

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-30079

Summary Calendar

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JOSEPH SHUBERT and  
LINDA SHUBERT, his wife,

Plaintiffs-Appellants,

B P DOCK COMPANY,

Defendant,

versus

B.P. EXPLORATION & OIL CO.,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CA 2466 H)

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(October 6, 1994)

Before HIGGINBOTHAM, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

After a trial before a magistrate, Dennis O'Bryan, trial counsel for plaintiff Shubert, moved for a new trial. On November 23, 1993, the magistrate held an evidentiary hearing at which O'Bryan was not present. The magistrate ruled sua sponte that the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

motion was frivolous and held O'Bryan personally liable for the attorneys' fees and costs incurred in connection with the hearing. On January 10, 1994, after defendant BP filed a motion for costs, the magistrate entered an order sanctioning O'Bryan \$1,293. O'Bryan filed a notice of appeal on February 9, 1994.

Defendant BP argues that the appeal was untimely. Because the court did not determine the amount of sanctions until January 10, 1994, the judgment against O'Bryan did not become final until that time. See Echols v. Parker, 909 F.2d 795, 798 (5th Cir. 1990); Deloach v. Delchamps, 897 F.2d 815, 826 (5th Cir. 1990). The notice of appeal was timely.

The notice of appeal did not name O'Bryan, but that is irrelevant. We have jurisdiction over an appeal of sanctions imposed on an attorney not named in the notice of appeal, if it is clear that the attorney intended to appeal the sanction. Garcia v. Wash, 20 F.3d 608, 609-10 (5th Cir. 1994). It was clear here.

Because O'Bryan was not at the hearing, he had no opportunity to respond before the magistrate imposed the sanction. Thus, the magistrate deprived O'Bryan of due process. See Roadway Express, Inc. v. Piper, 447 U.S. 752, 767 & n.14 (1980); Browning v. Kramer, 931 F.2d 340, 346 (5th Cir. 1991).

We VACATE the award of sanctions against O'Bryan and REMAND only this issue to the district court to conduct whatever additional proceedings it deems necessary.