[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-11274
Non-Argument Calendar

D.C. Docket No. 1:11-cv-04044-LMM

LABMD, INC.,

Plaintiff - Appellant,

versus

TIVERSA, INC.,
a Pennsylvania Corporation,

Defendants - Appellees,

M. ERIC JOHNSON, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Georgia

(December 7, 2017)

Exhibit A

Before JORDAN, ROSENBAUM, and EDMONDSON, Circuit Judges.

PER CURIAM:

LabMD, Inc. appeals the district court's orders denying LabMD's motion for post-judgment relief -- filed pursuant to Fed. R. Civ. P. 60(d)(3) -- and denying in part LabMD's motion for post-judgment discovery. No reversible error has been shown; we affirm.

I. Background

Tiversa, Inc. is a company that monitors global peer-to-peer network searches and provides peer-to-peer intelligence and security services. In 2008, Tiversa downloaded a 1,718-page document (the "1,718 File") that had been created and stored on a LabMD computer and that contained patient social security numbers, insurance information, and treatment codes. Tiversa notified LabMD that it had discovered the 1,718 File on a peer-to-peer file sharing network and then attempted to solicit LabMD's business.

In 2011, LabMD (a Georgia corporation) filed this lawsuit against Tiversa[1] (a Pennsylvania corporation) in the Superior Court of Fulton County, Georgia. LabMD asserted claims for violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, and of Georgia law. The case was removed to federal court. The District Court for the Northern District of Georgia dismissed the case without prejudice, concluding that -- based on Tiversa's limited contacts with Georgia -- the court lacked personal jurisdiction over Tiversa under Georgia's long-arm statute, O.C.G.A. § 9-10-91. We affirmed the dismissal on appeal. LabMD, Inc. v. Tiversa, Inc., 509 F. App'x 842 (11th Cir. 2013) (unpublished).

In 2016, LabMD filed a Rule 60(d)(3) motion for post-judgment relief, contending that Tiversa committed fraud on the court. Briefly stated, LabMD asserted that -- in support of Tiversa's motion to dismiss LabMD's complaint -- Tiversa and Tiversa's lawyers made knowingly false statements about Tiversa's contacts with Georgia and about the circumstances surrounding the downloading of the 1,718 File. LabMD also sought post-judgment discovery to obtain additional evidence in support of its Rule 60(d)(3) motion.

In a thorough and detailed order, the district court denied LabMD's Rule 60(d)(3) motion with a right to refile. The district court determined that "[t]o prove fraud on the court, LabMD must show that Tiversa's counsel knew that the

[1] LabMD also named as defendants Trustees of Dartmouth College and M. Eric Johnson. In an earlier order, this Court dismissed those defendants as parties to this appeal.

[complained-of statements] were false." (emphasis in original). Because LabMD failed to show by clear and convincing evidence that an "officer of the court" was involved in the alleged fraud, the court concluded that LabMD was entitled to no Rule 60(d)(3) relief.

The district court did, however, grant in part LabMD's motion for limited discovery: the court permitted LabMD to serve ten interrogatories on Tiversa's counsel-of-record, John Hansberry. In doing so, the court noted LabMD's assertion that discovery was needed "to determine whether Mr. Hansberry had actual knowledge of Tiversa's contacts with Georgia." Later, in response to a dispute between the parties about discovery, the district court ordered Mr. Hansberry to respond without objection to three of the ten original interrogatory questions. The district court clarified again that discovery was to be limited to determining "whether or not Mr. Hansberry had made representations concerning Tiversa's contacts with Georgia that were intentionally false, or, at the very least, willfully blind to the truth or in reckless disregard of the truth."

LabMD moved for reconsideration of the district court's rulings. The district court denied relief.[2]

[2] LabMD raises no challenge on appeal to the district court's denial of LabMD's motion for reconsideration.

II. Standard of Review

We review the denial of a Rule 60(d)(3) motion under an abuse-of-discretion standard. Booker v. Dugger, 825 F.2d 281, 285 (11th Cir. 1987). And we review for abuse of discretion decisions about discovery. Harrison v. Culliver, 746 F.3d 1288, 1297 (11th Cir. 2014). "[U]nder the abuse of discretion standard, we will leave undisturbed a district court's ruling unless we find that the district court has made a clear error of judgment, or has applied the wrong legal standard." Id.

III. Discussion

Under Rule 60(d)(3), a district court can "set aside a judgment for fraud on the court." See Fed. R. Civ. P. 60(d)(3). "Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which the attorney is implicated, will constitute a fraud on the court." Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978) (emphasis added) (quotation omitted). "Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court." Id.

(quotation omitted). The party seeking relief under Rule 60(d)(3) must establish fraud "by clear and convincing evidence." Booker, 825 F.2d at 283.

The district court has broad discretion in making rulings about discovery. Iraola & CIA., S.A. v. Kimberly-Clark Corp., 325 F.3d 1274, 1286 (11th Cir. 2003). When "it appears that further discovery would not be helpful in resolving the issues, a request for further discovery is properly denied." Avirgan v. Hull, 932 F.2d 1572, 1580-81 (11th Cir. 1991) (concluding the district court abused no discretion in imposing restrictions on discovery when the court's ruling permitted discovery on the dispositive issue in the case); Aviation Specialties, Inc. v. United Technologies Corp., 568 F.2d 1186, 1190 (5th Cir. 1978) ("When the record becomes clear enough to disclose that further discovery is not needed to develop significant aspects of the case . . . discovery should be ended."). Further, "we will not overturn discovery rulings unless it is shown that the District Court's ruling resulted in substantial harm to the appellant's case." Harrison, 746 F.3d at 1297.

Here, the district court determined properly that to prove fraud on the court, LabMD had to show that Tiversa's lawyer knew that statements made to the court about Tiversa's contacts with Georgia were false. The only attorney-of-record in this case was Mr. Hansberry. And LabMD has failed to show that another lawyer

was involved in Tiversa's representation.[3] The district court, thus, limited post-judgment discovery to the pertinent issue before it: whether Mr. Hansberry had actual knowledge of Tiversa's contacts with Georgia and mispresented intentionally that information to the court.

Given the circumstances of this case, we cannot say that the district court committed a clear error of judgment in limiting the scope of LabMD's post-judgment discovery. The district court's ruling permitted discovery about the dispositive issue in the case. And the additional discovery requested by LabMD would not have been helpful in resolving that dispositive issue. As a result, LabMD cannot show that the district court's ruling resulted in substantial harm. LabMD has demonstrated no abuse of discretion.

On appeal, LabMD concedes that it cannot demonstrate -- with clear and convincing evidence -- that Tiversa committed fraud on the court. LabMD argues only that the district court denied prematurely its Rule 60(d)(3) motion without

[3] LabMD contends that Eric Kline, one of Mr. Hansberry's law partners, also acted as Tiversa's lawyer in this case. The evidence LabMD relies on in support of its position is a statement -- made in 2014 by Tiversa's current lawyer (Mr. Shaw) -- during a hearing in a separate case in the Western District of Pennsylvania. There, in response to a question from the court, Mr. Shaw said that both Mr. Kline and Mr. Hansberry represented Tiversa in this case. Mr. Shaw now says that his 2014 statement was incorrect. Moreover, nothing evidences that Mr. Shaw ever worked at the same law firm as Mr. Kline and Mr. Hansberry (not a partner or an associate of Kline or Hansberry) or that Mr. Shaw had involvement with this case during the pertinent time: in 2011 and 2012. The district judge determined that Mr. Shaw's 2014 statement did not persuade her that Mr. Kline in fact participated in this case or had otherwise acted as an officer of the court. LabMD has failed to show on appeal that the district court's factual determination about Mr. Kline's lack of participation in this case was clearly erroneous. We also reject LabMD's assertion that this statement constitutes a binding judicial admission on Tiversa in this case.

first permitting additional discovery. Because we have determined that the district court abused no discretion in limiting the scope of discovery, LabMD can show no abuse of discretion in the district court's denial of its Rule 60(d)(3) motion.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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December 07, 2017

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-11274-EE
Case Style: LabMD, Inc. v. Tiversa, Inc., et al
District Court Docket No: 1:11-cv-04044-LMM

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Pursuant to Fed.R.App.P. 39, costs taxed against appellant.

The Bill of Costs form is available on the internet at www.ca11.uscourts.gov

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Elora Jackson, EE at (404) 335-6173.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6161

OPIN-1A Issuance of Opinion With Costs