

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11003
Summary Calendar

ESTATE OF BAYLESS MILTON HESTER, III,
ET AL.,

Plaintiffs-Appellants,

versus

NATIONSBANK, a/k/a NCNB Texas
National Bank NA, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas

(7:93 CV 114)

(June 22, 1995)

Before POLITZ, Chief Judge, JOLLY and BENAVIDES, Circuit Judges.

POLITZ, Chief Judge:*

Evalyn Hester, individually and as representative of the estate of Bayless Milton Hester; Josephine Hester; Marilyn Putney; and Charles Putney appeal the district court's dismissal of their

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

complaint and order of sanctions. We affirm.

Background

On July 27, 1987, Bayless Milton Hester, III (now deceased) and his wife, Evalyn Hester, filed a lender liability lawsuit in Texas state court against the First Republic Bank of Wichita Falls, N.A., and its president, for claims related to their oil and gas business. Approximately one week later, the Hesters filed a Chapter 11 bankruptcy petition seeking reorganization of their business. Among the creditors asserting claims in the bankruptcy proceeding were the Hesters' daughters, Josephine Hester and Marilyn Putney, and the Hesters' son-in-law, Charles Putney.¹

On April 5, 1991, the bankruptcy court confirmed a reorganization plan which called for the settlement and dismissal with prejudice of the Hesters' lender liability suit. Evalyn Hester² appealed the confirmation of the plan to the district court which dismissed the appeal for want of prosecution. We affirmed that dismissal in an unpublished opinion.³

Unwilling to accept these judgments, Hester began a relentless judicial campaign, including 23 appeals to this court, challenging orders issued by the bankruptcy court. In March of 1992 Hester filed an adversary action in the bankruptcy court entitled

¹Josephine Hester and the Putneys are referred to herein collectively as the "Hester children."

²Evalyn Hester pursued the appeal individually and as a representative of her husband's estate. We refer to her appearance in both roles collectively as "Hester."

³**Hester v. FDIC**, No. 92-1074 (5th Cir. Oct. 22, 1992) [978 F.2d 710 (table)] (unpublished opinion).

"Combined Motion to Revoke the Plan," alleging fraud and criminal conduct on the part of NationsBank, the reorganization plan's administrator, various attorneys, and others involved in the bankruptcy proceedings and seeking to revoke the confirmation of the reorganization plan. The bankruptcy court ultimately dismissed both the criminal and fraud allegations⁴ and granted the defendants' request for the imposition of sanctions for Hester's clearly vexatious litigation.⁵

On appeal, the district court affirmed both the dismissal of the claims and the imposition of sanctions. The district court also entered orders forbidding Hester, or anyone acting on her behalf, from filing additional pleadings related to issues resolved in the bankruptcy proceedings without the written authorization of the district court.⁶ We affirmed the dismissal of Hester's fraud claims, the imposition of sanctions, and the propriety of the

⁴The court dismissed the criminal allegations for lack of jurisdiction and the fraud allegations for Hester's failure to replead the allegations with particularity.

⁵See Bankr.R. 9011.

⁶The district court noted:

Litigant Hester has made 32 submissions to this Court this past week seeking appellate relief which add to the 16 appeals presently pending and do not include those appeals which have already been disposed. This multitude of appeals, written by prolific pro se litigant Hester, are an unwarranted drain on the court's resources. . . . In addition, Hester's motions and briefs rarely cite relevant legal authority or state the facts clearly or directly and, in general, ramble incoherently. . . . Accordingly, this Court is of the opinion that an injunction . . . is necessary to relieve the Court of this burden and to protect other parties from the burdens of this frequent and vexatious litigation.

In re Hester, 7-89-001K, (N.D.Tex. Nov. 3, 1992).

docket control orders, noting that "the orders are an appropriate exercise of the district court's discretion to manage its caseload and to prevent repetitious pleadings."⁷ We imposed the sanction of double costs under Fed.R.App.P. 38 and cautioned Hester "that any further frivolous appeals will draw substantial sanctions."⁸

In June 1993, Hester, joined by the Hester children, filed the instant 98 page pro se complaint against 74 defendants, including the creditors in the original bankruptcy proceedings, their attorneys, and other persons and organizations whose names appear within the voluminous record of those proceedings. The Hesters alleged a conspiracy on the part of the defendants to defraud the courts, deprive the Hester family of various constitutional rights, and violate certain federal and state laws.⁹ As relief for these transgressions, the Hesters again sought revocation of the reorganization plan and all actions taken under it, reinstatement of the lender liability lawsuit, the vacating of numerous bankruptcy orders, and 20 million dollars in damages.

Despite the clear and express terms of the district court's injunction requiring leave of court to file a new complaint, the complaint filed by the Hester family contained no written authorization from the district court. The defendants moved to

⁷**Estate of Hester v. FDIC**, No. 92-9055, slip op. at 10 (5th Cir. Aug. 31, 1993) [4 F.3d 990 (table)] (unpublished opinion).

⁸**Id.** at 11.

⁹The complaint alleges violations of the Texas Deceptive Trade Practices Act, Texas common law, and the Racketeering Influenced and Corrupt Organizations Act.

either strike the pleadings for failure to satisfy the terms of the injunction, or dismiss the action in its entirety as barred by the doctrine of res judicata.

The district court dismissed with prejudice the claims of Hester and the Hester children, concluding that the claims were both frivolous and barred by the doctrine of res judicata. The district court also ruled that Hester and the Hester children violated the court's docket control order of November 3, 1992, and that this violation justified its dismissal with prejudice.¹⁰ The court imposed sanctions of \$200 for each defendant, with \$100 of the award to be paid by Hester and \$100 to be paid by the Hester children.¹¹ Hester and the Hester children timely appealed.

Discussion

We first address Evalyn Hester's challenge to the district court's dismissal of her claims. The terms of the November 3, 1992 docket control order clearly provide that Hester or anyone acting on her behalf must secure written authorization from the district court before filing any claims related to issues resolved in the Hester bankruptcy proceedings. Although Hester feigns confusion about what this order requires, her actions demonstrate the contrary. She admits that she initially submitted her pleadings to

¹⁰See Fed.R.Civ.P. 41(b).

¹¹The district court imposed sanctions against the Hester children after it concluded that they violated Fed.R.Civ.P. 11(b)(2) by falsely certifying that the claims they asserted in the complaint were not frivolous. The court imposed sanctions against Hester for violating the court's docket control order.

the district court with a request for permission to file.¹² When the district court declined to grant this permission, Hester simply ignored the order and filed the instant complaint without the requisite authorization.

In the face of this flagrant violation of its specific order, the district court acted within its discretion in dismissing Hester's suit with prejudice. While we have no desire to deter any litigant "from advancing any claim or defense which is arguably supported by existing law,"¹³ we require of all litigants compliance with extant orders of the court. When such orders are violated, dismissal of a complaint with prejudice is an appropriate means of enforcement.¹⁴ Furthermore, Hester's violation of the order and her continued pursuit of vexatious litigation against anyone and everyone remotely connected with her bankruptcy proceedings warrants the imposition of monetary sanctions.

The Hester children also fall within the ambit of the district court's November 3, 1992 order. By its terms, the order applies to "Evalyn Jordan Hester or anyone [acting] on her behalf." The record reflects that the children expressly adopted allegations made by Hester in the complaint and joined her in requesting that certain orders of the bankruptcy court be set aside. The identity-in-fact of these claims by the children supports the conclusion that these

¹²(R. XVI 3859).

¹³**Ferguson v. MBank Houston, N.A.**, 808 F.2d 358, 359 (5th Cir. 1986).

¹⁴**Martin-Trigona v. Shaw**, 986 F.2d 1384 (11th Cir. 1993).

claims were made, if not at Hester's behest, then on her behalf.¹⁵ Although the imposition of an injunction as here presented is a drastic remedy to be construed narrowly in application, we are not reluctant to conclude that the injunction covers the Hester children in this case; as creditors in the original proceedings, co-plaintiffs with Hester in the instant action, and immediate family of the abusive pro se litigator, the children can not now be heard to deny knowledge of the existence of or the reasons for the district court's docket control order.

To the extent that the Hester children assert claims separate and apart from Hester, the district court correctly concluded that those claims were barred under principles of res judicata and collateral estoppel. Although the children couch their claims in terms of fraud and conspiracy, we perceive no error in the district court's recognition that the children sought to attack collaterally final orders entered in the bankruptcy proceedings.¹⁶ The children, as creditors in the bankruptcy proceedings, are bound by the orders entered therein.¹⁷ The assertion of these plainly barred claims supports the district court's ruling that the children violated Fed.R.Civ.P. 11(b)(2). Accordingly, we affirm the dismissal with

¹⁵See Id., (upholding dismissal with prejudice of mother's action for violating injunction entered against abusive litigant son). As in **Martin-Trigona**, there is little question that the children's claims arise from the same nucleus of operative fact as do Hester's claims.

¹⁶See Eubanks v. FDIC, 977 F.2d 166 (5th Cir. 1992).

¹⁷**In re Christopher**, 28 F.3d 512 (5th Cir. 1994)(creditor of bankruptcy estate bound by reorganization plan).

prejudice of the claims of the Hester children and the imposition of sanctions against them pursuant to Rule 11.

As an additional sanction, we further order that neither the clerk of this court, nor the clerk of any federal court over which we have jurisdiction, shall accept any filings that are in any way related to the Hester bankruptcy, from either Hester or the Hester children, absent specific written authorization from a judge of the forum district court or a judge of this court.

AFFIRMED.