

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

KENNITH McDOWELL, ROBERT *
MAULDING, LUTHER STRIPLING, *
RUDY KYLE, FRED DOLLAR, JAMES *
JOSLIN, JAMES MILNER, JOE ELLIS, *
DAVID ELLIS, DANIEL STRIPLING, and *
JANET STRIPLING, *

Plaintiffs, *

vs. *
*
*

No. 4:08cv003979 SWW

ELBERT PRICE, individually and as Trustee *
for these plans: Bud Price’s Excavating *
Service Inc. Profit-Sharing Plan, Bud Price’s *
Excavating Service, Inc. Retirement Plan, *
Price’s Utility Contractors, Inc. Retirement *
Plan and for six unnamed plans; MARY *
RUTH PRICE, individually and as Trustee *
for these plans: Bud Price’s Excavating *
Service, Inc. Profit-Sharing Plan, Bud Price’s *
Excavating Service, Inc. Retirement Plan, *
Price’s Utility Contractors, Inc. Retirement *
Plan and for six unnamed plans (Plans A-F); *
Bud Price’s Excavating Service, Inc. *
Profit-Sharing Plan; Price’s Utility Contractors, *
Inc. Retirement Plan; Bud Price’s Excavating *
Service, Inc. Retirement Plan; six unnamed *
plans (Plans A-F); Price’s Utility Contractors, *
Inc. as plan administrator for Price’s Utility *
Contractor’s Inc., Retirement Plan and up to *
six unnamed plans; Bud Price’s Excavating *
Service, Inc. as plan administrator of Bud *
Price’s Excavating Service, Inc. Profit- *
Sharing Plan, Bud Price’s Excavating Service, *
Inc. Retirement Plan, and up to six unnamed *
plans (A-F), *

Defendants. *

ORDER

Plaintiffs Kenneth McDowell, Robert Maulding, Luther Stripling, Rudy Kyle, Fred
Dollar, James Joslin, James Milner, Joe Ellis, David Ellis, Daniel Stripling, and Janet Stripling,

former employees or beneficiaries of former employees of defendants Bud Price’s Excavating Service, Inc. and Price’s Utility Contractors, Inc., appeal [doc.#368] the Magistrate Judge’s January 7, 2011 Order [doc.#366] denying plaintiffs’ motion for sanctions under Fed.R.Civ.P.

11. Plaintiffs argue the Magistrate Judge applied the wrong law when, citing *Hartman v. Hallmark Cards, Inc.*, 833 F.2d 117, 124 (8th Cir. 1987), he applied a test of objective reasonableness to the defendants’ pleadings. Rather, plaintiffs contend the correct test is set forth in *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990).

The Supreme Court in *Cooter & Gell* held that courts of appeals are to give deference to the determination of district courts concerning the imposition of sanctions – applying an abuse of discretion standard – and are to reverse a sanction only when the district court based its decision on an erroneous view of the law or on a clearly erroneous assessment of the evidence. 496 U.S. at 404-05. *See MHC Inv. Co. v. Racom Corp.*, 323 F.3d 620, 624 (8th Cir. 2003). As far as district courts are concerned, in determining whether a violation of Rule 11 has occurred, district courts, at least in the Eighth Circuit, must ascertain whether the attorney met the “objective reasonableness” standard. *See, e.g., Narsyn, Inc. v. Desai*, 351 F.3d 825, 831 (8th Cir. 2003); *Black Hills Inst. of Geological Research v. South Dakota Sch. of Mines and Tech.*, 12 F.3d 737, 745 (8th Cir. 1993); *Miller v. Bittner*, 985 F.2d 935, 938 (8th Cir. 1993). This is the standard the Magistrate Judge applied, and the Court does not find that his decision was based on an erroneous view of the law or on a clearly erroneous assessment of the evidence. Accordingly, the Court denies plaintiffs’ appeal of the Magistrate Judge’s decision denying Rule 11 sanctions.

To the extent plaintiffs are arguing the merits of their case in their appeal, the Court notes that plaintiffs may argue the merits of their case in any objections to the Magistrate Judge’s

findings and recommendations should such findings and recommendations be adverse to plaintiffs.

IT IS SO ORDERED this 14th day of January 2011.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE