NONPRECEDENTIAL DISPOSITION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 March 28, 2024*
Decided April 3, 2024

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 23-2702

AMERICAN ASSOCIATION FOR LABORATORY ACCREDITATION, INC., and DOROTHY H. DEY,
Petitioners-Appellees,

v.

ROBERT J. HUTCHINSON,
Respondent-Appellant.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 23-MC-47-JPS

J. P. Stadtmueller,
Judge.

O R D E R

Robert Hutchinson appeals the district court's order enforcing a filing bar against him. The district judge enforced the filing bar after determining that Hutchinson had persisted in pursuing frivolous and identical claims that had been rejected. We affirm.

* 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. *See* FED. R. APP. P. 34(a)(2)(C).

This appeal arises out of Hutchinson's long-term business partnership in Metallurgical Associates, Inc., a company that performed materials testing and analysis on large structures. When his business partner retired, Hutchinson agreed to buy out the partner's interest. Hutchinson failed to make payments, and his partner sued him for breach of contract. The partner prevailed after an arbitration and received control over the trade name "Metallurgical Associates, Inc."; Hutchinson retained ownership over the company, rebranded as Old Metallurgical Associates ("Old MAI"). Hutchinson and Old MAI eventually filed for receivership in Wisconsin, after which his partner bought all of Old MAI's assets.

Litigation ensued in state and federal courts over, among other things, the receivership action and the nature of the assets sold (including Hutchinson's belief that his company and its assets were unlawfully transferred to his business partner). *See, e.g.*, *Old Metallurgical Assocs., Inc. v. New MAI, Inc.*, No. 2018AP619, 2019 WL 1271208, at *2 (Wis. Ct. App. Mar. 20, 2019) (unpublished order). In these proceedings, he repeatedly has sued the same cast of defendants: his business partner; Metallurgical Associates, Inc.'s accreditor, the American Association for Laboratory Accreditation ("A2LA"); and a state-appointed receiver and counsel. Wisconsin state courts consistently found no basis for Hutchinson's suits and sanctioned him at least three times for frivolous filings. *See, e.g.*, *id.*; *Kohner Mann & Kailas SC v. Metallurgical Assocs., Inc.*, No. 2018AP1988, 2019 WL 13189444, at * 1 (Wis. Ct. App. Dec. 27, 2019) (unpublished order); *Kohner Mann & Kailas SC v. Metallurgical Assocs., Inc.*, No. 2019AP458, 2020 WL 2530954, at *2 (Wis. Ct. App. May 19, 2020) (unpublished order). Hutchinson later brought a suit against the defendants in the Northern District of Georgia, but it too was dismissed.

Hutchinson then reprised his claims against the same defendants in a new lawsuit that he filed in the Eastern District of Wisconsin. A magistrate judge, presiding with the parties' consent, dismissed some of his claims for lack of subject-matter jurisdiction and others for failure to state a claim. Recounting Hutchinson's history of vexatious litigation and repeated sanctioning, the judge barred him from "future filings in this district against the defendants named in this lawsuit, arising out of the litigation over the ownership of MAI's books and records." *Hutchinson v. Kelling*, No. 20-CV-1264, 2021 WL 2413807, at *2 (E.D. Wis. June 14, 2021). The judge also ordered Hutchinson to pay attorney's fees to the defendants for having to defend this frivolous lawsuit. *Id.* Hutchinson appealed to this court, challenging only the dismissal of his claims and not the filing bar, and we affirmed. *Hutchinson v. Am. Ass'n for Lab'y Accreditation*, No. 21-2289, 2022 WL 819517 (7th Cir. Mar. 17, 2022).

In 2023 A2LA sent a letter to the Clerk of Court for the Eastern District of Wisconsin to "address a lawsuit" that Hutchinson had threatened to file against it and many of the same defendants he previously had sued over similar allegations. A2LA recited Hutchinson's history of litigiousness, sanctions incurred (which remained unpaid), and the 2021 filing bar—the order barring him from future filings in the Eastern District of Wisconsin against the defendants on matters arising out of the "books and records" litigation. Because of his relentless and recalcitrant conduct, A2LA asked the court to screen Hutchinson's complaint under 28 U.S.C. § 1915(e)(2)(B)(i) and bar him from filing any lawsuit in the district until he pays his sanctions.

A week later Hutchinson countered with a letter of his own to the Clerk of Court. He asserted that the proposed complaint fell outside the scope of the 2021 filing bar because it concerned not "books and records" but the "conversion of my company" and because his claims were partly based on actions taken after the filing bar took effect.

The district judge, describing Hutchinson's conduct as a willful abuse of the judicial process, enforced the existing filing bar and took the additional step of imposing a broader filing bar under *Support Systems International, Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995), ordering the Clerk of Court for the Eastern District to return any papers that Hutchinson attempts to file until he pays his sanctions in full. The judge explained that many of the allegations in Hutchinson's draft complaint were "carbon copies" of those raised in his 2021 complaint, that the allegations fell "squarely" within the magistrate judge's filing bar, that the "scant allegations" over post-2021 acts were based on the same pre-2021 core set of facts underlying his previous complaint, and that Hutchinson had "consumed far more than his share of scarce and valuable judicial resources."

On appeal Hutchinson raises a due-process challenge to the enforcement of the filing bar. He argues that the district judge did not notify him of A2LA's request to enforce the filing bar or allow him an opportunity to be heard before concluding that the bar covered his proposed complaint. This argument is frivolous. Hutchinson surely knew of A2LA's request, having expressly responded to it in his letter to the Clerk of Court dated August 22, 2023. He also knew from the magistrate judge's 2021 order that he was barred from filing further actions in the Eastern District of Wisconsin over the same claims raised in the prior litigation. As for his request to be heard, we have explained that "a hearing is not invariably required" as a matter of due process in sanctions proceedings. *In re Rimsat, Ltd.*, 212 F.3d 1039, 1046 (7th Cir. 2000) (finding sanctioned litigants and attorneys waived whatever right they might have had to a presanctions hearing by failing to request such a hearing); *accord Kapco Mfg. Co. v. C & O*

Enters., Inc., 886 F.2d 1485, 1494–95 (7th Cir. 1989) (concluding that a request for a hearing after the imposition of sanctions was too late). Hutchinson had the opportunity to be heard when he responded to A2LA's letter. He did not ask for a hearing in the district court, and we see nothing in this record to suggest that a hearing could have assisted the court in its decision.

Hutchinson also argues that the district judge wrongly imposed the broader *Mack* filing bar without first giving him notice or requiring the defendants to file a separate motion for sanctions under Rule 11 of the Federal Rules of Civil Procedure. But the judge appropriately exercised his discretion by imposing the *Mack* bar. Hutchinson had sufficient notice—in the form of A2LA's letter—that he faced the prospect of more severe sanctions. To the extent he believes that notice needed to be issued by the court itself, we have not construed notice so narrowly. *See Lewis v. Faulkner*, 689 F.2d 100, 102–03 (7th Cir. 1982) (authorizing defendants in prisoner civil-rights cases to supply notice to pro se plaintiffs of the need to respond to a summary-judgment motion by affidavits); *Timms v. Frank*, 953 F.2d 281, 285–86 (7th Cir. 1992). Nor was A2LA required to file a separate motion. A *Mack* bar is a severe sanction that courts may impose on their own when less severe sanctions "appear unlikely to be sufficient deterrents to continued abusive or frivolous litigation." *Martin v. Redden*, 34 F.4th 564, 569 (7th Cir. 2022). The severe sanctions here were appropriate, given Hutchinsons's history of vexatious litigation and the ineffectiveness of the prior filing bar to deter further frivolous filings.

This is Hutchinson's second time in this court for litigation relating to his former company, and he has used significant judicial resources for similar claims despite repeatedly being told his claims are without merit. We warn Hutchinson that further frivolous appeals may result in sanctions, including fines that, if unpaid, may result in a bar on filing papers in civil lawsuits in any court within this circuit. *See Mack*, 45 F.3d at 186.

We have considered Hutchinson's remaining arguments and none has merit.

AFFIRMED