

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Oliveri v. Thompson

803 F.2d 1265 (2d Cir. 1986) · Decided October 15, 1986

SUMMARY

The United States Court of Appeals for the Second Circuit reviewed sanctions imposed against an attorney who filed and continued litigating a § 1983 action arising from an allegedly unlawful arrest and use of excessive force. The court analyzed attorney-fee shifting and sanctions under the American Rule, inherent judicial power, 42 U.S.C. § 1988, 28 U.S.C. § 1927, and Federal Rule of Civil Procedure 11. The opinion addressed the bad-faith requirement for § 1927 sanctions and the temporal scope of Rule 11.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Second Circuit                                                                                                                                                                                                                                                                                                              |
| WRITING FOR THE COURT | George C. Pratt                                                                                                                                                                                                                                                                                                                                                    |
| JURISDICTION          | Federal                                                                                                                                                                                                                                                                                                                                                            |
| DECIDED               | October 15, 1986                                                                                                                                                                                                                                                                                                                                                   |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Attorney Arthur Y. Graseck appealed a \$5,000 attorneys' fee sanction imposed against him under 28 U.S.C. § 1927 and Federal Rule of Civil Procedure 11 after the district court found that he had instituted and continued litigating meritless civil-rights claims. Suffolk County cross-appealed the reduction of the requested \$51,112.50 in fees to \$5,000. |
| STANDARD OF REVIEW    | The propriety of sanctions was reviewed under the governing legal standards, with recognition that district courts have wide discretion in handling sanctions applications.                                                                                                                                                                                        |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                                     |
| PARTIES               | Arthur Y. Graseck, Jr. v. County of Suffolk                                                                                                                                                                                                                                                                                                                        |

TOPICS

- sanctions
- attorney fees
- section 1983
- civil rights
- appellate procedure

PRACTICE AREAS

**QUESTIONS PRESENTED**

1. Whether an attorneys' fee sanction against an attorney under 28 U.S.C. § 1927 requires a finding of bad faith.
2. Whether Rule 11 authorizes sanctions for an attorney's continued prosecution of a claim after the initial pleading or paper was signed.
3. Whether the evidence produced during discovery required Graseck to withdraw the claims of unconstitutional arrest, excessive force, and malicious prosecution.
4. Whether claims challenging the district attorney's release policy and alleging municipal or supervisory liability were sanctionable when discovery was needed to assess their factual basis.
5. Whether the district court properly sanctioned the initial assertion of boilerplate claims under 42 U.S.C. §§ 1981 and 1985(3).
6. Whether special protection from sanctions should apply to attorneys representing unpopular or indigent civil-rights plaintiffs.

**HOLDINGS**

1. An award under 28 U.S.C. § 1927 must be supported by a finding of bad faith similar to that required for an award under the court's inherent power.
2. Rule 11 applies to the attorney's conduct when a pleading, motion, or other paper is signed; it does not impose a continuing obligation to withdraw a claim that becomes frivolous after the relevant paper was signed.
3. Rule 11 is governed by an objective standard and does not require a subjective bad-faith or subjective-good-faith inquiry.
4. The attorney could not be sanctioned under § 1927 or Rule 11 for continuing the unconstitutional-arrest and malicious-prosecution claims because the tape recording and surrounding circumstances did not constitute clear evidence of bad faith, and Rule 11 did not apply to the continuation of the claims.
5. The attorney could not be sanctioned for failing to discontinue the excessive-force claims because the photographs did not clearly establish that the claims were false or frivolous, and credibility determinations alone do not establish unreasonable and vexatious conduct under § 1927.
6. The claim challenging the district attorney's practice of seeking releases of civil-rights claims as a condition of dismissing criminal charges was not sanctionable under Rule 11 or § 1927.
7. The attorney could not be sanctioned for initially asserting or continuing to the eve of trial the claims against Commissioner Dilworth and Suffolk County where discovery was needed to determine whether a municipal policy or supervisory misconduct existed.
8. Although boilerplate civil-rights allegations lacking any factual basis may violate Rule 11, the technical violation here was de minimis and did not warrant sanctions, particularly where defendants delayed seeking dismissal until after jury selection.

9. Attorneys representing unpopular, indigent, or civil-rights plaintiffs are subject to the same professional and sanction standards as other attorneys.

#### KEY QUOTATIONS

*“Although our precedents have not always made this bad-faith requirement clear, see Cheng, 713 F.2d at 891 n. 3 (stating that it need not be decided whether an award under § 1927 requires a finding of bad faith or merely “unreasonable conduct”), we hold today that an award made under § 1927 must be supported by a finding of bad faith similar to that necessary to invoke the court’s inherent power” (803 F.2d at 1273-74)*

*“Rule 11 applies only to the initial signing of a “pleading, motion, or other paper”.” (803 F.2d at 1274-75)*

*“Section 1927 was not intended to require an attorney to pass judgment on the credibility of his client on pain of a monetary sanction in the form of paying adversaries’ attorneys’ fees should he evaluate that credibility contrary to the district court’s view.” (803 F.2d at 1278)*

*“All attorneys are to be held to the same standards of conduct, no matter who their clients are.” (803 F.2d at 1280-81)*

#### FACTUAL BACKGROUND

Oliveri was arrested by undercover Suffolk County police officers in an attempted heroin-sale investigation, held for six days, and later had the criminal charge dismissed. He told attorney Graseck that the officers had used excessive force, lacked probable cause, and had threatened and beaten him. Graseck investigated by interviewing Oliveri and reviewing legal-aid, police, and court records before filing a § 1983 complaint. During discovery, defendants produced a tape recording and photographs that they argued disproved Oliveri's claims, but the appellate court held that this evidence did not clearly establish bad faith or eliminate the factual and legal basis for the claims.

#### PROCEDURAL HISTORY

Oliveri brought a § 1983 action against Suffolk County police officers, the police commissioner, the district attorney, and the county. After a jury returned verdicts for the defendants, the district court dismissed the complaint and awarded attorneys' fees against Graseck under § 1927 and Rule 11, reducing the amount based on his inability to pay. The Second Circuit reversed the sanction in its entirety, making the county's cross-appeal moot.

#### DISPOSITION

reversed

#### CASES CITED

- Eastway Construction Corp. v. City of New York, 762 F.2d 243, 253-54 (2d Cir. 1985)
- Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 247 (1975)
- F.D. Rich Co., Inc. v. United States ex rel. Industrial Lumber Co., Inc., 417 U.S. 116, 129 (1974)

- *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 757-64 (1980)
- *Dow Chemical Pacific Ltd. v. Rascator Maritime S.A.*, 782 F.2d 329, 344 (2d Cir. 1986)
- *Weinberger v. Kendrick*, 698 F.2d 61, 80-81 (2d Cir. 1982)
- *Hall v. Cole*, 412 U.S. 1, 15 (1973)
- *Hughes v. Roe*, 449 U.S. 5, 15 (1980)
- *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978)
- *Davidson v. Keenan*, 740 F.2d 129, 133 (2d Cir. 1984)
- *Kamen v. American Telephone & Telegraph Co.*, 791 F.2d 1006, 1010-12 (2d Cir. 1986)
- *State of West Virginia v. Chas. Pfizer & Co.*, 440 F.2d 1079, 1092 (2d Cir. 1971)
- *Acevedo v. Immigration and Naturalization Service*, 538 F.2d 918, 920 (2d Cir. 1976)
- *People v. Ditchik*, 288 N.Y. 95, 41 N.E.2d 905 (1942)
- *Rumery v. Town of Newton*, 778 F.2d 66, 71 (1st Cir. 1985)
- *Henzel v. Gerstein*, 608 F.2d 654, 657 n.4 (5th Cir. 1979)
- *Boyd v. Adams*, 513 F.2d 83, 88 (7th Cir. 1975)
- *Lyon v. City of Los Angeles*, 461 U.S. 95 (1983)
- *Kentucky v. Graham*, 473 U.S. 159, 165 (1985)
- *Brandon v. Holt*, 469 U.S. 464, 471 (1985)
- *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978)
- *United Brotherhood of Carpenters & Joiners of America v. Scott*, 463 U.S. 825, 835 (1983)
- *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971)
- *Hensley v. Eckerhart*, 461 U.S. 424 (1983)
- *Munson v. Friske*, 754 F.2d 683, 697 (7th Cir. 1985)
- *Arnold v. Burger King Corp.*, 719 F.2d 63, 68 (4th Cir. 1983)
- *Durrett v. Jenkins Brickyard, Inc.*, 678 F.2d 911, 916-17 (11th Cir. 1982)
- *Farad v. Hickey-Freeman Co.*, 607 F.2d 1025, 1028 (2d Cir. 1979)