

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 94-40047

Summary Calendar

TROY PITRE GUIDRY, ET AL,

Plaintiffs,

versus

CITY OF NEW IBERIA, ET AL,

Defendants-Appellees,

P. CHARLES CALAHAN,

Movant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana

(6:92-CV-1530)

(January 24, 1995)

Before JONES, BARKSDALE and BENAVIDES, CIRCUIT JUDGES.

PER CURIAM:*

Attorney P. Charles Calahan, counsel of record for Plaintiff Troy Guidry and others, appeals an order from the United States District Court for the Western District of Louisiana, Lafayette

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Division, sanctioning him \$750.00 plus attorney's fees and costs. Finding no abuse of discretion in the sanction imposed, we affirm.

BACKGROUND FACTS

Attorney P. Charles Calahan ("Calahan"), was counsel of record for several plaintiffs in a civil rights action brought against the City of New Iberia, the New Iberia Police Department, and Sheriff Romero. A scheduling conference was set for January 13, 1993. Calahan failed to appear. When the magistrate contacted Calahan by telephone that same day, Calahan told her that he had filed a motion to withdraw "last week." In fact, Calahan had filed a proposed order removing him as counsel of record which was dated January 11, 1993, post-marked January 12, 1993, and received by the Court on January 14, 1993.

The magistrate ordered Calahan to pay opposing counsel \$380.00, representing their attorney's fees and costs involved in attending the scheduling conference. The magistrate further ordered that Calahan inform plaintiffs to enroll substitute counsel or file a statement of intent to proceed pro se. The magistrate then ordered that, in the event that Calahan filed a proper motion to withdraw with documentation that he had complied with the order, she would consider a motion to withdraw.

Calahan failed to file a proper motion to withdraw and failed to pay the \$380.00.

Subsequently, a pretrial conference was scheduled for July 29, 1993, and all attorneys of record were to appear. Despite a telephone call from Judge Doherty's office, Calahan failed to appear at the conference. Judge Doherty acted sua sponte, fining Calahan \$5,000.00 for his failure to appear, and assessing attorney's fees and costs of the opposing counsel. Judge Doherty

also suspended Calahan from practice until all monies were paid.

The case was re-assigned to Judge Walter, to be handled with a related matter concerning attorney Calahan's actions in another case. With respect to Calahan's actions in the other case, Judge Walter ordered that Calahan be disbarred.¹ In light of the disbarment, Judge Walter reduced the \$5,000.00 fine to \$750.00, plus attorney's fees and costs as previously ordered by the magistrate and Judge Doherty.

ANALYSIS

The standard of review for the entry of sanctions for the failure to appear at a scheduling conference or pretrial conference is "abuse of discretion." See Price v. McGlathery, 792 F.2d 472, 474 (5th Cir. 1986). Likewise, the standard of review for a district court's imposition of sanctions under its inherent powers is "abuse of discretion." See In re Stone, 986 F.2d 898, 902 (5th Cir. 1993).

With respect to the scheduling conference, Calahan argues that the case was dismissed on January 12, 1993, the day before the conference, and consequently he had no obligation to attend. We do not agree that an order of dismissal necessarily vitiates an attorney's obligation to appear at a scheduled conference. Nonetheless, Calahan overlooks the fact that only two of the three defendants were dismissed. As there were still claims pending against Sheriff Romero, the scheduling conference was not "moot" as Calahan contends. In addition, the magistrate found that Calahan misled the court by stating that he had filed a motion to withdraw "last week," when, in fact, he had not filed a proper motion to

¹ Judge Walter's order of disbarment was affirmed per curiam by this Court in cause number 94-40046.

withdraw and had mailed it the day before the conference. We find no abuse of discretion.

A pretrial conference was held on July 29, 1993, pursuant to a scheduling order filed January 14, 1993. Calahan did not appear. In assessing a fine of \$5,000.00, plus attorney fee's and costs, Judge Doherty considered Calahan's repeated failure to comply with orders of the court; namely, his failure to appear on two occasions; his failure to pay the previously-assessed \$380.00; his failure to file a proper motion to withdraw; and his failure to prepare or participate in the preparation of pretrial stipulations, as required under a standing order. In setting the \$5,000.00 fine, Judge Doherty specifically noted that the earlier-assessed \$380.00 had clearly made no impression whatsoever on Calahan.

Calahan argues that he was removed as plaintiffs' counsel by operation of law, because the magistrate's order suggested that the case would be dismissed if plaintiffs did not enroll substitute counsel or indicate their desire to proceed pro se. To the contrary, the magistrate's order specifically stated that Calahan would be allowed to withdraw once he had filed a proper motion to withdraw with the necessary supporting documentation. While we note that Judge Walter reduced Judge Doherty's assessed fine of \$5,000.00 to \$750.00, we find no abuse of discretion regardless of the reduction.

Accordingly, the order is **AFFIRMED**.