NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

May 29, 2018

Before

WILLIAM J. BAUER, *Circuit Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

No. 17-1732

IN RE: JOHN H. DAVIS,
Respondent.

Attorney Disciplinary Proceeding.

ORDER

We issued an order directing Attorney John H. Davis to show cause why he should not be subject to discipline for failure to comply with court rules and for unprofessional conduct, including his refusal to heed straightforward directions from a district judge. Davis filed his response, but it does not alleviate our concerns about his professional competence. We therefore conclude that Davis should be removed from the bar of this court. *See* FED. R. APP. P. 46.

We briefly recount the facts. Davis –purporting to represent himself, his ex-wife, and his estranged adult son who suffers from autism – filed a 574-page

complaint against 16 named defendants and 20 John Does alleging that they unlawfully took custody of his son in a child-welfare action. The complaint was accompanied by 429 pages of exhibits and a motion for a temporary restraining order. The district judge predictably struck the bloated pleading and denied the motion. At the hearing on the motion, the judge gave Davis explicit instructions for how to file a competent complaint. Davis agreed that "[i]t doesn't take 550 pages" to satisfy the pleading requirements in the Federal Rules of Civil Procedure. The judge specifically ordered Davis to avoid the "kitchen sink" approach to pleading, and he also noted that the complaint failed to separately number paragraphs as required by Rule 10(b).

Despite these instructions, Davis filed a 165-page amended complaint with the same 429 pages of exhibits. The amended complaint suffered from many of the same deficiencies as the original. Among many other problems, it omitted paragraph numbers, continued the "kitchen sink" approach the district judge specifically cautioned against, and contained gratuitous accusations against nonparties. The judge unsurprisingly dismissed the amended complaint with prejudice.

We affirmed that decision and expressed concerns about Davis's professional competence to represent the interests of his clients. *See Davis v. Anderson*, 718 F. App'x 420, 424–25 (7th Cir. 2017). Our main concern was that the quality of Davis's work fell far below the standards expected of members of this court's bar. In

particular, Davis refused to follow simple instructions from the judge and made frivolous arguments to this court in a woefully substandard appellate brief. His conduct appeared to us to be willful because he continued to press the patently frivolous argument that he had, in fact, complied with federal pleading standards. We also questioned Davis's simultaneous representation of himself, his former wife, and his estranged adult son; specifically, we were skeptical that he had communicated adequately with his son as required by Indiana's Rules of Professional Conduct. We therefore ordered Davis to show cause why he should not be removed from the bar of this court or otherwise disciplined, *see* FED. R. APP. P. 46(b), (c), and we forwarded a copy of our order to the Indiana Supreme Court Disciplinary Commission.

Davis sought rehearing en banc, but that pleading too was frivolous. On January 23, 2018, we denied the petition for rehearing. Order, ECF No. 73. On February 7, 2018, the Indiana Disciplinary Commission informed us by letter that Davis's representation of himself, his former wife, and his estranged son did not violate the Indiana Rules of Professional Conduct. The Commission expressed no opinion on Davis's violation of court rules and the district judge's instructions.

Davis has responded to our order to show cause, but he has not addressed our concerns about his professional competence. Indeed, his response does not mention his refusal to heed the district judge's orders, his unwillingness or inability to file a complaint that complied with the rules of procedure, and his

persistent and frivolous insistence that he has, in fact, complied with the rules. Rather, Davis discusses his duties as a father and his time as an Indiana prosecutor and public defender. He also argues that our merits order was erroneous.

But our order to show cause was not an invitation to relitigate the merits of this appeal. And Davis's unwillingness or inability to respond to our unambiguous concerns about his professional competence – not to mention the concerns of the district judge – plainly establishes that he cannot adequately represent his own interests, let alone those of his clients. That cements our initial view that Davis should not be permitted to continue to practice in our court.

Accordingly, IT IS ORDERED that Davis be removed from the roll of attorneys admitted to practice before this court. We direct the Clerk of Court to send copies of this order to the Indiana Supreme Court Disciplinary Commission and to the clerks of each district court within the circuit. Davis must send a copy to any other jurisdiction in which he is licensed to practice law.

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Argued November 14, 2017
Decided December 4, 2017

Before

WILLIAM J. BAUER, *Circuit Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

No. 17-1732

JOHN H. DAVIS, et al.,
Plaintiffs-Appellants,

v.

JEANNE W. ANDERSON, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

No. 2:16-cv-120

Philip P. Simon, *Judge.*

ORDER

Naming himself, his ex-wife, and their adult autistic son as plaintiffs, Attorney John H. Davis filed a 574-page complaint in federal court in northern Indiana against 16 defendants, including various Alabama officials and the Alabama Department of Human Resources, plus 20 "John Does." He attached 429 pages of exhibits to this excessive pleading. Predictably, the district judge struck the complaint and ordered the plaintiffs to file one that complies with the rules of procedure. Davis responded with a 165-page amended complaint, to which he attached the same 429 pages of exhibits. He later filed a second amended complaint; this version stretched to 215 pages and again included the same 429 pages of exhibits. The judge had seen enough: he dismissed the case with prejudice for failure to comply with the basic requirements set forth in Rules 8 and 10 of the Federal Rules of Civil Procedure.

Davis has appealed, still purporting to represent himself, his ex-wife, and their adult son as plaintiffs-appellants. As a pro se litigant, however, Davis cannot also represent the other two plaintiffs, so we dismiss them as parties to the appeal. As to Davis, we affirm the judgment. His repeated failure to comply with Rules 8 and 10 fully justified the judge's order dismissing the case with prejudice.

I. Background

John Davis and his ex-wife, Shelia, contend that 16 named defendants, including the Alabama

Department of Human Resources and various public officials in that state, in concert with 20 John Does, unlawfully took custody of their autistic son, Eric, in a child-welfare action. They allege that Eric, who was born in 1991, was taken from them in 2001 and that they have been unable to regain custody. Eric is a named plaintiff too, but he is not a minor, and neither John nor Shelia is his legal guardian, if he has one. Whether Eric agreed to be party to this suit or is even aware of it is an open question.

The original complaint was 574 pages long and contained 429 pages of exhibits, bringing its total length to a whopping 1,003 pages. The pleading was accompanied by a motion for a temporary restraining order. At a hearing on that motion, the judge struck the complaint sua sponte, noting that among its many defects, it did not comply with Rule 8(a)'s basic requirement of a "short and plain" statement of the plaintiffs' claims. The judge explained that the Davises could "write a very straightforward complaint" that would contain their allegations "that your son was taken away from you without notice, without any due process, without any right to be heard, that they've invaded your constitutional rights to association with your child." John Davis conceded that "[i]t doesn't take 550 pages to do this." The judge gave the plaintiffs 60 days to file an amended complaint.

The amended complaint clocked in at 165 pages and came with the same 429 pages of exhibits as the original complaint, for a combined total of 594 pages. The Davises also filed a new motion for a temporary

restraining order. The judge denied the motion and expressed his disapproval of the amended complaint, noting that it failed to remedy the defects in the original complaint. The amended complaint, he explained, continued to employ the "kitchen sink" approach to pleading, which he had expressly cautioned Davis against. The judge also noted that the amended complaint blatantly violated Rule 10(b)'s requirement that allegations be set forth in separately numbered paragraphs.

The Davises then filed a second amended complaint. This time the document grew to 215 pages with the same 429 pages of exhibits. A magistrate judge struck that pleading because the plaintiffs had not obtained the defendants' consent or the court's leave to amend, so the first amended complaint remained the operative pleading.

Many of the defendants moved to dismiss, arguing (among other things) that the amended complaint violated Rules 8 and 10. The district judge dismissed the suit based on the plaintiffs' repeated failure to comply with these rules. The judge explained that there was "not a single short and plain statement of any claim," and the exhibits were irrelevant. The amended complaint, like the original version, also failed to connect claims to defendants; most counts, the judge noted, were contained in a "single mammoth paragraph." And because all three versions of the complaint contained the same glaring deficiencies, the judge concluded that no further opportunity to amend was warranted. The judge therefore dismissed the case with prejudice.

II. Discussion

The Davises insist on appeal that their amended complaint complies with Rule 8 and Rule 10. They claim that those rules do not apply to the "preliminary" section of the amended complaint (83 pages) or the "chronology" section (41 pages), and that the defendants could have moved for a more definite statement if any part of the complaint was unclear. The defendants respond that the judge explicitly warned the plaintiffs about the requirements of Rules 8 and 10, yet the excessively long, verbose, and unintelligible amended complaint obviously did not comply.

As an initial matter, it's clear that John Davis cannot represent his ex-wife and their son in this matter because he is also a party. A pro se litigant, even one who is a licensed attorney, is not allowed to represent other people on appeal, *see Cole v. Comm'r*, 637 F.3d 767, 773 (7th Cir. 2011), or in the district court, *Nocula v. UGS Corp.*, 520 F.3d 719, 725 (7th Cir. 2008). Without Shelia's and Eric's signatures on the appellate briefs signifying their status as pro se litigants, they are not parties to this appeal. FED. R. CIV. P. 11(a); *Swanson v. Citibank, N.A.*, 614 F.3d 400, 402 (7th Cir. 2010); *Navin v. Park Ridge Sch. Dist. 64*, 270 F.3d 1147, 1149 (7th Cir. 2001). We dismiss Shelia Davis and Eric Davis as parties to the appeal.

Moving to the merits, dismissal for noncompliance with Rules 8 and 10(b) is discretionary, and our review is for abuse of that discretion. *See Stanard v. Nygren*, 658 F.3d 792, 796–97 (7th Cir. 2011); *Frederiksen v.*

City of Lockport, 384 F.3d 437, 439 (7th Cir. 2004). Rule 8(a) requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Rule 10(b) requires a party to state its claims or defenses in numbered paragraphs, "each limited as far as practicable to a single set of circumstances." FED. R. CIV. P. 10(b). The primary purpose of these rules "is to give defendants fair notice of the claims against them and the grounds supporting the claims." *Stanard*, 658 F.3d at 797. So a complaint is subject to dismissal under these rules if it is unduly long or if it is unintelligible. *See Kadamovas v. Stevens*, 706 F.3d 843, 844 (7th Cir. 2013); *U.S. ex rel. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 378 (7th Cir. 2003). The amended complaint suffers from both defects.

Davis's insistence that his amended complaint satisfies Rule 8 and Rule 10 is frivolous. The pleading suffers from extreme logorrhea. As we've noted, the "Preliminary Statement" alone is 83 pages. Many of the numbered paragraphs in this section continue on for many pages and encompass wholly unrelated or irrelevant circumstances. A representative example is paragraph 4(s), which spans 14 pages, contains 67 unnumbered paragraphs, and covers multiple unrelated and often incoherent topics, including Eric's stay at a hospital; his education in Alabama; the plaintiffs' belief that the defendants have committed RICO violations; the "deep hatred for Northerners" held by citizens of Athens, Alabama; Elian Gonzalez; and a mental-health study conducted on retired NFL

players. Other numbered paragraphs in the Preliminary Statement are similar; the last one in this section begins on page 53 and continues for 37 pages.

The amended complaint then provides a "Chronology" that consists of many unnumbered paragraphs. This section covers myriad events broken down by year, with subheadings for each year from 1991 to 2015. After discussing "Jurisdiction and Venue" for two pages, the amended complaint moves on to "Common Allegations," followed by legal theories arranged into 16 counts. It's not clear, however, which defendants are alleged to be liable under each count. Thirteen of the sixteen counts are pleaded in a single paragraph; most of the "counts" are at least a page long.

We normally defer to the "informed judgment of district judges who must decide whether to dismiss a case with prejudice when counsel repeatedly fails to plead properly." *Stanard*, 658 F.3d at 801. Davis offers no reason to deviate from that practice. Here the judge patiently identified the defects in the original complaint, yet Davis – a licensed attorney, *see* Mr. John Horace Davis, *Indiana Roll of Attorneys*, COURTS.IN. GOV. https://courtapps.in.gov/rollofattorneys/Search/Detail/a4bb5ab1-fdb6-e011-9d34-02215e942453 (last visited Nov. 29, 2017) – flagrantly disregarded the judge's instructions by presenting an amended complaint containing 165 pages of gobbledygook. And because Davis is an attorney, his pleadings are not entitled to the generous construction normally given to pro se filings. *See Cole*, 637 F.3d at 773. We have upheld the dismissal of shorter, and sometimes clearer, complaints. *See Garst*,

328 F.3d at 376 ("pestilential" 155-page complaint); *Vicom, Inc. v. Harbridge Merchant Servs., Inc.*, 20 F.3d 771, 775 (7th Cir. 1994*)* (119-page complaint); *Hartz v. Friedman*, 919 F.2d 469, 471 (7th Cir. 1990) (125-page complaint); *Jennings v. Emry*, 910 F.2d 1434, 1435 (7th Cir. 1990) (55-page complaint).

Davis contends that Rules 8 and 10 apply only to the "claims" section of his amended complaint (pages 140 to 159), but this argument is likewise frivolous. Rule 8 "requires parties to make *their pleadings* straightforward, so that judges and adverse parties need not try to fish a gold coin from a bucket of mud." *Garst*, 328 F.3d at 378 (emphasis added). And Rule 10(b) "requires *allegations* to be separated into numbered paragraphs[] and distinct claims to be separated into counts." *Frederiksen*, 384 F.3d at 438 (emphasis added). The amended complaint complies with neither rule.

Finally, Davis argues that dismissal was unwarranted because the defendants could have asked for a more definite statement under Rule 12(e). That argument improperly shifts the burden of compliance with the pleading rules away from the plaintiffs. Further, we have explained that it's usually preferable to require repleading rather than ordering a more definite statement so that a plaintiff's allegations are not split between the complaint and the more definite statement. *Davis v. Ruby Foods, Inc.*, 269 F.3d 818, 820 (7th Cir. 2001). In short, the judge was well within his discretion to dismiss this case with prejudice after

providing an opportunity to replead based on the repeated and flagrant violations of Rules 8 and 10.

Before concluding, we note that Davis's conduct in this litigation raises serious concerns about his professional competence. He repeatedly ignored the judge's simple instructions to file a complaint that complied with the federal rules. Even after the judge all but dictated what it would take to file a competent pleading, Davis returned with another bloated, unintelligible tome. Moreover, he told the judge that he was unable to communicate with his son except for exchanging an occasional greeting over the phone. That gives us reason to doubt whether Eric even knows about this case, yet Davis named him as a plaintiff and holds himself out as his attorney. Davis's possible failure to communicate with Eric regarding the scope of the purported representation may violate Rule 1.4 of the Indiana Rules of Professional Conduct. And to the extent Eric's interests are not aligned with Davis's interests (or Shelia's, for that matter), Davis may also be violating Rule 1.7 of the code of conduct. *See In re Moores*, 854 N.E.2d 350, 353 (Ind. 2006).

For the foregoing reasons, we DISMISS Shelia Davis and Eric Davis as parties to this appeal and otherwise AFFIRM the judgment of the district court. IT IS FURTHER ORDERED that John Davis must show cause within 21 days why he should not be removed or suspended from the bar of this court or otherwise disciplined under Rule 46(b) or (c) of the Federal Rules of Appellate Procedure. We also direct the clerk of this court to send a copy of this order to the Indiana

Supreme Court Disciplinary Commission for any action it deems appropriate.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60501

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

[SEAL]

ORDER

June 20, 2018

Before

WILLIAM J. BAUER, *Circuit Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

No. 17-1732	JOHN H. DAVIS, Plaintiff - Appellant v. JEANNE W. ANDERSON, Judge, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 2:16-cv-00120-PPS-PRC Northern District of Indiana, Hammond Division District Judge Philip P. Simon	

Upon consideration of the **MOTION TO RECONSIDER**, filed on June 5, 2018, by the pro se appellant,

IT IS ORDERED that the motion to reconsider is **DENIED**.

[SEAL]

INDIANA
SUPREME COURT
251 N Illinois St | Suite 1600
Indianapolis, Indiana 46204

Office of Judicial Administration
COURTS.IN.GOV

February 7, 2018

Mr. Jim Richmond
Appeals Processing Manager
U.S. Court of Appeals, 7th Circuit
219 S. Dearborn Street, Suite 2722
Chicago, IL 60604

Re: Your grievance against John H. Davis

Dear Mr. Richmond:

The Indiana Supreme Court Disciplinary Commission met on January 12. It addressed the matter of John H. Davis, appeal no. 17-1732, which you forwarded to the Commission on behalf of a panel of the U.S. Court of Appeals for the Seventh Circuit. The Commission determined that Mr. Davis' conduct did not rise to the level of substantial misconduct. Since he was acting pro se, as well as for his own spouse and child, his actions did not harm a paying client. Regarding his failure to follow Court rules or direction, the Court is in the best position to address those issues, and it did through its sanctioning authority and power of dismissal. The issue of conflict of interest also is not one of substantial misconduct, especially since it involves close family members and is a waivable conflict. The evidence before us does not suggest that an

unknowing waiver is in play, and neither Mrs. Davis or the son are claiming to be aggrieved by Mr. Davis' representation.

The totality of the above reasons has led the Commission to determine that the misconduct did not meet the standard of being substantial. Thank you for bringing this matter to the attention of the Commission.

Sincerely,

/s/ G. Michael Witte
G. Michael Witte
Executive Director

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

JOHN H. DAVIS, SHELIA D. DAVIS and ERIC S. DAVIS, a minor by parents John. H. Davis, father, and Shelia D. Davis, mother, Plaintiffs, v. ALABAMA DEPARTMENT OF HUMAN RESOURCES OF LIMESTONE COUNTY, ALABAMA, et al., Defendants.	)	2:16CV120-PPS

ORDER

(Filed Feb. 12, 2018)

On January 31, 2018, the Seventh Circuit Court of Appeals issued its mandate on the December 4, 2017 order affirming the dismissal of this case. The Court of Appeals provided to the Clerk of this court a copy of the mandate and the underlying order, which has been docketed as part of the district court record. [DE 111.] The Seventh Circuit's order directed that John. Davis show cause within 21 days why he should not be "removed or suspended from the bar of this court or otherwise disciplined under Rule 46(b) or (c) of the Federal Rules of Appellate Procedure." [DE 111 at 6 (emphasis

added).] As the quoted language suggests, the issue of John Davis' bar membership is being taken up by the Court of Appeals, not the district court. John Davis has filed his response to the show cause order here in the district court. [DE 112.] Review of the Court of Appeals' docket shows that Davis has not filed a response to the show cause order there. To assist the Court of Appeals in its consideration of the issues it has undertaken, I will direct the Clerk to provide a copy of the response to the Court of Appeals.

ACCORDINGLY:

The Clerk is directed to provide a copy of this order, along with a copy of John Davis' Response to Court's Order to Show Cause [DE 112] and supporting Affidavit [DE 1124], to the Court of Appeals for its consideration in its Case Number 17-1732.

SO ORDERED.

ENTERED: February 12, 2018.

/s/ Philip P. Simon
PHILIP P. SIMON, JUDGE
UNITED STATES DISTRICT COURT