United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 6, 2023
Lyle W. Cayce
Clerk

No. 23-10397

SHELLEY GIPSON,

Plaintiff,

versus

WEATHERFORD COLLEGE, *of the Parker County Junior College District*,

Defendant,

JOHN L. ROSS

Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CV-730

Before RICHMAN, *Chief Judge*, and HAYNES and DUNCAN, *Circuit Judges*.

PER CURIAM:[*]

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

Counsel for Defendant Weatherford College appeals the district court's order imposing sanctions on him. For the reasons set forth below, we REVERSE and REMAND.

I. Background

The underlying case involved the alleged sexual harassment of Ms. Gipson ("Plaintiff"), a former employee of Weatherford College ("Defendant"), by its president, Dr. Tod Farmer. During the case, the parties had a number of discovery disagreements, filing several motions. Those motions and rulings are not before us on this appeal. Instead, ultimately, the district court ordered all counsel to read *Dondi*,[1] the Texas Lawyer's Creed, and the Texas Disciplinary Rules of Professional Conduct, and to certify via an affidavit that they had done so, understood these texts, and agreed to comply with their standards for the remainder of the litigation. Counsel for each party, in a timely fashion (during winter weather issues) filed 28 U.S.C. § 1746 declarations, instead of notarized affidavits, in response to the court's order. The district court reacted to that prompt filing as sanctionable and imposed a $250 monetary sanction on each counsel sua sponte while ordering them to refile their documents as actual notarized affidavits. Counsel quickly did so and paid the $250.

Thereafter, the underlying case settled, and the district court granted the parties joint motion to voluntarily dismiss all claims with prejudice and entered a final judgment. Counsel for Defendant then timely appealed the district court's sanction order.

II. Jurisdiction & Standard of Review

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[1] *Dondi Properties Corp. v. Com. Sav. & Loan Ass'n*, 121 F.R.D. 284 (N.D. Tex. 1988) (per curiam) was an en banc opinion from the Northern District of Texas which addressed overly aggressive conduct of lawyers in the district court.

We have appellate jurisdiction over the district court's sanctions order under 28 U.S.C. § 1291 because this order merged with the court's final judgment when it granted the parties' joint motion to dismiss Plaintiff's claims with prejudice. *See Click v. Abilene Nat'l Bank*, 822 F.2d 544, 545 (5th Cir. 1987) (per curiam) (noting "sanctions can be and routinely are appealed when merged in the district court's final judgment"); *cf. REC Marine Logistics, L.L.C. v. Richard*, 829 F. App'x 51, 51 & n.3 (5th Cir. 2020) (per curiam) (noting sanctions orders, including those issued pursuant to the district court's inherent authority, are not appealable final decisions nor appealable collateral orders).

"We review sanctions imposed under a court's inherent authority for abuse of discretion." *Elliott v. Tilton*, 64 F.3d 213, 217 (5th Cir. 1995). "A court abuses its discretion to impose sanctions when a ruling is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Matta v. May*, 118 F.3d 410, 413 (5th Cir. 1997).

III. Discussion

Defense counsel contends the district court abused its discretion in imposing sanctions because it did not make any finding of bad faith and misconstrued 28 U.S.C. § 1746. We agree.[2]

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[2] It is unclear to us what authority the district court relied on in issuing sanctions. The impetus for the district court's order requiring counsel to file affidavits appears to be the nature and number of discovery disputes, which it indicated could rise to the level of a Rule 11 violation. However, the district court ultimately imposed sanctions because counsel failed to follow its order to the letter by filing declarations instead of affidavits. The district court did not mention Rule 11 in its order imposing sanctions. As such, we interpret the district court's imposition of sanctions as an exercise of its inherent authority. *See Blanco River, L.L.C. v. Green*, 457 F. App'x 431, 438 (5th Cir. 2012) (per curiam) (analyzing the district court's sanctions as being imposed pursuant to its inherent authority when the basis was not mentioned by the district court and the procedural requisites for Rule 11 were

"Because of the potency of inherent powers and the limited control of their exercise . . . they must be used with great restraint and caution." *Nat. Gas Pipeline Co. of Am. v. Energy Gathering, Inc.*, 86 F.3d 464, 467 (5th Cir. 1996). "The threshold for the use of the inherent power sanction is high," and such power should only be exercised "if essential to preserve the authority of the court." *Id.* "In order to impose sanctions against an attorney under its inherent power, a court must make a specific finding that the attorney acted in bad faith." *Chaves v. M/V Medina Star*, 47 F.3d 153, 156 (5th Cir. 1995) (internal quotation marks and citation omitted).

The district court's order imposing monetary sanctions on defense counsel contains no mention of "bad faith," let alone a "specific finding." *Id.* For this reason alone, we could reverse. *See Elliott*, 64 F.3d at 217. Indeed, to the extent the district court interpreted defense counsel's filing of a 28 U.S.C. § 1746 declaration instead of a notarized affidavit as "bad faith" conduct justifying sanctions, it abused its discretion. *Crowe v. Smith*, 151 F.3d 217, 236 (5th Cir. 1998) (explaining "where the finding of bad faith is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence, the imposition of sanctions is necessarily [an] abuse [of] discretion" (internal quotation marks and citations omitted) (alterations in original)).

Defense counsel's alleged error was not even an error much less bad faith conduct justifying sanctions since he complied with the court's order under federal law. *See Williams v. Lockheed Martin Corp.*, 990 F.3d 852, 867 (5th Cir. 2021) (explaining bad faith includes "when the party practices a fraud upon the court or delays or disrupts the litigation or hampers a court

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not satisfied); *Sandifer v. Gusman*, 637 F. App'x 117, 121 (5th Cir. 2015) (per curiam) (same).

order's enforcement" (quoting syllabus from *Chambers v. NASCO, Inc.*, 501 U.S. 32, 33 (1991)). Without a doubt, 28 U.S.C. § 1746, by its very terms, permits counsel to file an unsworn declaration as a substitute for an affidavit, *Gezu v. Charter Commc'ns*, 17 F.4th 547, 555 (5th Cir. 2021), and defense counsel's proffered reason for filing a 28 U.S.C. § 1746 declaration rather than a notarized affidavit was due to inclement weather.[3] On this set of facts, the district court's imposition of sanctions was a clear abuse of discretion.

IV. Conclusion

For the reasons set forth above, we REVERSE and REMAND the sanctions imposed on defense counsel to be VACATED and the monetary amount to be refunded.

[3] The notion that counsel should have put himself at risk to find a notary given that he complied with the order via 28 U.S.C. § 1746 is simply wrong.