

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-1766  
Conference Calendar

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FRANK J. HOLDAMPF,

Plaintiff-Appellee,

versus

J. B. HUNT TRANSPORT SERVICES  
INCORPORATED,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:91-CV-2641-H  
- - - - -  
(November 1, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:\*

J. B. Hunt Transport Services, Inc. (Hunt) argues for the first time on appeal that the district court erred by not imposing Fed. R. Civ. P. 11 sanctions against Holdampf for bringing, and maintaining, a frivolous suit. At the district court level, Hunt argued that Frank J. Holdampf's suit was either an abuse of process or malicious prosecution, and suggested that the district court impose sanctions, sua sponte, in the form of reasonable attorneys' fees. Hunt now informs this Court that its

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\* Local Rule 47.5 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

request for sua sponte sanctions was a motion for Rule 11 sanctions and offers a laundry list of Rule 11 violations by Holdampf.

An issue not presented to the district court will not be considered by this court on appeal, unless it involves a pure question of law that if not ruled upon would involve a miscarriage of justice. Clark v. Aetna Cas. & Sur. Co., 778 F.2d 242, 249 (5th Cir. 1985). The denial of sanctions is an issue of law that does not involve a miscarriage of justice if not considered. Cf. St. Amant v. Bernard, 859 F.2d 379, 385 (5th Cir. 1988) (no injustice in not considering, for the first time on appeal, an objection to the imposition of Rule 11 sanctions).

The district court should not be penalized by Hunt's delay until appeal to explain the nature of its request for sanctions. Hunt's request for sanctions could have been construed as either a motion for sanctions for violating the affirmative duties of Rule 11 or a request for the district court to use its inherent power to award attorney's fees when Holdampf had acted in bad faith in filing the lawsuit or in his conduct of the litigation. See Thomas v. Capital Sec. Services, Inc., 836 F.2d 866, 875 (5th Cir. 1988) (en banc).

The district court should not be held to a Rule 11 sanctions review, when Hunt failed to inform the district court that it had moved for Rule 11 sanctions. The district court's denial of sanctions is AFFIRMED.