

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Cabell v. Petty

810 F.2d 463 (4th Cir. 1987) · Decided February 5, 1987

OPINION

HALL, J.

K.K. HALL, Circuit Judge: Joan F. Cabell, administratrix of the estate of Charles Leslie Fitz, and certain other individuals instituted a civil action against the Commonwealth of Virginia, William G. Petty, Commonwealth Attorney for the City of Lynchburg, Virginia, and Harvey Gary Watson.

The plaintiffs alleged the infliction of constitutional injury in violation of 42 U.S.C. §§ 1981 and 1983, in connection with the 1983 murder of Fitz by Watson. Following a hearing on Petty's motion to dismiss, the plaintiffs accepted a voluntary non-suit. Petty now appeals the denial of his motion for the imposition of sanctions in the form of attorneys' fees pursuant to Fed.R.Civ.P.

11. Because we conclude that a violation of Rule 11 did occur, we reverse the order of the district court and remand for consideration of an appropriate sanction. I. In December of 1982, Harvey G. Watson, Jr. was convicted of assault with a firearm in the Juvenile and Domestic Relations Court of Lynchburg, Virginia. At some time after sentencing, the weapon used by Watson to commit the assault, a ten-gauge shotgun, was apparently returned to him.¹ On August 11, 1983, Watson used the shot*465gun to fire on various persons residing at 1525 Bedford Avenue in the City of Lynchburg.

As a result of the attack, Charles Leslie Fitz was shot in the back and died instantly. Walter W. Cabell and Kellie Fitz were wounded. Dominique L. Fitz was injured by flying glass caused by the shotgun blast.² Watson was subsequently convicted of murder and malicious wounding.

On August 12, 1985, Attorney Charles M.L. Mangum filed a civil action on behalf of all plaintiffs against Petty, the Commonwealth of Virginia and Watson. The complaint sought to assert an actionable violation of "28 U.S.C. § 1983"³ based upon Petty's alleged negligence in failing to move for confiscation of the shotgun at the time of Watson's appearance in juvenile court.

The complaint also sought to assign liability to the Commonwealth upon a theory of respondeat superior based upon the actions of the Commonwealth Attorney and the judge of the Juvenile and Domestic Relations Court. Damages were requested in the amount of one million dollars.

On August 30, 1985, Petty filed an answer to the complaint and a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6). In both the answer and motion to dismiss, Petty raised substantial defenses, including absolute prosecutorial immunity and the unavailability of respondeat superior in actions

under 42 U.S.C. § 1983. Petty also asserted that he had no personal involvement with Watson's juvenile court case which was handled solely by Assistant Commonwealth Attorney Joseph A. San-zone.

On September 3, 1985, the existence of defenses to the Cabell action was reiterated in a letter sent from Petty's counsel to Attorney Mangum. The letter also expressed Petty's intent to pursue a motion for attorneys' fees under Rule 11 unless the case was voluntarily withdrawn by October 16, 1985.

The action was not withdrawn and argument on Petty's motion to dismiss took place on October 22, 1985. After listening to the oral argument by Petty's counsel, and without responding, plaintiffs counsel moved for a voluntary non-suit.

On October 25, 1985, the district court dismissed the action without prejudice while reserving the defendant's right to request sanctions and fees. Petty subsequently moved for the imposition of attorneys' fees pursuant to Rule 11, contending that he and his attorney had expended 34.65 hours preparing for a frivolous case. Petty, therefore, requested an award of attorney's fees in the amount of \$2,598.75.

After hearing argument, the district court concluded that "[although the behavior of plaintiffs' attorney certainly bordered on a Rule 11 violation," the absence of any sign of extrinsic bad faith and the attorney's status as a sole practitioner rendered an award of fees inappropriate.

The court, therefore, denied Petty's motion and directed that the action be stricken from the docket. This appeal followed. II. On appeal, Petty contends that the district court incorrectly considered the subjective intent of plaintiff's attorney in determining whether a Rule 11 violation had occurred.

We find merit in this contention. Rule 11 of the Federal Rules of Civil Procedure, as amended in 1983, states in pertinent part that: The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any *466improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation____ If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

From both the plain language of the rule itself and the notes of the Advisory Committee, it is clear that the rule imposes upon an attorney a duty to conduct a prefiling examination of both the facts and the law before instituting legal process. While, as the Advisory Committee noted, the rule was not intended “to chill an attorney’s creativity,” it was unquestionably expected to “streamline the litigation process by lessening frivolous claims or defenses.” If an attorney’s conduct appears to fall within the scope of Rule 11, the court must first examine the actions at issue according to a standard of objective reasonableness.

At this stage, the inquiry focuses only on whether a reasonable attorney in like circumstances could believe his actions to be factually and legally justified. If the standard of objective reasonableness is unsatisfied, sanctions are mandatory. (The court... shall impose____”) In concluding that the pleadings in this case only “bordered” on a Rule 11 violation, the district court stated that the attorney “may have intended to make a good faith argument for reversal of Pierson and Monell and then changed his mind____”⁴ The court also found the tactics used by plaintiff’s counsel did not constitute harassment.

We must disagree with the district court’s first conclusion while finding its second to be irrelevant to the essential inquiry. On the available record, we can see absolutely no objective indication that plaintiff’s counsel ever intended to seek a modification of the law. Indeed, counsel’s statements at oral argument indicate that the action was filed in a speculative effort to find someone financially liable for plaintiffs’ injuries before the statute of limitations expired.

Although the absence of deliberate “harassment” may be a consideration in choosing an appropriate sanction, it is not a factor in determining a violation. Rule 11 does not prohibit merely intentional misconduct. Inexperience, incompetence, willfulness or deliberate choice may all contribute to a violation. Schwarzer, Sanctions under the New Federal Rule 11, A Closer Look, 104 F.R.D.

181, 201 (1985). The Advisory Committee noted that the amended rule set a standard “more stringent than the original good-faith formula.” It was expected, therefore, that a “greater range of circumstances” would trigger a violation.

We are left with the unavoidable conclusion that plaintiff’s counsel violated Rule 11 by filing the action below. The weight of existing law overwhelmingly favored the defendants, while the record appears devoid of any factual or legal investigation conducted by plaintiffs’ counsel as an effort to formulate an alternative argument in favor of his clients. It does not follow, however, that Petty is automatically entitled to an award of attorneys’ fees.

While some sanction is required when an infraction occurs, the determination of what is “appropriate” is still a matter left to the sound discretion of the district court. In choosing a sanction “[t]he basic principle... is that the least severe -sanction adequate to serve the purpose

should be imposed.” Schwarzer, 104 *467F.R.D. at 201.5 On remand, many of the same factors erroneously considered by the district court in ruling on the initial motion for sanctions may be reconsidered at the proper stage of the process.

We hold only that the district court must take some action in light of the clear rule violation that will serve the essential goal of education and deterrence underlying Rule 11. III. For the foregoing reasons, the judgment of the district court is reversed and the matter remanded for further proceedings consistent with this opinion. REVERSED AND REMANDED..

The circumstances whereby Watson regained possession of the weapon are unclear. The Juvenile and Domestic Relations Court is not a court of record. In an affidavit, the Assistant Commonwealth Attorney who prosecuted the case asserts that he requested that the weapon be confiscated, but that upon representations by Watson that the gun did not belong to him, the Court ordered the weapon returned to its actual owner.

In a second affidavit, the arresting police officer who testified against Watson, stated that he understood from the Assistant Commonwealth Attorney that the gun was to be returned to Watson.. Walter Cabell, Kellie Fitz and Dominique Fitz were all plaintiffs who sued in their individual capacity below..

We assume that the intended statutory reference was to 42 U.S.C. § 1983 and that reference to 28 U.S.C. was a typographical error.. Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967), addresses the issue of prose-cutorial immunity in cases under 42 U.S.C. § 1983. Monell v. Department of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), rejects the doctrine of respondeat superi- or in section 1983 actions..

In his well-reasoned article, Judge Schwarzer noted that "where it is a first violation, a reprimand from the court will suffice.”