UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-2896

DAVID J. FOWLER,

Plaintiff-Appellant,

versus

CABOT CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Texas

(CA H 92 1695)

(March 6, 1995)

Before POLITZ, Chief Judge, HIGGINBOTHAM and DEMOSS, Circuit Judges.

PER CURIAM:*

David J. Fowler sued Cabot Corporation, his former employer, for wrongful discharge and related claims, including a specific claim for unpaid business expenses. The district court granted Cabot's motion for partial summary judgment, holding that Fowler

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

had contractually released all claims he had against Cabot except his claim for unpaid business expenses. To avoid going to trial only on the issue of expenses, the parties entered a stipulated final agreement whereby Cabot would pay Fowler $5,000. The district court then entered a final judgment. The court separately sanctioned Fowler and his attorney for their conduct during Fowler's deposition. Fowler appeals both the court's partial summary judgment for Cabot and the court's sanctions order. We now vacate the partial summary judgment but affirm the sanctions order.

I.

We review a summary judgment de novo, applying the same standard as the district court. Campbell v. Sonat Offshore Drilling, Inc., 979 F.2d 1115, 1118-19 (5th Cir. 1992). We therefore view the facts of this case in the light most favorable to Fowler. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986) ("[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor"). Fowler began working for Cabot Corporation as an accountant in May 1988 and was eventually terminated in April 1990. Upon terminating Fowler, Cabot proffered a separation agreement. The agreement provided, inter alia, that Cabot would (1) pay Fowler severance benefits in the amount of $4,283.54 a month for the next five months, (2) provide continued health insurance coverage, and (3) provide Fowler assistance in obtaining future employment. The agreement, dated April 30, 1990, additionally stated:

> In consideration of receipt of these payments and benefits from Cabot, you agree as follows: . . .

> F. The payments and other considerations herein are in full settlement of all claims or rights (including any rights under any severance pay plan) you or your family has or may have arising from or in connection with your employment with or your resignation from Cabot and its subsidiaries and affiliates.

Fowler refused to sign the agreement. Cabot nonetheless commenced payment of the severance benefits and paid Fowler $4,283.34 a month for May, June, July, and August 1990. Fowler accepted each monthly payment. As for the September payment, Cabot applied the same amount to a portion of Fowler's unpaid corporate American Express bill.

On August 28, 1990, Gary Weiss, Cabot's personnel director, informed Fowler that, to continue receiving benefits under the unsigned separation agreement, Fowler would have to submit a report for all outstanding expenses (including relocation) and a signed copy of the separation agreement. Fowler responded on September 10, 1990, informing Weiss that he was claiming $17,390.37 in expenses. Two days later, Fowler again wrote Weiss and stated that he "agree[d] substantially with [the separation agreement's] contents." He indicated, however, that he expected Cabot would "pay me my September severance monies." In addition, he stated that, "by signing either this letter or [the separation agreement], I do not waive my rights to claim full reimbursement of my expenses." On September 14, 1990, Weiss received from Fowler an executed copy of the April 30 separation agreement, with one reservation; he maintained that his acceptance of the separation agreement was "subject to full reimbursement of all my expenses and

costs directly or indirectly in connection with my employment with Cabot." Fowler avers that he added the reservation, which was dated September 13, after consulting with Robert Nailling, one of Cabot's in-house lawyers. Fowler further avers that, upon receipt of the executed agreement, Weiss telephoned Fowler and told Fowler that, because of the claimed reservation of rights regarding unpaid expenses, the agreement was inoperative and that Fowler's benefits (including the out-placement services) under the agreement would be cancelled immediately. Shortly thereafter, according to Fowler, a representative from the out-placement service told Fowler that Cabot considered Fowler "persona non grata" and that Cabot had ordered Fowler to leave the premises immediately.

Fowler then retained attorney Mark Williams. Fowler and Williams subsequently met with Weiss and another Cabot in-house attorney. According to Fowler, Weiss again stated that Fowler's addendum was unacceptable and that the agreement was null and void. In April 1992, Fowler brought this action against Cabot for wrongful discharge and other claims in state court. Cabot removed Fowler's suit to federal court in June 1992. Fowler claimed $135,256.04 in damages arising from Cabot's refusal to pay his expenses and cancellation of his benefits. In September 1993, Cabot moved for summary judgment on Fowler's wrongful discharge and related claims, arguing that Fowler ratified the separation agreement, and its accompanying release of such claims, by (1) retaining benefits under the agreement, and (2) claiming certain damages arising from the agreement. Shortly after filing its

motion for partial summary judgment, Cabot also filed a motion for sanctions against Fowler and Williams, alleging that they had engaged in dilatory conduct during Fowler's deposition. In October 1993, the district court granted Cabot's motion for sanctions. The court ordered Fowler and Williams to pay Cabot the cost of Fowler's deposition, which amounted to $10,400.44.[1] In November 1993, the court then granted Cabot's motion for partial summary judgment, finding that the release was binding because Fowler had ratified it by accepting its stated benefits. The court's order meant that the only remaining issue was Fowler's claim for unpaid business expenses. Rather than proceed to trial on this issue, the parties stipulated that Cabot could satisfy its remaining obligations to Fowler by paying him $5,000. As part of the stipulation, however, Fowler reserved the right to appeal the court's finding that Fowler had ratified the separation agreement and its release. The district court approved the stipulation and entered a final judgment. Cabot tendered $5,000 as satisfaction for the final judgment, but Fowler refused it. Fowler now appeals (1) the district court's order granting Cabot partial summary judgment, and (2) the court's order sanctioning Fowler.

II.

Cabot asserts on appeal that the district court's partial summary judgment was proper because Fowler (1) accepted the contract as of September 13 and (2) subsequently ratified it when

[1]The court directed Fowler to pay two-thirds of the sanction ($6,968.29) and Williams to pay one-third ($3,432.15).

he failed to disgorge the severance monies that Cabot had paid out over the prior four months. With regard to Fowler's September 13 addendum to the separation agreement, wherein Fowler reserved the right to resolve the issue of expenses, Cabot challenges Fowler's contention that the addendum was a counteroffer. Instead, Cabot characterizes the addendum as legally insignificant because it did not materially alter the terms of the separation agreement.

Fowler, however, has averred one important fact: Cabot itself (through Weiss) denied the existence of the contract upon receiving from Fowler a modified separation agreement on September 14. Fowler, in other words, has created a genuine issue of material fact as to whether a contract ever came into being between Cabot and Fowler. See Argonaut Ins. Co. v. Allstate Ins. Co., 869 S.W.2d 537, 540 (Tex. Ct. App. 1993) ("[t]he determination of whether there was a meeting of the minds on each element of contract formation is based on objective standards of what the parties said and did and not on their alleged subjective states of mind"); Adams v. Petrade Int'l, Inc., 754 S.W.2d 696, 717 (Tex. Ct. App. 1988) (same). We therefore hold that the district court's partial summary judgment for Cabot was inappropriate because Fowler created a genuine issue of material fact as to whether a contract existed between Cabot and Fowler.[2]

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[2]It is important to note that we are not holding that, as a matter of law, a contract did not exist between Cabot and Fowler. That remains to be determined upon remand if the parties decide to go to trial, along with the issue of whether Fowler should disgorge the severance monies he received from Cabot between May and August. Rather, we are holding only that Fowler created a fact issue as to whether a contract existed, which is all he needed to do to avoid

III.

We now turn to Fowler's appeal of the district court's order for sanctions. We review a discovery sanctions order for abuse of discretion. Topalian v. Ehrman, 3 F.3d 931, 934 (5th Cir. 1993). In reviewing a sanctions order, we have stated that a district court is not required to make specific findings every time it issues such an order. Thomas v. Capital Sec. Servs. Inc., 836 F.2d 866, 883 (5th Cir. 1988) (en banc). Instead, "`the degree and extent to which a specific explanation must be contained in the record will vary accordingly with the particular circumstances of the case, including the severity of the violation, the significance of the sanctions, and the effect of the award.'" Topalian, 3 F.3d at 936 (quoting Thomas, 836 F.2d at 883).

The district court below imposed a $6,968.29 sanction on Fowler for his dilatory conduct during a two-day deposition. In the introduction to its two-and-a-half page order, the court stated, "In a textbook example of mendacious testimony and obstreperous tactics, David Fowler has made it impossible for the Cabot Corporation to defend this lawsuit." The court, which noted that it had read the 692-page deposition, then proceeds to separately describe Fowler's specific dilatory conduct. We have read the record on appeal and conclude that it supports the district court's characterization of Fowler's conduct. Recognizing that the court had broad discretion to impose sanctions, we will not disturb the court's order.

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a summary judgment on that issue. See FED. R. CIV. P. 56(c).

IV.

For the reasons stated above, the district court's partial summary judgment for Cabot is VACATED and the case is REMANDED for further proceedings. In addition, the district court's order imposing sanctions on Fowler is AFFIRMED.