

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

MAR 16 1989

AMY KERR, Administratrix of the Estate of Georgia I. Ashby Deceased,
Plaintiff-Appellant,

ROBERT L. HOECKER
Clerk

v.

No. 87-1939
(D.C. No. 86-2785W)
(W.D. Okla.)

CURTIS E. HARRIS, JR., M.D.,
Individually; CURTIS E.
HARRIS, JR., M.D., INC.;
RONALD J. JANZEN, M.D., Individually;
RONALD J. JANZEN, M.D., INC.; JACK E.
METCALF, M.D., Individually; JACK E.
METCALF, M.D., INC.; MYRON A. CORDUM,
M.D., Individually,
Defendants-Appellees.

ORDER AND JUDGMENT*

Before ANDERSON and TACHA, Circuit Judges, and ROGERS, District Judge.**

**The Honorable Richard D. Rogers, United States District Judge for the District of Kansas, sitting by designation.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P.

*This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Plaintiff has appealed from the dismissal of this action for lack of subject matter jurisdiction. The district court concluded that diversity jurisdiction had been improperly manufactured in violation of 28 U.S.C. § 1359.

Our review is limited to whether the district court's determination was clearly erroneous. Martinez v. United States Olympic Committee, 802 F.2d 1275, 1279 (10th Cir. 1986). We have examined the record on appeal and conclude that the district court's perception of the evidence was permissible and, as such, not clearly erroneous. See Anderson v. City of Bessemer City, 470 U.S. 564, 573-76 (1985).

Accordingly, the order of the United States District Court for the Western District of Oklahoma is AFFIRMED.

The mandate shall issue forthwith.

ENTERED FOR THE COURT
PER CURIAM