In The

Supreme Court of the United States

Sabrina Marie Wadhams, *Petitioner*

v.

American Federation of Teachers, et al, *Respondents*

On Petition for a Writ of Certiorari

To The Fifth Circuit

United States Court of Appeals

PETITION FOR WRIT OF CERTIORI

Mark Ellis O'Brien
Post Office Box 342
Lunenburg, Massachusetts 01462
978-790-1936

QUESTIONS PRESENTED FOR REVIEW

1. Whether due process is violated when an unincorporated association is considered a citizen of the Plaintiff's state when none of the events leading to the claim occurred in the Plaintiff's home state, and this citizenship is the basis for subject matter jurisdiction under the diversity rule.

2. Whether the rule from *Steelworkers v. Bouligny* should be overruled to the extent that national labor unions should be treated as corporations regarding citizenship and diversity.

3. Whether in this case, to correct a mistake in the pleadings, relief should have been granted under Rule 60(b)?

4. Whether the lower Court abused its discretion when it denied leave to amend the Complaint under Rule 15(a)(2)?

5. Whether the lower Court erred when it dismissed the entire case, rather than dismissing only Defendants over which the Court claimed no jurisdiction?

6. Whether the lower Court erred when it dismissed the case before deciding a Plaintiff motion-to-amend that would have provided federal claims?

PARTIES TO THE PROCEEDING

American Federation of Teachers, 555 New Jersey Ave NW, Washington, DC 20001

Texas AFT, 912 Highway 183 South, Austin, TX 78741

Corpus Christi AFT, 4455 S Padre Island Drive, Corpus Christi, TX 78411.

Corpus Christi Independent School District, 801 Leopard Street, Corpus Christi, TX 78401.

RELATED CASES

United States District Court, District of Massachusetts

Sabrina Marie Wadhams v. American Federation of Teachers 19cv12098. Case transferred to Southern District of Texas: 20 July 2020.

Southern District of Texas:

Wadhams v. American Federation of Teachers, et al. Southern District of Texas. 20cv00260. Dismissed for lack of subject matter jurisdiction: 2 February 2022. Rule 60 Motion for Relief denied. Notice of Appeal: 18 April 2022.

Fifth Circuit Court of Appeals:

Sabrina Marie Wadhams v. American Federation of Teachers, et al. Fifth Circuit Court of Appeals. No. 22-40246. Firth Circuit Affirmed. 25 October 2022.

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JURISDICTION

Cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. 28 U.S. Code § 1254(1). In this case, the Fifth Circuit Court of Appeals affirmed the Fifth Circuit's Order of dismissal on 25 October 2022.

Jurisdiction in the First and Fifth Circuit was based on diversity, 28 U.S.C. §1332.

STATEMENT OF THE CASE

Petitioner Wadhams was employed by the Corpus Christi Independent School District [CCISD] in Texas as a special education teacher. She was assigned to a room with autistic students where she was seriously injured by a student.

The contention of Ms. Wadhams is that both Defendants AFT and the CCISD

owed her a duty of care—the CCISD to not place her in harm's way; and the AFT to not stand idly by while it knew she was in harm's way, and to not have effectuated her removal from the dangerous classroom.

This case was filed in the District of Massachusetts on 9 October 2019 against the national AFT union as a 28 U.S.C. § 1330 breach of contract and negligence action, the Plaintiff a citizen of Massachusetts, and Defendant AFT, headquartered in Washington, D.C.

The First Circuit on 15 September 2020 removed the case to the Southern District of Texas [SDT], where the Defendant's alleged misconduct had taken place.

In the SDT, Ms. Wadhams moved—and the Court allowed—the addition of CCISD and the local and state AFT as Defendants.

Defendant AFT on 23 March 2021 filed a Rule 12(b)(6) motion to dismiss claiming the case was a duty-of-fair-representation action and consequently time-barred; and that the Plaintiff had failed to establish viable negligence or breach of contract claims against AFT. That motion was never ruled upon.

On 9 February 2022 the SDT issued a show cause Order as to why the case should not be dismissed for lack of subject-matter-jurisdiction because it appeared there was not complete diversity of citizenship, and that further, the Court apparently lacked federal question jurisdiction.

The case was dismissed for lack of subject matter jurisdiction on 28 February 2022. Plaintiff Wadhams then moved for relief under Rule 60, and for leave to

amend by enumerating federal labor statutes.

Both motions were denied on 4 April 2022. Ms. Wadhams filed a notice of appeal on 18 April 2022. The decision of the Fifth Circuit was affirmed on 25 October 2022, leading to this petition for certiorari.

SUMMARY OF THE ARGUMENT

The time has come to revisit *Steelworkers v. Bouligny* and carve-out a rule establishing a rational basis for the citizenship of labor unions lest under diversity jurisdiction the unions are allowed to slip-- along with the merits of a case-- down through the narrow cracks of justice.

"The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."

***Conley v. Gibson,* 355 US 41, 47 (1957).**

An error in pleading this case—not recognizing that a union has citizenship is all states where it has members-- led the Court to accuse Counsel of *ignorance of the law,* and to dismiss the case. In the interest of justice, the Supreme Court should take a second look, and review that dismissal, and also the case law ushered the ruling along because uncorrected, it constitutes grave error by allowing culpable parties a means of eluding justice.

But for the denial of Ms. Wadhams's motion for relief from judgment, the door to amend and correct the pleading would not have been closed. The Court

made a mistake under the abuse-of-discretion standard—a doctrine that has deteriorated through the years from encompassing an innocent mistake by the Court to take on a new and nefarious meaning. The doctrine's early origins, found in a Wisconsin case, should not be forgotten. "The term as used in the decisions of courts and in the books, implying, in common parlance, a bad motive or wrong purpose, is not the most appropriate. It is really a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence." *Murray v. Buell*, 74 Wis. 14 (1889).

In that regard, the decision to dismiss— commonly called abuse of discretion—is more aptly known by a better name, a decision, "clearly against, reason and evidence." Unreasonable and contrary to justice. To call it *abuse* paints a distorted picture.

Although the Court could have allowed pending motions-to-amend—motions that would have cleared-up the federal question issue-- it fell comfortably back on the rule from *Bouligny*, and consigned the entire case to the litigation junkyard.

ARGUMENT

"We are of the view that these arguments, however appealing, are addressed to an inappropriate forum, and that pleas for extension of the diversity jurisdiction to hitherto uncovered broad categories of litigants ought to be made to the Congress and not to the courts."

***Steelworkers v. Bouligny, Inc.* 328 U.S. 150-151 (1965).**

Congress hasn't resolved the issue in the ensuing fifty-eight years so it's high-time

the Court revisit *Bouligny* because this Court has within its own hands the tools to fashion a remedy for the miscarriage of justice that was devastating to the Plaintiff in this case.

The arguments for overturning *Bouligny* are well-reasoned. "They assert, with considerable merit, that it is not good judicial administration, nor is it fair, to remit a labor union or other unincorporated association to vagaries of jurisdiction determined by the citizenship of its members and to disregard the fact that unions and associations may exist and have an identity and a local habitation of their own." *Bouligny* at 150.

To be sure, Defendant AFT national, early in this case insisted that the Corpus Christi AFT [CCAFT] was an entity unto itself although affiliated with the national AFT in Washington, D.C. Further, it can't reasonably be said that CCAFT or the Texas AFT—both separate Defendants in this case-- have members in Massachusetts where the Plaintiff resides.

IN THE WAKE OF BOULIGNY

RELIEF PURSUED ALONG VARIOUS PATHS

The district Court cited *Lyles* for the proposition that, "Whether to grant or deny relief under Rule 60(b) lies within the sound discretion of the district court and will be reversed only for abuse of that discretion." *Lyles v. Medtronic Sofamor Danek, USA, Inc.*, 871 F.3d 305, 315 (5th Cir. 2017).

The case at bar is to be distinguished from *Lyles* which involved Rule 60 as it

applied to newly-discovered evidence and fraud. Here, the Plaintiff—in light of the dismissal of her case for want of subject matter jurisdiction—asked rather that she be granted leave to amend with federal statutes that although clear in the record, hadn't been enumerated.

Elaborating further, the lower Court wrote in its decision, "But "gross carelessness, ignorance of the rules, or ignorance of the law are insufficient bases for 60(b)(1) relief." *Trevino v. City of Fort Worth,* 944 F.3d 567, 571 (5th Cir. 2019) (per curiam) (cleaned up).

"In fact, a court would abuse its discretion if it were to reopen a case under Rule 60(b)(1) when the reason asserted as justifying relief is one attributable solely to counsel's carelessness with or misapprehension of the law or the applicable rules of court." *Id.*

The Court's reliance on *Trevino* is misplaced because that case concerned a lawyer who had failed to register with the Court's electronic filing system, and the failure to respond to a motion to dismiss. Here, in pleadings, Counsel had accurately portrayed the misconduct of the Defendants and was asking the Court for leave to name those pleadings by listing the corresponding federal statutes in an amended Complaint.

In fact, concerning Defendants AFT, federal jurisdiction *is* in the record where the Plaintiff quotes a United States Supreme Court case—that a union owes its member a duty of care in all undertakings—a doctrine that derives from decades of case law.

"Under this doctrine, the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct. *Humphrey* v. *Moore,* 375 U. S., at 342. It is obvious that Owens' complaint alleged a breach by the Union of a duty grounded in federal statutes, and that federal law therefore governs his cause of action. *E. g., Ford Motor Co.* v. *Huffman, supra.*" *Vaca v. Sipes*, 386 US 171, 177 (1967). In the present case as pled, it's obvious also that Ms. Wadhams's complaint alleged, "a breach by the Union of a duty grounded in federal statutes..." *Id.*

THE DEFENDANTS

ALL CULPABLE BY DIFFERENT THEORIES

The cause-of-action in this case is simple—the Plaintiff school teacher was injured at the hands of a dangerous student, and the union and the school district had failed in their duties-of-care concerning the Plaintiff—the Defendant school district because it placed Ms. Wadhams in harm's way; and Defendants AFT because they knew she had been placed in harm's way by the school district, but looked the other way.

There are three AFT Defendants—the AFT local; the Texas AFT, and the national AFT, headquartered in Washington.

which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley* at 47.

In this case, without good cause, the merits have played second-fiddle to the pleadings.

IGNORANCE OF THE LAW

No one raised the diversity jurisdiction problem until the SDT raised it on its own initiative in February 2022. The case had been filed in October 2019, and neither the District of Massachusetts, nor AFT's Boston or Texas lawyers had brought up the issue.

Reflecting on this dilemma, the SDT wrote, "This Court has an independent obligation to satisfy itself of its own jurisdiction, even when the Parties are prepared to concede it. *Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 95 (1998).

Which begs the question—are the parties and the District of Massachusetts as ignorant of the law as is Ms. Wadhams's counsel; or has an honest mistake been made concerning diversity of citizenship as it relates to labor unions? And this against the backdrop of a case that should have been dissected and overruled fifty years ago.

Ignorance of the law is a largely criminal construct that has little place in pleading a civil case but is more properly relegated to dusty volumes on antiquated

By the lower Court's reasoning, it doesn't have subject-matter-jurisdiction over the AFT because the Plaintiff, "... brought suit entirely on Texas state law claims but without complete diversity of citizenship between the Parties, depriving this Court of jurisdiction." On the contrary, a Plaintiff motion-to-amend filed early in the SDT clearly supplied a federal cause-of-action. However, that motion remains to be ruled upon. [Motion to amend. 3/10/2021].

The lower Court's resolution of this dilemma constitutes abuse-of-discretion because it points-out the problem but forecloses the remedy—amendment-- while casting stones at Counsel. "Even if the Court were inclined to grant such relief, it would be an abuse of discretion to do so because Wadhams's counsel plainly states that relief is sought due to his ignorance of the law."

Petitioner Wadhams submits that even if jurisdiction appears problematic for AFT national; diversity jurisdiction remains viable for Defendants Corpus Christi AFT, and the Texas AFT because none of the members of those entities reside in Massachusetts where Ms. Wadhams resides.

Further, the lower Court's reliance on *Trevino* is made perhaps in the right *church* but the wrong *pew* because the rule quoted by the lower Court derives from a case diametrically different from the one at bar-- *Knapp v. Dow Corning Corp.*

As is often the case, if citations are traced back to their *origins*, they're necessarily reduced to their essence-- clever quotes patently off-point.

"In the case of a motion for reconsideration brought under Rule 60(b)(1), for

example, if the failure of the party to submit the evidentiary materials in question is attributable solely to the negligence or carelessness of that party's attorney, then it would be an abuse of discretion for the court to reopen the case and to consider the evidence." *Knapp v. Dow Corning Corp.*, 941 F. 2d 1336, 1338 Court of Appeals, 5th Circuit 1991.

If the lower Court places its reliance on *Trevino* which issues from *Knapp*; then the Court's reliance is misguided because the Plaintiff's Attorney here didn't fail to submit evidence and that failure wasn't attributable to negligence or carelessness. It was merely a *mistake* in pleading which could quickly be remedied by an amendment which in fact had been sought by the Plaintiff in its motion for relief under Rule 60, and earlier in a motion yet-to-be ruled upon.

The motion-for-relief and its concurrent motion to amend are inextricable, one from the other, because the motion for Rule 60 relief is purposefully structured to open the door for the motion to amend—a door that had been otherwise closed by the dismissal.

None of the reasons for not granting the motions-to-amend are present-- "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

"The Federal Rules reject the approach that pleading is a game of skill in

book shelves because its origins are from criminal matters of days gone by.

"This may be; but both murder and robbery, with arson, burglary, and some other crimes, are defined by writers on the common law, which is part of the law of every state in the Union, of which, for the most obvious reasons, no one is allowed to allege his *ignorance*, in excuse for any crime he may commit." *United States* v. *Smith,* 5 Wheat. 71, 85 (1820). [Emphasis supplied].

The facts in this case were properly pled but perhaps not properly titled. This alone should not allow the Defendants escape culpability through a procedural side-door. Nor can pleading failures properly be held as ignorance. The culpable conduct of Defendants AFT—memorialized in the Complaint-- is the very same conduct codified in the Labor Management Relations Act [LMRA] § 301 (29 U.S.C. §185), and in pertinent parts of the National Labor Relation Act. [NLRA]

"Ignorance of law means want of knowledge of those laws which a person has a duty to know and which everyman is presumed to know." [https://definitions.uslegal.com/i/ignorance-of-law/].

That Plaintiff's counsel is guilty of ignorance of the law, is a construct peculiar to the lower Court's derailed reasoning. "Wadhams's counsel plainly states that relief is sought due to his ignorance of the law." Counsel never stated that, but in its motion did write, "Counsel for the Plaintiff had inadvertently made the mistake of regarding the union Defendants as corporate entities whereby the union would be a citizen of its state of incorporation where it also has its principal place of

business. The Plaintiff asks the Court's indulgence to find this error excusable neglect." [Plaintiff motion for Rule 60 Relief.]

And this brand of *ignorance* of the law isn't found in *Trevino*, cited by the lower Court, nor in the cases cited therein. The cases cited in *Trevino* deal with procedural errors—the failure to timely file an appeal; failure to timely submit evidence, and the failure to register for the Courts electronic case management system which led to the failure to respond to a motion.

The error in the present case is strictly confined to errors in pleading which bring us back to *Conley*, where missteps in pleading are to be forgiven because justice demands they bow to the merits.

Plaintiff's counsel merely misapprehended the law when it believed labor unions were treated as corporations—as residents of where they're headquartered. Secondly, although not named by statute, federal causes of action are clearly present in the pleadings notwithstanding the *ignorance* of Counsel.

FEDERAL CAUSES-OF-ACTION

At least two federal causes-of-action are boldly etched into the record of this case. For the lower Court to demand anything further in order to satisfy subject matter jurisdiction is to seek what it already had in front of it. And what may not be in the Complaint is nonetheless in the pleadings and can be swiftly placed in the Complaint by amendment.

The Supreme Court weighed-in thirty years ago—that a union's breach of the

duty of fair representation applies to *all* union activity. "We hold that the rule announced in *Vaca v. Sipes*, 386 U.S. 171, 190 (1967)— that a union breaches its duty of fair representation if its actions are either "arbitrary, discriminatory, or in bad faith" — applies to all union activity, including contract negotiation. We further hold that a union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a "wide range of reasonableness," *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953), as to be irrational." *Air Line Pilots Ass'n v. O'Neill,* 499 US 65, 67 (1991)." [Plaintiff Opposition to Defendant AFT Motion to Dismiss. 6 February 2021].

And with regard to Defendant Corpus Christi Independent School District, it negligently maintained a classroom wherein a dangerous out-of-control student was perpetually poised to attack educational staff. For diversity purposes, Defendant CCISD is a citizen of Texas, the Plaintiff a citizen of Massachusetts.

"The Plaintiff has a possessory interest in her health and well-being and under the provisions of the 14th Amendment, the state cannot take that away. "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition." [Constitution of the World Health Organization]." [Plaintiff Motion to Amend. 10 March 2021].

In its motion-to-amend, Petitioner Wadhams addressed the guarantees of the Constitution. "Notwithstanding the theory that one's health and well-being constitute property rights, Section 1983 recognizes the state's obligation to protect

against violence. "Ordinarily, a state official has no constitutional duty to protect an individual from private violence." *McClendon v. City of Columbia*, 305 F.3d 314, 324 (5th Cir. 2002) (en banc) (citing *DeShaney v. Winnebago* County Dep't of Soc. Servs., 489 U.S. 189, 197, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989).

"There are exceptions however, and "in certain limited circumstances the Constitution imposes upon the State affirmative duties of care and protection with respect to particular individuals." *DeShaney*, 489 U.S. at 198. "...[w]hen the state, through the affirmative exercise of its powers, acts to restrain an individual's freedom to act on his own behalf 'through incarceration, institutionalization, or other similar restraint of personal liberty,' the state creates a 'special Lawsuits Against the Government... relationship' between the individual and the state which imposes upon the state a constitutional duty to protect that individual from dangers, including, in certain circumstances, private violence." *McClendon*, 305 F.3d at 324 (citing *DeShaney*, 489 U.S. at 200)." [Plaintiff Motion to Amend].

In short, irrespective of Plaintiff counsel's *ignorance* of the law, federal causes-of-action were present in the record *before* the Court dismissed for want of subject matter jurisdiction.

Regarding amendments to a pleading, Federal Rule 15(a) trumps all other considerations in this case where, "leave shall be freely given when justice so requires." *Foman v. Davis*, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962).

Absent leave to amend—to tailor the pleading to the constraints of subject matter jurisdiction— the culpable parties here will never be held accountable for their tortious and negligent conduct.

Under the facts of this case, the Order of Dismissal; the denial of the Motion for relief under Rule 60, and the denial of the Motion to amend were all in error because these rulings cast the merits recklessly to the four winds.

CONCLUSION

WHEREFORE, Petitioner Wadhams asks that this Honorable Court grant the petition for certiorari.

Respectfully Submitted,

__/s/__Mark Ellis O'Brien___
Post Office Box 342
Lunenburg, Massachusetts 01462
978.790.1936.

In The

Supreme Court of the United States

Sabrina Marie Wadhams, *Petitioner*

v.

American Federation of Teachers, et al, *Respondents*

On Petition for a Writ of Certiorari

To The Fifth Circuit

United States Court of Appeals

APPENDIX INDEX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

SABRINA MARIE WADHAMS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 2:20-CV-00260**
	§	
AMERICAN FEDERATION OF TEACHERS; TEXAS AMERICAN FEDERATION OF TEACHERS; CORPUS CHRISTI AMERICAN FEDERATION OF TEACHERS; AND CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT,	§	
	§	
Defendants.	§	

ORDER OF DISMISSAL

On February 9, 2022, the Court *sua sponte* questioned whether it had subject matter jurisdiction in this case. (Dkt. No. 80). Plaintiff Sabrina Wadhams brings only state law claims under a theory of diversity jurisdiction but there does not appear to be complete diversity of citizenship between Wadhams and all the Defendants. Specifically, both Wadhams and the American Federation of Teachers are citizens of Massachusetts—which deprives the Court of diversity jurisdiction. (*Id.*). The Court ordered the Parties to Show Cause as to why the case should not be dismissed. Wadhams Responded. (Dkt. No. 81). Wadhams's Response addresses the amount in controversy requirement, which is not at issue, but said nothing about the citizenship of the parties. The Unions Responded. (Dkt. No. 82). The Unions concur that the Court does not have jurisdiction

because diversity does not exist. Corpus Christi Independent School District did not respond.

There is not complete diversity of citizenship between Wadhams and the Defendants. *See* (Dkt. No. 80). When a court lacks jurisdiction, all that remains within its power is dismissal. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94, 118 S.Ct. 1003, 1012, 140 L.Ed.2d 210 (1998). Accordingly, this case is **DISMISSED WITHOUT PREJUDICE**.

It is SO ORDERED.

Signed on February 28, 2022.

Drew B Tipton

DREW B. TIPTON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

SABRINA MARIE WADHAMS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 2:20-CV-00260**
	§	
AMERICAN FEDERATION OF TEACHERS, TEXAS AMERICAN FEDERATION OF TEACHERS, CORPUS CHRISTI AMERICAN FEDERATION OF TEACHERS, AND CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT,	§	
	§	
Defendants.	§	

ORDER

On February 28 this action was dismissed without prejudice for lack of subject matter jurisdiction. (Dkt. No. 83). Plaintiff Sabrina Wadhams now seeks relief from the order of dismissal, under Rule 60(b)(1) of the Federal Rules of Civil Procedure. Her counsel argues that he "inadvertently made the mistake of regarding the union Defendants as corporate entities" and thereby brought suit entirely on Texas state law claims but without complete diversity of citizenship between the Parties, depriving this Court of jurisdiction. (Dkt. No. 84 at 2). Wadhams also seeks leave to amend her complaint to add a federal cause of action, under Rule 15(a)(2). (*Id.* at 1, 4). All defendants are opposed. (Dkt. No. 85); (Dkt. No. 86).

Rule 60(b)(1) provides a party relief from a final judgment, order, or proceeding for "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1).

Whether to grant or deny relief under Rule 60(b) lies within the sound discretion of the district court and will be reversed only for abuse of that discretion. *Lyles v. Medtronic Sofamor Danek, USA, Inc.*, 871 F.3d 305, 315 (5th Cir. 2017). But "gross carelessness, ignorance of the rules, or ignorance of the law are insufficient bases for 60(b)(1) relief." *Trevino v. City of Fort Worth*, 944 F.3d 567, 571 (5th Cir. 2019) (per curiam) (cleaned up). "In fact, a court would abuse its discretion if it were to reopen a case under Rule 60(b)(1) when the reason asserted as justifying relief is one attributable solely to counsel's carelessness with or misapprehension of the law or the applicable rules of court." *Id.*

Here, Wadhams recognizes that the Court did not have subject matter jurisdiction, (Dkt. No. 84 at 2), but still asks the Court to grant relief from the order dismissing the case without prejudice. Even if the Court were inclined to grant such relief, it would be an abuse of discretion to do so because Wadhams's counsel plainly states that relief is sought due to his ignorance of the law. *See Trevino*, 944 F.3d at 571. Therefore, the Court **DENIES** Wadhams's Motion. (Dkt. No. 84). Accordingly, this case remains closed, and all pending motions (including the motion for leave to amend Wadhams's complaint that accompanied her Rule 60(b)(1)) are terminated.

It is SO ORDERED.

Signed on April 4, 2022.

Drew B Tipton

DREW B. TIPTON
UNITED STATES DISTRICT JUDGE

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 25, 2022
Lyle W. Cayce
Clerk

No. 22-40246
Summary Calendar

SABRINA MARIE WADHAMS,

Plaintiff—Appellant,

versus

AMERICAN FEDERATION OF TEACHERS; CORPUS CHRISTI AMERICAN FEDERATION OF TEACHERS; CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT; TEXAS AMERICAN FEDERATION OF TEACHERS,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:20-CV-260

Before KING, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Sabrina Wadhams appeals three decisions by the district court, which dismissed her case for lack of subject matter jurisdiction, denied her relief

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

under Rule 60(b), and denied her leave to amend under Rule 15(a)(2). We AFFIRM.

Plaintiff-Appellant Sabrina Wadhams, a teacher once employed by the Corpus Christi Independent School District ("CCISD"), brought tort and contract claims against the American Federation of Teachers ("AFT"), a union representing teachers across the country, in the U.S. District Court for the District of Massachusetts. The Massachusetts district court transferred the case to the U.S. District Court for the Southern District of Texas (henceforth, the "district court"). Wadhams subsequently amended her complaint to include Texas state law claims and added CCISD and the state and local AFT chapters (collectively, "Defendants-Appellees") as defendants. The district court then *sua sponte* issued a show cause order concerning its subject matter jurisdiction. It questioned whether diversity jurisdiction—the only basis under which Wadhams had asserted the court's jurisdiction—was present in this case given that AFT is an unincorporated association with members in Massachusetts, where Wadhams resides. Following the parties' responses to that order, the district court dismissed the case for lack of subject matter jurisdiction. Wadhams then moved for relief from dismissal under Rule 60(b)(1) of the Federal Rules of Civil Procedure ("FRCP") and for leave to amend under FRCP Rule 15(a)(2) to add claims arising under federal labor statutes. The district court denied both motions. Wadhams, now proceeding *pro se*, appeals these denials and the dismissal for lack of subject matter jurisdiction.

We review the district court's dismissal for lack of subject matter jurisdiction *de novo*. *Ordonez Orosco v. Napolitano*, 598 F.3d 222, 225 (5th Cir. 2010). Federal courts' diversity jurisdiction requires "complete diversity," meaning that all persons on one side of the suit (Plaintiff-Appellant) must be citizens of different states than all persons on the opposing side (Defendants-Appellees). 28 U.S.C. § 1332; *see Harvey v. Grey Wolf Drilling Co.*, 542 F.3d

1077, 1079 (5th Cir. 2008). Unincorporated associations, such as labor unions, share citizenship with each of their members for diversity purposes. *Bass v. Int'l Bhd. of Boilermakers*, 630 F.2d 1058, 1067 n.17 (5th Cir. 1980).

Here, AFT is an unincorporated association with some members who are citizens of Massachusetts. Wadhams is a Massachusetts citizen. For purposes of diversity jurisdiction, both Wadhams and AFT are considered Massachusetts citizens. Complete diversity thus did not exist between parties, and the district court correctly held that it lacked subject matter jurisdiction over this case.

Next, we review a decision to deny discretionary relief under Rule 60(b) for abuse of discretion. *Provident Life & Accident Ins. Co. v. Goel*, 274 F.3d 984, 997 (5th Cir. 2001). In relevant part, Rule 60(b)(1) allows a court to relieve a party from a judgment or order based on the party's "mistake, inadvertence, surprise, or excusable neglect." FED. R. CIV. P. 60(b)(1). "Implicit in the fact that Rule 60(b)(1) affords extraordinary relief is the requirement that the movant make a sufficient showing of unusual or unique circumstances justifying such relief." *Pryor v. U.S. Postal Service*, 769 F.2d 281, 286 (5th Cir. 1985). With regard to "mistake, inadvertence, . . . or excusable neglect," "'[i]gnorance of the rules is not enough, nor is ignorance of the law.'" *Id.* at 287 (citing 11 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 2858 at 170 (footnotes omitted)).

The mistake putatively justifying grounds for relief here stems from a misunderstanding of the rules governing diversity jurisdiction. Wadhams's counsel initially erred in bringing this suit under diversity jurisdiction without correctly determining the citizenship of AFT. Such ignorance of law cannot support a Rule 60(b) motion. *See Trevino v. City of Fort Worth*, 944 F.3d 567, 571 (5th Cir. 2019) ("[C]ounsel's carelessness with or misapprehension of

the law or local rules does not justify relief.").[1] The district court did not abuse its discretion in denying Wadhams's Rule 60(b) motion.

Finally, we consider the district court's denial of Wadhams's motion to amend under FRCP Rule 15(a)(2). We review a denial of leave to amend for abuse of discretion. *Filgueira v. U.S. Bank Nat'l Ass'n*, 734 F.3d 420, 422 (5th Cir. 2013). Although a court "should freely give leave [to amend] when justice so requires," FED. R. CIV. P. 15(a)(2), leave to amend can be denied when justified by, for example, mootness. *Carroll v. Fort James Corp.*, 470 F.3d 1171, 1175 (5th Cir. 2006). The district court need not give reasons when the reason justifying the denial is apparent and the record reflects "ample and obvious grounds" for doing so. *See id.* (internal quotations omitted) (quoting *Mayeaux v. La. Health Serv. & Indem. Co.*, 376 F.3d 420, 426 (5th Cir. 2004)). Both conditions are present here. Because the district court did not have subject matter jurisdiction, all it could do was dismiss the suit. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). It thus did not abuse its discretion in disallowing a motion to amend after it had already dismissed the suit.[2]

[1] Wadhams's attempts to distinguish the facts in the present case from the facts in *Trevino* are unavailing, as such differences do not affect the underlying principle that a Rule 60(b) motion will not be granted for a mistake solely involving ignorance of the law. *See Trevino*, 944 F.3d at 571.

[2] Wadhams also argues that the court should not have dismissed her suit without ruling on a March 10, 2021 motion to amend her complaint to add a federal cause of action under 42 U.S.C. § 1983. But the district court was without jurisdiction to grant Wadhams's motion for leave to add a § 1983 claim. This court has held that "an amendment may not remedy a jurisdictional defect by asserting a cause of action to serve as a statutory basis for federal question jurisdiction." *In re Katrina Canal Breaches Litig.*, 342 F. App'x 928, 931 (5th Cir. 2009) (citing *Whitmire v. Victus Ltd.*, 212 F.3d 885, 888 (5th Cir. 2000)). This is what Wadhams's amendment sought to do, and the district court did not err by *sub silentio* denying leave to amend when it dismissed the case for lack of subject-matter jurisdiction.

For the foregoing reasons, we AFFIRM.

In The

Supreme Court of the United States

Sabrina Marie Wadhams, *Petitioner*

v.

American Federation of Teachers, et al, *Respondents*

On Petition for a Writ of Certiorari

To The Fifth Circuit

United States Court of Appeals

CERTIFICATE OF SERVICE

Per Supreme Court Rule 29.5, I hereby certify that a true copy of this Petition has on 20 January 2023 been served on Counsel for Defendant CCISD, Rebecca S. Bailey, Esq., Phoenix Tower, 3200 Southwest Freeway, Houston, Texas. 713-554-6765; and on Counsel for AFT Defendants, Matthew B. Bachop, Esq., 707 West 34th Street, Austin, Texas 78705. 512-474-6200. All parties required to be served have been served.

__/s/__Mark Ellis O'Brien___