

[Ellis v. Heldman](#)

United States Court of Appeals for the Sixth Circuit

February 6, 2003, Filed

No. 02-5740

Reporter

55 Fed. Appx. 742; 2003 U.S. App. LEXIS 2234

MARCUS C. ELLIS, Plaintiff-Appellant, v. RUSSELL HELDMAN, personally and officially as a Chancellor of the Williamson County & Perry County Chancery Court; ROBERT TODD JACKSON; CANDI NOELLE CHAFFIN; DAVID W. MCMILLAN; FRANCES ROGERS; THE EXCHANGE CLUB, Defendants-Appellees.

Notice: **[**1]** NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 28(g) LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 28(g) BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

Subsequent History: US Supreme Court certiorari denied by [Ellis v. Heldman, 2003 U.S. LEXIS 8374 \(U.S., Nov. 17, 2003\)](#)

Prior History: Middle District of Tennessee. 01-01480. Haynes. 04-23-02. 05-09-02.

Disposition: Plaintiff's motions denied, defendants' motions for sanctions granted, and district court's judgment affirmed.

Core Terms

district court, defendants', sanctions, motions, pleadings, responded, motion for sanctions, pro se, injunction, frivolous, motion to dismiss, leave to proceed, oral argument, show cause, psychologist, state-court, attorney's, prosecuted, unfounded, vexatious, contends, damages, jointly, biased, amend, costs

Case Summary

Procedural Posture

Appellant father appealed a judgment of the United States District Court for the Middle District of Tennessee that dismissed his civil rights action filed under [42 U.S.C.S. § 1983](#). The father's original and amended complaints alleged that he was denied his constitutional right to parent his child in Tennessee state-court divorce proceedings. Appellees, including the father's ex-wife, moved to dismiss the complaint.

Overview

On appeal, the father contended that he adequately stated a claim upon which relief could have been granted with respect to each appellee, and contended that the district court was biased against him. In addition, the father moved for an injunction pending appeal and for permission to depose a witness. Appellees responded in opposition to the father's motion for an injunction and essentially contended that the district court properly dismissed the father's action. In addition, certain appellees moved for sanctions pursuant to [Fed. R. App. P. 38](#). The father responded in opposition and filed a motion for sanctions. In the case at bar, the district court granted sanctions against the father's counsel pursuant to [Fed. R. Civ. P. 11](#) because several of the father's pleadings were unfounded. Indeed, the record supported appellees' contention that the litigation was vexatious. Undaunted, the father appealed the district court's judgment and had continued the vexatious litigation. Under those circumstances, the appellate court granted the appellees' motions for costs and attorneys' fees.

Outcome

The father's motions were denied, the appellees' motions for sanctions were granted, and the district court's judgment was affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Costs & Attorney Fees

Civil Procedure > Appeals > Frivolous Appeals

Criminal Law & Procedure > Appeals > Frivolous Appeals

Family Law > Child Custody > Custody Awards > General Overview

Legal Ethics > Professional Conduct > Frivolous Claims & Conduct

HN1 An appellate court may award damages and costs to an appellee if the court determines that an appeal is frivolous, *Fed. R. App. P. 38*, and award attorney's fees if the appeal was frivolous, unreasonable, or without foundation. An appeal is frivolous if it is obviously without merit and is prosecuted for delay, harassment, or other improper purposes. An appeal is unreasonable if no reasonable person would have thought he could succeed on appeal. An appeal is unfounded if the appeal had no foundation in law upon which the appeal could be brought.

Counsel: MARCUS C. ELLIS, Plaintiff-Appellant, Pro se, Waynesboro, TN.

For RUSSELL HELDMAN, Defendant-Appellee: Mary M. Bers, Asst. Atty. General, Office of the Attorney General, Nashville, TN.

For ROBERT TODD JACKSON, Defendant-Appellee: Hal D. Hardin, Office of Hal D. Hardin, Nashville, TN.

For CANDI NOELLE CHAFFIN, Defendant-Appellee: Michael E. Evans, Davies, Humphreys & Evans, Nashville, TN.

For DAVID W. MCMILLAN, Defendant-Appellee: Samuel J. Welborn, Smith & Cashion, Don L. Smith, Nashville, TN.

For FRANCES ROGERS, THE EXCHANGE CLUB, Defendants-Appellees: Reid D. Leitner, Leitner, Williams, Dooley & Napolitan, Nashville, TN.

Judges: Before: SILER, DAUGHTREY, **[**2]** and COLE, Circuit Judges.

Opinion

[*743] ORDER

Before: SILER, DAUGHTREY, and COLE, Circuit Judges.

Marcus C. Ellis appeals a district court judgment that dismissed his civil rights action filed under *42 U.S.C. §*

1983. This case has been referred to a panel of the court pursuant to *Rule 34(j)(1), Rules of the Sixth Circuit*. Upon examination, this panel unanimously agrees that oral argument is not needed. *Fed. R. App. P. 34(a)*.

Ellis filed his complaint and an amended complaint in the district court by counsel alleging that he was denied his constitutional right to parent his child in Tennessee state-court divorce proceedings. Ellis named as defendants Candi Noelle Chaffin, his ex-wife, Robert Todd Jackson, her attorney, Russell Heldman, the presiding state-court judge, David W. McMillan, a court-appointed psychologist, The Exchange Club, a non-profit child abuse prevention agency used to facilitate court-ordered supervised child visitation, and an individual employee of that agency, Frances Rogers. Ellis sought declaratory and injunctive relief and compensatory and punitive damages. Defendants moved to dismiss the complaint or for summary judgment, and plaintiff **[**3]** responded in opposition.

The defendant psychologist and the defendant attorney separately moved for the imposition of sanctions pursuant to *Fed. R. Civ. P. 11*, all the defendants jointly moved for oral argument on pending motions, and Ellis responded to the motions for sanctions. Among other pleadings, the defendants jointly moved the district court for an order directing plaintiff to show cause why his pleadings appear to have been signed by someone other than counsel and why his pleadings refer to nonexistent crimes, criminal investigations, and prosecutions. The district court granted defendants' motion for an order to show cause. Thereafter, the district court conducted a hearing. Following the hearing, the district court granted defendants' motions to dismiss, as well as the motions for *Rule 11* sanctions, and entered an order accordingly. Plaintiff then moved for leave to proceed pro se and filed a *Fed. R. Civ. P. 59(e)* motion to alter or amend the judgment. The district court granted plaintiff leave to proceed pro se and denied his motion to alter or amend the judgment. Plaintiff filed a timely notice of appeal pro se.

On appeal, plaintiff contends that he adequately stated **[**4]** a claim upon which relief can be granted with respect to each defendant, and contends that the district court was biased against him. In addition, plaintiff moves this court for an injunction pending appeal and for permission to depose a witness. Defendants have responded in opposition to plaintiff's motion for an injunction, and essentially contend that the district court properly dismissed plaintiff's action. In addition,

defendants Exchange Club, Rogers, and Chaffin move this court for sanctions pursuant to *Fed. R. App. P. 38*. Plaintiff has responded in opposition and has filed a motion for sanctions.

Upon de novo review, see *Mann v. Conlin*, 22 F.3d 100, 105 (6th Cir. 1994); *Allard v. Weitzman (In re DeLorean Motor Co.)*, 991 F.2d 1236, 1239-40 (6th Cir. 1993), we will affirm the district court's judgment for [*744] the reasons stated on the record April 19, 2002, and in the district court's order entered April 23, 2002. Further, we note that plaintiff's motions and remaining claim on appeal that the district court is biased lack merit.

Finally, we will grant the motions for sanctions filed by defendants Exchange Club, Rogers, and Chaffin. This **HN1** court [**5] may award damages and costs to an appellee if the court determines that an appeal is frivolous, see *Fed. R. App. P. 38*, and award attorney's fees if the appeal was frivolous, unreasonable, or without foundation. *Wrenn v. Gould*, 808 F.2d 493, 505 (6th Cir. 1987) (citing *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421, 54 L. Ed. 2d 648, 98 S. Ct. 694 (1978)). An appeal is frivolous "if it is obviously without merit and is prosecuted for delay, harassment, or other improper

purposes." *Vic Wertz Distrib. Co. v. Teamsters Local 1038*, 898 F.2d 1136, 1143 (6th Cir. 1990) (quoting *Dallo v. INS*, 765 F.2d 581, 589 (6th Cir. 1985)). An appeal is unreasonable if "no reasonable person would have thought he could succeed on appeal." *Wrenn*, 808 F.2d at 505. An appeal is unfounded if "the appeal had no foundation in law upon which the appeal could be brought." *Id.*

Here, the district court granted sanctions against plaintiff's counsel pursuant to *Fed. R. Civ. P. 11* because several of plaintiff's pleadings were unfounded. Indeed, the record supports defendants' contention that this litigation is vexatious. Undaunted, plaintiff appealed the [**6] district court's judgment and has continued the vexatious litigation. Under these circumstances, defendants' motions for costs and attorneys' fees are granted.

For the foregoing reasons, plaintiff's motions are denied, defendants' motions for sanctions are granted, and the district court's judgment is affirmed. See *Rule 34(j)(2)(C), Rules of the Sixth Circuit*.