

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 11 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ROOTER HERO PHOENIX, INC.; CALL  
PRO'S, INC.,

No. 23-15228

Plaintiffs-Appellants,

D.C. No. 2:22-cv-00220-JJT

v.

MEMORANDUM\*

JORDAN BEEBE; BRITTANY BEEBE,

Defendants-Appellees,

and

ROOTER RANGER TUCSON, LLC;  
ROOTER RANGER, LLC,

Defendants.

Appeal from the United States District Court  
for the District of Arizona  
John Joseph Tuchi, District Judge, Presiding

Submitted December 7, 2023\*\*  
San Francisco, California

Before: S.R. THOMAS, BRESS, and JOHNSTONE, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Plaintiffs Rooter Hero Phoenix, Inc. and Call Pro's, Inc. appeal the district court's order imposing monetary sanctions on their counsel under 28 U.S.C. § 1927 and the court's inherent authority. We review a district court's imposition of sanctions for abuse of discretion. *See Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1087 (9th Cir. 2021); *In re Keegan Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 435 (9th Cir. 1996). We “give ‘great deference’ to a district court’s factual findings underlying a sanctions order,” which “may not be set aside unless they are clearly erroneous.” *Am. Unites for Kids*, 985 F.3d at 1088 (quoting *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1035 (9th Cir. 2012)). We review legal questions de novo, including whether the district court afforded adequate process before granting a motion for sanctions. *Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1109 (9th Cir. 2005). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.<sup>1</sup>

Under 28 U.S.C. § 1927, an attorney “who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” In addition, the district court has the inherent power to sanction counsel for “(1) a willful violation of a court order; or (2) bad faith.” *Am.*

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<sup>1</sup> We previously affirmed the district court’s dismissal of the First Amended Complaint. *See Rooter Hero Phoenix, Inc. v. Beebe*, 2023 WL 2523618 (9th Cir. Mar. 15, 2023). We also concluded that the district court did not abuse its discretion by striking the plaintiffs’ Second Amended Complaint as a sanction for plaintiffs’ failure to meet and confer with the defendants. *Id.* at \*1.

*Unites for Kids*, 985 F.3d at 1090. “A sanction may be awarded either for willful disobedience of a court order or when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” *Id.*

The district court’s award of \$34,715.00 in attorneys’ fees and \$2,029.78 in non-taxable costs was not an abuse of discretion, nor were the court’s factual findings clearly erroneous. The district court acted within its inherent powers in concluding that plaintiffs’ counsel should be sanctioned because counsel “persisted in attempting to bring” claims and allegations that “were frivolous on their face” and harassing. These included claims that defendants were violating the Arizona criminal code (which does not provide a private right of action) and allegations that a defendant had sexually assaulted a family member. “A finding of bad faith is warranted where an attorney ‘knowingly or recklessly raises a frivolous argument, or argues a meritorious claim for the purpose of harassing an opponent.’” *Primus Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 649 (9th Cir. 1997) (quoting *In re Keegan Mgmt. Co.*, 78 F.3d at 436).

The district court likewise did not abuse its discretion in finding that plaintiffs’ counsel “willfully disobeyed the Court’s order” to meet and confer “in bad faith or for oppressive reasons.” *See Am. Unites for Kids*, 985 F.3d at 1090 (explaining that “a willful violation of a court order” can support the imposition of sanctions). The record supports the district court’s determination that plaintiffs’ counsel

unreasonably failed to meet and confer and willfully failed to address defendants' meritorious grounds for dismissing plaintiffs' claims before filing amended pleadings, contrary to the court's order and the local rules. Indeed, in the previous appeal we upheld the district court's striking of the Second Amended Complaint as a sanction for plaintiffs' failure to meet and confer. *Rooter Hero*, 2023 WL 2523618, at \*1. Considering the record as a whole, the district court did not abuse its discretion in ordering payment of attorneys' fees and costs as a sanction.

Finally, plaintiffs were not deprived of due process because the district court did not hold oral argument before granting the defendants' motion for fees and costs. Plaintiffs were entitled to "notice and an opportunity to be heard" before the district court imposed the sanctions at issue here. *See Lasar*, 399 F.3d at 1112. The district court satisfied this requirement by allowing briefing on the fee motion, in which plaintiffs did not request oral argument.<sup>2</sup>

**AFFIRMED.**

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<sup>2</sup> To the extent plaintiffs challenge the amount of fees and costs awarded, the challenge is forfeited because plaintiffs did not raise this objection in the district court. *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009). As the district court found, "Plaintiffs do not challenge the reasonableness of Defendants' requested fees and non-taxable costs."