IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 91-3870

OLD TIME ENTERPRISES, INC.,

Plaintiff,

VERSUS

MICHAEL L. BROWNING, et al.,

Defendants,

INTERNATIONAL COFFEE CORP. and
CARLOS NOTTEBOHM,

Defendants-Appellees,

VERSUS

LOUIS R. KOERNER, JR.,

Movant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 89 1371 (H))

January 5, 1993

Before REAVLEY, SMITH, and EMILIO M. GARZA, Circuit Judges.

JERRY E. SMITH, Circuit Judge:[*]

Louis R. Koerner, Jr., challenges the district court's

[*] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

imposition of sanctions imposed pursuant to Fed. R. Civ. P. 11, contending that the district court insufficiently supported its ruling and that Koerner was not a proper party to sanction. Finding no merit in these contentions, we affirm.

I.

In 1986, Old Time Enterprises, Inc. ("Old Time"), filed a Racketeer Influenced and Corrupt Organizations Act ("RICO") complaint against International Coffee Corporation ("ICC") and several of its officers, including Carlos Nottebohm. The district court dismissed the complaint, and we affirmed but modified the dismissal to be without prejudice. Old Time Enters. v. Int'l Coffee Corp., 862 F.2d 1213, 1219-20 (5th Cir. 1989).

In 1989, Old Time filed a second RICO complaint involving the same business relationships among the same parties. ICC moved to dismiss the complaint and moved for sanctions against Old Time and its attorney, Louis Koerner.

On August 18, 1989, the district court found in favor of ICC and imposed, but did not fix the amount of, sanctions for the costs associated with filing the RICO claim. The district court found that Old Time's 150-page RICO claim was "vague, confusing, and . . . essentially incomprehensible." Specifically, the court objected to paragraphs referenced within paragraphs and a muddled jumble of attached schedules and exhibits. The court went on to show that Old Time's complaint was "woefully inadequate" because it attempted to establish the existence of a RICO "enterprise" only

through conclusionary allegations and irrelevant documents. Finally, the court determined that this fourth set (including amended complaints) of unclarified generalities that Old Time threw together "failed once again even to approach compliance with the requirements so clearly outlined" previously.

The next day the district court entered judgment and imposed sanctions in favor of the defendants and against the plaintiff, Old Time, without mentioning Koerner by name. In an amended notice of appeal, Koerner wrote, "Louis R. Koerner, Jr. hereby appeals from all orders granting sanctions, . . . and any other final or interlocutory order that affects or is adverse to his interests." In an unpublished opinion, Old Time Enters. v. Int'l Coffee Corp., No. 89-3763 (5th Cir. July 12, 1990), we affirmed the judgment in all respects.

ICC then filed a motion to fix the amount of sanctions at $47,373.58, representing attorneys' fees and costs. Before the district court ruled on this motion, Old Time and ICC reached a settlement, as part of which ICC agreed not to pursue sanctions against Old Time but specifically reserved its right to do so against Koerner. After the settlement, the court held a hearing on the sanctions issue, at which Koerner argued that because the district court had never imposed sanctions on him by name, he was not liable. The court disagreed, affirming that the August 18, 1989, order had intended to impose sanctions on Koerner.

After the hearing, ICC filed a second motion for sanctions and submitted documentation justifying its costs and fees. On

September 10, 1991, the district court ruled on sanctions. It considered "all of the circumstances, including the total expenses which have been incurred, Mr. Koerner's relative impecuniosity, and the necessity for deterrence . . ." and ordered Koerner to pay a total of $25,000 ($12,500 to each of ICC and Nottebohm) in sanctions.

II.

We review "all aspects" of a district court's award of sanctions under an abuse of discretion standard. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990). See also Thomas v. Capital Sec. Servs., 836 F.2d 866, 872 (5th Cir. 1988) (en banc); Akin v. Q-L Invs., 959 F.2d 521, 534 (5th Cir. 1992). Under this standard, we shall not reweigh evidence and reconsider facts already weighed and considered by the district court. Cooter & Gell, 496 U.S. at 404. Rather, we shall uphold a district court's award of sanctions if that court has offered substantial justification for finding a rule 11 violation. Id. at 405.

In Thomas, 836 F.2d at 883, we explicitly stated that a district court need not make specific findings and conclusions in all rule 11 cases. We did stress "the importance of an adequate record for appellate review in those cases in which the violation is not apparent on the record and the basis and justification for the trial judge's Rule 11 decision is not discernible." Id. In other words, we shall rigorously review the district court's award of sanctions to ICC in order to ensure that justification for the

district court's decision is present in the record.

Koerner basically argues two points on appeal. First, he contends that the district court failed to make detailed findings necessary to back up its imposition of severe monetary sanctions. By omitting such findings, Koerner asserts that the district court has abused its discretion and we must remand.

We disagree. In Thomas, id., we specifically chose not to force district courts to make detailed factual findings every time they award sanctions. In Willy v. Coastal Corp., 915 F.2d 965, 966 (5th Cir. 1990), we confronted a similar situation in which the district court sanctioned an attorney who filed a 110-page motion for summary judgment along with 1200 pages of unorganized supporting material. The district court found that the attorney had filed confusing, misleading pleadings, including a baseless RICO claim, and assessed $19,307 in rule 11 sanctions. Id. at 966, 968. We reviewed the record and, given the district court's better position to marshal the necessary facts and figures, found that it disclosed ample support for the district court's determination of the amount of sanctions. Id. at 968.

In Jennings v. Joshua Indep. School Dist., 948 F.2d 194, 199 (5th Cir. 1991), we emphasized another restriction on rule 11 cases: Sanctions must be limited to expenses directly caused by filing the baseless complaint in the district court. A further requirement we have placed on sanctions is that they be the "least severe sanction" adequate to accomplish the purposes of rule 11.

Our review of the record shows that the district court did not

abuse its discretion in awarding sanctions of $25,000. The record shows that ICC spent $47,373.58 to defend itself from Old Time's baseless RICO claims. The district court considered this amount and then reduced it. It felt the less severe sanction of $25,000 better suited the purposes of rule 11. Following the lessons of the Supreme Court in Cooter & Gell and our own words in Thomas, we shall not reconsider the district court's determination of the appropriate amount of sanctions, as the record adequately reflects the district court's choice of the amount of sanctions. It considered all of the circumstances and concluded that $25,000 was the least severe sanction necessary to implement the policy of rule 11.

Koerner's second main contention is that the district court inappropriately sanctioned him in that the court did not mention him by name in its August 18, 1989, order imposing sanctions. Koerner first argues that when we affirmed that order in 1990 without mentioning him, we rendered the sanctions claim res judicata. We do not accept this argument: The district court still retained the power to decide the amount of sanctions and the parties to be sanctioned.

An award of attorneys' fees is collateral to the merits of an action. Deloach v. Delchamps, Inc., 897 F.2d 815, 826 (5th Cir. 1990). The district court had not set the amount of sanctions in its August 18 order or August 19 judgment. It explicitly stated that it would hold a hearing at a later date to determine the specifics of the sanction award. When we affirmed the judgment, we

did not make all of its aspects res judicata, but only the fact that sanctions would be forthcoming.

Next, Koerner argues that the settlement between Old Time and ICC, which gave up pursuit of sanctions against Old Time, meant that no sanctions could be imposed on Koerner. Quite the opposite is true. Once a court has determined that a party has violated rule 11, the court is duty-bound to impose some form of sanctions on that party. Thomas, 836 F.2d at 876. The court found that Koerner, as signer of the pleadings, had violated rule 11. It therefore rightfully sanctioned Koerner, regardless of any settlement between Old Time and ICC.

Koerner cannot now claim that he had no knowledge that he was to be sanctioned. In the notice of appeal filed right after the August 19, 1989, judgment, Koerner writes that he appeals any sanctions adverse to his interests. In the settlement negotiations between Old Time and ICC, ICC specifically reserved its rights to pursue sanctions against Koerner. Koerner obviously had knowledge that the sanctions referred to in the August 18 order referred to him. As an attorney who signed the sanctionable pleadings, Koerner knew, from the district court's first mention of sanctions, that he was liable for them.

For the foregoing reasons, we AFFIRM the decision of the district court.