UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

HUS HARI BULJIC, et al., *Plaintiffs-Appellees*, v. TYSON FOODS INC., et al., *Defendants-Appellants*.	No. 21-1010

APPELLEES' OPPOSITION TO MOTION FOR ADMINISTRATIVE STAY

Appellees Hus Hari Buljic, Honario Garcia, Arturo de Jesus Hernandez, and Miguel Angel Hernandez oppose Appellants' motion for an "administrative stay" of the district court's remand order on two grounds.[1]

First, Appellants' request for an "administrative stay" of the district court's remand order until the Court rules on their contemporaneously filed motion to stay that order is moot. Although Appellants argue that the automatic 30-day stay provision of Federal Rule of Civil Procedure 62(a) should have applied to the district

[1] Appellees also maintain that Appellants are unlikely to succeed on the merits of their appeal, as they will explain in greater detail in their opposition to Appellants' motion to stay pending appeal, and as stated by the district court in its January 28, 2021 Order, D.Ct.Dkt.64. *See also Benjamin v. JBS S.A.*, Civ. No. 20-2594, 2021 WL 308133 (E.D. Pa. Jan. 29, 2021) (granting motion to remand and rejecting arguments similar to those asserted by Appellants).

court's December 28, 2020 Remand Order, they concede that a 30-day stay would have expired on January 27, 2021. Thus, before Appellants filed this motion and the accompanying motion to stay, jurisdiction over this case properly returned to the state court. Because the district court's remand order has already been carried out, that order can no longer be "stayed."

Second, mootness aside, this case does not present the sort of extraordinary emergency situation that this Court and others have found justifies an administrative stay. Here, an administrative stay is not necessary to preserve the status quo so as "to give the court sufficient opportunity to consider the merits of the motion for a stay pending appeal," *Brady v. Nat'l Football League*, 638 F.3d 1004, 1005 (8th Cir. 2011), because the status quo is that the case is now pending in state court. And if the issue of a stay of the remand order were not moot now, it also would not be moot in the time needed to consider Appellants' motion for stay under this Court's standard motions-practice procedures. Appellants have not shown they will suffer irreparable harm in the interim.

I. The request for a stay is moot because the district court's remand order has already been carried out.

The district court issued its remand order on December 28, 2020. D.Ct.Dkt.57. That same day, the district court mailed a copy of the remand order to the state court. *Id.* On December 31, 2020, a copy of that order was filed by the Clerk of the Iowa District Court in and for Black Hawk County. D.Ct.Dkt.62, Ex. 1.

Appellants maintain that the remand order was stayed automatically pursuant to Federal Rule of Civil Procedure Rule 62(a) until January 27, 2021. *See* Motion for Admin. Stay at 1–2. Rule 62(a) provides that "execution on a judgment and proceedings to enforce it" are stayed for 30 days unless the court orders otherwise. Even assuming that the district court's action in remanding constituted "execution on a judgment" or "proceedings to enforce it," *but see Arnold v. Garlock, Inc.*, 278 F.3d 426 (5th Cir. 2001) (holding that Rule 62 does not apply to remand orders), Rule 62 has no current bearing on Appellants' entitlement to an administrative stay.[2] Although Appellants filed a notice of appeal on December 31, 2020, they did not move for a stay pending appeal in the district court until January 8, 2021—11 days into any 30-day stay period. Appellants did not seek expedited briefing, and thus briefing was not complete until Appellants filed their reply brief on January 25, 2021. D.Ct.Dkt.63. On January 28, 2021, the district court denied their motion. D.Ct.Dkt.64.

Because any Rule 62 stay would have expired on January 27, 2021, as Appellants concede, *see* Mot. for Admin. Stay at 2, the district court's remand order was effective no later than that date. Accordingly, jurisdiction was returned to the Black Hawk County District Court before Appellants moved for a stay in this Court.

[2] The Court need not resolve whether Rule 62(a) applies to remand orders given Appellants' concession that, even if Rule 62(a) did apply, a stay under that rule would have expired before it filed the pending motion.

In this situation, the motion to "stay" the remand order is moot. *See Hammer v. U.S. Dep't of Health & Human Servs.*, 905 F.3d 517, 524 n.1 (7th Cir. 2018) ("HHS moved this court to stay the remand, but we denied the motion because the district court had already certified its remand orders and the case had returned to state court; therefore, there was nothing for this court to stay."); *Hudson United Bank v. LiTenda Mortg. Corp.*, 142 F.3d 151, 154 n.6 (3d Cir. 1998) ("Hudson also moved for a stay of the remand order. As the remand order had already been sent to state court, however, this motion was moot."). As in *Hammer*—which also involved federal officer removal—so too here: "there [is] nothing for this [C]ourt to stay."

Appellants' argument that an administrative stay is necessary to honor "Congress' judgment that defendants asserting a colorable basis for federal-officer removal should not be denied a federal forum without appellate consideration," Mot. for Admin. Stay at 3, is misplaced for three reasons. First, as *Hammer* and *Hudson United Bank* reflect, meaningful appellate consideration will remain available even absent a stay. Indeed, in *Hammer*, the Seventh Circuit reversed the district court's remand order. 905 F.3d at 536. Second, Appellants' argument that a stay is necessary for appellate review would apply in every appeal concerning federal officer removal; Congress did not enact an automatic stay for all such appeals.

Third, the Court need not decide whether this Court *ever* had jurisdiction to stay the district court's remand order, but rather whether it does now—more than 30

days after the order, and after the order has become effective and the case has returned to the state court. Under Appellants' Rule 62 theory, had Appellants moved this Court for a stay before January 27, 2021, this Court could have extended an existing stay. But Appellants did not do so. Instead, Appellants waited 11 days after the remand order, and 8 days after filing their notice of appeal, to file their stay motion in the district court. They did not seek expedited briefing or relief in accordance with the district court's rules. *See* N.D. Ia. LR 7(i). And although Appellants point to Federal Rule of Appellate Procedure 8(a)(1), Mot. for Admin. Stay at 2, to justify their litigation choices, Rule 8(a)(1) states only that "a party must *ordinarily* move first in the district court" for a stay (emphasis added). Such a filing is not a jurisdictional prerequisite, particularly where a deadline is imminent. *See Walker v. Lockhart*, 678 F.2d 68, 69 (8th Cir. 1982) (granting injunction pending appeal despite failure to seek stay from district court); *Populist Party v. Herschler*, 746 F.2d 656, 657 n.1 (10th Cir. 1984) ("application in the district court is not necessary" where "need for relief is [] immediate"). Moreover, nothing in the rule requires a party await the district court's resolution of such a motion before filing in the court of appeals. The choice of Appellants, represented by able counsel, to await the district court's ruling cannot empower this Court to grant a request for relief that is moot.

II. If the request for a stay is not moot, an administrative stay is not necessary to preserve the Court's jurisdiction to resolve Appellants' stay motion or to avoid irreparable harm.

Even if this Court *could* grant a "stay" of a remand order after jurisdiction has returned to the state court, an administrative stay would not be warranted here. As this Court has recognized, administrative stays are appropriate in emergency situations where the passage of time needed for briefing and consideration by a motions panel would deprive the Court of the ability to consider the merits of a motion for a stay pending appeal. *See Brady*, 638 F.3d at 1005. The Court has thus issued administrative stays where, for example, a district court ordered an employer to immediately cease a lockout of its employees, *id.*, and where a district court enjoined the enforcement of in-person signature and notarization requirements in the midst of a petition-gathering campaign, *Miller v. Thurston*, No. 20-2095, 2020 WL 3240600 (8th Cir. June 15, 2020). As Judge Bye noted in his dissent in *Brady*, such stays are not this Court's ordinary practice absent "circumstances which truly qualify as emergencies." 638 F.3d at 1005.

No such emergency exists here. If, as Appellants assert, this Court could issue a "stay" of the remand order now, after the remand has been effected, its ability to do so would not dissipate in the additional days or weeks necessary for a motion to proceed in the normal course. Thus, an administrative stay is not necessary "to preserve the status quo to permit the court to consider the matter more fully." *FTC*

v. Beatrice Foods Co., 587 F.2d 1225, 1228 (D.C. Cir. 1978). Moreover, the "prejudice" cited by Appellants—the need to file a responsive pleading or motion in state court sometime between February 8 and February 17—is not "irreparable harm" that warrants extraordinary relief. And here, the burden of filing a motion to dismiss in state court is particularly low because Appellants already filed and briefed a motion to dismiss in the district court, while the remand motion was pending. *See* Dist.Ct.Dkt.Nos.23 & 24. Moreover, Appellants have not indicated they sought an extension of time or a stay from the state court that currently has jurisdiction over this matter.

CONCLUSION

For the foregoing reasons, and those set forth in the district court's January 28, 2021 Order denying Appellants' motion for a stay, Appellees respectfully request the Court deny Appellants' motion for an administrative stay.

Respectfully submitted,

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February 1, 2021

CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the motion exempted by Fed. R. App. P. 32(f), it contains 1,625 words.

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 MSO in 14-point Times New Roman.

3. This motion has been scanned for viruses and is virus-free.

February 1, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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