

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Johnson v. University of Rochester Medical Center

642 F.3d 121 (2d Cir. 2011) · No. 10-2258-cv(L), 10-2267-cv (con) · Decided April 19, 2011

SUMMARY

The Second Circuit dismissed for lack of appellate jurisdiction Johnson's appeal from the judgment dismissing his qui tam complaint and denying leave to amend because his notice of appeal was untimely. The court affirmed the denial of Rule 60(b)(1) relief and the imposition of sanctions against Johnson's attorney under 28 U.S.C. § 1927.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Wesley, Circuit Judge; Chin, Circuit Judge; Lohier, Circuit Judge
JURISDICTION	Federal
DECIDED	April 19, 2011
DOCKET	10-2258-cv(L), 10-2267-cv (con)
DISPOSITION	other
PROCEDURAL POSTURE	Keith Johnson appealed from a judgment dismissing his qui tam complaint and denying leave to amend, an order denying relief under Federal Rule of Civil Procedure 60(b)(1), and an order imposing sanctions on his attorney under 28 U.S.C. § 1927 and alternatively Rule 11.
STANDARD OF REVIEW	The court reviewed the Rule 60(b) order and sanctions order for abuse of discretion. Appellate jurisdiction and timeliness of the notice of appeal were reviewed under the governing jurisdictional rules.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Keith Johnson, M.D. v. The University of Rochester Medical Center, Strong Memorial Hospital

TOPICS

[appellate jurisdiction](#)[appellate procedure](#)[motion to amend](#)[motion for reconsideration](#)[sanctions](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Second Circuit had appellate jurisdiction over Johnson's appeal from the judgment dismissing his complaint and denying leave to amend when his Rule 60(b) motion was filed three days after the twenty-eight-day tolling deadline.
2. Whether the district court abused its discretion by denying Johnson's Rule 60(b)(1) motion seeking reconsideration of the denial of leave to amend.
3. Whether the district court abused its discretion by imposing sanctions on Johnson's attorney under 28 U.S.C. § 1927.

HOLDINGS

1. The appeal from the February 19, 2010 judgment and order was untimely because Johnson filed his Rule 60(b) motion three days after the twenty-eight-day period that would have tolled the time to appeal; therefore, the Second Circuit lacked appellate jurisdiction over that portion of the appeal.
2. The district court did not abuse its discretion in denying Johnson's Rule 60(b)(1) motion because Johnson asked for leave to amend rather than asserting a right to amend as a matter of course, and the district court therefore did not make a mistake by exercising discretion over the request.
3. The district court did not abuse its discretion in sanctioning Johnson's attorney under 28 U.S.C. § 1927 because it reasonably found that counsel pursued claims known to lack a basis in law or fact and acted in bad faith after notice and an opportunity to be heard.

KEY QUOTATIONS

"Filing deadlines are mandatory and jurisdictional." (at 124)

"Federal Rule of Civil Procedure 60(b)(1) permits a district court to grant relief from a judgment based on 'mistake, inadvertence, surprise, or excusable neglect.'" (at 125)

"A court may award § 1927 sanctions only 'when the attorney's actions are so completely without merit as to require the conclusion that they must have been undertaken for some improper purpose.'" (at 126)

FACTUAL BACKGROUND

Johnson brought a qui tam action alleging that the University of Rochester Medical Center and Strong Memorial Hospital fraudulently billed Medicare and Medicaid for medical procedures performed by unsupervised residents. The United States declined to intervene, the complaint was unsealed, and Johnson served the defendants. After the defendants moved to dismiss, Johnson sought leave to amend but did not assert that he was entitled to amend as of right. His attorney later pursued an allegedly libelous-statement claim despite having requested and authorized release of the statement at issue.

PROCEDURAL HISTORY

Johnson filed a qui tam action alleging that the defendants fraudulently billed Medicare and Medicaid for procedures performed by unsupervised residents. The United States declined to intervene, and after service the defendants moved to dismiss. The district court dismissed the complaint and denied leave to amend, later denied Johnson's Rule 60(b)(1) motion, and imposed sanctions on his attorney. The Second Circuit dismissed the appeal from the merits judgment for lack of appellate jurisdiction and affirmed the orders denying reconsideration and imposing sanctions.

DISPOSITION

other

CASES CITED

- *Silivanch v. Celebrity Cruises, Inc.*, 333 F.3d 355, 363 (2d Cir. 2003)
- *Glinka v. Maytag Corp.*, 90 F.3d 72, 74 (2d Cir. 1996)
- *Ins. Co. of N. Am. v. Pub. Serv. Mut. Ins. Co.*, 609 F.3d 122, 127 (2d Cir. 2010)
- *Zervos v. Verizon N.Y., Inc.*, 252 F.3d 163, 169 (2d Cir. 2001)
- *Gollomp v. Spitzer*, 568 F.3d 355, 368 (2d Cir. 2009)
- *Cunningham v. Hamilton County*, 527 U.S. 198, 205-06, 119 S. Ct. 1915, 144 L. Ed. 2d 184 (1999)
- *Salovaara v. Eckert*, 222 F.3d 19, 27 n.4 (2d Cir. 2000)
- *Kassner v. 2nd Avenue Delicatessen, Inc.*, 496 F.3d 229, 244 (2d Cir. 2007)