[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-12140

Non-Argument Calendar

BENJAMIN VIENT,

Plaintiff-Appellant,

versus

HIGHLANDS NEWS-SUN,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 2:19-cv-14012-RLR

Before WILSON, LAGOA, and ANDERSON, Circuit Judges.

PER CURIAM:

Benjamin Vient, a *pro se* litigant, appeals following the denial of six post-judgment motions for reconsideration, and the denial of a motion for transparency, after the district court granted summary judgment against him in his suit for copyright infringement. Before he could file his initial brief, the appellee, the Highlands News-Sun, has moved for dismissal, summary affirmance in part, and to stay the briefing schedule, as well as for sanctions.

Vient filed the present *pro se* suit in 2019. In a fifth amended complaint, he alleged that the Highlands News-Sun ("Highlands"), a news organization, had violated various copyright statutes by publishing, distributing, and reproducing two of his articles without his permission—"Welcome on board, enjoy the ride" and "Using a tower to sell a station." He alleged that the Highlands Journal was connected to Highlands and Highlands had authorized his work to be distributed and reproduced without his permission to the Highlands Journal and a third party, Newsbank.

Highlands initially responded by moving to dismiss the case. The district court, noting *sua sponte* that Highlands's motion also raised concerns under Fed. R. Civ. P. 11, later dismissed the case as a sanction thereunder, without addressing Highlands's motion. Vient appealed, however, and we ultimately reversed and remanded the case for further proceedings. *See Vient v. Highlands*

News-Sun, 829 F. App'x 407 (11th Cir. 2020). In doing so, we held that "Vient did not take a frivolous legal position without evidentiary support."

Following discovery, Highlands moved for summary judgment, arguing in part that Vient lacked a valid copyright claim over the two articles he was suing for, and he could not establish the first element of a copyright infringement claim. Vient opposed the motion, arguing that Highlands had not provided evidence sufficient to support the grant of summary judgment and material facts remained in dispute.

The district court granted Highlands's motion for summary judgment, noting that Vient had not cited to or provided evidence that he owned the copyright for the two disputed articles. It entered a judgment to this effect in October 2021. Rather than immediately filing an appeal, Vient filed six motions for reconsideration.

In Vient's first motion for reconsideration filed in November 2021, under Fed. R. Civ. P 60(a), he argued that the district court made a mistake in overlooking that some articles in his copyright listing were identical to the two articles at issue, just under different names, and he had proven his copyright claim.

The district court denied Vient's first motion for reconsideration, finding that Vient used it to present evidence that could have been presented previously.

Vient moved for reconsideration four more times under Rule 60(a), and Fed. R. Civ. P. 56(e)(1), and the district court denied each motion in paperless orders. In his sixth motion for reconsideration, he argued that the previous paperless order omitted the district court's basis for its decision and that it should reconsider his other five motions for reconsideration and its grant of summary judgment. Vient also filed a self-styled motion "to our Court for Transparency," requesting the judges and clerks to certify in writing that they had adhered to "Canon 3 standards" throughout the case.

In an order entered on June 1, 2022, the district court denied Vient's last motion for reconsideration and his other pending motions. It also ordered the clerk of court to not accept any more filings from Vient aside from a notice of appeal.

On June 28, 2022, Vient filed his notice of appeal designating for review the October 2021 summary judgment ruling and final judgment, and the June 2022 order denying his last motion for reconsideration and his "Motion to our Court for Transparency."

Before briefing, Highlands filed a motion to dismiss Vient's appeal for lack of jurisdiction and a motion for summary affirmance on anything we deemed we had jurisdiction over and to stay the briefing. Highlands separately moved for sanctions under Fed. R App. P. 38.

We will discuss each motion in turn.

I.

In its motion to dismiss, Highlands argues that we lack jurisdiction over Vient's appeal. First, Highlands argues that Vient's notice of appeal was untimely to challenge the district court's October 2021 order entering summary judgment because it was filed more than 30 days after the district court resolved his first motion for reconsideration, and his subsequent post-judgment motions could not further toll the appeal period. Second, Highlands argues we lack jurisdiction to review the district court's order denying Vient's sixth motion for reconsideration because that motion raised the same substantive arguments as his previous motions and, if allowed to toll, would have the effect of indefinitely tolling the time to appeal from his first such motion, which is not allowed. Highlands further argues that even if Vient's subsequent motions for reconsideration tolled the time to appeal from his first such motion, some of those motions were not filed within 28 days of the previous one, which broke the "chain" of tolling motions. Third, Highlands argues that we lack jurisdiction over Vient's appeal from the denial of his "Motion to our Court for Transparency" because it was untimely to attack the district court's October 2021 order entering summary judgment.

Vient responds that a "chain" existed between his motions for reconsideration for the purposes of tolling the time to appeal because each was mailed to the district court within 28 days of the prior motion for reconsideration, some were affected by "systemic delays" in the mail caused by COVID-19, and these delayed filings

were not his fault. Vient further argues that his motions for reconsideration do not make the same argument, as shown in an excel spreadsheet he appended to his response. Regarding Vient's appeal from the denial of his "Motion to our Court for Transparency," he argues that we "ha[ve] jurisdiction over [his] Constitutional rights at Court and a District Court's discretion," specifically noting his "Constitutional rights of fairness at Court."

The timely filing of a notice of appeal in a civil case is a jurisdictional requirement and we cannot entertain an appeal that is out of time. *See Green v. Drug Enf't Admin.*, 606 F.3d 1296, 1300-02 (11th Cir. 2010). A notice of appeal in a civil case must be filed within 30 days after the judgment or order appealed from is entered. Fed. R. App. P. 4(a)(1)(A); 28 U.S.C. § 2107(a). However, if a party files a timely motion listed in Fed. R. App. P. 4(a)(4)(A), then the appeal period runs from the entry of the order disposing of the last such remaining motion. Fed. R. App. P. 4(a)(4)(A). To toll the time to appeal from an order or judgment, a motion for reconsideration must be filed within 28 days after the entry of the order or judgment. Fed. R. Civ. P. 59(e); *Advanced Bodycare Sols., LLC v. Thoine Int'l, Inc.*, 615 F.3d 1352, 1359 n.15 (11th Cir. 2010) (noting that an untimely post-judgment motion does not toll the time to appeal). A party cannot file successive motions for reconsideration to indefinitely toll the time to appeal from the underlying judgment. *Finch v. City of Vernon*, 845 F.2d 256, 259 (11th Cir. 1988).

Here, although Vient's first motion for reconsideration tolled the time to appeal from the district court's October 19, 2021,

order entering summary judgment, he was required to file his notice of appeal from that order on or before January 7, 2022—30 days after the court's December 8, 2021, order disposing of his first motion for reconsideration. *See* Fed. R. App. P. 4(a)(1), 4(a)(4). Because Vient filed his notice of appeal on June 28, 2022, it was untimely to challenge the summary judgment order, and thus, we lack jurisdiction to review it. *See Green,* 606 F.3d at 1300-02; *Finch*, 845 F.2d at 259. For the reasons set forth in Highlands' Motion to Dismiss for Lack of Jurisdiction, we doubt we have jurisdiction to review either the district court's denial of Vient's sixth motion for reconsideration or its denial in that same order of Vient's motion for transparency. However, to the extent that Vient's sixth motion for reconsideration or his motion for transparency might be deemed to raise some issue over which we might have jurisdiction, we hold below that the district court's judgment should be summarily affirmed.

II.

Highlands also argues that even if we have the jurisdiction to consider the denial of Vient's sixth motion for reconsideration, the district court did not abuse its discretion in that respect, because it was substantively identical to the first motion, and the district court properly denied the first motion for presenting arguments and evidence that could have been presented before judgment was entered. It contends that that the denial of the motion for transparency was proper because there is no rule or statute authorizing litigants to request or require that a district judge issue a written

certification that the judge is complying with the code of conduct for United States judges, nor did he allege any instances of judicial misconduct in the motion.

Vient, who is still *pro se*, responds that Highlands is not correct as a matter of law, and he has a right to brief the merits of his appeal. He asserts that Rule 56(e)(1) allows a district court the discretion to allow the opportunity to properly support or address a fact, and the district court's refusal to grant that motion was an abuse of discretion. He does not explicitly address the motion for transparency in his summary affirmance arguments; however, under his jurisdictional argument, he argues that there should be authorization for him to move for transparency to improve accountability in government.[1]

Summary disposition is appropriate, in part, where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

We review the denial of a Fed. R. Civ. P. 60(b) motion for abuse of discretion. *Aldana v. Del Monte Fresh Produce N.A., Inc.*, 741 F.3d 1349, 1355 (11th Cir. 2014). And we may "affirm the

[1] In light of Vient's response to the motion for summary affirmance, we conclude that we are in a position to rule on that motion even in the absence of an initial brief from Vient.

district court's ruling on any basis the record supports . . . regardless of the grounds addressed, adopted or rejected by the district court." *Fla. Wildlife Fed'n Inc. v. U.S. Army Corps of Eng'rs*, 859 F.3d 1306, 1316 (11th Cir. 2017) (citations and quotations omitted). We review the district court's broad discretion in the management of a trial for abuse of discretion. *United States v. Hiliard*, 752 F.2d 578, 582 (11th Cir. 1985).

The scope of appellate review for reconsideration is fairly circumscribed and deferential because it "does not bring up the underlying judgment for review." *See Cavaliere v. Allstate Ins. Co.*, 996 F.2d 1111, 1115 (11th Cir. 1993) (stating that the Court would consider only the denial of relief as to the Rule 60(b) motion itself, not the efficacy of the underlying judgment, and that a Rule 60(b) motion cannot be used as a substitute for proper and timely appeal of the district court's judgment).

Pro se pleadings are generally held to a less stringent standard than pleadings drafted by attorneys and will be liberally construed. *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014).

Rule 60(a) allows for corrections based on a clerical mistake or a mistake arising from an oversight or omission. Fed. R. Civ. P. 60(a). Rule 60(b) allows a court to relieve a party from final judgment for mistake, newly discovered evidence that could not have been discovered in time to move for a new trial, fraud, void judgment, a satisfied judgment, or any other reason that merits relief. Fed. R. Civ. P. 60(b)(1)–(6). A motion for reconsideration cannot

be used to relitigate old matters, raise arguments, or present evidence that could have been raised prior to the entry of judgment. *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009).

Rule 56(e)(1) states that if, in a summary judgment proceeding, a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact, the district court may give an opportunity to properly support or address the fact. Fed. R. Civ. P. 56(e)(1).

Under our Local Rules, the filing of a motion for summary affirmance "shall postpone the due date for the filing of any remaining brief until the court rules on such motion." *See* 11th Cir. R. 31-1(c).

Here, we conclude that the district court did not abuse its discretion when it denied Vient's sixth motion for reconsideration and his motion for transparency. Although he claimed his sixth motion for reconsideration was brought under Rule 60(a), Vient appeared to be asking the district court to reverse its decision under Rule 60(b), rather than correct a clerical mistake under Rule 60(a). *Campbell*, 760 F.3d at 1168. Vient appears to have tried to use his motion for reconsideration to raise evidence that he already had available to him and add to the record through Rule 56(e)(1). A Rule 60(b) motion cannot be used to raise arguments that could have been raised before and also cannot be used to relitigate old arguments, so the district court did not abuse its discretion when it denied his sixth motion that sought to introduce previously

available evidence and relitigate his previous five motions. *Wilchombe*, 555 F.3d at 957.

As for his motion to compel transparency, the district court did not abuse its discretion in denying it. The district court has broad discretion in managing how a case progresses and a reviewing court will not interfere absent a clear showing of abuse. *Hiliard*, 752 F.2d at 582. Vient does not cite, and research does not reveal, any published case, rule, or statute giving a party a right to compel a district court to make a certification or affidavit stating it followed judicial canons. Thus there was no abuse of that broad discretion.

In sum, because Highlands's position is clearly correct as a matter of law, we grant its motion for summary affirmance and affirm the decision of the district court to the extent we have jurisdiction. *Groendyke Transp., Inc.*, 406 F.2d at 1162. We also deny as moot its motion to stay the briefing schedule because our local rules already provide that relief.

III.

Highlands has also moved for sanctions, arguing that Vient's appeal is frivolous due to a lack of jurisdiction over the case and that the sixth motion for reconsideration and the motion for transparency lack legal precedent.

Vient responds that there are valid grounds for appeal, as his motions for reconsideration were timely, and his motion for transparency was not frivolous.

We have imposed Rule 38 sanctions against appellants who raise clearly frivolous claims in the face of established law and clear facts. *Farese v. Scherer*, 342 F.3d 1223, 1232 (11th Cir. 2003). Generally, though, we have declined requests to impose sanctions under Rule 38 on *pro se* litigants. *See Woods v. I.R.S.*, 3 F.3d 403, 404 (11th Cir. 1993); *Hyslep v. United States*, 765 F.2d 1083, 1084–85 (11th Cir. 1985). Nevertheless, we have made exceptions and imposed sanctions against *pro se* appellants who were attorneys themselves or who were explicitly warned by the district court that their claims were frivolous. *See, e.g.*, *United States v. Morse,* 532 F.3d 1130, 1132–33 (11th Cir. 2008) (imposing sanctions on *pro se* appellant who had been warned in the district court that his tax claims were "utterly without merit").

Here, we decline to impose sanctions on Vient. To date, no court has warned Vient that his underlying claim, or an appeal relating thereto, was frivolous. *See Morse*, 532 F.3d at 1130, 1132–33. Moreover, we have already vacated imposition of one sanction—the initial dismissal of his suit under Rule 11—and held that Vient had not taken "a frivolous legal position without evidentiary support" at that point. Therefore, we follow our general practice of not sanctioning *pro se* litigants and deny Highlands's motion for sanctions. *Woods*, 3 F.3d at 404; *Hyslep*, 765 F.2d at 1084–85.

IV.

In sum, in Part I, we **GRANT**, in part at least, Highland's motion to dismiss the case for lack of jurisdiction. To the extent that Vient's sixth motion for reconsideration or his motion for

transparency might be deemed to raise some issue over which we might have jurisdiction, we hold in Part II that the district court's judgment should be summarily **AFFIRMED**. We **DENY** as moot Highlands's motion to stay the briefing schedule. We **DENY** Highlands's motion for sanctions. All other pending motions are **DENIED AS MOOT**.