

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-8588
No. 93-8149
Summary Calendar

VINCENT CESARANI,

Plaintiff-Appellant,

VERSUS

HERBERT GRAHAM, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(A-92-CA-233-01-SS)

(June 9, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

DAVIS, Circuit Judge:¹

Appellant complains of the dismissal of his long, rambling "RICO" complaint and the imposition of Rule 11 sanctions. We affirm.

I.

Vincent Cesarani filed a 104-page, 793-paragraph, single-spaced, small print complaint against 41 parties, asserting, **inter**

¹Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

alia, RICO violations, bankruptcy fraud, breach of contract, and copy infringement claims. He then filed a 111-page, 860-paragraph, single-spaced, amended complaint. A number of defendants filed motions to strike as well as motions to dismiss, based either on Rule 8(a) or Rule 12(b)(6).

Cesarani then filed a motion to disqualify some of the defendants' attorneys as well as a motion for sanctions against various defendants. He also filed a motion for entry of default as to various defendants. Numerous defendants filed counter-motions for sanctions against Cesarani.

The district court entered an order directing the parties, particularly Cesarani, to submit double-spaced pleadings not in excess of 20 pages. It then conducted a hearing on the various motions. Cesarani's motions were denied. The defendants' various motions to dismiss were taken under advisement, and their motions for sanctions were carried with the case. Cesarani was ordered to amend, within ten calendar days, his amended complaint to conform with Rule 8(a).

Cesarani then filed a 58-page, 323-paragraph second amended complaint. A number of defendants filed amended motions for sanctions. The district court then granted the amended motions for sanctions, and ordered Cesarani to pay \$15,000, to be divided into four equal parts "amongst the defendants represented by counsel."

In imposing sanctions, the district court specifically noted that Cesarani's lawsuit was an attempt to collect a judgment from a defendant who had subsequently filed for bankruptcy, that none of

his motions to disqualify, for sanctions, and for entry of default were meritorious, and that the motion to disqualify was "not made in good faith." The district court also noted that it had given Cesarani "the benefit of the doubt," warned him that his pleadings were in violation of Rule 8(a), and had given him an opportunity to file a second amended complaint. Judgment was entered accordingly and the matter dismissed, **without prejudice**.

II.

A.

Cesarani contends first that the district court abused its discretion in dismissing his second amended complaint pursuant to Rule 8(a), and by refusing to allow him to file a third amended complaint. He also argues that the district court incorrectly held that the second amended complaint stated no claim for relief. To the extent he argues that the district court improperly dismissed his complaint pursuant to Rule 12(b)(6), his argument is factually frivolous. The district court's order specifically states that Cesarani's lawsuit was dismissed for violations of Rule 8(a). Rule 12(b)(6) was never mentioned.

A district court may dismiss an action, **sua sponte**, under Rule 41(b) for failure to prosecute or to comply with an order of the court. **McCullough v. Lynaugh**, 835 F.2d 1126, 1127 (5th Cir. 1988). Although the district court dismissed this matter without prejudice, when further litigation will be barred by the statute of limitations, a dismissal without prejudice is tantamount to a

dismissal with prejudice.² **McGowan v. Faulkner Concrete Pipe Co.**, 659 F.2d 554, 556 (5th Cir. 1981). Under such a scenario, this court affirms only when there is "a clear record of delay or contumacious conduct by the plaintiff," and "lesser sanctions would not serve the best interests of justice." **Williams v. Brown & Root, Inc.**, 828 F.2d 325, 328-29 (5th Cir. 1987) (internal quotations and footnotes omitted).

There is a clear record of contumacious conduct. Cesarani filed meritless motions for disqualification, default, and sanctions against various defendants. Cesarani also blatantly disregarded the district court's order respecting the length of his pleadings.

Furthermore, lesser sanctions would not have been effective. The district court specifically ordered that any pleadings submitted after August 5, 1992, could not "exceed twenty pages." After a thorough hearing, the district court further ordered Cesarani to file a second amended complaint because his previous complaints "clearly violate[d] the rules of being too long, too detailed." The district court noted that Cesarani was proceeding **pro se**, but also noted that he had "been represented by lawyers," and was "obviously . . . well versed in litigation over the years." **Id.** Keeping in mind that Cesarani was **pro se**, the district court

² The district court's order does not indicate if it considered a potential limitations problem. RICO claims are governed by a 4-year statute of limitations. **Agency Holding Corp. v. Malley-Duff & Associates, Inc.**, 483 U.S. 143, 156, 107 S.Ct. 2759, 97 L.Ed.2d 121 (1987). Cesarani does not brief whether his claims would be time-barred. He has apparently re-filed a lawsuit against these same defendants in Cause No. A-93-CA-82-SS.

gave him an opportunity to explain why the district court should not dismiss the complaint. After hearing his argument, the district court allowed him "ten days to file an amended complaint to comply with the federal rules." *Id.* at 36. Cesarani then filed a 58-page second amended complaint, in flagrant violation of the district court's order and prior warnings.

In its order of dismissal, the district court noted that it had given Cesarani the benefit of the doubt, warned him of his Rule 8 violations, and allowed him an opportunity to comply with its order by filing a second amended complaint. The district court also noted examples of "scandalous language still present in [Cesarani's] Second Amended Complaint." In light of the district court's order giving Cesarani an opportunity to file a second amended complaint that complied with the federal rules, the district court's dismissal, without prejudice, was not an abuse of discretion. **See *Old Time Enterprises, Inc. v. International Coffee Corp.***, 862 F.2d 1213, 1219 (5th Cir. 1989). Because the district court did not abuse its discretion in dismissing Cesarani's second amended complaint, his argument regarding a third amended complaint is frivolous.

B.

Cesarani also argues that the district court abused its discretion by imposing Rule 11 sanctions in the amount of \$15,000, to be divided equally among four defendant groups. Cesarani maintains that the district court violated his due process rights and meted out sanctions without notice or opportunity to be heard.

He also maintains that the district court failed to state in the record which alternative sanctions, if any, it considered, and why the sanction imposed was the least severe sanction to adequately serve the purposes of Rule 11.

Fed. R. Civ. P. 11 directs district courts to impose sanctions against a litigant who signs frivolous or abusive pleadings. Moreover, district courts may impose Rule 11 sanctions on **pro se** litigants. **See e.g., Whittington v. Lynaugh**, 842 F.2d 818, 820-21 (5th Cir.), **cert. denied**, 488 U.S. 840 (1988). To avoid Rule 11 sanctions, a litigant must harbor a subjective belief that his pleading is well-founded; this belief must also be objectively reasonable. **Stites v. IRS**, 793 F.2d 618, 620 (5th Cir. 1986) (citation omitted). A "district court has broad discretion in imposing sanctions reasonably tailored to further the objectives of the rule. 'Reasonableness' within the context of Rule 11 'must be considered in tandem with the rule's goals of deterrence, punishment, and compensation.'" **Willy v. Coastal Corp.**, 915 F.2d 965, 968 (5th Cir. 1990) (citations omitted), **aff'd**, 112 S.Ct. 1076 (1992).

Cesarani fails to show that the sanctions were unreasonable in light of the record, which demonstrates voluminous abusive filings, in flagrant disregard for the district court's order setting a page limit for pleadings; Cesarani's motions for entry of default, sanctions, and to disqualify also are meritless. The district court did not abuse its discretion in imposing sanctions. **See Thomas v. Capital Sec. Services, Inc.**, 836 F.2d 866, 872 (5th Cir.

1988) (en banc).

To the extent that Cesarani argues that his due process rights were violated because he did not receive prior warning, his argument is legally untenable and factually inaccurate. Although "[t]he imposition of a sanction without prior warning is generally to be avoided," a warning is not necessary if the litigant's conduct is particularly egregious. **Moody v. Baker**, 857 F.2d 256, 258 (5th Cir.), **cert. denied**, 488 U.S. 985 (1988). The requisite degree of formality of the notice and proceedings is commensurate with the level of sanctions imposed. **American Airlines, Inc. v. Allied Pilots Ass'n.**, 968 F.2d 523, 530 (5th Cir. 1992). Cesarani was warned about the possibility of sanctions. He received due process.

For the reasons stated above the judgment of the district court is

AFFIRMED.