[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 19-14147
Non-Argument Calendar

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D.C. Docket No. 2:15-cv-00328-JES-MRM

ABSOLUTE ACTIVIST VALUE MASTER FUND LIMITED,
ABSOLUTE EAST WEST FUND LIMITED,
ABSOLUTE EAST WEST MASTER FUND LIMITED,
ABSOLUTE EUROPEAN CATALYST FUND LIMITED,
ABSOLUTE GERMANY FUND LIMITED, et al.,

Plaintiffs-Appellees,

versus

SUSAN ELAINE DEVINE,

Defendant-Appellant,

LAIRD LILE,
as custodian f/b/o Isabella Devine, et al.,

Defendants.

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Appeals from the United States District Court
for the Middle District of Florida

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(September 16, 2020)

Before WILSON, BRANCH, and ANDERSON, Circuit Judges.

PER CURIAM:

The dust has settled in this money-laundering case; all that's left is a fight over fees. The appellees are hedge funds that were allegedly defrauded in a stock-manipulation scheme. They claimed that the appellant Susan Devine illegally hid proceeds from the scheme. The hedge funds thus sued Devine in the Middle District of Florida, alleging a litany of federal and state claims. The district court held that the hedge funds were likely to prevail, so it entered a temporary restraining order (TRO) that froze Devine's assets. Under Federal Rule of Civil Procedure 65(c), it also ordered the hedge funds to post a $10,000 bond to secure the TRO.

For various reasons, the district court eventually dismissed the complaint and dissolved the injunction. Devine then moved for an award of fees and costs, citing (among other things) the district court's inherent power to sanction, Federal Rule of Civil Procedure 37(d), and Federal Rule of Civil Procedure 65(c). The

district court, for the most part, declined to award fees under these authorities. Devine appeals, and we affirm.

**I**

We will start with inherent power. A federal court has the inherent power to sanction a party. *Purchasing Power, LLC v. Bluestem Brands, Inc.*, 851 F.3d 1218, 1223 (11th Cir. 2017). Because these powers are substantial, a court must exercise "restraint and discretion" when invoking them. *Id.* To justify a use of inherent power, "the party moving for sanctions must show *subjective* bad faith." *Hyde v. Irish*, 962 F.3d 1306, 1310 (11th Cir. 2020). "This standard can be met either (1) with direct evidence of . . . subjective bad faith or (2) with evidence of conduct so egregious that it could only be committed in bad faith." *Id.* (internal quotation mark omitted).

We review a court's decision not to award a sanction under its inherent power for abuse of discretion. *Id.* "The application of an abuse-of-discretion review recognizes the range of possible conclusions the trial judge may reach." *United States v. Frazier*, 387 F.3d 1244, 1259 (11th Cir. 2004) (en banc). "When employing an abuse-of-discretion standard, we must affirm unless we find that the district court has made a clear error of judgment, or has applied the wrong legal standard." *Amlong & Amlong, P.A. v. Denny's, Inc.*, 500 F.3d 1230, 1238 (11th Cir. 2007) (alteration accepted).

Devine takes three issues with the district court's ruling. None hold merit.

She first says that the court applied the wrong legal standard. In Devine's eyes, the district court did not recognize that a party can prove subjective bad faith "with evidence of conduct so egregious that it could only be committed in bad faith." *Hyde*, 962 F.3d at 1310 (internal quotation mark omitted). Devine claims that the court erroneously required direct evidence of subjective bad faith. We disagree. The court correctly noted that inherent-power sanctions turn on subjective bad faith, but nothing in its order suggests that it ignored the possibility that objective evidence could be so great that it establishes subjective intent. To the contrary, the court listed objective circumstances that can show bad faith and then found that the circumstances here did not reveal subjective bad faith "by any stretch of the imagination." It did not apply an incorrect legal standard.

Next, Devine says that the court committed error by failing to explain why it did not find bad faith. But the court did just that. It cited examples of what facts typically reveal bad faith—"fraud on the Court, proof of forum shopping, unreasonable and vexatious multiplying of proceedings, pursuing a case barred by the statute of limitations, or purposely vexatious behavior." And it found that Devine's evidence did not bring this case to "[the] level" of bad faith needed "to support the imposition of sanctions." A court need not discredit a party's evidence

line-by-line when holding that the party failed to justify the need for sanctions. The court's analysis here was more than enough.

Last, Devine claims that, in any event, the district court erred in failing to award sanctions. She says that she established that the hedge funds sued her—and continued their suit well after viability—to harass her and pick off information for use in a different matter. But even if her evidence could support the finding she seeks, it does not rule out an equally justified finding: that the hedge funds acted earnestly. Given the district court's extensive factual findings and the accompanying record, we easily conclude that the district court acted within its zone of choice in finding that the evidence did not justify the extraordinary use of inherent power. *See Frazier*, 387 F.3d at 1259.

**II**

Devine also challenges the court's refusal to award attorney's fees connected with the hedge funds' missed depositions. Federal Rule of Civil Procedure 37(d)(1)(A)(i) allows a court to sanction a party who "fails, after being served with proper notice, to appear for [its own] deposition." If the court orders sanctions, it "must require" the culpable party to pay "reasonable expenses, including attorney's fees . . . unless the failure was substantially justified or other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(d)(3). "The standard of review for an appellate court in considering an appeal of sanctions under Rule 37 is

sharply limited to a search for an abuse of discretion and a determination that the findings of the trial court are fully supported by the record." *Serra Chevrolet, Inc. v. Gen. Motors Corp.*, 446 F.3d 1137, 1146–47 (11th Cir. 2006) (alterations accepted).

The hedge funds, before the court dismissed their case, failed to sit for duly noticed depositions. Devine requested about $28,000 in fees as a result. The court here apparently exercised its discretion to partially sanction the hedge funds for their failure to attend their depositions: It granted Devine's reimbursement requests for some meals and for "messenger services, the air travel, the taxi/Uber expenses, and the hotel" expenses related to the depositions. But the court refused to award all the corresponding attorney's fees. Devine says this was error. It was not.

As the district court explained in both its fee order and its order denying reconsideration, Devine failed to provide specific support for her attorney's-fee requests. Instead, Devine submitted hundreds of redacted billing entries, leaving the court to sift through the entries to determine whether the records supported her requested fees. Punting the ball even farther down the field, Devine said that the court could request an "in camera" hearing if it wanted to sort through the unredacted entries itself.

The district court rejected this minimal effort. It declined to "carry the burden to aid [Devine's] collection efforts." It also found that, at any rate, the

amounts requested "greatly exceeds any reasonable attorney's fees that would have been incurred for the failure to appear." Given the large bill, and given that we, even on appeal, cannot make heads or tails of Devine's unspecific and redacted billing records, we cannot hold that the district court abused its discretion in declining to award more than it did. *See id.*

**III**

Finally, the district court ordered the hedge funds to post a $10,000 bond to secure the TRO. *See* Fed. R. Civ. P. 65(c). "[A] prevailing defendant is entitled to damages on the injunction bond unless there is a good reason for not requiring the plaintiff to pay in the particular case." *State of Ala. ex rel. Siegelman v. U.S. E.P.A*, 925 F.2d 385, 390 (11th Cir. 1991). We review the district court's decision not to assess damages on an injunction bond for abuse of discretion. *Id.* at 389. One factor a court may consider in conducting its analysis is whether the plaintiff sought the TRO in good faith, though that is not dispositive. *See id.* at 390. Another is whether an unforeseen change in the law occurred after the plaintiff sued, "effectively prevent[ing] the plaintiff from obtaining permanent injunctive relief." *Id.* at 391.

The district court did not abuse its discretion here. For one, the court found that the hedge funds sought the injunction in good faith. *See id.* at 390. The record supports this finding, as do the district court's findings that the hedge funds were

likely to succeed on their claims. For another, an intervening change in the law—*RJR Nabisco, Inc. v. European Community*, 579 U.S. ___, 136 S. Ct. 2090 (2016)—also supports the court's decision. Indeed, the court dissolved the injunction only after this change in the law lowered the hedge funds' likelihood of success to a minimal level. Given these circumstances, we cannot say that the district court abused its discretion in finding that there was good reason not to assess damages on the bond.

**AFFIRMED.**