IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-4297
Summary Calendar

CHARLES MCCORD AND MARCELLA MCCORD,

Plaintiffs-Appellees,

v.

JACK P. MOSS,

Defendant,

v.

THOMAS P. JACKSON,

Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(4:91-CV-189)

(November 19, 1992)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Thomas P. Jackson appeals from the district court's award of Rule 11 sanctions against him. Jackson was both an attorney-of-record and defendant in an underlying state court action that was

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

removed to federal district court. Holding that removal was clearly improper, the district court both remanded the case back to state court and imposed sanctions -- in the form of attorney's fees and expenses -- against Jackson. On appeal, Jackson does not challenge the district court's basic rationale for imposing sanctions. Rather, he simply objects to the amount of the monetary award as exorbitant. Finding that Jackson waived his right to contest the amount of sanctions awarded by the district court, we affirm.

I.

As an initial matter, we asked the parties to supplementally brief the following jurisdictional question: whether, in view of Click v. Abilene National Bank, 822 F.2d 544 (5th Cir. 1987) (sanctions order does not constitute a final appealable order) and its progeny, this court has proper jurisdiction over Jackson's appeal of the district court's order imposing sanctions when the underlying case has been remanded to state court. Both parties have argued in letter briefs that this court does possess jurisdiction.

We agree with the parties. Click involved an appeal of a sanction order where the underlying case remained pending in the federal district court. The court held that a sanctions order in such a case was not a final order because the award of sanctions could be challenged on the appeal of the underlying action. Click, 822 F.2d at 545. The instant case is distinguishable in

that there will be no final federal court judgment from which to appeal the collateral sanctions order. Thus, because the underlying action has been remanded to state court, we may properly review the severable collateral sanctions order. See Vatican Shrimp Co. v. Solis, 820 F.2d 674, 680 & n.7 (5th Cir. 1987); News-Texan, Inc. v. City of Garland, 814 F.2d 216, 219-20 (5th Cir. 1987); see also Karl Koch Erecting Co. v. New York Convention Center Development Corp., 838 F.2d 656 (2d Cir. 1988); Kozera v. Spirito, 723 F.2d 1003 (1st Cir. 1983); Katsaris v. United States, 684 F.2d 758 (11th Cir. 1982).

II.

Because Jackson concedes that he engaged in conduct deserving of some type of Rule 11 sanction, we will only briefly recount the events leading up to the sanctions order. Jackson, both an attorney-of-record and defendant in the underlying state court case, filed a petition for removal to federal district court, alleging diversity jurisdiction. The plaintiffs challenged the removal on the ground that there was not complete diversity, as required by 28 U.S.C. § 1441(b). Jackson then amended his removal petition, claiming that the district court possessed federal question jurisdiction. Again, the plaintiffs challenged the removal, this time by invoking the "well-pleaded complaint rule." See Verlinden B.V. v. Central Bank of Nigeria, 461 U.S. 480, 494 (1983).

Jackson readily concedes that he was in error regarding both theories of federal removal jurisdiction advanced in his removal petition. He explains his actions by claiming that he simply was unfamiliar with federal practice. He points out that this was the first time in his nine-year career to practice in federal court. Denying the plaintiffs' allegations, Jackson claims that he did not remove the case in bad faith. The district court found that Jackson violated Rule 11's requirement that a pleading be "well grounded in fact and [be] warranted by existing law or a good faith argument for the extension, modification, or reversal thereof."

On October 10, 1991, the district court remanded the case to state court and then ordered the plaintiffs' counsel to submit, within ten days, an affidavit listing their reasonable attorney's fees and expenses incurred in defending against the removal attempt. Jackson was given ten days to respond after the plaintiffs' affidavit was submitted. A week later, the plaintiffs' counsel requested a month's extension of the deadline for submitting an affidavit, which the court granted. In an order sent to both parties on October 21, 1991, the court expressly stated that the plaintiffs' counsel's affidavit was due "on or before November 20, 1991. Defendant's counsel shall have ten days from the filing of such affidavit to respond thereto." On November 20, 1991, the plaintiffs' counsel submitted an affidavit which claimed that the legal fees and other expenses incurred totalled to $21,272.23. This amount, it was claimed,

represented the work of numerous attorneys and other support personnel, as well as other non-labor expenses. Detailed invoices were also submitted.

Jackson failed to respond to the plaintiffs' affidavit within the ten-day period required by the district court's October 21, 1991 order. On December 12, 1991, the district court entered an order awarding the full $21,272.23 requested by the plaintiffs' counsel. The court noted that "having considered th[eir] affidavit, the lack of response thereto, and the record in this case, ... [the court] is of the opinion that sanctions should be imposed . . . " (emphasis added).

On December 20, 1991, pursuant to Rule 59 of the Federal Rules of Civil Procedure, Jackson filed a "Motion to Amend Judgment," to which he appended an affidavit challenging the plaintiffs' counsel's request for $21,272.23 as exorbitant. Jackson claimed that he was mistaken about the ten-day time limit in which he could have filed a controverting affidavit. Jackson alleged that he was under the impression that he had thirty days, as opposed to ten days, based on the court's original October 10, 1991 order that gave each of the parties equal amounts of time (ten days) to file affidavits. The court rejected Jackson's proffered excuse, denied his Rule 59 motion, and refused to consider his controverting affidavit as untimely. Jackson was ordered to pay the full $21,272.23 to the plaintiffs' counsel.

III.

On appeal, Jackson argues that the district court's sanction order should be reversed for three reasons: (i) the court erred by failing to make specific factual findings in support of its decision to impose the full $21,272.23; (ii) the court erred by failing to impose the "least severe sanction adequate" to accomplish the purposes of Rule 11; and (iii) the monetary award of $21,272.23 was clearly erroneous and unsupported by the evidence.

We review a district court's decision to award Rule 11 sanctions for an abuse of discretion. See Cooter & Gell v. Hartmarx Corp., 110 S. Ct. 2447, 2458-60 (1990); Thomas v. Capital Security Services, Inc., 836 F.2d 866, 872 (1988) (en banc) (requiring "application of an abuse of discretion standard across-the-board to all issues in Rule 11 cases"). This type of review encompasses our review of all fact-finding. See Cooter, 110 S. Ct. at 2450 ("In the [Rule 11] context, the abuse-of-discretion and clearly erroneous standards are indistinguishable.").

In view of this deferential standard of review, we reject all three of Jackson's arguments. First, with respect to the court's failure to make specific findings of fact, we note that the general rule is that a court is not required to make specific findings if a Rule 11 violation "is ... apparent on the record," Thomas, 836 F.2d at 883, as is true in Jackson's case. However, even if a violation is apparent from the record, "[i]f sanctions imposed are substantial in amount . . . , such sanctions must be

quantifiable with some precision." Id. We agree with Jackson that over $21,000 in attorney's fees and expenses are substantial when imposed on a single attorney. Ordinarily, then, a district court awarding substantial sanctions should give a reasonable and detailed accounting of the amount of sanctions awarded.

However, the district court did not abuse its discretion by simply adopting the plaintiffs' counsel's detailed requisition in toto in view of Jackson's unjustified failure to comply with the reasonable procedural requirements for challenging such a requisition.[2] See United States ex rel. Lochridge-Priest, Inc. v. Con-Real Support Group, Inc., 950 F.2d 284, 290 (5th Cir. 1992); see also Pope v. MCI Telecommunications Corp., 937 F.2d 258, 267 & n. 46 (5th Cir. 1991); FDIC v. Binion, 953 F.2d 1013, 1018 (6th Cir. 1991). As the court held in Lochridge-Priest:

> In its order granting L-P's motion for attorney's fees . . . against Con-Real, the district court noted 'that Defendants have failed to respond to this motion.' Con-Real now challenges the sufficiency of the evidence supporting the district court's award of attorney's fees. . . . Con-Real received a copy of L-P's application for attorney's fees two days before L-P filed the application, but did not respond within the ten days allowed by the United States District Court for the Western District of Texas Local Rule CV-7(j)(2) for objections to such motions. The district court granted L-P's motion for attorney's fees . . . . Although Con-Real objected to L-P's application after the district court granted the motion, its objection was untimely under the local rule. Con-Real cannot raise its objections to L-P's claim for attorney's fees on appeal.

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[2] Jackson's explanation that he mistakenly believed that he had thirty days, rather than ten days, to respond is untenable in view of the express language in the court's October 21, 1991 order.

Id. at 290 (emphasis added).

Because Cooter requires that we review a fact-finding challenged as "clearly erroneous" as part of our larger abuse-of-discretion review, we likewise rely on these cases to reject Jackson's argument that the district court's factual findings were clearly erroneous. After all, the court had to rely on the parties to litigate the issue of the amount of attorney's fees. When one party failed to do so, the court was left to rely exclusively on the other side. Under the highly deferential abuse-of-discretion standard, we cannot fault the district court for doing so.

With respect to Jackson's final argument -- that the district court failed to consider the "least severe sanction" to achieve the purposes of Rule 11, see Akin v. Q-L Investments, Inc., 959 F.2d 521, 534 (5th Cir. 1992) -- we cannot say that the court's decision to require Jackson to pay the other party's attorney's fees was an abuse of discretion. Jackson does not seem to dispute this general proposition, but instead challenges the district court's decision to impose the large amount requested by the plaintiffs. However, it is not as if the district court intended to impose additional punitive damages in awarding the full amount requested by the plaintiff's counsel. The court simply intended the sanctions to make the plaintiffs whole. If in fact $21,277.23 was not commensurate of the plaintiffs' counsel's efforts and reasonable expenses in defending against the improper removal, as discussed supra,

Jackson waived his right to challenge any excessiveness in the requisition by failing to respond within the ten-day period required by the district court. Although we agree that the plaintiffs' counsel's requisition was above the going rate for legal work in Texas,[3] we cannot say that the amount was so exorbitant that upholding the award would cause a miscarriage of justice.

IV.

For the foregoing reasons, we AFFIRM the district court's order awarding $21,272.23 in sanctions.

[3] For instance, the billing rate of Bill Boyd, lead counsel for plaintiffs, was $400/hour.