IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-3488

Summary Calendar

HONORE L. HAZEUR, ET AL.,

Plaintiffs,

v.

KELLER INDUSTRIES,

Defendant,

WINTHROP GARDNER and
EDWARD RODRIGUEZ,

Movants-Appellants.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 90 4861 "N")

(January 11, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:[*]

Appellants Winthrop Gardner and Edward Rodriguez appeal from the district court's order assessing jury costs against them in the amount of $1,792.00. Finding that (a) we have jurisdiction

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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 Pursuant to that Rule, the court has determined that this opinion should not be published.

to decide the appeal and (b) the district court did not err in assessing costs against Gardner and Rodriguez, we affirm the order of the district court.

I.

On December 10, 1990, Honore and Shelley Hazeur, who are not parties to this appeal, filed a products liability suit against Keller Industries in federal district court. The Hazeurs alleged that a manufacturing defect in a Keller Industries' ladder, which collapsed while Mr. Hazeur was on it, proximately caused injuries to Mr. Hazeur. The Hazeurs were represented by the appellants in this case, Winthrop Gardner and Edward Rodriguez. After substantial discovery, the Hazeurs' lawsuit proceeded to trial. Two days into trial, however, the district court declared a mistrial because of "inappropriate observations" by Rodriguez, one of the Hazeurs' attorneys.

The events leading up to the mistrial warrant further discussion. One of the major issues in this case was whether Mr. Hazeur's injuries were caused by a manufacturing defect in the ladder or whether, as Keller Industries contended, Mr. Hazeur's injuries were caused by the ladder being bent or "bowed" prior to the accident. Both the Hazeurs and Keller Industries employed experts on this issue, and both experts prepared reports on their theory of how the accident occurred. Before trial, however, the district court instructed the attorneys for the Hazeurs and Keller Industries that, in questioning their experts at trial,

they were restricted to the scope of the expert's report. While the report submitted by Hazeurs' expert, Edward Cooke, did not refer to the presence or absence of any "bow" in the ladder, the report of Keller Industries' expert, John Ver Halen, did refer to a "bow" in the ladder. Thus, when Cooke was asked by the Hazeurs' attorneys to testify about the "bow" in the ladder, Keller Industries objected that such testimony was beyond the scope of Cooke's report. This objection was sustained. By contrast, when Keller Industries called Ver Halen and began questioning him about the "bow" in the ladder, the district court overruled the objection made by the Hazeurs' attorney, Rodriguez, noting that Cook "made no reference at all in the entirety of his testimony to the ladder being previously dropped or bowed. . . ." It was at this point that Rodriguez made the inappropriate observations resulting in a mistrial:

> Your Honor you are testifying what Mr. Cooke said. Mr. Cooke tried to talk about the bowing and you wouldn't let him. That is when I got real upset yesterday. Now he [Ver Halen] is getting up here and you are letting him talk about bowing and all kinds of stuff and he doesn't specifically go into that in his report. That is what I kept on getting confused. I don't understand.

The district court responded as follows:

> You have accomplished what you set out to accomplish. I declare a mistrial and direct that this case be replaced on the docket at the bottom of the docket. As a result of counsel's inappropriate observations, this case is mistried.

After declaring a mistrial, the district court, on October 23, 1991, issued a show cause order to Gardner and Rodriguez. The district court's order directed them to show cause why Keller

Industries' costs and expenses in connection with the trial, as well as jury costs in the amount of $1,792.00, should not be assessed against them. Gardner and Rodriguez subsequently withdrew as counsel for the Hazeurs and, on January 27, 1992, filed a motion for clarification of the district court's show cause order. In response to the motion for clarification, the district court dismissed the portion of its October 23 order directing Gardner and Rodriguez to show cause why Keller Industries' costs and expenses in connection with the trial should not be assessed against them. However, the district court retained that portion of the October 23 order directing Gardner and Rodriguez to show cause why jury costs should not be assessed against them.

On April 21, 1992, after conducting a hearing on the issue of Gardner and Rodriguez's conduct, the district court entered an order assessing jury costs against them in the amount of $1,792.00. Gardner and Rodriguez filed a timely notice of appeal. Subsequent to their filing of a notice of appeal, the Hazeurs, who are now represented by different counsel, settled their lawsuit against Keller Industries. The district court, however, has not yet entered a final judgment in the case.

II.

We first address our jurisdiction to entertain this appeal. In particular, we must decide whether, despite the fact that the district court's order assessing jury costs against Gardner and

Rodriguez is not a final decision within the meaning of 28 U.S.C. § 1291, it nonetheless constitutes an appealable collateral order under the rule set forth in Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949). For the following reasons, we conclude that the district court's order assessing jury costs is appealable under the Cohen collateral order doctrine.

In Cohen, the Supreme Court held that orders not appealable as a final decision under 28 U.S.C. § 1291 are nonetheless appealable where they "finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." 337 U.S. at 546. For the Cohen collateral order doctrine to apply, the order must: (1) conclusively determine the disputed question; (2) resolve an important issue completely separate from the merits of the underlying action; and (3) be effectively unreviewable on appeal from a final judgement. Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (1978). Failure to meet any one of these three elements renders the doctrine inapplicable. Estate of Bishop v. Bechtel Power Corp., 905 F.2d 1272, 1274-75 (9th Cir. 1990).

In our view, all three Cohen elements are satisfied in the instant appeal. First, there can be no doubt that the order assessing jury costs against Gardner and Rodriguez conclusively determines whether they must pay jury costs and the amount of those costs. Indeed, because the district court did not stay the

assessment of jury costs against Gardner and Rodriguez, under Rule 62(a) of the Federal Rules of Civil Procedure, the order assessing those costs became executory ten days after its entry. Second, the question of jury costs is one that is completely separate from the merits of the Hazeurs' products liability lawsuit: it specifically involves the issue of whether Gardner and Rodriguez intentionally, or in bad faith, caused a mistrial. See infra Part III. Finally, given that (i) Gardner and Rodriguez no longer represent the Hazeurs and (ii) the Hazeurs have subsequently settled their lawsuit with Keller Industries, there is a substantial likelihood that the order assessing jury costs would be effectively unreviewable on appeal from a final judgment.

We recognize that, under Click v. Abilene National Bank, 822 F.2d 544, 545 (5th Cir. 1987), sanction orders--even those imposing sanctions against an attorney--do not generally meet the third element of the Cohen collateral order doctrine. Accord G.J.B. & Assocs. v. Singleton, 913 F.2d 824, 827 (10th Cir. 1990) (holding that a sanction order against counsel currently of record is not appealable under the Cohen collateral order exception to the final judgment rule); see also Schaffer v. Iron Cloud, Inc., 865 F.2d 690, 691 (5th Cir. 1989) (holding that order sanctioning party and requiring immediate payment was not appealable under Cohen collateral order doctrine).[1] Our decision

[1] Other circuits have taken a different view on the question of whether sanction orders against a non-party attorney are appealable under the Cohen collateral order doctrine. In the

in Click was based on the observation that orders sanctioning an attorney "can be and routinely are appealed when merged in the district court's final judgement." 822 F.2d at 545. Thus, in Click we held that, as a general rule, orders sanctioning attorneys are not appealable under the collateral order doctrine. We stated: "a general rule rendering [such orders] appealable . . . would be unworkable in practice, unwise from a policy standpoint, and would interfere with the effective resolution of lawsuits." Id.

Since Click, however, we have recognized that, in certain limited circumstances, an order sanctioning an attorney may be appealable under Cohen. In Markwell v. County of Bexar, 878 F.2d 899 (5th Cir. 1989), we held that, "where an order assesses sanctions against an attorney who has withdrawn from

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Ninth Circuit, for example, "an order imposing sanctions solely on a nonparty falls within the collateral order exception to the final judgement rule and thus is immediately appealable." Estate of Bishop v. Bechtel Power Corp., 905 F.2d 1272, 1275 (9th Cir. 1990); see also Riverhead Sav. Bank v. National Mortgage Equity Corp., 893 F.2d 1109, 1113 (9th Cir. 1990) (while an order awarding Rule 11 sanctions against a *party* generally is not appealable prior to the entry of final judgment, a sanctions order imposed solely on a *nonparty* falls within the collateral order exception) (emphasis added). The Second Circuit has a similar rule with respect to the appealability of an order sanctioning an attorney. See Thomas E. Hoar, Inc. v. Sara Lee Corp., 882 F.2d 682, 685-86 (2d Cir. 1989). And, in the Eleventh Circuit, as long as an order sanctioning an attorney is immediately payable, the attorney may appeal the order under the Cohen collateral order doctrine. See Ortho Pharmaceutical Corp. v. Sona Distribs., 847 F.2d 1512, 1515-18 (11th Cir. 1988); DeSisto College, Inc. v. Line, 888 F.2d 755, 762-63 (11th Cir. 1989), cert. denied, 495 U.S. 952 (1990); see also Transamerica Commercial Fin. Corp. v. Banton, Inc., 970 F.2d 810, 814-15 (11th Cir. 1992) (holding that, under facts of case, order sanctioning a *party* was appealable under collateral order doctrine) (emphasis added).

representation at the time of the appeal, and immediate appeal of the sanctions order will not impede the progress of the underlying litigation, an exception to the general policy set out in Click is warranted." Id. at 901; accord Eavenson, Auchmuty & Greenwald v. Holtzman, 775 F.2d 535, 539 (3d Cir. 1985) (holding that where counsel has withdrawn from a case in which he or she has been sanctioned, and the sanction order is itself final and sets forth issues separable from the merits, the requirements of Cohen have been met, and the sanction order is appealable as a collateral order). Because Gardner and Rodriguez, like the attorney in Markwell, withdrew from representing their clients after being sanctioned, an exception to the general policy set out in Click is also warranted in this case. Accordingly, we hold that the order assessing jury costs against Gardner and Rodriguez is appealable under the Cohen collateral order doctrine.

III.

Proceeding to the merits of this appeal, we must now determine whether the district court erred in assessing jury costs against Gardner and Rodriguez. We first discuss a district court's inherent power to award such costs. And, concluding that a district court has the inherent power to award jury costs, we then explain why the district court in this case did not err in assessing such costs against Gardner and Rodriguez.

A.

Rodriguez and Gardner concede, as they must, that a district court "has the inherent power to sanction attorney or litigant misconduct." Indeed, in Roadway Express, Inc. v. Piper, 447 U.S. 752, 765 (1980), the Supreme Court acknowledged that a district court has the inherent power "to levy sanctions in response to abusive litigation practices." (citing Link v. Wabash R. Co., 370 U.S. 626, 632 (1962)). More recently, in Chamber v. NASCO, Inc., 111 S. Ct. 2123, 2131-36, the Supreme Court reaffirmed the inherent power of a district court to sanction bad-faith conduct. In rejecting the argument that various explicit rules giving a district court the power to sanction displace the inherent power to sanction, the Court stated:

> We discern no basis for holding that the sanctioning scheme of [28 U.S.C. § 1927] and [the Federal Rules of Civil Procedure] displaces the inherent power to impose sanctions for the bad faith conduct described above. These other mechanisms, taken alone or together, are not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions.

Id. at 2134.

Rodriguez and Gardner further concede that a district court has the inherent power to assess jury costs against one who engages in bad faith conduct. We recognize that a district court's inherent power to sanction primarily has been discussed in the context of the power to assess attorney's fees. See e.g., Roadway Express, 447 U.S. at 764. We conclude, however, that the inherent power is also broad enough to sustain an sanction order assessing jury costs for bad faith conduct. See Waible v.

McDonald's Corp., 935 F.2d 924, 926 (8th Cir. 1991) (finding no abuse of discretion in district court's decision to impose jury costs on attorney who sought dismissal of claim on the day of trial); Boettcher v. Hartford Ins. Group, 927 F.2d 23, 26 (1st Cir. 1991) (recognizing that, in appropriate circumstances, district court has the inherent authority to impose jury costs as a sanction); Zambrano v. City of Tustin, 885 F.2d 1473, 1478 (9th Cir. 1989) (acknowledging that district court has inherent authority to sanction attorneys and make sanctions payable to the court).

B.

Gardner and Rodriguez's real complaint with the district court's order, then, is not that the district court lacked the inherent authority to assess jury costs, but that such a sanction was inappropriate in their case. They argue specifically that (1) the district court's failure to expressly articulate that it was imposing jury costs pursuant to its inherent power to sanction violated their due process rights and (2) the district court exceeded its inherent authority to impose sanctions. We address each of these contentions in turn.

1.

Gardner and Rodriguez first complain that, in imposing jury costs pursuant to its inherent power to sanction, the district court did not comply with procedural due process safeguards. In particular, they contend that "the [d]istrict [c]ourt's failure to articulate its authority for [the jury cost] sanction violated

[their] due process rights." Although they speculate that the district court "was proceeding under its inherent power,"[2] they nonetheless maintain, without citing any authority, that the district court was required to explicitly state that it was sanctioning the attorneys under its inherent power.

Initially, we note that, when a district court imposes sanctions under its inherent authority, due process considerations undoubtedly are implicated. In Roadway Express, the Supreme Court stated that a district court should not lightly utilize its inherent power to sanction. 447 U.S. at 767. The Court further instructed that such sanctions should not be imposed "without fair notice and an opportunity for a hearing on the record." With regard to the "fair notice" component of due

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[2] In fact, this is the only authority that can support the district court's assessment of jury costs. Although Gardner and Rodriguez also speculate that the district court may have been acting pursuant to 28 U.S.C. § 1927, a straightforward reading of that statute reveals that the district court lacked the power to assess jury costs for an intentionally-caused mistrial. As Gardner and Rodriguez correctly note, § 1927, by its own terms, limits recovery to "the excess costs, expenses, and attorneys' fees reasonably incurred because of" the person's conduct in unreasonably and vexatiously multiplying the proceedings. The Supreme Court held in Roadway Express that the "costs" referred to in § 1927 are limited to those enumerated in 28 U.S.C. § 1920: (1) fees of the clerk and marshal; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of papers necessarily obtained for use in the case; (5) docket fees under 28 U.S.C. § 1923; and (6) compensation of court appointed experts and interpreters, and salaries, fees, expenses, and costs of special interpretation services under 28 U.S.C. § 1828. Roadway Express, 447 U.S. at 757-61. Thus, "[i]t is clear beyond peradventure that 28 U.S.C. § 1927 does not include jury costs." Boettcher v. Hartford Ins. Group, 927 F.2d 23, 25 (1st Cir. 1991).

process, the Third Circuit has stated that "fundamental fairness may require some measure of prior notice to an attorney that the conduct that he or she contemplates undertaking is subject to discipline or sanction by a court." Eash v. Riggins Trucking, Inc, 757 F.2d 557, 571 (3d Cir. 1985). And, with regard to the requirement of a hearing on the issue of such sanctions, the Third Circuit has recognized that the purpose of such a requirement is to "ensure that the attorney has an adequate opportunity to explain the conduct deemed deficient." Id.

Gardner and Rodriguez do not seriously contend that the district court assessed sanctions "without fair notice and an opportunity for a hearing on the record." Indeed, such a contention would be without merit. First, the record on appeal reveals that Gardner and Rodriguez had ample notice that their conduct in referring to testimony by the Hazeurs' expert on the subject of a "bow" in the ladder would be sanctionable. At the beginning of the trial, and again prior to the Hazeurs' expert testifying, the district court instructed the attorneys for both sides that, in questioning their expert, they were restricted to the scope of the expert's report. Because the Hazeurs' expert made no reference to the presence or absence of any "bow" in the ladder in his report, the district court prohibited Gardner and Rodriguez from questioning him about the subject. Second, the district court assessed costs only after holding a hearing on the issue. The record on appeal reveals that, on February 5, 1992, Rodriguez and Gardner were given the opportunity, at a hearing,

to explain their conduct in referring to the absence of a bow in the ladder.

Even though the district court assessed sanctions after notice and hearing, the district court did not expressly articulate that it was acting pursuant to its inherent power to sanction. Pointing to this failure alone, Gardner and Rodriguez argue that their procedural due process rights were violated. We disagree.

Admittedly, it would have been preferable for the district court to expressly articulate that it was assessing jury costs pursuant to its inherent power to sanction. In our view, however, the district court's failure to do so does not rise to the level of a due process violation--especially given our conclusion that Gardner and Rodriguez received adequate notice and hearing. See Western Systems, Inc. v. Ulloa 958 F.2d 864, 872-73 (9th Cir. 1992) (district court's failure to expressly set forth underlying basis for sanctions did not violate sanctioned party's due process rights, where sanctioned party received adequate notice and hearing). Due process, it must be remembered, is a flexible concept, and the procedures that will suffice to accord a person due process vary "according to specific factual contexts." Hanah v. Larch, 363 U.S. 420, 442 (1960); see also Cafeteria & Restaurant Workers Union, Local 473 v. McElroy, 367 U.S. 886, 895 (1961) ("The very nature of due process negates any concept of inflexible procedures applicable to every imaginable situation."). Moreover, under the Supreme

Court's decision in Mathews v. Eldridge, 424 U.S. 319, 334-35 (1976), which sets forth the general formula for determining what process is due, courts are instructed to consider, as one of three factors, "the risk of an erroneous deprivation of [a liberty or property] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." Gardner and Rodriguez have not alleged how the district court's failure to articulate its authority for sanctioning them increased the risk that they would be erroneously sanctioned. Nor have they explained how a requirement that the district court articulate its authority for awarding sanctions would provide enhanced procedural protections in the context of proceedings surrounding a district court's decision to impose sanctions.

In sum, we hold that Gardner and Rodriguez's procedural due process rights were not violated by the district court's failure to articulate that it was assessing jury costs pursuant to its inherent power to sanction. The district court's failure in this regard did not detract from the adequate notice and hearing that were accorded to Gardner and Rodriguez. Furthermore, Gardner and Rodriguez have not established that the district court's failure to articulate its authority for imposing sanctions measurably increased the risk of factual error.

2.

Gardner and Rodriguez also complain that, even if their due process rights were not violated, the district court erred in

assessing jury costs against them. Their argument in this regard is two-fold: First, Gardner and Rodriguez contend that the district court clearly erred in finding they caused a mistrial in bad faith. Second, they contend that, even assuming the district court did not err in finding bad faith conduct, the district court nonetheless abused its discretion in sanctioning them under its inherent power.

a.

We review the district court's finding that an attorney engaged in bad faith conduct under the clearly erroneous standard. United States v. Wallace, 964 F.2d 1214, 1217 (D.C. Cir. 1992). Under this standard of review, a district court's finding may be set aside if it rests on an erroneous view of the law. Pullman-Standard v. Swint, 456 U.S. 273, 287 (1982). Once it is determined, however, that the district court applied the correct legal standard in making a finding, that finding will not be set aside unless, based upon the entire record, we are "left with the definite and firm conviction that a mistake has been committed." Anderson v. City of Bessemer City, 470 U.S. 564, 573 (1985) (quoting United States v. Gypsum Co., 333 U.S. 364, 395 (1948)). "If the district court's account of the evidence is plausible in light of the record viewed in its entirety," we will not set it aside as clearly erroneous--even if convinced that had we "been sitting as trier of fact, [we] would have weighed the evidence differently." Anderson, 470 U.S. at 573-74.

Pointing to the Supreme Court's decision in Chambers, Gardner and Rodriguez argue that the district court applied an incorrect legal standard in determining the existence of bad faith conduct. They specifically contend that the term "bad faith" encompasses only fraudulent conduct, improper conduct outside the confines of the court, and oppressive and harassing conduct. They reason that, because there was "no allegation of fraud perpetrated on the [c]ourt, no allegation of improper conduct `outside the confines of [the] [c]ourt and certainly no allegation that the conduct of [Rodriguez and Gardner] was calculated to reduce [the] defendant to a state of `exhausted compliance' by means of `oppression, harassment and massive expense,'"[3] the district court's finding of bad faith was clearly erroneous. We disagree.

First, it is clear that, before a district court may impose sanctions under its inherent authority, it must make a finding that the party to be sanctioned engaged in bad faith conduct. See Roadway Express, 447 U.S. at 765-66; see also Barnd v. City of Tacoma, 664 F.2d 1339, 1342 (9th Cir. 1982) (remanding case in which district court sanctioned attorney pursuant to inherent power, because district court failed to make a finding of fact on the question of bad faith). As the Ninth Circuit stated: "To insure that restraint is properly exercised, we have routinely insisted upon a finding of bad faith before sanctions may be imposed under the court's inherent power." Zambrano, 885 F.2d at

[3] Internal citations have been omitted.

1478. Thus, "[a] specific finding of bad faith by the trial judge or magistrate must accompany the sanction order in all such cases." Id.

In this case, Gardner and Rodriguez's do not dispute that the district court, in determining that they had accomplished what they "set out to accomplish," made what purported to be a "bad faith" finding. Rather, they contend that the district court's finding in this regard--namely, that Gardner and Rodriguez intentionally caused a mistrial--does not rise to the level of bad faith. Contrary to Gardner and Rodriguez's suggestions, "bad faith conduct" is not limited to fraudulent conduct, improper conduct outside the confines of the court, and oppressive and harassing conduct. The intentional causing of a mistrial also rises to the level of bad faith conduct and is therefore sanctionable under the district court's inherent power. See Barnd, 664 F.2d 1342-43 (recognizing that an attorney's conduct in intentionally causing a mistrial could rise to the level of "bad faith conduct"); see also Pressey v. Patterson, 898 F.2d 1018, 1021 (5th Cir. 1990) (noting that district court, under its inherent power, may sanction "instances of bad faith or willful abuse of the judicial process") (emphasis added). Thus, we conclude that the district court, by asking whether Gardner and Rodriguez intentionally caused a mistrial, applied the correct legal standard for determining the existence of bad faith conduct.

Gardner and Rodriguez further maintain that the district court clearly erred in finding that they intentionally caused a mistrial. In their brief on appeal, Gardner and Rodriguez argue that "[t]he record lacks any indication that counsel sought, in the instance that led the [c]ourt to declare a mistrial, the sua sponte declaration by the [c]ourt. . . ." Thus, Gardner and Rodriguez essentially argue that the district court's finding of bad faith is not plausible in light of the entire record. Again, we disagree.

Our review of the record reveals that there was substantial evidence supporting the district court's bad faith finding. In any event, we are not left with a definite and firm conviction that a mistake has been made. On several occasions during trial, Gardner and Rodriguez argued with the district court's rulings. On other occasions, Gardner and Rodriguez commented that the district court's rulings were "ridiculous." At still another point during trial--after Mr. Gardner had attempted to question Cooke for a second time about a "bow" in the ladder--the district court recognized that Gardner and Rodriguez were trying to mistry the case. It stated: "I guess you want to mistry this, don't you? Is that what you're aiming at, Counsel?" Most importantly, however, is the fact that earlier in the day on which the district court sua sponte declared a mistrial, Gardner had unsuccessfully moved for a mistrial.

Thus, we hold that the district court did not clearly err in finding that Gardner and Rodriguez engaged in bad faith conduct

by intentionally causing a mistrial. The district court applied the correct legal standard in determining that an attorney who intentionally causes a mistrial acts in "bad faith." Moreover, the district court's finding that the attorneys intentionally caused a mistrial is plausible in light of the entire record.[4]

b.

Although we review the district court's finding of bad faith under the clearly erroneous standard, we apply an abuse of discretion standard to the district court's ultimate decision to impose sanctions. See Wallace, 964 F.2d at 1217 (citing Chambers v. NASCO, 111 S. Ct. at 2136). The difference between the two standards, however, appears negligible. In reviewing a district court's decision to impose sanctions for bad faith conduct under the abuse of discretion standard, we will not set that decision aside unless we "have a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors." United

[4] Gardner and Rodriguez also argue--somewhat belatedly--in their reply brief that the district court's declaration of a mistrial was as unwarranted as its imposition of sanctions. This argument is easily rejected. We have stated that a federal district court "enjoys wide discretion to grant a new trial and the order granting a new trial will only be disturbed if that broad discretion is abused." Eximco, Inc. v. Trane Co., 748 F.2d 287, 290 (5th Cir. 1984). Given the numerous instances in which Gardner and Rodriguez were disruptive and disrespectful toward the court, as well as their recalcitrant attempts to question Cooke, the Hazeurs' expert, on the presence or absence of a "bow" in the ladder, we cannot say that the district court abused its discretion in sua sponte declaring a mistrial when Rodriguez again referred to the fact that Cooke attempted to testify about a "bow" in the ladder.

States v. Walker, 772 F.2d 1172, 1176 n.9 (5th Cir. 1985) (quoting In re Josephson, 218 F.2d 174, 182 (1st Cir. 1954)).

Gardner and Rodriguez contend that, even if the district court was not clearly erroneous in finding bad faith conduct, the district court's ultimate decision to assess jury costs against them constituted an abuse of discretion. They suggest that, because they "were outclassed by the more experienced lawyers representing the defendant," their conduct should have been excused. This contention lacks merit. Once the district court found that Rodriguez intentionally caused a mistrial, it was well within the district court's discretion, especially given the other disrespectful and disruptive conduct of Gardner and Rodriguez, to assess jury costs against both of them. We find no abuse of that discretion.

IV.

In sum, we conclude that we have jurisdiction to entertain this appeal from the district court's order sanctioning Gardner and Rodriguez. We also conclude that the district court did not err in sanctioning Gardner and Rodriguez. The district court's order assessing jury costs against Gardner and Rodriguez is, therefore, AFFIRMED in all respects.