

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10213

ISIDRO CALDERON,
MARFELIA CALDERON,

Plaintiffs-Appellants,

versus

GEBRUEDER KNAUF
VERWALTUNGSGESELLSCHAFT, KG, et.al.,

Defendants,

KNAUF GIPS, KG,
KNAUF PLASTERBOARD TIANJIN CO. LTD.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:21-cv-24216-RNS

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

BY THE COURT:

Isidro and Marfelia Calderon appeal the district court's November 30, 2022 order dismissing their action and imposing attorney's fees as sanctions under Fed. R. Civ. P. 16(f) but leaving the amount of fees to be determined. They filed their notice of appeal on January 19, 2023, after the district court entered its January 3, 2023 order determining the amount of attorney's fees to be awarded. The defendants have moved to dismiss the appeal for lack of finality. We conclude that the Calderons appeal from a final order.

We generally only have jurisdiction to review final decisions of district courts that end the litigation on the merits and leave nothing for the court to do but execute the judgment. *See CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1327 (11th Cir. 2000). Generally, a pending request for attorney's fees by a prevailing party is a collateral matter that does not affect finality. *See Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 197, 199-202 (1988); *Ray Haluch Gravel Co. v. Cent. Pension Fund of Int'l Union of Operating Eng'rs & Participating Emps.*, 571 U.S. 177, 180-81, 183-86, 189-90

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Order of the Court

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(2014). However, orders imposing attorney's fees as sanctions are different. In *Jaffe v. Sundowner Properties, Inc.*, we concluded that an appeal from an order dismissing an action and awarding attorney's fees as a sanction under Fed. R. Civ. P. 37(d) was not final because the amount of attorney's fees had not yet been determined. 808 F.2d 1425, 1426-27 (11th Cir. 1987). We reasoned that the award of attorney's fees was "not separable from the imposition of the dismissal sanction." *See id.* at 1427.

Here, the defendants argue that the Calderons appealed the non-final November 30, 2022 order. However, because the Calderons filed their notice of appeal after entry of the January 3, 2023 order, we conclude that there is no finality concern here. *See id.* at 1426-27. The January 3 order applied to the plaintiffs' case because (1) the November 30, 2022 order that the January 3 order followed-up on and finalized explicitly applied to the plaintiffs' case; (2) the January 3 order was filed in a docket that the district court had ordered the plaintiffs to file documents in, and the court had entered other orders only in that docket that applied to the plaintiffs' action; and (3) the January 3 order provided the case number for plaintiffs' case and described the November 30 order as applying to that case.

Accordingly, the motion to dismiss is DENIED.