

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13704

Non-Argument Calendar

EDUARDO GONZALEZ,
Pursuant to 28 U.S.C. 1782 For Judicial Assistance
in Obtaining Evidence for Use in
Foreign International Proceedings,

Petitioner-Appellee,

versus

VERFRUCO FOODS, INC.,

Respondent-Appellant,

VICTOR SEBASTIAN MAURICIO, et al.,

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Respondents.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:20-mc-24628-DPG

Before WILSON, NEWSOM, and LAGOA, Circuit Judges.

PER CURIAM:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. Verfruco Foods, Inc. (“Verfruco”) appeals a magistrate judge’s August 8, 2022 report and recommendation (“R&R”) that Eduardo Gonzalez be awarded attorney’s fees, the district court’s February 8, 2023 order adopting the R&R and directing Gonzalez to move for a specific amount of fees, and the magistrate judge’s October 6, 2023 order awarding attorney’s fees in the amount of \$28,660.

We lack jurisdiction to directly review the magistrate judge’s October 6, 2023 order, as an appeal from that order must be taken to the district court first. *See* 28 U.S.C. § 1291; *Donovan v. Sarasota Concrete Co.*, 693 F.2d 1061, 1066–67 (11th Cir. 1982); *United States v. Schultz*, 565 F.3d 1353, 1359 (11th Cir. 2009). Even if the district court ultimately affirms that order, the subsequent affirmation would not cure this premature notice of appeal. *See Perez-Priego v. Alachua Cnty. Clerk of Ct.*, 148 F.3d 1272, 1273 (11th Cir.

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1998) (holding that a magistrate judge's R&R was not final and appealable where the district court had not adopted it before the notice of appeal was filed).

Because the district court has not affirmed the magistrate judge's attorney's fees award or otherwise rendered it final, there is no final order on attorney's fees. As we noted in our previous order dismissing in part Verfruco's prior appeal from the district court's February 8, 2023 order, that order and the magistrate judge's underlying August 8, 2022 R&R are not final or immediately appealable because they did not determine the attorney's fees amount. See 28 U.S.C. § 1291; *Acheron Cap., Ltd. v. Mukamal*, 22 F.4th 979, 986 (11th Cir. 2022); *PlayNation Play Sys., Inc. v. Velez Corp.*, 939 F.3d 1205, 1212 (11th Cir. 2019). Accordingly, we lack jurisdiction to consider this appeal.

No petition for rehearing may be filed unless it complies with the timing and other requirements of 11th Cir. R. 40-3 and all other applicable rules.