NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted February 16, 2024*
Decided February 20, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1715

KEENAN BROWN,
Plaintiff-Appellant,

v.

McDONALD'S RESTAURANTS OF ILLINOIS, INC.,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 21 C 1769

Matthew F. Kennelly,
Judge.

O R D E R

Keenan Brown sued McDonald's Restaurants of Illinois ("McDonald's") under federal diversity jurisdiction. After finding that Brown had litigated in bad faith, the

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

district court sanctioned him by dismissing his suit. Brown appeals, but because the district court reasonably found bad faith and did not abuse its discretion, we affirm.

Brown alleges that a McDonald's employee threw two cups of hot tea at him, severely burning him, after he complained about an order. Brown, a citizen of Georgia, then sued McDonald's, a citizen of Illinois, invoking the district court's diversity jurisdiction. 28 U.S.C. § 1332(a). His first amended complaint asserted two negligence-related claims: willful and wanton conduct and spoliation of evidence. *See Jane Doe-3 v. McLean Cnty. Unit Dist. No. 5 Bd. of Dirs.*, 973 N.E.2d 880, 887 (Ill. 2012) (willful and wanton conduct), *Martin v. Keeley & Sons, Inc.*, 979 N.E.2d 22, 27 (Ill. 2012) (spoliation).

Discovery did not go well. To begin, Brown essentially refused to respond to McDonald's requests for written discovery. He initially objected to 16 of 17 interrogatories, refusing to provide his birthdate or address, his treating physicians, and the names of witnesses. Brown also refused to produce any statements from witnesses; instead, he turned over only unrelated medical documents, such as an invoice for a tooth extraction unconnected to the incident. In response to a motion to compel, the court ordered that Brown disclose his medical providers, the treatment received for the alleged injuries, and any witness statements. Brown defied the court and never produced this information.

Second, during his deposition, Brown resisted answering questions. He objected more than 150 times over the course of four hours and largely refused to provide direct answers. Here are representative examples of his refusal to answer questions about the identity of known witnesses:

Q: Did you personally know that witness?

A: Did I know that witness, yes. I know the witness.

…

Q: What's her name?

A: You have her name.

Q: Can you please give me her name?

A: You have the name. You have the name. You guys have the information already. You guys have names. It's in all of the court documents and order. I'm just being honest and polite as well. You have that information.

Q: Can you please tell me the witness' name?

A: You have the names. I mean, what do you want with the names? You want the names? You have the names.

…

Q: Okay. What was -- what would be your best estimate as to the age of the employee [who threw the tea]?

A: I'm not going to make no guess on that. I don't know that, so we're going to object to that.

Q: How about you know, young, middle aged or elderly?

A: I'm going to object to that one. I think his age doesn't distract the issue of the unlawful conduct or what took place.

MS. FULCO: Certify the question.

BY MS. FULCO:

Q: What color hair did the employee have?

A: That's an objection. I mean, it's kind of irrelevant, it's beyond irrelevant.

MS. FULCO: Certify the question.

BY MS. FULCO:

Q: What was the height and weight? How would you best describe the body type of the employee who you gave an order to?

A: People change, people look different over time. I can describe somebody that was four years ago and they may look totally different now if I saw them.

Q: I'm just asking how they looked at the time you placed your order.

> A: Well, that's a form of discrimination. If I was trying to describe what they look like and what they wore, that's a form of discrimination.

Depositions conducted by Brown were similarly unproductive. For example, a court reporter ended Brown's deposition of one witness shortly after the deposition started. Brown had refused to abide the reporter's pleas not to interrupt opposing counsel because, as the reporter explained, she could not transcribe simultaneous speakers. After the third reminder, Brown launched grievances against the reporter and suggested he would complain to her employer. She responded by offering to find Brown another court reporter and ending the deposition.

After the close of discovery, the district court granted McDonald's motion to sanction Brown by dismissing the suit. (The court had earlier denied without prejudice a similar motion, which warned Brown that the court had the authority to impose sanctions for litigating in bad faith.) In dismissing Brown's suit, the district court cited both Federal Rule of Civil Procedure 37 and its inherent power to ensure the orderly disposition of its cases. The court found that Brown's conduct during the depositions and his defiance of its order to respond to written discovery requests showed willful disobedience, bad faith, and abuse of the judicial process.

Before turning to the merits, we address a jurisdictional question. The parties state that they are citizens of diverse states, but McDonald's challenges Brown's assertion that the amount in controversy exceeds $75,000. S*ee* 28 U.S.C. § 1332(a). When a party contests the amount in controversy, the proponent of jurisdiction must show that the case exceeds the threshold of $75,000, but jurisdiction is not lacking unless it is "legally certain" that recovery will not exceed that threshold. *Sykes v. Cook Inc.*, 72 F.4th 195, 206 (7th Cir. 2023). Brown offered no evidence of losing money from the incident, but in his deposition he asserted that the burns caused him pain, and in his amended complaint he also seeks punitive damages. From this information, our inquiry is two-fold: are punitive damages allowed by Illinois law for Brown's claims and, if so, is it legally possible for Brown to recover more than $75,000? *See LM Ins. Corp. v. Spaulding Enters. Inc.*, 533 F.3d 542, 551 (7th Cir. 2008). Whether such a recovery is likely is irrelevant; all that matters is whether it is possible. *Sykes*, 72 F.4th at 207.

The answer to both questions is yes. Illinois law permits punitive damages for willful and wanton conduct. *McQueen v. Green*, 202 N.E.3d 268, 282 (Ill. 2022). And recovery above $75,000 is possible. Brown alleged in his complaint that he experienced pain and suffering, and he supported that allegation with his deposition testimony. *See Vanoosting v. Sellars*, 970 N.E.2d 614, 621 (Ill. App. Ct. 2012) (recognizing that pain

and suffering is a separate element of damages). Moreover, a punitive damages award eight times the compensatory award was upheld where the tortious conduct alleged was egregious and the plaintiff suffered physical injury. *See Doe v. Parrillo*, 185 N.E.3d 1248, 1264 (Ill. 2021). Brown alleged such conduct: He asserts that a McDonald's employee intentionally threw scalding liquid at him, burning him painfully. Even a compensatory award of less than $10,000 for Brown's pain could thus, under the law, support enough punitive damages to exceed $75,000. Because it is not legally certain that recovery must be less than that threshold, we therefore conclude that federal diversity jurisdiction is present.

We now turn to the merits. To dismiss a suit as a sanction, a district court must first make certain required findings, but a finding of bad-faith conduct will support imposing sanctions under either Rule 37(b) or the court's inherent authority. *Ramirez v. T&H Lemont, Inc.*, 845 F.3d 772, 775–76 (7th Cir. 2016). We review factual findings for clear error and dismissals under either authority for an abuse of discretion. *Donelson v. Hardy*, 931 F.3d 565, 569 (7th Cir. 2019).

The sanction of dismissal was proper. First, ample evidence supports the finding of bad faith: Brown intentionally ignored his discovery obligations when he defied a clear order to answer written discovery; he deliberately and repeatedly evaded basic deposition questions about the identity of witnesses; and he prevented a fair deposition of a witness by disabling a court reporter from doing her job. Second, because this bad-faith conduct went beyond mere inadvertence or mistake, the district court did not abuse its discretion to dismiss under Rule 37(b) or its inherent authority. *See Ramirez*, 845 F.3d at 776; *see also Donelson*, 931 F.3d at 569–70 (affirming dismissal because of intentionally evasive answers to deposition questions); *Domanus v. Lewicki*, 742 F.3d 290, 302 (7th Cir. 2014) (affirming dismissal for deliberate refusal to obey order to produce documents); *Brown v. Columbia Sussex Corp.*, 664 F.3d 182, 191 (7th Cir. 2011) (affirming dismissal for intentional disregard of a court's order to respond to interrogatories). (For completeness, we note that Rule 30(d)(2) allows a court to sanction a deponent who impedes a fair deposition, but the court did not invoke that rule.)

Brown responds that the district court needed first to impose lesser sanctions before resorting to dismissal and that dismissal was disproportionate to his conduct. But the court reasonably concluded that a lesser sanction was not required and that dismissal fit Brown's abuse. First, Brown was proceeding *in forma pauperis,* thus a fine likely would not have been effective. *See Secrease v. W. & S. Life Ins. Co.*, 800 F.3d 397, 402 (7th Cir. 2015). Also, a warning was not required because McDonald's first motion

to compel had adequately notified Brown already of the court's authority to sanction bad-faith conduct. *See Fischer v. Cingular Wireless, LLC*, 446 F.3d 663, 666 (7th Cir. 2006). Further, an order directing Brown to obey discovery rules would have been useless because the court had issued such an order to no avail. Finally, an order limiting the scope of Brown's case would be pointless because Brown had so thoroughly refused to comply with his discovery obligations that McDonald's could not gather even basic information needed to defend against any claim. Thus, the district court did not abuse its discretion by dismissing Brown's suit. *See Donelson*, 931 F.3d at 569.

Brown has not developed any other argument enough to warrant discussion. *See Shipley v. Chi. Bd. of Election Comm'rs*, 947 F.3d 1056, 1062–63 (7th Cir. 2020).

AFFIRMED