UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-4756
Summary Calendar

JOHN HOWARD MEADOWS, as trustee on behalf of persons entitled, etc.,

Plaintiff-Appellant,

versus

CHEVRON, USA, INC., ETC., ET AL.,

Defendants

LOCKE, PURNELL, RAIN, HARRELL, ET AL.,

Defendants-Appellees,

versus

BRUCE D. HERRIGEL,

Appellant.

Appeal from the United States District Court
For the Eastern District of Texas
(1:90-CV-0676)

(March 25, 1993)

Before POLITZ, Chief Judge, JOLLY and EMILIO M. GARZA, Circuit Judges.

POLITZ, Chief Judge:[*]

Sanctioned under Rule 11 of the Federal Rules of Civil Procedure for filing and pursuing a baseless lawsuit, John Howard Meadows and his attorney, Bruce Herrigel, appeal. We affirm the sanctions against Herrigel but vacate sanctions against Meadows and remand for recalculation.

Background

This suit is one of many asserting claims to oil and gas earnings from the lucrative Spindletop Oil Field in Jefferson County, Texas. Meadows bases his claim on a 1911 deed from Ephrian Garonzik to James Meaders. The deed purported to convey a one-eighth interest in four specific tracts, followed by the representation that

> the above described property herein conveyed is all the property that J.H. McFadden, R.D. McFadden, and A.J. McFadden inherited through their ancestor, Wm. McFadden, and this deed is intended to convey to the said James Meaders one-eights [sic] interest in and to all properties that the said J.H. McFadden, A.J. McFadden, and R.D. McFadden are entitled to by inheritance through their ancestor, the said Wm. McFadden, of every description whatsoever, situated in the said County of Jefferson.

This language is the basis for the instant claim. Although the Spindletop field was not among the four listed tracts, Meadows maintains that it was conveyed as part of the McFadden inheritance.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Five weeks before Meadows filed suit we construed this same deed in **Clark v. Amoco Production Co.**[1] (**Clark II**. We held in **Clark II** that the deed conveyed an interest in the four listed tracts only. Meadows nonetheless filed the instant complaint which he refused to dismiss even after opposing counsel gave notice of her intent to seek Rule 11 sanctions in light of the **Clark II** decision.

After voluminous briefing, the district court granted summary judgment to defendants, finding Meadows' claims barred by *stare decisis*, collateral estoppel, *res judicata*, and the applicable statutes of limitations. It also found a violation of Rule 11 and, after hearing, imposed sanctions against Meadows and Herrigel jointly and severally in the amount of $85,555 in attorneys' fees and ordered them to notify all like-positioned claimants of the disposition of this lawsuit. Meadows and Herrigel appeal the sanctions order only.

Analysis

Rule 11 requires that every filing be signed by an attorney or, if unrepresented, the party.

> The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose . . . .

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[1] 908 F.2d 29 (5th Cir. 1990).

Upon finding that a filing was signed in violation of this rule, the district court must impose sanctions. We review the imposition of Rule 11 sanctions for abuse of discretion only.[2]

The district court found sanctions warranted in the instant case because "a cursory examination of the law" would have shown that **Clark II** and other cases[3] foreclosed any chance of success. Attorney Herrigel acknowledges that he was aware of the **Clark** case[4] but contends that he presented both a good faith argument that it was wrongly decided and equitable claims outside **Clark II**'s reach. We are not persuaded.

Subjective good faith alone is insufficient to invoke Rule 11's protection of good faith arguments for change in the law. Like all legal positions, the argument for change must be "formed after reasonable inquiry." The issue therefore is whether Herrigel's legal position was reasonable "from the point of view both of existing law and of its possible extension, modification,

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[2] **Cooter & Gell v. Hartmarx Corp.**, 496 U.S. 384, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990); **Thomas v. Capital Security Services, Inc.**, 836 F.2d 866 (5th Cir. 1988) (*en banc*).

[3] Before the instant complaint was filed, the district court held in **Robbins v. Amoco Production Co.**, No. 85-251 (E.D.Tex. 1989), aff'd 952 F.2d 901 (5th Cir. 1992), a suit by yet another set of Meaders heirs, that the Garonzik-Meaders deed conveyed only the four specifically referenced tracts.

[4] At the time the complaint was filed, Herrigel knew that **Clark** was on appeal and had heard a rumor that a decision had issued. Three weeks after suit was filed, defense counsel sent Herrigel a copy of this court's **Clark II** opinion and the district court's opinion in **Robbins** with her letter informing him that she would seek sanctions.

or reversal."[5]

Herrigel insists that **Clark II** was wrongly decided because it erroneously relied on **Coffee v. Manly**[6] as a basis for excluding extrinsic evidence in construing the critical deed. **Clark II** cited **Coffee** and other cases for the proposition that extrinsic evidence cannot be admitted to contradict or create ambiguities in an unambiguous document. Herrigel argues that **Coffee** is inapposite because the problematic portion of that deed was false, whereas the troublesome language in the instant deed -- that which purports to convey all of the McFadden inheritance -- renders the deed ambiguous. This argument is frivolous. Necessarily **Coffee** would not apply if the Meaders deed were ambiguous. The **Clark II** court, however, found the deed unambiguous because the troublesome language was merely redundant.[7] Herrigel offers no reasonable ground for finding material ambiguity. His challenge to **Clark II** is baseless.

The legal basis for the equitable claims, most notably constructive trust, likewise is wanting. Herrigel asserts that the Meadows case differs from **Clark II** in that Meadows alleges extrinsic facts illuminating the intent of the parties to the 1911

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[5] **Smith International, Inc. v. Texas Commerce Bank**, 844 F.2d 1193, 1200 (5th Cir. 1988).

[6] 166 S.W.2d 377 (Tex.Civ.App. 1942, writ ref'd).

[7] The language was redundant because the text immediately preceding it stated that the deed conveyed the four tracts and that the four tracts comprised the entire McFadden inheritance.

deed, specifically various earlier land transactions. Although such extrinsic evidence is inadmissible under **Clark II** to prove legal title, Herrigel argues that it may be admitted to prove equitable rights. These allegations do not provide colorable grounds for Meadows' claims.

"A constructive trust generally arises when a person with legal title to property owes equitable duties to deal with the property for the benefit of another."[8] The Meadows complaint alleges no facts creating an equitable duty owed Meaders and his successors in dealing with any property other than the four tracts listed in the deed. According to the complaint, the reference to the four specific tracts originated in the deed to Garonzik from his grantor, William Lucas; Lucas allegedly listed the tracts not to limit the grant but rather to clarify that they were part of the McFadden properties transferred by the deed. Garonzik incorporated the reference in his deed to Meaders. These allegations, even if true, do not state a claim for actual fraud; they neither assert that Garonzik represented to Meaders that he was conveying properties other than those specifically identified in the deed nor that Meaders acted in reliance on any such misrepresentation.[9] Nor

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[8] **In re Carolin Paxson Advertising, Inc.**, 938 F.2d 595, 597 (5th Cir. 1991).

[9] **1488, Inc. v. Philsec Inv. Corp.**, 939 F.2d 1281, 1287 (5th Cir. 1991) ("To state a cause of action for fraud under Texas law, a plaintiff must allege sufficient facts to show: (1) that a material misrepresentation was made; (2) that it was false; (3) that when the speaker made it he knew that it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) that he made it with the intention that it should be

does the complaint allege the fiduciary relationship necessary to support a constructive trust based on fraud, actual or constructive.[10]

Separately, Meadows contends that the sanctions should be borne entirely by attorney Herrigel because the offending conduct concerned errors of law for which he, as a layman, was not responsible. We disagree. Like a lawyer, a party who signs a pleading, motion, or other paper without reasonable inquiry into the facts and the law is subject to Rule 11 sanctions.[11] Although "what is objectively reasonable for a client may differ from what is objectively reasonable for an attorney," the client still must meet a standard of reasonableness under the circumstances.[12] Meadows did not. One month after suit was filed Herrigel informed Meadows that several defendants had threatened sanctions because of two recent decisions construing the deed under which Meadows claims. Meadows, who admittedly played an active role in

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acted on by the party; (5) that the party acted in reliance upon it; (6) that he thereby suffered injury.").

[10] **In re Monnig's Dept. Stores, Inc.**, 929 F.2d 197 (5th Cir. 1991), citing **Harris v. Sentry Title Co., Inc.**, 715 F.2d 941 (5th Cir. 1983), modified on other grounds, 727 F.2d 1368 (5th Cir.), cert. denied sub nom. **Ward v. Sentry Title Co.**, 469 U.S. 1037, 1226 (1984).

[11] **Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.**, 498 U.S. 533, 111 S.Ct. 922, 112 L.Ed.2d 1140 (1991).

[12] **Id.**, 111 S.Ct. at 933.

developing his claim, is held to an understanding that these rulings were directly contrary to his claim. Herrigel said that he would oppose defendants' position but did not specify grounds for such.[13] Reliance on such vague assurances was entirely unreasonable under the circumstances. Meadows cannot escape responsibility.

Meadows' liability, however, is limited for a different reason. A party, like an attorney, can be sanctioned under Rule 11 only for signing baseless papers.[14] The signature on which the district court premised its sanctions against Meadows was that appearing on an affidavit filed 11 months after the suit was filed. When the sanction takes the form of reimbursement of the adverse parties' expenses, as here, reimbursable expenses are restricted to those incurred because of the filing of the baseless document.[15] Meadows' exposure therefore is limited to those fees and expenses incurred after the filing of the offending affidavit. Herrigel was sanctioned for filing and pursuing the suit. His sanctions therefore include fees and expenses incurred before and after Meadows signed the affidavit. Accordingly, the dollar sanctions against Meadows must be vacated; on remand, the district court must

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[13] Meadows argues that Herrigel told him that his case was "different." Even if this explanation justified reliance, which it does not, Herrigel's letter reporting the adverse decisions to Meadows describes as "different" suits other than those relying on the Meaders deed.

[14] **Id.**

[15] Fed.R.Civ.P. 11; **Thomas**, supra.

determine the portion of the fees and expenses for which Meadows can be held jointly and severally liable. Otherwise the sanctions imposed on Meadows are affirmed.

Finally, both Herrigel and Meadows challenge the monetary award as excessive. With the above-noted qualification, we find no abuse of discretion. The district court awarded approximately half of the total sought by the defendants. The $85,555 award was less than the $97,000 in fees which Herrigel admittedly received from Meadows. Contrary to appellants' arguments, the district court did not impermissibly engage in fee-shifting; it premised its award not on the results of the litigation but rather the lack of foundation for the complaint.[16] The sanctions were not excessive.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

[16] **Business Guides**, supra.