IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3694
Summary Calendar

DEETE MARIE BILLIOT,

Plaintiff,

CRAIG J. HATTIER,

Movant-Appellant,

v.

NATIONAL TEA COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-91-3133A)

(February 5, 1993)

Before GARWOOD, JONES, and EMILIO GARZA, Circuit Judges.*

EDITH H. JONES, Circuit Judge:

Craig J. Hattier, former attorney for the plaintiff in this action, appeals a decision by the district court assessing sanctions against him for abuse of the discovery process under FRCP 37(b)(2). We affirm the district court's decision.

I

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The record reveals a series of procedural abuses by Hattier. Trial was originally set in this case for June 15, 1992, but was continued pursuant to a pre-trial conference on June 3, 1992. At this conference, the district court learned that Hattier had failed to provide defense counsel a witness list. Hattier had also neglected to provide the defense with any expert medical reports.

At the pre-trial conference the two sides agreed to take the depositions of fourteen of the defendant's employees on June 15, 1992. The depositions had previously been set for May 30, 1992, but on May 29 Hattier's secretary called defense counsel to inform him that Hattier would be unable to attend due to an alleged illness. The cancellation caused a burdensome scheduling disruption at the defendant's business.

The depositions were reset for June 15. At 9:05 a.m. on June 15, Hattier's wife called defense counsel's office to say that Hattier was once again ill and would not be able to attend the depositions. Defense counsel doubted this excuse and obtained permission of the district court to have Hattier examined by an independent physician. Hattier's wife refused to permit the examination, claiming that Hattier was treated only by "homeopaths". Hattier himself refused to take any calls, and never returned defense counsel's calls. Meyer hired private investigators to follow Hattier on June 15. Hattier was observed arriving at his law office in the afternoon. Defense counsel called Hattier's regular law office number but Hattier did not

answer. Finally, defense counsel called an alternate number for Hattier's office, which Hattier answered. Hattier told defense counsel that he would speak with him the next day.

The trial court found Hattier's claims unbelievable. While Hattier could have been ill, the court found, he should have at least returned defense counsel's phone calls. The scheduling and then rescheduling of the depositions caused disruption and expense to the defendant's business. Moreover, these depositions were scheduled solely for the plaintiff's benefit.

The court ordered sanctions to be assessed against Hattier to compensate defense counsel for reasonable attorney fees and costs incurred in scheduling, noticing, and preparing for the fourteen depositions.

II

Two jurisdictional points should be noted at the outset. First, the district court granted Hattier's Motion to Withdraw as counsel for Deete Marie Billiot at the same time it ordered sanctions against Hattier. Ordinarily, under the collateral order doctrine of Cohen v. Beneficial Life Ins. Co., 337 U.S. 541, 69 S. Ct. 1221 (1949), an interlocutory order imposing sanctions against a party's attorney would not be immediately appealable. However, an exception applies where an order assesses sanctions against an attorney who has withdrawn from representation at the time of the appeal. Markwell v. County of Bexar, 878 F.2d 899, 901 (5th Cir. 1989). Although Markwell involved Rule 11 sanctions, its principle applies equally to sanctions imposed under Rule 37(b)(2).

Therefore, we have jurisdiction over this appeal under the collateral order doctrine.

Second, Hattier filed his notice of appeal after the district court ordered sanctions but before the district court determined the amount of those sanctions. Under these circumstances we would dismiss the appeal as premature. However, since the filing of this appeal, but before our consideration of it, the district court did enter an order of sanctions in the amount of $1,151.10. Therefore, we hold that the appeal is premature but effective. FRAP 4(a)(2). We admonish appellants in the future not to jump the gun by appealing a sanctions order before the amount has been determined. We consider only the challenge to the propriety of the sanctions themselves, not the amount.

III

We review the district court's decision to assess sanctions under Rule 37 for abuse of discretion. Batson v. Neal Spelce Associates, Inc., 765 F.2d 511 (5th Cir. 1985).

Hattier's conduct of discovery in the underlying litigation, particularly his treatment of the depositions, was riddled with abuses. His continual excuses, evasions, failures to treat opposing counsel with minimal courtesy, and disregard for the expense and time of others, as evidenced in this case, reveal a pattern of abuse that merits sanction. Rule 37 was written with conduct such as Hattier's in mind. The district court did not abuse its discretion in ordering sanctions.

We add one final note. In his appeal brief, Hattier asked this court to review the arguments and authorities in documents he had presented to the district court. He did this in lieu of presenting those arguments and authorities in his appellate brief. He asked this, he said, because of the space limitations imposed on appellate briefs by the Federal Rules of Appellate Procedure, which limits briefs to fifty pages. Yet Hattier used barely half the allotted number of pages for an appellate brief, so his complaint that he did not have space to write more is not credible. Moreover, the page limitation in briefs on appeal cannot be evaded by referring the court to arguments and authorities in other sources. That would make a mockery of the rules themselves. We will not consider arguments and authorities not presented in the brief on appeal.

For the foregoing reasons, the decision of the district court is **AFFIRMED**.