

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30625
Summary Calendar

SUNSHINE TURTLE FARM,

Plaintiff-Appellant,

versus

RICHARD IEYOUB, Attorney General
for the State of Louisiana, and
ROBERT ODOM, Commissioner of
Agriculture,

Defendants-Appellees.

Appeal from the United States District Court
For the Middle District of Louisiana
(CA-93-121-A)

(July 5, 1995)

Before POLITZ, Chief Judge, SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Sunshine Turtle Farm, Inc. appeals the imposition of sanctions in conjunction with the summary dismissal of its action challenging Louisiana legislation regulating pet turtle farming. Defendants cross appeal, seeking an increase in sanctions. Finding neither error nor abuse of discretion, we affirm.

Background

In October 1992 turtle farmers Paul Alleman and Adam Blanchard

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

filed suit in the Eastern District of Louisiana, seeking a declaration that La. R.S. 3:2358.1 *et seq.* was preempted by federal law and injunctive relief prohibiting its enforcement. Alleman and Blanchard had been charged in state court with violating the statute. Shortly thereafter a preliminary injunction issued enjoining them from engaging in the baby pet turtle business. Being so advised, in December 1992 the district court dismissed their suit under the Anti-Injunction Act.

In January 1993 Sunshine was formed with the wives of Alleman and Blanchard each owning 45% of the shares of the company. Alleman was employed part-time by the new company. In February 1993 Sunshine filed the instant suit in the Middle District of Louisiana, reasserting in essence the prior claims for declaratory and injunctive relief. The defendants are the defendants in the prior suit, Richard Ieyoub, Louisiana's Attorney General, and Robert Odom, the State Commissioner of Agriculture. The district court found that Sunshine was not an entity separate from Paul Alleman and Adam Blanchard and granted summary judgment for the state officials. In doing so the court relied on principles of *res judicata* and the Anti-Injunction Act. Defendants sought over \$60,000 in attorneys fees as sanctions; the court sanctioned Sunshine and its attorney \$10,000. Sunshine timely appealed the sanction order; defendants cross appealed the amount awarded.

Analysis

We review the district court's imposition of sanctions under the abuse of discretion standard, inquiring whether the sanction is

based on an erroneous view of the law or a clearly erroneous factual determination.¹ Sunshine maintains that the sanction was unfounded because a minimal basis in fact supported its claimed existence separate and distinct from the business of Alleman and Blanchard. We are not persuaded. The district court's determination that Alleman and Blanchard formed Sunshine as a "dummy" corporation was not clearly erroneous. Sunshine's lawsuit, judged by a standard of objective reasonableness,² was interposed "to harass or to cause unnecessary delay or needless increase in the cost of litigation."³

We deny the cross appeal of the defendants, finding no abuse of discretion in the trial court's determination that the \$10,000 sanction is sufficient. Nor do we conclude that Sunshine's appeal is so lacking in merit that additional sanctions are warranted under Federal Rule of Appellate Procedure 38.⁴ The request for same is therefore denied.

The judgment of the district court is AFFIRMED in all respects.

¹**Childs v. State Farm Mut. Auto. Ins. Co.**, 29 F.3d 1018 (5th Cir. 1994); **Resolution Trust Corp. v. Bright**, 6 F.3d 336 (5th Cir. 1993) (involving sanctions imposed under court's inherent power).

²**Jennings v. Joshua Independent School Dist.**, 948 F.2d 194 (5th Cir. 1991), cert. denied, 504 U.S. 956 (1992).

³Federal Rule of Civil Procedure 11. Various amendments to Rule 11 took effect on December 1, 1993. We have held that where the conduct at issue occurred prior to the effective date, the amendments do not apply. **Childs**. Nevertheless, the instant bad faith litigation would be covered by either version of the Rule.

⁴See **Ruiz v. Medina**, 980 F.2d 1037 (5th Cir. 1993).