[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 24-10145

Non-Argument Calendar

CITY OF JACKSONVILLE, NEIGHBORHOOD CODE ENFORCEMENT DIVISION,
a State of Florida municipal corporation,

Plaintiff-Counter Defendant,

HPL GP, LLC,
HOUSTON PIPE LINE COMPANY, L.P.,

Plaintiffs-Third Party Defendants-Counter Claimants-Appellees,

versus

JACKSONVILLE HOSPITALITY HOLDINGS L.P.,
a Delaware Limited Partnership, et al.,

Defendants,

CONTINENTAL HOLDINGS, INC.,
a Wyoming Corporation,

Defendant-Third Party Plaintiff-Counter Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:12-cv-00850-HES-MCR

Before WILSON, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

Less than a year ago, we dismissed this appeal for lack of jurisdiction. *See City of Jacksonville v. Jacksonville Hosp. Holdings, L.P.*, 82 F.4th 1031, 1039 (11th Cir. 2023). After review of a record spanning eight years of litigation and ten different parties, we concluded that various stipulated dismissals failed to abide by Federal Rule of Civil Procedure 41(a)(1)(A)(ii)'s signature requirements. *Id.* at 1034. Faced with upwards of seven ineffective stipulations, we lacked jurisdiction to consider the merits. *Id.* at 1035. Consequently, the parties returned to the district court and Continental Holdings, Inc. (Continental), among others, moved to dismiss

these pending claims pursuant to Federal Rules of Civil Procedure 41(a)(2) and (b). Doc. 415. The district court granted the motion. Doc. 416.

With the jurisdictional issues resolved, this appeal followed. The merits claims mirror those brought before us in the original litigation: Continental once again challenges the district court's denial of its November 2015 motion to voluntarily dismiss Houston Pipe Line Company, L.P. and HPL GP, LLC (collectively, Houston) from the case. *See* Fed. R. Civ. P. 41(a)(2); *Jacksonville Hosp.*, 82 F.4th at 1034–35. Continental urges us to reverse the district court's Rule 41(a)(2) denial and vacate all subsequent orders regarding its litigation with Houston.

After review of the record and parties' briefing, we conclude that the district court abused its discretion in its Rule 41(a)(2) decision. We vacate and remand with instructions to reinstate the case for proceedings consistent with this opinion.

I. Background

This case concerns liability for environmental contamination near a gas plant in the City of Jacksonville (the City).[1] The City filed suit against several parties, including Continental, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9607(a), 9613(g)(2), and Florida

[1] Our last opinion on this matter outlines the broader history of this litigation. *See Jacksonville Hosp.*, 82 F.4th at 1034–35. Here, we focus on the history most salient to our present appeal.

Statute § 376.313. Relevant here, there were questions surrounding the gas plant's successorship. The City's suit alleged the following: the gas plant's ownership and operations originated with Jacksonville Gas Company in the early twentieth century; after various mergers and a name change, Jacksonville Gas Company became the Florida Gas Company (FGC); Continental is the successor of FGC; therefore, Continental is liable for the contamination.

In April 2015, Continental filed an amended third-party complaint against numerous third-party defendants, including Houston. Continental alleged that Houston was the true successor to FGC and liable for any contamination. In June, Houston answered and brought counterclaims in return. Then, that November, Continental moved to voluntarily dismiss its third-party complaint against Houston without prejudice pursuant to Rule 41(a)(2). Houston opposed, and a hearing was held on the matter.

The parties disputed the propriety of dismissal. Continental argued, among other things, that it reasonably relied on corporate history documents in bringing its third-party complaint; yet, at that point in litigation, Continental lacked the requisite evidence to satisfy its burden; and Houston incurred minimal costs over the preceding months. Accordingly, Continental claimed it wanted to focus on its case with the City and needed more time to collect evidence against Houston. Houston countered that its dismissal

would substantially prejudice its legal interests.[2] Houston further alleged that Continental unreasonably delayed its discovery responses and merely sought to avoid an adverse ruling. Ultimately, the district court denied Continental's motion:

> As to Continental's Motion to Dismiss the claims against [Houston], Houston objects based upon its position that it would be prejudiced if a successor liability determination was made during the pendency of this litigation without its active participation. The Court agrees that Houston has important interests at stake and will not dismiss the claims against it at this time.

Doc. 204 at 2–3.

In early September 2016, Houston moved for summary judgment against Continental and served it with a motion for sanctions, demanding Continental dismiss it from suit *with* prejudice. Houston based its motion on discovery evidence that Continental historically represented itself as a successor to FGC and collected millions of dollars in insurance payments. According to Houston, the evidence proved the suit's frivolity, which Continental attempted to conceal via bad faith motions practice. Later that month, Continental again moved to dismiss Houston *without*

[2] These interests included participating contemporaneously in discovery, filing an upcoming motion for summary judgment, and resolving the corporate successorship issue.

prejudice. Houston objected again, and filed its sanctions motion with the court under 28 U.S.C. § 1927 and the court's inherent authority.

The following year, the court denied Continental's second motion to dismiss and granted Houston's motion for sanctions. Approximately four years later and after a hearing on the sanctions motion, the court entered an order granting Houston approximately $1.5 million in attorneys' fees and costs. The court found that "not [only] was [Continental's complaint] frivolous, this was indeed an exceptional case." Doc. 401 at 11. Pointing to the original sanctions order, the court reiterated that Continental had not only "engaged in *some* bad faith conduct while prosecuting a legitimate complaint," but that the "complaint . . . was *brought* in bad faith." *Id.* at 10. Finally, the court awarded fees under Florida Statute § 376.313(6) in the public interest.

II. Law and Analysis

A. Standard of Review

We review a district court's decision to allow or deny a voluntary dismissal under Rule 41(a)(2) for an abuse of discretion. *Arias v. Cameron*, 776 F.3d 1262, 1268 (11th Cir. 2015). We similarly review the court's sanctions order for an abuse of discretion, whether under § 1927 or its inherent powers. *Amlong & Amlong, P.A. v. Denny's, Inc.*, 500 F.3d 1230, 1237–38 (11th Cir. 2007).

B. Rule 41(a)(2) Voluntary Dismissal

After an opposing party serves its answer, "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). The district court "enjoys broad discretion in determining whether to allow a voluntary dismissal under Rule 41(a)(2)." *Arias*, 776 F.3d at 1268. Our precedent walks a line by which we favor granting dismissals while protecting defendants' rights. In general, we aim to protect defendants' substantial rights—not their preferences.

By Rule 41(a)(2)'s permissive language, voluntary dismissals are not a matter of right. When deciding whether to permit dismissal, courts "should keep in mind the interests of the defendant, for Rule 41(a)(2) exists chiefly for protection of defendants." *Fisher v P.R. Marine Mgmt., Inc.*, 940 F.2d 1502, 1502–03 (11th Cir. 1991) (per curiam). Indeed, "[t]he purpose of the rule is primarily to prevent voluntary dismissals which unfairly affect the other side, and to permit the imposition of curative conditions." *McCants v. Ford Motor Co.*, 781 F.2d 855, 856 (11th Cir. 1986) (quotation marks omitted). Nonetheless, we generally find that "a motion for voluntary dismissal should be granted unless the defendant will suffer clear legal prejudice other than the mere prospect of a second lawsuit." *Arias*, 776 F.3d at 1268. "The crucial question to be determined is, [w]ould the defendant lose any substantial right by the dismissal."

Durham v. Fla. E. Coast Ry. Co., 385 F.2d 366, 368 (5th Cir. 1967).[3] And "[w]hile the district court should keep in mind the interests of the defendant . . . the court should also weigh the relevant equities and do justice between the parties in each case, imposing such costs and attaching such conditions to the dismissal as are deemed appropriate." *Arias*, 776 F.3d at 1269 (internal citation and quotation marks omitted).

Our precedent provides circumstances which tip the equities in either direction. For plaintiffs, we rejected arguments that defendants would be prejudiced where "plaintiff may obtain some tactical advantage over the defendant in future litigation." *Id.* at 1272 (quotation marks omitted). Further, an attempt to avoid an adverse ruling, in and of itself, is insufficient. *See Potenberg v. Bos. Sci. Corp.*, 252 F.3d 1253, 1258 (11th Cir. 2001). We have found that the inconvenience to lawyers who proceeded up to the point of trial, without more, does not justify denial of a voluntary dismissal motion. *See Durham*, 385 F.2d at 367. And a court does not abuse its discretion dismissing an action without prejudice where "the 'practical prejudice' of expenses incurred in defending the action can be alleviated by the imposition of costs or other conditions." *Potenberg*, 252 F.3d at 1260 (internal quotation marks omitted). For defendants, courts generally focus upon bad faith on part of the plaintiff. *See Arias*, 776 F.3d at 1272. We also find that dismissal is

[3] Decisions of the former Fifth Circuit rendered before October 1, 1981, are binding on our court. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

ordinarily denied when defendants incur considerable expense—unless it is accompanied with orders for some amount of reimbursement. *See McCants*, 781 F.2d at 860.

With this law in mind, we find that the district court abused its discretion in denying Continental's first Rule 41(a)(2) motion. As a preliminary matter, we note that we review the court's first Rule 41(a)(2) denial, which was decided before Continental's ostensibly bad faith conduct was revealed in discovery. Upon review of the decision at that earlier point in time, our reading of the court's concerns for "a successor liability determination" in the litigation "without [Houston's] active participation" reveals that its decision hinged on Houston's fears of an "empty-chair" litigation strategy. The hearing's transcript similarly demonstrates an overt emphasis upon fears of future litigation.

Yet these concerns fail to justify denial of a motion to voluntarily dismiss. First, as Houston's counsel admitted (and the district court pointed out), the doctrine of collateral estoppel[4] prevents Continental or any other party from using the litigation's determination of successor liability against Houston in future litigation. Any development of evidence against Houston during the present litigation would be a mere "tactical advantage" in a second lawsuit,

[4] The doctrine only applies in subsequent litigation where "the parties are the same or in privity with each other and the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue in the earlier proceeding." *Grayson v. Warden, Comm'r, Ala. Dep't of Corr.*, 869 F.3d 1204, 1223 (11th Cir. 2017). Houston's dismissal would preclude either finding.

rather than a sufficient objection to voluntary dismissal. *Arias*, 776 F.3d at 1272. And the prospect of another suit down the road is an insufficient reason to deny a motion for voluntary dismissal. *See id.* at 1268. Although Continental's decision to hail Houston into court cost Houston money, the court may impose conditions for dismissal, including costs up to that point in litigation, *see McCants*, 781 F.2d at 857, and costs if, or when, Continental later refiles, *see Potenberg*, 252 F.3d at 1260. As a result, our review of the record reveals a lack of "clear legal prejudice" against Houston. *Arias*, 776 F.3d at 1268. Due to the court's reliance upon Houston's concerns regarding the litigation's fact determinations, coupled with the curative conditions available upon Rule 41(a)(2) dismissals, we find that the district court abused its discretion in its denial of Continental's November 2015 motion to dismiss.

C. Subsequent Orders

"A voluntary dismissal without prejudice renders the proceedings a nullity and leaves the parties as if the action had never been brought." *United States v. $760,670.00 in U.S. Currency*, 929 F.3d 1293, 1303 (11th Cir. 2019) (quotation marks omitted). Upon reversal, we may "remand with instructions that the case be reinstated" where "the complaint may be dismissed without prejudice upon such terms and conditions as the court deems proper." *Durham*, 385 F.2d at 369.

After an action is voluntarily dismissed pursuant to Rule 41(a), a district court is ordinarily stripped of jurisdiction. *See Absolute Activist Value Master Fund Ltd. v. Devine*, 998 F.3d 1258, 1265

(11th Cir. 2021). However, the court retains jurisdiction to consider "a limited set of issues," including the imposition of costs, attorneys' fees, and sanctions. *Id.*

The Supreme Court has explained that because a "violation of Rule 11 is complete when the paper is filed, a voluntary dismissal does not expunge the Rule 11 violation." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990) (internal citation and quotations omitted). A court may continue to entertain a Rule 11 motion after terminating a case because federal courts "may consider collateral issues after an action is no longer pending," and sanctions determinations are "a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate." *Id.* at 395–96.

We extended *Cooter & Gell*'s holding in *Hyde v. Irish*, 962 F.3d 1306 (11th Cir. 2020). The parties there moved for sanctions at a point in the case that the district court ultimately found it lacked subject matter jurisdiction. *Id.* at 1308. Upon review, we explained that: (1) ruling on collateral issues does not implicate constitutional concerns; and (2) "the interest in having rules of procedure obeyed outlives the merits of the case." *Id.* at 1309–10 (internal quotation marks omitted and alteration adopted). We concluded that, as consistent with at least five other circuits, "a district court may address a sanctions motion based on its inherent powers or § 1927 even if it lacks jurisdiction over the underlying case." *Id.* at 1310.

In the present case, the orders subsequent to the district court's initial Rule 41(a)(2) denial require mixed treatment. First,

the summary judgment order should be vacated.[5] Doing so places the parties in a position as if the action had never been brought. *See U.S. Currency*, 929 F.3d at 1303. And because summary judgment motions go to the merits of the case, the court would not have had jurisdiction over the motion had Houston been dismissed. *Contra Hyde*, 962 F.3d at 1310.

However, the sanctions and fees orders should be vacated and remanded for reconsideration. Both motions dealt with issues collateral to the underlying merits, which are properly considered even after dismissal. *See Cooter & Gell*, 496 U.S. at 396–98. This is permissible even where the motions come after a party is voluntarily dismissed, and the court no longer has jurisdiction of the underlying merit determinations. *See Hyde*, 962 F.3d at 1308–10. Allowing reconsideration on remand supports the fundamental underpinnings of Rule 11 as well. First, a remand aligns with the Supreme Court's admonishment that a Rule 11 violation vests the moment a frivolous complaint is filed, and the harm to the judiciary occurs even if the careless plaintiff quickly dismisses the action. *See Cooter & Gell*, 496 U.S. at 395, 398. Second, permitting reconsideration furthers the "central purpose of Rule 11," which "is to deter baseless filings." *Id.* at 393. Because the sanctions and fees orders rest on conduct that occurred after Continental filed its

[5] Continental waived any argument that we should reverse the sanctions and summary judgment orders on the ground that issues of fact remained. This argument occurs in a footnote at the end of its initial brief and lacks any accompanying case law. These arguments are insufficient and constitute waiver. *See Robinson v. Sauls*, 46 F.4th 1332, 1341 n.6 (11th Cir. 2022).

November 2015 Rule 41(a)(2) motion, the court should reconsider its judgment by focusing its inquiry on any bad faith conduct up until the point where Houston would have been dismissed from the case.

III. Conclusion

We hold that the district court abused its discretion in its denial of Continental's November 2015 Rule 41(a)(2) motion to voluntarily dismiss. We therefore **VACATE and REMAND** the district court's first Rule 41(a)(2) order with instructions to reinstate the case. We further **VACATE** the summary judgment order, and **VACATE and REMAND** the court's sanctions and fees orders. Continental shall file a new motion to voluntarily dismiss. The court should reconsider the sanctions and fees motions based upon bad faith conduct up and until Continental's filing of its first motion to voluntarily dismiss. Upon Continental's filing of the new motion, the court should condition Houston's dismissal on any additional terms and conditions as it deems proper.

VACATED and REMANDED.