

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4861
(Summary Calendar)

SHEET METAL WORKERS, Sheet
Metal National Pension Fund,

Plaintiff-Appellee,

versus

FABRICATED SPECIALTIES and
DAVID K. CLARK,

Defendants,

FLAREGAS CORP.,

Garnishee-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(CA1-89-249)

(February 22, 1993)

BEFORE KING, DAVIS, and WIENER, Circuit Judges.

PER CURIAM:*

For the second time, Garnishee-Appellant Flaregas Corporation appeals the district court's denial of its motion to vacate a default judgment. As we held in our previous decision, the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court's failure to vacate the judgment would be an abuse of discretion unless it found that the motion to set aside the judgment was not made within a reasonable time and that such unreasonable delay prejudiced the non-movant. As the district court failed to make any findings concerning the prejudicial effect of the delay, we vacate and remand for findings on this issue.

I

FACTS AND PROCEEDINGS

The facts of this case are recounted in detail in our previous panel opinion,¹ so only an abbreviated restatement is needed for the purposes of this appeal. The case originated from a suit by Sheet Metal Workers against Fabricated Specialties and its owner David C. Clark for failing to contribute to a mandatory employee benefit trust fund. The United States District Court for the Eastern District of Virginia entered a default judgment against Fabricated and Clark for approximately \$29,000. Sheet Metal Workers named Flaregas as a garnishee because of an outstanding account receivable owed by Flaregas to Fabricated.² When Flaregas received the writ of garnishment, it contacted Sheet Metal Workers by phone, followed by a series of letters and additional phone calls disputing the garnishment.

Eventually, Sheet Metal Workers filed a motion for a default

¹ Sheet Metal Workers National Pension Fund et. al v. Flaregas Corp., No. 91-4313 (5th Cir. Oct. 8, 1991) (unpublished opinion).

² The account receivable resulted from Flaregas' refusal to pay for flare and noise abatement systems purchased from Fabricated due to a dispute over the quality of those systems.

judgment against Flaregas, which the court granted. Flaregas responded by filing a motion for relief from judgment to vacate the default judgment. The district court denied the motion without any hearing or statement of reasons, and Flaregas appealed. In that appeal, we vacated the court's denial of the motion to vacate and remanded for reconsideration. Given the facts of the case, we held that:

the record does not sustain the denial of Flaregas' motion to vacate. We accordingly vacate the district court's denial of that motion, and remand for reconsideration. If the district court determines that Flaregas' motion was not made within a reasonable time after it had notice of the default judgment, and that such unreasonable delay was sufficiently prejudicial to Sheet Metal Workers, then the court may deny the Motion to Vacate; otherwise, it would be an abuse of discretion to deny the motion and it should be accordingly granted.

On remand, the district court held an evidentiary hearing, considered the parties' agreed statements of facts, and received motions and affidavits. After considering this evidence, the court once again denied Flaregas' motion to vacate the default judgment. In its memorandum decision, the court found that the delay had been unreasonable; it was silent, however, on the issue of prejudice.

II

ANALYSIS

Ordinarily, we review a district court's denial of a Rule 60(b) motion to vacate a default judgment for abuse of discretion.³ As we review this case for a second time, however, we are constrained by the law of the case doctrine, which provides:

³ Harrison v. Byrd, 765 F.2d 501, 503 (5th Cir. 1985).

The decision of a legal issue by an appellate court established the "law of the case" and must be followed in all subsequent proceedings in the same case at both the trial and appellate levels unless the evidence at a subsequent trial was substantially different, the controlling authority has since made a contrary decision of law applicable to such issues, or the decision was clearly erroneous and would work a manifest injustice.⁴

Metal Steel Workers does not contend that any of the exceptions to the law of the case doctrine apply to the instant cause of action.

The applicability of that doctrine dictates the outcome of this appeal. In the previous panel decision, we expressly held that denial of the motion to vacate the default judgment would be an abuse of discretion unless the court found that Flaregas' motion to set aside the default judgment was not made within a reasonable time and that such unreasonable delay was sufficiently prejudicial to Sheet Metal Workers. Nevertheless, on remand the district court failed entirely to make a finding on the issue of prejudice, leaving us no choice but to remand again.

Sheet Metal Workers argues that the district court's failure expressly to find prejudice is not fatal, because that conclusion is implicit in the court's denial of the motion to vacate the judgment. True, "failure to meet the technical requirements of Rule 52 does not warrant reversal or remand" so long as the purposes behind the rule are effectuated.⁵ Here, however, we are prevented from inferring a finding of prejudice given the precise

⁴ Schexnider v. McDermott Int'l Inc., 868 F.2d 717, 718-19 (5th Cir. 1989)(citation omitted).

⁵ Chandler v. Dallas, 958 F.2d 85 (5th Cir. 1992)(quoting Ramirez v. Hofheinz, 619 F.2d 442, 445 (5th Cir. 1980)).

directions in our previous opinion that the court should make such a finding.

Based on the explicit directions set forth in our prior opinion, viewed in the context of the law of the case, we vacate the district court's denial of Flaregas' motion to vacate the default judgment and remand for completion of the process by addressing the prejudice prong of the test for unreasonable delay. Should no prejudice be found, the district court must grant the motion and vacate the default judgment.

For the foregoing reasons, the district court's ruling is VACATED and the case REMANDED for further consistent proceedings.