No. 11-3386

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JACK and RENEE BEAM,

Plaintiffs-Appellants,

vs.

CAROLINE C. HUNTER, FEDERAL ELECTION COMMISSION CHAIR,

Defendant(s)-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

Case No. 07-cv-1227

Honorable Rebecca R. Pallmeyer

REPLY BRIEF OF PLAINTIFF-APPELLANTS JACK AND RENEE BEAM

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1. The FEC's Clear Misconduct in this Case Precludes an Award of Costs

Plaintiff-Appellants need not inconvenience the Court with a lengthy reply. In their response, each of the Defendant-Appellees' arguments refer affirmatively to the District Court opinion as if citing authority. However, if the District Court's discretion was without check, what would be the purpose of this appellate process?

Fed. R. Civ. P. 54(d) allows the District Court discretion in its decision of whether or not to award costs. One of the reasons for which the Court can refuse to award costs is if the party seeking costs engaged in misconduct, and should be penalized. Defendant-Appellees cite two cases that exemplify the degree of misconduct worthy of penalty that they hold as authoritative: Congregation of the Passion, Holy Cross Province v. Touche, Ross, & Co., 854 F.2d 219, 222 (7th Cir. 1988) as well as Overbeek v. Heimbecker, 101 F.3d 1225 (7th Cir. 1996). Plaintiff-Appellants find the analysis of these cases in Defendant-Appellees' response lacking.

In the related District Court case, the FEC unnecessarily prolonged proceedings, comportment which in and of itself was considered misconduct worthy of a penalty by the Overbeek Court, whereby the District Court's denial of costs was upheld due to the prevailing party's "wast[e] of time and resources". Furthermore, unnecessarily prolonging litigation is one of the mainstay reasons cost awards have been denied (Congregation of the Passion, reiterating that costs can be denied for "misconduct by the prevailing party worthy of a penalty, [such as] calling unnecessary witnesses, raising unnecessary issues, or otherwise unnecessarily prolonging the proceedings").

Furthermore, the very protraction which the FEC committed was based on one of its own employee's conduct, as explained below. The FEC 's argument that such issue was not raised on appeal is meritless and devoid of intellectual honesty, as Plaintiff-Appellants raised the issue of misconduct in the underlying District Court case, thus preserving it for the instant appeal (See Plaintiffs' Objections to Defendant's Bill of Costs, Document 6-9).

Even if the FEC's pre-litigation misconduct can be construed as a mere inconvenience to the Beams, the FEC's misconduct during litigation cannot be so belied. The fact that Phillip Olaya, a licensed attorney and employee of the FEC, affirmed the very basis of the Beam's case during his deposition[1], only to repudiate his own testimony in a statement a month prior to trial, is such confounding behavior that it removes all doubt of his prevarication. To tell the truth is one of the basic moral principles of our society, and by extension, our Courts. For Mr. Olaya to swear to tell the truth with one breath, and to state that he had seen the Beam's financial records in the next begs the question: in which instance was he deceiving the Court? If he lied at deposition, then his misconduct in doing so prolonged the case for over a year, and costs should not be assessed against the Plaintiffs for pursuing a claim for which they had incontrovertible evidence that they were the wronged parties and should so prevail. If he lied in his recantation of his sworn deposition testimony, then Plaintiff-Appellants should also not be assessed any costs, as but for that lie, they would have prevailed in the District Court case. It is undisputable that a pivotal and dispositive[2] false statement was made under oath by an FEC lawyer, and for

[1] The basis of the case being that employees of the Federal Election Commission had seen the Beams' financial records in violation of Title 12 of United States Code, Section 3401.

[2] As viewed by the District Court Judge, the Beams' entire case hung on the words of Mr. Olaya. Again, if Olaya had told "the truth" at his deposition, the Beams' case, rightly or wrongly, would have been disposed of a long time ago.

Plaintiffs to be assessed costs for this behavior is not in keeping with the Rules of this Court or common sense.

CONCLUSION

Based upon the foregoing, and the Plaintiffs' opening Appellants' Brief, the District Court's award of costs before this Court should be reversed.

Dated: 8/15/2012

s/ Jack Beam
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Atty. No. 6285383

Attorney for Plaintiff-Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system

s/ Jack Beam
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CERTIFICATE OF COMPLIANCE WITH RULE 32 (a)

The undersigned counsel of record for the Appellants in compliance Fed. R. App. P. 32 (a)(7)(B) hereby certifies that the Reply Brief of the Appellants complies with the type volume limitations set forth in Fed. R. App. P. 32(a)(7)(B)(iii) and consists of 607 words. This brief complies with the typeface requirements of Fed. R. App. P. 32 (A)(5) and the type style requirements of Fed. R. App. P. 32 (a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in font size 12, Times New Roman, excepting footnotes, which are font size 11.

Dated: Dated: 8/15/2012

s/ Jack Beam
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CERTIFICATION OF COMPLAINT WITH CIRCUIT RULE 30 (d)

The undersigned counsel of record for the Appellants in compliance with Circuit Rule 30 (d) hereby certifies that the Appellants' Reply Brief contains all materials required by Circuit Rule 30 (a) and Circuit Rule 30 (b).

Dated: 8/15/2012

s/ Jack Beam
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