No. 22-56003 & 23-55784

In the United States Court of Appeals

For the Ninth Circuit

LAURA LYNN HAMMETT

Plaintiff-Appellant

v.

MARY E. SHERMAN, et al.

Defendants-Appellees

Appeal from the United States District Court for the Southern District of California

Case No. 19-CV-0605-LL-AHG

The Honorable Linda Lopez

Laura Lynn Hammett's Reply Re: Motion for stay on proceedings in the District Court on Motions for Further Attorney Fees [ECF Nos. 270 and 271] and Order [ECF No. 290], to allow an appeal of the Order and to consolidate the two appeals

(Amended for Font Size)

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Introduction

Defendants Ellis Roy Stern, Alan N. Goldberg, and Stern & Goldberg (collectively "S&G"), and Defendants Patrick C. McGarrigle, and McGariggle, Kenney & Zampielo, a Professional Law Corporation (collectively "MKZ"), collectively called "the Attorney Defendants" made three pertinent errors in their joint opposition to the Motion, DktEntry 39-1.

The Motion asks for a stay of proceedings in the District Court to allow an appeal of the late entered order on attorney fees on only the issue of whether the District Court had jurisdiction to allow an amended motion for attorney fees to be filed almost a year after the final judgment on the underlying case was entered.

The Attorney Defendants' Erroneous Categorization of the Order as "Interlocutory"

The Attorney Defendants opposed the motion based upon their errant categorization of the Order as interlocutory and caselaw that addresses interlocutory appeals.

The Attorney Defendants referred to the order, ECF No. 290, as "interlocutory" 14 times in the opposition, DktEntry 40. ("this Interlocutory Order"

at 2, “Plaintiff seeks permission to appeal the district court’s interlocutory order” at 10, “not only is the district court’s order a non-appealable interlocutory order, plaintiff failed to first seek permission to certify the interlocutory order for appeal” at 10, “[t]he district court’s August 17, 2023 order is a non-appealable interlocutory order” at 11, “is not subject to certification for interlocutory appeal” at 14, and nine other instances.)

Hammett did not refer to the order as interlocutory even once.

The order is not interlocutory.

Black’s Law Dictionary defines “Interlocutory Appeal” thus: “- interlocutory appeal. (1847) An appeal that occurs before the trial court's final ruling on the entire case. 28 USCA § 1292(b). • Some interlocutory appeals involve legal points necessary to the determination of the case, while others involve collateral orders that are wholly separate from the merits of the action. See INTERLOCUTORY APPEALS ACT; FINAL-JUDGMENT RULE.” (Black's Law Dictionary (11th ed. 2019), interlocutory appeal referring to Black's Law Dictionary (11th ed. 2019), appeal, subsection interlocutory appeals)

The Attorney Defendants wrote a section called “Procedural Background” that is four pages long. (DktEntry 40 at 6-9) In all this detail, they chose to leave out any specifics of the final judgment issued September 30, 2022, the Notice of

Appeal filed October 25, 2022 and the briefing of Appeal No. 22-56003 which was complete on July 26, 2023. (Docket of Appeal No. 22-56003)

The Order on appeal in No. 23-55784 was entered on August 17, 2023.

No. 23-55784 is not an appeal of an order that occurred before the trial court's final ruling on the entire case. The motion practice on ECF Nos. 270 and 271 was complete on December 5, 2022, over eight months after the briefing. The Court gave no reason for delaying her order on the motion. Whether a purposeful an abuse of discretion or an inadvertent mistake, the biased judge used the delay as an opportunity to let the represented parties correct an error they made on the original fee motion as well.

All authorities used by the Attorney Defendants that address interlocutory orders are irrelevant.

Because of Overlapping Issues in the Two Courts, the District Court Cannot Make an Appealable Order and Simultaneously Protect the District Court's Jurisdiction

The District Court exceeded her authority. The District Court lost jurisdiction the moment she issued an order on the outstanding "post judgment order".

Plaintiff's Opposition to the Attorney Defendants' renewed motions, ECF Nos. 293 and 294, began "[The non-moving party] make[s] this special appearance to challenge the jurisdiction of the District Court to hear this attorney fee motion."

Supporting authorities include that Appeal No. 22-56003 divests this court of jurisdiction over issues related to the original S&G judgment on attorney fees. (*Griggs v. Provident Consumer Disc. Co*., 459 U.S. 56, 58 (1982) ("The filing of a notice of appeal is an event of jurisdictional significance–it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."); *Gilda Indus., Inc. v. United States*, 511 F.3d 1348, 1350 (Fed. Cir. 2008) ("Ordinarily, the act of filing a notice of appeal confers jurisdiction on an appellate court and divests the trial court of jurisdiction over *matters related to the appeal*.")) (italics added)

The aspects of the case involved in the original attorney fee motions and the further attorney fee motions are identical, except for an accounting of the hours spent. When the District Court denied the fees because the Attorney Defendants did not meet their burden of proving reasonableness, that was an order that is different than the original fee order that is on appeal in No. 22-56003. It should inform the Ninth Circuit that the District Court acknowledged one of its errors.

Going forward, only the Court of Appeals should give any opinion and the District Court should recognize it was divested of its jurisdiction.

“Reasonableness” of Fees is a Macro Issue, as well as a Micro Issue

The Attorney Defendants argue that “S&G Defendants’ renewed combined motion for additional attorney’s fees incurred on plaintiff’s first appeal and in district court, however, is instead focused on the reasonableness of attorney’s fees requested and incurred in defending the prior award and judgment. The issues to be decided in this motion are therefore separate and distinct from the initial determination on the merits that defendants were prevailing parties to the anti-SLAPP motion, which triggered a mandatory award of attorney’s fees. *Budinich v. Becton Dickinson & Co*., 486 U.S. 196, 200 (1988) (announcing uniform rule in case where fees were statutorily mandated that regardless of source of authority for attorney's fee award, outstanding claim for fees is collateral to and distinct from the merits judgment.)”

Arguendo that the District Court did not lose jurisdiction due to the issues being the same in both courts, or the leave to amend the motion being given well past the statutory period to file a motion for fees, or that the late advice to the represented party gives the appearance of bias and is an abuse of discretion, the Attorney Defendants’ argument still fails.

Hammett's primary argument is that the derivative causes, which are both causes against the Attorney Defendants according to the District Court, are void ab initio. This is not a merits-based argument. It is akin to a jurisdictional issue. No Court should have entertained the void claims.

No fees are reasonable when the proper and expeditious work that the Attorney Defendants' counsel should have done was to write a one-page motion to strike the derivative causes of action advocated by a person unauthorized to practice law.

There is no fee shifting for that motion, so it was not as attractive to the attorneys who created an artificial demand for their work.

The Attorney Defendants' counselors were unrelenting. They claimed their fees were incurred due to "plaintiff's unrelentless" (sic) litigation. (DktEntry 40 at 16) Plaintiff, who is not a $450 per hour attorney, ended the need for the Attorney Defendants to incur fees the moment she spoke the truth that the attorneys and the District Court ignored. The proceedings were void. The Attorney Defendants were set free…until the complaint against them was refiled by a licensed attorney or they were substituted in as Doe Defendants after a motion under California Rule of Civil Procedure to name attorneys in a conspiratorial role was granted.

For these reasons, the Ninth Circuit should stay the proceedings at the District Court and consolidate its opinion after both appeals are fully briefed.

Respectfully submitted,

September 28, 2023

/s/ Laura Lynn Hammett

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CERTIFICATE OF COMPLIANCE FOR CASE NUMBER 22-56003 & 23-55784

(FRAP 27 and 32 and Ninth Circuit Rules 27.1 and 32-1)

Pursuant to Federal Rules of Appellate Procedure Rules 27(d)(2), 32(a)(7)(B) and 32(g) and Ninth Circuit Rule 27.1 and 32-1, I certify that the Appellant's Reply to Appellees' Opposition to Appellant's Motion for Stay on Proceedings in the District Court on Defendants' Motions for Further Attorney Fees [ECF Nos. 270 and 271] and Order [ECF No. 290], to Allow an Appeal of the Order and to Consolidate the Two Appeals. is proportionately spaced, has a typeface of 14-point or more and contains 1,247 words, which is within the 2,600 word limit.

September 28, 2023

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Certificate of Service

All attorneys of record to the district court case are served by filing with the electronic filing system.

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