[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-13514

IN RE:

OFFICE OF THE ALABAMA ATTORNEY GENERAL,
ASSISTANT ATTORNEY GENERAL LAUREN SIMPSON,

Movants-Appellants.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 2:19-cv-00927-ECM-SMD

Before WILSON, JORDAN, and JILL PRYOR, Circuit Judges.

PER CURIAM:

In litigation about death row inmate Willie B. Smith's failure to elect nitrogen hypoxia as his method of execution, Assistant Attorney General Lauren Simpson from the Office of the Alabama Attorney General represented that then-Warden Cynthia Stewart acted on her own directive to distribute an election form to death row inmates. But during discovery, Simpson learned that someone superior to Stewart ordered the form's distribution. After Simpson notified the district court, the court conducted a show cause hearing. Ultimately, the district court assessed Rule 11 sanctions against Simpson and the Office of the Alabama Attorney General for this misrepresentation. The Office of the Alabama Attorney General and Simpson (collectively, the appellants) appealed the sanction order, arguing that the district court abused its discretion in imposing Rule 11 sanctions.

After careful review and with the benefit of oral argument, we find that the district court abused its discretion in imposing Rule 11 sanctions. Thus, we vacate the sanctions order against the appellants.

I. FACTS

In March 2018, the Alabama legislature enacted a law that permitted nitrogen hypoxia as an approved method of execution. Ala. Code § 15-18-82.1. According to the statute, any inmate whose death sentence was final before June 1, 2018 had thirty days from

that date to make an election. *Id.* § 15-18-82.1(b)(2). Counsel from the Alabama Department of Corrections (ADOC Legal) informed the appellants that it would not give any notice to the inmates.

While handling death row inmate Christopher Price's case, Simpson learned that Price received an election form[1] from then-Warden Stewart, which notified Price about the timeframe in which to elect nitrogen hypoxia. After learning this, Simpson went to Holman Correctional Facility (Holman) and spoke with Captain Jeff Emberton about his role in distributing the form. Captain Emberton signed an affidavit stating that then-Warden Stewart directed him to distribute the form. In response to interrogatories, Stewart stated that she was unaware of any ADOC-directed notice about the election period to Price or his counsel. Stewart also explained that she directed Capitan Emberton to deliver the form to all death row inmates at Holman. As a result, Simpson inferred that Stewart gave out the forms on her own initiative, without the permission of ADOC. Consequently, Simpson made that argument to the court.[2]

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[1] In June 2018, the Federal Defenders for the Middle District of Alabama drafted an election form and distributed that form to their clients at Holman Correctional Facility.

[2] Stewart's prior directives to distribute the election form were an issue in another death row inmate's case (Nathanial Woods). Based on Stewart's answers from discovery in Price's case, Simpson again represented to the court in Woods's case that Stewart distributed the form on her own initiative.

In November 2019, Smith sued the Commissioner of ADOC and the Warden of Holman (collectively, the defendants) for violating the Americans with Disabilities Act (ADA), alleging that he was a qualified individual with a disability under the ADA and that he could not make a timely election using the provided form without reasonable accommodation. To support his claim, Smith alleged that Stewart implemented an official policy when she distributed the election form. The defendants moved to dismiss Smith's complaint. The defendants argued that Stewart's distribution of the form did not create an official ADOC policy but amounted to a courtesy to inmates.

At the hearing on the defendants' motion to dismiss and Smith's motion for stay of execution, Simpson, on behalf of the defendants, explained that Stewart "took it upon herself to make sure that every inmate had a copy" of the form and did so without consulting ADOC Legal. This assertion was not based on a new investigation into Stewart's conduct but was based on the inference Simpson developed from the Price litigation. The district court denied Smith's motion for stay of execution. Ultimately, however, Smith's execution was rescheduled.

In 2021, Smith filed an amended complaint. In their answer, the defendants again denied Smith's allegation that ADOC had established a program under the ADA by adopting as an official policy the distribution of the election form. Because ADOC did not approve of Stewart distributing the form, there was no program in which Smith, as an inmate at Holman, was eligible to participate—

a requirement for an ADA claim.[3] Simpson, on behalf of the defendants, reiterated that Stewart "on her own initiative" directed Captain Emberton to distribute the form.

As discovery progressed, Stewart sat for a deposition on May 26, 2021. There, Stewart testified that she received instructions from a superior to distribute the form to each death row inmate. She could not recall who she spoke with or when, but she stated that "I know I did have a conversation" about distributing the form. Simpson contacted ADOC Legal to investigate Stewart's testimony. Simpson spoke with several individuals at ADOC. None of them knew about an order being given to distribute the election form and testified to that lack of knowledge. But Warden Terry Raybon explained that he believed someone from the central office directed Stewart, although Raybon was on leave at the time. Although there were conflicting statements, appellants updated their position that someone within ADOC instructed Stewart to distribute the form.

On June 2, 2021, Simpson notified the district court of the discrepancy. The court ordered the defendants to show cause why sanctions should not be assessed either against the defendants or their counsel because they repeatedly asserted a verifiable fact

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[3] "The Supreme Court has instructed that a disabled prisoner can state a Title II-ADA claim if he is denied participation in *an activity provided in state prison* by reason of his disability." *Bircoll v. Miami-Dade Cnty.*, 480 F.3d 1072, 1081 (11th Cir. 2007) (emphasis added).

without evidentiary support. The defendants responded and appeared before the district court for a hearing. At the hearing, Simpson recounted what led her to representing that ADOC did not direct Stewart to distribute the form. But Simpson acknowledged that she did not talk directly to Stewart at the time.

In a written order, the district court found that Simpson violated Rule 11 by making a factual contention without evidentiary support and without conducting a reasonable inquiry. The district court also found that Simpson's conduct rose "to the level of recklessness" and was akin-to-contempt. The district court then formally reprimanded the Office of the Alabama Attorney General and Simpson and imposed a monetary sanction ($1,500) against Simpson. The appellants timely appealed.[4]

II. STANDARD OF REVIEW

"We review Rule 11 sanctions under the abuse-of-discretion standard." *Kaplan v. DaimlerChrysler, A.G.*, 331 F.3d 1251, 1255 (11th Cir. 2003). A district court abuses its discretion by imposing sanctions if it "base[s] its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990).

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[4] The State of Alabama executed Smith on October 21, 2021. As a result, Smith's counsel said that they would not file a brief in this case. The court appointed amicus curiae to defend the district court's decision. We thank counsel for their diligent service.

III. ANALYSIS

The appellants argue that (1) the district court used the wrong standard to impose sua sponte Rule 11 sanctions, and (2) regardless of the standard, the district court abused its discretion in imposing Rule 11 sanctions.

When an attorney files a pleading, written motion, or other paper, the attorney certifies that "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," there is "evidentiary support" for the factual contentions. Fed. R. Civ. P. 11(b)(3). If Rule 11(b) is not complied with, the court may impose an appropriate sanction after notice and reasonable opportunity to be heard. Fed. R. Civ. P. 11(c)(1). For the court to impose sanctions, the court may order a party to show cause explaining why specified conduct has not violated Rule 11(b). Fed. R. Civ. P. 11(c)(3).

Rule 11 does not indicate whether a different standard for reviewing conduct is required for court-imposed sanctions as opposed to when a party requests sanctions. But the Advisory Committee Notes from the 1993 Amendment regarding sua sponte sanctions explain that "[s]ince show cause orders will ordinarily be issued only in situations that are akin to a contempt of court, the rule does not provide a 'safe harbor' to a litigant for withdrawing a claim, defense, etc., after a show cause order has been issued on the court's own initiative." Fed. R. Civ. P. 11 advisory committee's note to 1993 amendment.

As the appellants correctly noted, we joined other circuits in their akin-to-contempt interpretation for court-imposed sanctions. *Kaplan*, 331 F.3d at 1256. But we left deciding the mens rea requirement for court-imposed sanctions for another day. *See id.* The appellants argue that although the district court referenced the akin-to-contempt standard, the district court should have also been required to find subjective bad faith before levying sanctions.

Again, we need not resolve the mens rea standard in this case because we find that the appellants' conduct during the litigation was reasonable under the circumstances and thus does not meet the bar for sanctions under Rule 11, which only requires reasonableness under the circumstances.

"The standard for testing conduct under amended Rule 11 is reasonableness under the circumstances." *United States v. Milam*, 855 F.2d 739, 743 (11th Cir. 1988) (internal quotation marks omitted). In determining reasonableness under the circumstances, we employ a two-step inquiry: first "whether the party's claims are objectively frivolous" with "no reasonable factual basis"; and second, "whether the person who signed the pleadings should have been aware that they were frivolous" after conducting a reasonable inquiry. *Baker v. Alderman*, 158 F.3d 516, 524 (11th Cir. 1998).

Here, the appellants had a reasonable factual basis to support their representation that Stewart directed the distribution of the form on her own initiative. First, ADOC Legal told the appellants that ADOC had no intent to notify the death row inmates about the change in the law—let alone to distribute a form to allow

for the election. Second, ADOC Legal and appellants were equally surprised to learn that a form had been distributed. Third, Simpson immediately went to Holman and spoke with Captain Emberton, who explained that Stewart directed him to distribute the form. Fourth, as discovery in the Price litigation proceeded, appellants sought written clarification from Stewart about the distribution of the form. Fifth, Stewart's answers showed that she knew that ADOC had no plans to give notice of the new election period to the death row inmates. Finally, Stewart directly stated that she ordered Captain Emberton to distribute the form. Based on those facts, there was enough information for Simpson to infer that ADOC did not authorize the distribution of election forms and that Stewart distributed the forms on her own accord.

We do agree with the district court that Simpson could have done more, such as talking directly with Stewart. But Simpson's failure to talk with Stewart, in this case, does not rise to sanctionable conduct. Specifically, we find that Simpson conducted a reasonable inquiry once she learned the form had been distributed to the inmates. She spoke with ADOC Legal about the distribution of the form and ultimately learned Stewart had directed its distribution.

We note that there was a difference in the litigation between the cases of Price and Smith. In the Price litigation, it did not matter who ordered the forms' distribution, but that Price received the form. While in the Smith litigation, the person who ordered the form's distribution was highly relevant for Smith's ADA claim.

The district court noted that these differences matter and factor into whether Simpson conducted a reasonable inquiry. While we agree that those differences matter, their significance does not undercut our conclusion that appellants acted reasonably under these circumstances. Simpson conducted (a perhaps imperfect) inquiry into the source of the directive to distribute the election forms during the Price litigation. Although Simpson did not undertake a new investigation for Smith, Rule 11 does not explicitly require that the appellants conduct a brand new inquiry into the same issue for which they already conducted an inquiry and developed an answer, especially considering the evidence showing ADOC never intended to distribute the form.

We also highlight that once Stewart testified in her deposition that a superior ordered the distribution of the election form, Simpson began investigating that statement and spoke with several individuals within ADOC who would have had knowledge about whether ADOC ordered distribution of the form. Once she completed that investigation, Simpson promptly notified the district court.

IV. CONCLUSION

We find that the district court abused its discretion in sanctioning the Office of the Alabama Attorney General and Assistant Attorney General Simpson. Thus, we vacate the district court's sanctions order.

VACATED AND REMANDED.