[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 24-13970

Non-Argument Calendar

ATLANTIC CASUALTY INSURANCE COMPANY,

Plaintiff-Counter Defendant-Appellee,

versus

TREMAINE ROSS,

Interested Party-Appellant,

SHERRY PHILLIPS,
individually,
d.b.a. All Trades Handicraftsmen, et al.,

Defendants-Counter Claimants.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:22-cv-04546-MLB

Before WILLIAM PRYOR, Chief Judge, and KIDD and WILSON, Circuit Judges.

PER CURIAM:

Tremaine Ross, an attorney proceeding *pro se*, appeals the imposition of a sanction of attorney's fees under Federal Rule of Civil Procedure 26. We affirm.

A sanction under Rule 26(g)(3) is mandatory after a district court finds that a discovery filing was signed in violation of the rule. *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1372 (11th Cir. 1997). We review the factual finding that a certification was made in violation of Rule 26 for clear error and the decision about the appropriate sanction for abuse of discretion. *Id.* A finding is clearly erroneous when reviewing all the evidence, we are "left with the definite and firm conviction that a mistake has been committed." *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985) (citation and internal quotation marks omitted).

Ross argues the district court could not impose sanctions under Rule 26(g)(3) absent a finding of bad faith. We disagree. Rule 26 requires an attorney to certify that, after a "reasonable inquiry," a discovery response is consistent with the applicable rules, warranted by existing law, not intended for any improper purpose, and not unduly burdensome on the other party. Fed. R. Civ. P. 26(g)(1). If a certification violates the rule without substantial justification, the district court "must impose an appropriate sanction," which may include an order to pay attorney's fees. *Id.* R. 26(g)(3). A signature does not certify the truthfulness of a client's response but "certifies that the lawyer has made a reasonable effort to assure that the client has provided all the information and documents available to him that are responsive to the discovery demand." *Id.*, Advisory Committee Note, 1983 Amendments. "[W]hat is reasonable is a matter for the court to decide on the totality of the circumstances." *Id.*

Although a sanction under a district court's inherent powers requires a finding of subjective bad faith, we have cautioned district courts not to blur the lines between sanctions under the federal rules and its inherent powers. *Purchasing Power, LLC v. Bluestem Brands, Inc.*, 851 F.3d 1218, 1223 n.4 (11th Cir. 2017). And we have held that a district court did not clearly err in determining that a party violated Rule 26 even though we concluded that the record did not establish bad faith. *See Chudasama*, 123 F.3d at 1371–72 (holding that the district court abused its discretion in granting sanctions under Rule 37 because the record did not support a finding of bad faith but did not clearly err in finding a violation of Rule

26). The district court was not required to make a finding of bad faith to impose sanctions under Rule 26.

Ross also argues that the district court clearly erred in finding that he violated Rule 26. We disagree. The district court found that Ross did not undertake a reasonable investigation before signing his client's discovery responses because he testified that he accepted discovery responses from his clients without checking that they were responsive to the requests.

The record supports the finding by the district court. The responses to requests for production directed Atlantic Casualty to over 900 pages of documents the defendants had produced without pointing to the documents that were responsive to each request or whether documents existed at all. At least one response to a request for production was completely nonresponsive to the request. Another stated a document would be produced but did not produce the document. Ross testified that although he looked at the documents before producing them, he took his client's word that she gave him what was necessary. He stated that he gave a general response to requests for production because a client might not appreciate the seriousness of an obligation to search for documents and might later find those documents. He also testified that he or his client might have misunderstood the request for production, which is why it was nonresponsive, and that he was required to give his client's truthful nonresponsive answer. The district court did not clearly err in finding Ross did not undertake a reasonable investigation before signing his client's discovery responses. *See Anderson*,

470 U.S. at 573–74 ("If the district court's account of the evidence is plausible in light of the record viewed in its entirety, [we] may not reverse it even though convinced that had [we] been sitting as the trier of fact, [we] would have weighed the evidence differently.").

Ross argues that Atlantic Casualty did not make a good faith attempt to confer before filing a motion for sanctions. Ross relies on Rule 37, which requires that a party make a good faith attempt to resolve a dispute before seeking court intervention. But the district court relied on Rule 26, not Rule 37. In any event, Ross's argument that Atlantic Casualty only sent one letter regarding this dispute ignores that there had already been court orders regarding overdue discovery. When the district court ordered the defendants to file all overdue discovery responses, it stated that if they failed to do so, Atlantic Casualty could seek sanctions. Atlantic Casualty sent a letter to Ross identifying issues with his initial discovery responses. Ross responded that any changes would be in the supplemental response, and if not, Atlantic Casualty should seek the information elsewhere, which suggested further communication after his supplemental responses would be unfruitful.

Ross does not challenge the sanction of fees or the amount of those fees, so he has abandoned any challenge to them. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) (holding that a party abandons a claim by failing to raise it in their initial brief). To the extent Atlantic Casualty seeks an award of attorney's

fees for work performed during this appeal, it must file an application for those fees. *See generally* 11th Cir. R. 39-2.

We **AFFIRM** the sanction of attorney's fees against Ross.