University of Baltimore Law Forum

Volume 21
Number 2 *Spring, 1991*

Article 7

1991

Recent Developments: Cooter & Gell v. Hartmarx Corporation: Voluntary Dismissal of Frivolous Lawsuit Will Not Protect Plaintiff from Imposition of Rule 11 Sanctions

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tional issue presented should have been considered. He indicated that, had the issue been considered, he would have held that section 554 does not infringe upon the constitutional right of privacy. *Id.* at 737, 580 A.2d at 187.

In *Schochet v. State,* the Court of Appeals of Maryland considerably narrowed the scope of section 554 by excluding from its application consensual, noncommercial, heterosexual activities between adults in private. Although, as the court points out in its opinion, section 554 is still viable as applied to activities not expressly excluded by its opinion, the scope and constitutionality of its application to such activities remains in question. By artfully avoiding the constitutional issue presented in this case, the court avoided the possibility of being reviewed by the United States Supreme Court. However, this has merely postponed a seemingly inevitable ruling which will define the extent of the State's control over the most intimate and personal aspects of the lives of its citizenry.

— *Mark K. Boyer*

Cooter & Gell v. Hartmarx Corporation: VOLUNTARY DISMISSAL OF FRIVOLOUS LAWSUIT WILL NOT PROTECT PLAINTIFF FROM IMPOSITION OF RULE 11 SANCTIONS

In *Cooter & Gell v. Hartmarx Corp.,* 110 S. Ct. 2447 (1990), the Supreme Court resolved a split among the federal circuit courts in their application of Federal Rule of Civil Procedure 11. The Court held that a plaintiff's voluntary dismissal did not destroy the jurisdiction of the federal district court to award Rule 11 sanctions. Additionally, the Court held that the appropriate standard of review on appeal was an abuse of discretion standard. However, the Court ruled that expenses incurred in an appeal of sanctions were not includable in the amount of the monetary award.

Hartmarx Corporation ("Hartmarx") filed a breach of contract action against Danik Incorporated ("Danik"), who, represented by the law firm of Cooter & Gell, filed a counterclaim to that action. The district court found in favor of Hartmarx in both matters. Thereafter, Danik filed two antitrust complaints against Hartmarx, one of which was the subject of the appeal.

The complaint in question alleged, *inter alia*, the existence of a nationwide conspiracy to fix prices and to eliminate competition. Hartmarx moved to dismiss the complaint and for sanctions under Rule 11 based principally on the grounds that the suit had no basis in fact. Danik filed a notice of voluntary dismissal of the antitrust complaint which became effective in June 1984. Thereafter, the court entertained argument on the Rule 11 motion.

In December 1987, the district court granted the Rule 11 motion for sanctions and awarded costs and fees for defense of the action against Danik and Cooter & Gell. The court of appeals affirmed, but additionally ruled that the matter be remanded to the district court where the expenses incurred as a result of the appeal should be assessed against Danik and Cooter & Gell. The Supreme Court granted certiorari.

The Court considered three issues on appeal. First, whether a district court may impose Rule 11 sanctions on a plaintiff who voluntarily dismissed a complaint. Second, what was the appropriate standard of review in the imposition of Rule 11 sanctions. Third, whether awarding attorney fees incurred on appeal of the sanctions was authorized under Rule 11.

The Court first addressed Danik's contention that its voluntary dismissal pursuant to Rule 41(a)(1) automatically deprived the district court of jurisdiction over the Rule 11 motion, and thus, the sanctions and award of attorney fees and costs were improper. *Id.* at 2454-55. In its analysis, the Court considered both the language of and the purposes behind the promulgation of Rule 11 and Rule 41(a)(1).

Rule 11 requires that an attorney or party offering a paper to a court must sign that paper. By signing, the attorney or party certifies that:

> the signer has read the . . . paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> [Fed. R. Civ. P. 11.]

If signed in violation of the rule, the court "shall" impose upon the attorney or his client "an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing" of the paper. *Id.* The Court determined that the purpose of Rule 11 is to deter baseless lawsuits and to streamline the judicial process. *Cooter & Gell,* 110 S.Ct. at 2454.

In contrast, the purpose of Rule 41(a)(1) is to limit a plaintiff's ability to dismiss an action without prejudice. Specifically, the provision allows a plaintiff "one free dismissal" without the permission of the adverse party or the court, provided certain procedural requirements are followed. *Id.* at 2456-57. However, the Court stated, Rule 41(a)(1) did not secure the plaintiff's right to file baseless papers. *Id.* at 2457. The Court reasoned that if a litigant could purge his Rule 11 violation merely by taking a dismissal, he would lose all incentive to investigate more carefully before serving and filing papers. *Id.*

The Court rejected the petitioner's argument and found that the language and policies behind Rule 11 were consistent with the district court's position that it had authority to rule on the motion after the dismissal of the action. *Id.* The Court found that the jurisdiction of the district court was invoked when the underlying complaint was filed and was not destroyed by the voluntary dismissal. The Court further found that the Rule 11 motion was a collateral issue, not a judgment on the merits, and therefore, the imposition of sanctions did not deprive the plaintiff of his Rule 41(a)(1) right to voluntarily dismiss without prejudice. Thus, the Court held the award of attorney fees and costs was properly made after the voluntary dismissal of the suit. *Id.*

Similarly, the Court rejected the petitioner's contention that the court of appeals erred in applying an abuse of discretion standard in reviewing the imposition of Rule 11 sanctions. In its analysis, the Court compared the language in the Equal Access to Justice Act

("EAJA") to the language of Rule 11 which it considered analogous.

Under the EAJA, the federal government must be "substantially justified" for its action or inaction. If litigants are forced to challenge the federal government's activities in court, attorney fees may be awarded against the government unless its activities were "substantially justified." A district court's decision on that issue is reviewed under an abuse of discretion standard. *Id.* at 2459-60 (citing *Pierce v. Underwood,* 487 U.S. 552, 559-60 (1988)).

The Court reasoned that determining whether an action was "substantially justified" under the EAJA was analogous to determining whether an attorney's complaint was factually well-grounded and legally tenable for Rule 11 purposes. Both situations require fact-specific findings which, according to the Court, the district courts are in a better position to make. Furthermore, district courts are "best acquainted with the local bar's litigation practices and thus best situated to determine when a sanction is warranted to serve Rule 11's goal of specific and general deterrence." *Id.* at 2460. Since an abuse of discretion standard had been applied to district court findings under the EAJA, the Court held that the same standard of review was appropriate for district court findings under Rule 11. *Id.* at 2460-61.

Finally, the Court considered the petitioner's contention that the court of appeals erroneously found that Rule 11 sanctions may include attorney fees incurred as a result of an appeal of the sanction. The Court interpreted the language of Rule 11 and the drafter's comments as limited to those costs directly incurred as a result of the filing of the frivolous suit. The Court reasoned that the attorney fees on appeal did not stem from the filing of the complaint, but rather from the imposition of the sanctions by the district court. *Id.* at 2461. In that Rule 38 provides attorney fees and damages for wrongful appeal, the Court reasoned, the scope of Rule 11 is naturally limited to fees connected with the filing of the complaint. *Id.* at 2462. Following the American rule that the prevailing litigant would not ordinarily be entitled to attorney fees, the Court reversed on this issue. *Id.*

In *Cooter & Gell*, the decision of the Court clarifies the manner in which Rule 11 should be applied by district courts. Now, even if a plaintiff voluntarily dismisses a suit, the district court may impose sanctions for violation of Rule 11 on both the plaintiff and the plaintiff's attorney, subject only to review for abuse of discretion.

— *Laura Campbell*

NOW v. Operation Rescue: INJUNCTION PROHIBITING BLOCKING ACCESS TO ABORTION FACILITIES IN VIOLATION OF CIVIL RIGHTS CONSPIRACY STATUTE UPHELD

In *NOW v. Operation Rescue,* 914 F.2d 582 (4th Cir. 1990), the United States Court of Appeals for the Fourth Circuit held that pro-life demonstrators could be enjoined from blocking entry to an abortion clinic on the ground that it denied women their constitutional right to interstate travel in violation of the civil rights conspiracy statute. The court affirmed the district court injunction on the ground that there was no abuse of discretion.

The plaintiffs/appellees (hereinafter "NOW") were nine clinics that provided abortion-related services and five organizations devoted to preserving women's rights to obtain abortions. Defendants/appellants (hereinafter "Operation Rescue") were Operation Rescue, a pro-life organization, and six individuals who opposed abortion and sought to have the procedure made illegal.

NOW filed a motion for a temporary restraining order in the United States District Court for the Eastern District of Virginia. They sought to enjoin Operation Rescue from blocking entry to and exit from facilities that offered abortion and abortion-related services. The motion was filed, and granted, in anticipation of rescue demonstrations which were scheduled to take place in the immediate future in the Washington metropolitan area. Although the court enjoined the defendants from "trespassing on, blockading, impeding or obstructing access to or egress from the [listed] premises," it declined to extend the injunction to the activities that tended to "intimidate, harass or disturb patients or potential patients." *Id.* at 584.

The district court concluded that the defendants' activities violated the provisions of 42 U.S.C. §1985(3) (1988) by depriving women seeking abortions and abortion-related services of their constitutional right to travel interstate in search of medical facilities. *Id.* To bring a successful action under §1985(3), the court noted, a plaintiff must prove a conspiracy to deprive any person, or class of persons, of the equal protection of the laws, or of the equal privileges and immunities under the law. In addition, the plaintiff must prove that the conspirators committed acts in furtherance of their goals, thus causing injury to persons or property, and depriving any right or privilege of a citizen of the United States. *NOW v. Operation Rescue,* 914 F.2d at 584 (citing 42 U.S.C. §1985 (3)). The district court reasoned that rescue demonstrations were acts in furtherance of a conspiracy which interfered with the right to travel in that many women in the Washington metropolitan area traveled interstate to obtain abortions and abortion related services. *Id.* at 585.

Finally, the district court concluded that injunctive relief was appropriate because: "(i) there was no adequate remedy at law; (ii) the balance of equities favored the plaintiffs; and (iii) the public interest was served by granting the injunction." *Id.*

The defendants appealed the order, arguing that there was insufficient evidence to grant relief against three of their members. *Id.* at 586. NOW cross-appealed on the ground that the scope of the injunction was too narrow, contending that the district court abused its discretion in limiting the injunction to Northern Virginia and for refusing to grant the requested relief on a permanent basis. *Id.* The arguments of both parties were duly noted, but the United States Court of Appeals for the Fourth Circuit affirmed the ruling of the lower court.

Citing the ruling of the district court, the fourth circuit court agreed that the defendants' conduct crossed the line from persuasion to coercion, denying women the exercise of legally protected rights. *Id.* at 585. Further, the court noted that the district court holding was consistent with at least six other circuit courts of appeals which have similarly