
IN THE
Supreme Court of the United States

THOMAS P. GANNON, ESQ.,
Petitioner,
v.

RIVERWATCH CONDOMINIUM OWNERS' ASSN. et al,
Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals for the
Third Circuit

PETITION FOR A WRIT OF CERTIORARI

THOMAS P. GANNON, Esq.
552 KELLY AVENUE
Woodlyn, PA 19094
(610) 532-8445
TG4Law@aol.com
The petitioner in his own
right

QUESTIONS PRESENTED

1. Should an attorney be punished with the severe penalty of the dismissal of his appeal where his notice of appeal reports that the appeal is from a specific judgment that applies only to attorneys under 28 U. S. Code §1927 but the notice does not name the attorney as the party taking the appeal?
2. Should a petitioner be punished with the severe sanction of the dismissal of his appeal where within the 30 day appeal period the opposing litigant filed and served the functional equivalent of a notice of appeal from the judgment assessing attorney fees against the petitioner under 28 U. S. Code §1927?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the court whose judgment is sought to be reviewed are:

- Petitioner is Thomas P. Gannon, Esq., (“Attorney Gannon”). He is counsel for plaintiff, Daniel King.
- The plaintiff and appellant below is Daniel King. (“King”)
- Riverwatch Condominium Owners’ Association (“Riverwatch”) and Charles B. Burr, II (“Burr”) are defendants and appellees in the proceedings below.

There are no publicly held corporations involved in this proceeding.

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OPINION BELOW

The opinion of the Court of Appeals for the Third Circuit's is the subject of this petition. The court dismissed Attorney Gannon's appeal on the grounds that the notice of appeal did not specify the party taking the appeal. The opinion is reproduced in the appendix to this petition (Appendix "APP." II.)

**THE BASIS FOR THE JURISDICTION OF THIS
COURT**

Under 28 U. S. Code § 1254 (1) this Court has jurisdiction of this petition to review the judgment of United States Court of Appeals for the Third Circuit.

The Third Circuit filed its Judgment and memorandum opinion on December 10, 2018.

Petitioners' Petition for Rehearing and Rehearing En Banc was denied on January 30, 2019.

STATUTORY PROVISIONS INVOLVED

According to 28 U. S. Code § 1927 “Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.”

28 U. S. Code § 1927 does not authorize an award of attorney fees against a litigant. Under section 1927 not even a pro se party can be assessed attorney fees. Nor can a party be held liable for the conduct of his attorney.

STATEMENT OF THE CASE

On March 20, 2018 the District Court entered an Order imposing attorney fees personally against Attorney Gannon under 28 U. S. Code § 1927. (App. IX.) On April 25, 2018, the District Court denied Attorney Gannon's motion to alter or amend its judgment. (App. XI.) The Jurisdiction of the District Court is based upon 28 U.S.C. §1331 (Civil actions arising under the laws of the United States).

On May 22, 2018, Attorney Gannon filed his Notice of Appeal from the District Court's March 20, 2018 Order. (App. XV.) The notice of appeal states that it is an appeal from a judgment granting attorney fees under 28 U. S. Code § 1927. It does not specify Attorney Gannon as the party taking the appeal.

As provided by Federal Rule of Appellate Procedure 4 (a) (1) "...the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from."

Before the 30 day appeal period closed, Riverwatch filed and served a motion to dismiss Attorney Gannon's appeal. (App. XVI.)

Riverwatch's filing contains the following statement *"On May 22, 2018 Attorney Gannon filed an appeal to this Third Circuit of Judge Baylson's March 20, 2018 Order."*

On December 10, 2018, the Court of appeals dismissed Attorney Gannon's appeal on the grounds

that the notice of appeal did not name the attorney as the party taking the appeal. (App. II.) On January 30, 2019, the Court of Appeals denied a Rehearing. (App. XII.)

SUMMARY OF THE ARGUMENT

Petitioner should not be punished with the severe sanction of dismissal of his appeal where the filing by the opposing litigant before the 30 day appeal period closed specified Attorney Gannon as the party taking the appeal, the order appealed from, and the court to which the appeal is taken. It functions as a notice of appeal no matter its intended purpose or the identity of the litigant. Further, the content of the respondent Riverwatch's filing clearly evidences that Attorney Gannon's notice of appeal sufficiently reported his intent to appeal the Section 1927 judgment against him.

Attorney Gannon's notice of appeal specified that it is an appeal from a judgment assessing an award of attorney fees under 28 U. S. Code § 1927. It is clear that Attorney Gannon was the real party taking the appeal.

REASONS WHY REVIEW IS WARRANTED

ATTORNEY GANNON'S NOTICE OF APPEAL EXPRESSES THE CLEAR INTENT TO APPEAL A SPECIFIC JUDGMENT FOR ATTORNEY FEES PERSONALLY ASSESSED AGAINST HIM UNDER 28 U. S. CODE § 1927 AND IT IS FAIRLY INFERRED THAT ATTORNEY GANNON IS THE REAL PARTY TAKING THE APPEAL FROM THAT JUDGMENT

According to Federal Rule of Appellate Procedure 3 (c) (4) "An appeal must not be dismissed ... for failure to name a party whose intent to appeal is otherwise clear from the notice."

The content of Riverwatch's motion provides more than sufficient evidence that Attorney Gannon's notice of the appeal contained sufficient information to express his intent to appeal the judgment against him.

Imperfections in a notice of appeal are not fatal where no genuine doubt exists about who is appealing. *Han Tak Lee v. Houtzdale Sci*, 798 F.3d 159, 163 (3d Cir. 2015).

The Court of Appeals cited to *Torres v. Oakland Scavenger Co.*, 487 U. S. 312, 314 (1988) for the proposition that the failure to name a party in a notice of appeal "constitutes a failure of that party to appeal." However, after this Court decided *Torres*, Rule 3 was amended by the addition of Rule 3 (c) (4)."

The Court of Appeals further cited to *Collier v Marshall, Dennehey, Warner, Coleman & Coggin*, 977 F.3d 93, 95 (3d Cir. 1992) for the proposition that the court lacked jurisdiction “where a district court imposed sanctions under Federal Rule of Civil Procedure 11 only against a party’s lawyer but the notice of appeal names only the client, not the lawyer, as the appellant.” However, in *Collier*, the district court imposed attorney fee sanctions under Federal Rule of Civil Procedure 11 not under 28 U.S. Code § 1927. Rule 11 sanctions can apply to the party, the attorney or both. A party or the court cannot draw an inference as to who is taking the appeal.

On the other hand, 28 U. S. Code § 1927 sanctions are only available against lawyers, not litigants. The appeal from a section 1927 personal judgment for attorney fees is sufficient to establish a clear inference that the attorney is the real party taking the appeal. (App VI)

The appeal from the assessment of attorney fees under 28 U. S. Code § 1927 is an appeal by the sanctioned attorney. The attorney is the only party with skin in the game.

RIVERWATCH’S MOTION FILED BEFORE THE 30 DAY APPEAL PERIOD CLOSED, FUNCTIONS AS A NOTICE OF APPEAL WHERE IT IDENTIFIES THE PARTY TAKING THE APPEAL, THE ORDER APPEALED FROM, AND THE COURT TO WHICH THE APPEAL IS TAKEN.

The Federal Rule of Appellate Procedure 3 (c) (1), states that a notice of appeal must:

- (A) specify the party or parties taking the appeal ... ;
- (B) designate the judgment, order, or part thereof being appealed; and
- (C) name the court to which the appeal is taken.

On May 25, 2018, Riverwatch filed and served a motion to dismiss Attorney Gannon's appeal. The filing contains the following statement "*On May 22, 2018 Attorney Gannon filed an appeal to this Third Circuit of Judge Baylson's March 20, 2018 Order.*"

"...the notice afforded by a document, not the litigant's motivation in filing it, determines the document's sufficiency as a notice of appeal." *Smith v. Barry*, 502 U.S. 244, 248 112 S. Ct. 678, 116 L. Ed. 2d 678 (1992).

Where the contents of documents filed within the appeal period contain the information required by Rule 3(c), the notice will be deemed to have complied with the rule and the case may not be dismissed for lack of appellate Jurisdiction. *In re Continental Airlines*, 125 F.3d 120, 129 (3d Cir. 1997).

No matter its intended purpose a document that meets the requirements of Rule 3 (c) is the functional equivalent to a notice of appeal. *US v. Carelock*, 459 F.3d 437, 441 (3d Cir. 2006).

There is no authority that bars an opposing litigant from filing the functional equivalent of a party's notice of appeal.

The document filed by Riverwatch meets the requirements of Rule 3 (c). It specifies Attorney Gannon as the party taking the appeal, the order appealed from, and the court to which the appeal is taken. It is the equivalent of a timely filed notice of appeal.

CONCLUSION

The intent of Attorney Gannon's notice of appeal is sufficiently clear to confer appellate jurisdiction on the Court of Appeals for the Third Circuit. Further, the content of the motion filed and served by Riverwatch confirms that it had sufficient notice of Attorney Gannon's intent to appeal from the judgment assessing attorney fees against him under 28 U. S. Code § 1927.

Where Riverwatch filed and served a document before the appeal 30 day period closed specifying that Attorney Gannon is taking the appeal, the order appealed from, and the court to which the appeal is taken, the content meets the requirements of Rule 3 (c) and it functions as a notice of appeal no matter its intended purpose or the identity of the filing litigant.

For the above reasons, the petition for writ of certiorari should be granted.

Respectfully,

Thomas P. Gannon, Esq.
552 Kelly Avenue
Woodlyn, PA 19094
610-532-8445
Tg4law@aol.com
Petitioner and Attorney
for Daniel King

APP.- I

APPENDIX

THIRD CIRCUIT OPINION AND JUDGMENT (DECEMBER 10, 2018).....	APP.- II
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APP.- II

THIRD CIRCUIT OPINION AND JUDGMENT
(DECEMBER 10, 2018)

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

No. 18-2152

DANIEL KING,
Appellant

V.

JUDGE CHARLES B. BURR, II, Individually;
RIVER WATCH CONDOMINIUM OWNER'S
ASSOCIATION

Appeal from the United States District Court for
the Eastern District of Pennsylvania (D.C. Civil

Action No. 2-17-cv-02315)

District Judge: Honorable Michael M. Baylson

Submitted Under Third Circuit L.A.R. 34.1(a)
November 5, 2018

Before: AMBRO, SCIRICA, and RENDELL,
Circuit Judges

(Opinion filed: December 10, 2018)

OPINION*
AMBRO, Circuit Judge

APP.- III

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

This is the second appeal filed in this case. *See King v. Burr et al.*, 728 F. App'x 83 (3d Cir. 2018). Plaintiff Daniel King was the owner of a condominium in the Riverwatch Condominium complex in Delaware County, Pennsylvania. After a dispute concerning Riverwatch's right of access to King's residence to make repairs to the roof. Riverwatch obtained a judgment for approximately \$8,500 in a bench trial before Judge Charles Burr in the Court of Common Pleas in June 2010. After King's post-trial motions were denied, he—or more specifically his attorney Thomas Gannon filed dozens upon dozens of appeals in the Pennsylvania courts, along with an unsuccessful petition for a writ of *certiorari* to the United States Supreme Court. *King v. Riverwatch Condo. Owners' Ass'n*, 138 S.Ct. 520 (2017). In May 2017 King filed this action in federal court against Riverwatch and against Judge Burr, alleging that the latter had acted without jurisdiction and thereby violated King's due process rights and that Riverwatch was seeking to enforce void court orders. The District Court dismissed under the *Rooker-Feldman* doctrine,¹ and we affirmed. *See King*, 728 F. App'x at 86. On remand, the District Court imposed sanctions against

¹ This doctrine, named for *Rooker v. Fidelity Trust Co.*, 263 U.S. 414 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), states that a federal District Court should not sit in direct review of a state court decision.

APP.- IV

Gannon under 28 U.S.C. § 1927,² which states that "[a]ny attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." The District Court held that Gannon had multiplied the proceedings "in willful bad faith," such that § 1927 sanctions were appropriate, and awarded attorneys' fees against him in the amount of \$3,985.00. On appeal, King now argues it was improper for the District Court to impose sanctions under § 1927 without giving Gannon notice and an opportunity to be heard, the Court lacked jurisdiction under § 1927 because King's initial lawsuit had been dismissed for want of jurisdiction, the sanctions were wrongly imposed on Gannon for his conduct in state rather than federal court, and the District Court did not adequately find on the record that the amount of the award was proper. We cannot address the merits of these arguments because we lack jurisdiction to entertain the appeal. Federal Rule of Appellate Procedure 3(c) states that the notice of appeal must "specify the party or parties taking the appeal." In 1988, the Supreme Court held that this is a jurisdictional requirement, and that because failure to name a party in a notice of

² The District Court's award of attorneys' fees to defendants was initially entered against King himself, but on March 20, 2018 it amended its earlier award to be against Gannon instead after defendants clarified that they were only seeking fees against him.

APP.- V

appeal "constitutes a failure of that party to appeal," it deprives the Court of Appeals of power over that party. *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 314 (1988). Four years later, we held accordingly that we lack jurisdiction where a district court has imposed sanctions under Federal Rule of Civil Procedure 11 only against a party's lawyer, but the notice of appeal names only the client, not the lawyer, as the appellant. *See Collier v. Marshall, Dennehey, Warner, Coleman & Goggin*, 977 F.3d 93, 95 (3d Cir. 1992). In such a case, the real party in interest on appeal is the lawyer against whom sanctions were imposed and who therefore has something riding on the outcome of the appeal. The lawyer's failure to appeal, by listing only his client as the appellant, thus means there is no live controversy on appeal for us to decide.

That is what happened here: the notice of appeal listed only King as the appellant in the case caption, and in its body text stated that:

Notice is hereby given that Daniel King, plaintiff, in the above named case hereby appeals to the United States Court of Appeals for the Third Circuit from Judgment entered on March 20, 2018 by Judge Michael B. Baylson, granting the defendant, Riverwatch Condominium Owners' Association attorney fees under 28 U.S.C. § 1927.

APP.- VI

Notice of Appeal at 1. This is materially identical to the notice of appeal in *Collier*. *See* 977 F.3d at 94. Our case, in which Gannon has pursued endless appeals to his own client's detriment, underscores the observation in *Collier* that a lawyer's interests and his client's may well diverge in cases involving attorney sanctions. *Id.* at 95

And while *Collier* concerned sanctions under Rule 11, rather than 28 U.S.C. § 1927, this distinction has no significance. *See CTC Imports and Exports v. Nigerian Petroleum Corp.*, 951 F.3d 573, 576 (3d Cir. 1991) (no jurisdiction as to lawyer sanctioned under § 1927 who filed appeal only in his client's name). *See also Agee v. Paramount Communications, Inc.*, 114 F.3d 395, 399-400 (2d Cir. 1997) (same).

Accordingly, the appeal is dismissed.

APP. - VII

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

No. 18-2152

DANIEL KING,
Appellant

v.

JUDGE CHARLES B. BURR, II, Individually;
RIVER WATCH CONDOMINIUM OWNER'S
ASSOCIATION

Appeal from the United States District Court for the
Eastern District of Pennsylvania (D.C. Civil Action
No. 2-17-cv-02315)

District Judge: Honorable Michael M. Baylson

Submitted Under Third Circuit L.A.R. 34.1(a)
November 5, 2018

Before: AMBRO, SCIRJCA, and RENDELL, Circuit
Judges

JUDGMENT

This cause came on to be heard on the record before the
United States District Court for the Eastern District of
Pennsylvania and was submitted pursuant to Third
Circuit L.A.R. 34.1 (a) on November 5, 2018.

On consideration whereof, IT IS ORDERED AND
ADJUDGED by this Court that the appeal of the
judgment of the District Court entered on March 22,
2018, is hereby dismissed. Costs taxed against

APP.- VIII

Appellant. All of the above in accordance with the
opinion of this Court.

ATTEST:

s/Patricia S. Dodszuweit Clerk

Dated: December 10, 2018

APP.- IX

DISTRICT COURT AMENDED ORDER (MARCH
20, 2018)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

<p>Daniel KING, Plaintiff,</p> <p>v.</p> <p>Judge Charles B. BURR, II et al., Defendants.</p>	<p>CIVIL ACTION</p> <p>NO. 2:17-cv-02315- MMB</p>
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AMENDED ORDER

AND NOW this 20th day of March, 2018, in light of the Third Circuit's affirmance of the Court's Order (ECF 17) granting Defendants' Motion to Dismiss Plaintiff's Amended Complaint, and having considered Plaintiff's Motions to Vacate (ECF 24, modified on January 8, 2018 by ECF 26), the Motions (ECF 24, 26) are **GRANTED IN PART AND DENIED IN PART**. The Court will modify its Order issued on December 7, 2017 (ECF 23).

Plaintiff's counsel has multiplied the proceedings unreasonably and vexatiously, in willful bad faith, in violation of 28 U.S.C. § 1927. This is the latest in a long line of cases filed and pursued in various courts by Plaintiff's counsel. None of the cases has had any merit, and the case in this Court is no

APP.- X

exception. Thus, Plaintiff's counsel "transcend[ed] the bounds of zealous advocacy on behalf of a client." Baker Industries, Inc. v. Cerberus Ltd., 764 F.2d 204, 211 (3d Cir. 1985). In doing so, he improperly imposed costs of defense on Riverwatch Condominium Owner's Association.

Moreover, Plaintiff's counsel filed motions such as a Motion to Dismiss Defendants' Motion to Dismiss, an improper motion, on the grounds that it was Defendant who sought review of a state court judgment on the merits, in violation of the Rooker-Feldman doctrine. These vexatious motions unreasonably multiplied the proceedings and abused access to this Court by "violati[ng] recognized standards." LaSalle Nat. Bank v. First Connecticut Holding Grp., LLC, 287 F.3d 279, 289 (3d Cir. 2002).

Judgment is hereby entered in favor of Riverwatch Condominium Owner's Association against Plaintiff's counsel, Thomas P. Gannon, in the amount of \$3,985.00. The Clerk shall close this case.

BY THE COURT:
/s/ Michael M. Baylson
MICHAEL M. BAYLSON
United States District Court Judge

APP.- XI

DISTRICT COURT ORDER (ENTERED: APRIL 25,
2018)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Daniel KING, Plaintiff, v. Judge Charles B. BURR, II et al, Defendants,	CIVIL ACTION NO.2:17-cv-02315- MMB
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ORDER

AND NOW this 24th day of April, 2018, Plaintiff King's Motion to Vacate (ECF 30) and Motion for Leave to File Supplemental Appendix (ECF 31) are DENIED. The Motion to Vacate repeats prior arguments, which this Court previously considered in Plaintiff's previously-filed Motions to Vacate (ECF 24 and 26). The Motion for Leave seeks to submit old complaints filed by Plaintiff against Defendant Riverwatch. These materials are neither new nor relevant to Plaintiff's case, which this Court has already dismissed. (ECF 17, Order Dismissing Amended Complaint).

The Court has previously noted King's prolific filings. (See ECF 22 at 2, Memorandum Awarding Counsel Fees to Defendant Riverwatch ("King has

APP.- XII

filed approximately forty-eight appeals related to this litigation.")). This Order serves as notice to Plaintiff King that any further frivolous filings will justify additional sanctions.

BY THE COURT:

Isl Michael M. Baylson
MICHAEL M. BAYLSON
United States District Court Judge

APP.- XIII

THIRD CIRCUIT DENIAL OF REHARING
(JANUARY 30, 2018)

UNITED STATE COURT OF APPEALS FOR
THE THIRD CIRCUIT

DANIEL KING, Appellant	No. 18-2152
v.	
JUDGE CHARLES B. BURR, II, Individually; RIVER WATCH CONDOMINIUM OWNER'S ASSOCIATION	

Appeal from the United States District Court for
the Eastern District of Pennsylvania (D.C. Civil
Action No. 2-17-cv-02315)

District Judge: Honorable
Michael M. Bayson

SUR PETITION FOR REHEARING

Before: SMITH, Chief Judge, McKEE, AMERO,
CHAGARES, JORDAN, HARDIMAN ,
GREENAWAY, Jr., SHWARTZ, KRAUSE,
RESTREPO, BIBAS, PORTER, SCIRICA* and
RENDELL*, Circuit Judges

APP.- XIV

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court *en banc*, is denied.

By the Court,

s/ Thomas L. Ambro, Circuit Judge

Dated: January 30, 2019

* Judge Scirica's and Judge Rendell's votes limited to panel rehearing only.

APP.- XV

NOTICE OF APPEAL (May 22, 2018)

CASE NO.: 2:17-02315-MMB

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Daniel King,
Plaintiff-Appellant

v.
Judge Charles B. Burr II, and Riverwatch
Condominium Owners' Association
Defendants- Appellees

NOTICE OF APPEAL

Notice is hereby given that Daniel King, plaintiff, in the above named case hereby appeals to the United States Court of Appeals for the Third Circuit from Judgment entered on March 20, 2018 by Judge Michael B. Baylson, granting the defendant, Riverwatch Condominium Owners' Association attorney fees under 28 U.S.C. § 1927.

s/Thomas P. Gannon
Attorney for Appellant

APP.- XVI

LITIGANT'S MOTION (May 25, 2018)

UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

DANIEL KING, v. JUDGE CHARLES B. BURR II, and RIVERWATCH CONDOMINIUM OWNERS ASSOCIATION	Appellant Case # 2018 - 02152
	Appellees

**MOTION TO QUASH APPEAL DUE TO FILING
BEYOND THIRTY DAY DEADLINE**

17. On May 22, 2018 Attorney Gannon filed an appeal to this Third Circuit of Judge Baylson's March 20, 2018 Order.

WHEREFORE, Petitioner, Riverwatch Condominium Owners Association, respectfully request this Honorable Court of Appeals to Quash this latest appeal filed by Thomas P. Gannon, Esquire.

s/ Robert C. Ewing, Esquire
Attorney for Petitioner/Appellee
Riverwatch Condominium Owners Assn
Date: May 25, 2018