In particular, Kadane reached his conclusion that two-thirds or more of the class members are Oklahoma citizens by extrapolating from a flawed sample. As the district court observed, trusts—which make up nearly 15% of the sample—were not properly accounted for. Further, the sample included deceased individuals without providing further identifying citizenship information. And finally, the district court alluded to information in the skip-trace reports inconsistent with Oklahoma citizenship for some of the sample's members. Nichols does not dispute these problems or otherwise explain how Kadane's evidentiary extrapolation remains statistically viable.

Given the clear-error standard of review, we must affirm the district court's conclusion that Nichols failed to prove at least two-thirds of the proposed plaintiff class members were Oklahoma citizens by a preponderance of the evidence. The district court, therefore, properly determined that CAFA's home-state exception to exercising jurisdiction did not apply.

IV

AFFIRMED.

All Citations

718 Fed.Appx. 736

Footnotes

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

1 See Conagra Foods, Inc. v. Americold Logistics, LLC, 776 F.3d 1175, 1181 (10th Cir. 2015) (explaining that "[w]hen a trustee is a party to litigation, it is the trustee's citizenship that controls for purposes of diversity jurisdiction" as long as the trustee is a real party in interest, and "[w]hen the trust itself is party to the litigation, the citizenship of the trust is derived from all the trust's 'members,' " which "includes the trust's beneficiaries"), aff'd sub nom. Americold Realty Trust v. Conagra Foods, Inc., —— U.S. ——, 136 S.Ct. 1012, 194 L.Ed.2d 71 (2016).

2 For instance, the skip-trace reports indicated that only 35 of the sample's class members had Oklahoma driver's licenses and that 37 members had non-Oklahoma addresses.

3 Nichols suggests that in order to meet his burden, he must make only "some minimal showing" that at least two thirds of the proposed class members are Oklahoma citizens. Reece v. AES Corp., 638 Fed.Appx. 755, 769 (10th Cir. 2016) (unpublished). In Reece, a panel of this court observed, in the context of CAFA's local-controversy exception, 28 U.S.C. § 1332(d)(4)(A), that although "[s]everal of our sister circuits have required plaintiffs to establish the elements of a CAFA jurisdictional exception by a preponderance of the evidence[,] [s]ome district courts[ ] ... have required less proof, embracing a reasonable-probability standard or something akin to it." 638 Fed.Appx. at 768 (emphasis added; citations omitted). The Reece panel declined to embrace either approach, and instead selected a burden it found common to both, which, as Nichols posits, requires "some minimal showing of the citizenship of the proposed class at the time that suit was filed." Id. at 769 (quotations omitted). We conclude, however, that a more definitive standard is warranted, and we choose to follow our sibling circuits in their use of the more exacting preponderance-of-the-evidence standard. That standard is consistent with the "strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant." Dutcher, 840 F.3d at 1190 (quotation omitted).

4 Domicile requires both residence in a State and intent to remain there indefinitely. Middleton v. Stephenson, 749 F.3d 1197, 1200 (10th Cir. 2014).