

No. _____

In The
Supreme Court of the United States

TODD PHILLIPPI,
Petitioner,

V.

HUMBLE DESIGN, L.L.C.
AND WARREN DAVID HUMBLE,
Respondents.

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

APPENDIX

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**IN THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

No. 19-10769

FILED: March 3, 2020

AUTOMATION SUPPORT, INCORPORATED,
doing business as Technical Support; SOYOKAZE
INCORPORATED,

Plaintiffs - Appellees

v.

HUMBLE DESIGN, L.L.C.; WARREN DAVID
HUMBLE,

Defendant - Appellees

v.

TODD PHILLIPPI,

Movant – Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:14-CV-4455

Before KING, JONES, and COSTA, Circuit Judges.
PER CURIAM:*

* Pursuant to 5TH CIR. R. 47.5, the court has determined
that this opinion should not be published and is not precedent
except under the limited circumstances set forth in 5TH CIR. R.
47.5.4.

Automation Support, Inc. and Soyokaze, Inc. sued their former employees Becky Wallace and Warren Humble, as well as Humble's new business, Humble Design, L.L.C. The plaintiffs asserted breach of contract, breach of fiduciary duty, tortious interference with contract, misappropriation of trade secrets, and violations of the Texas Theft Liability Act. The parties consented to have a magistrate judge conduct proceedings and enter judgment. *See* 28 U.S.C. § 636(c).

Eventually the parties filed a joint stipulation of voluntary dismissal with prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(ii). The defendants then sought attorney's fees under the Texas Theft Liability Act and the Texas Uniform Trade Secrets Act, both of which entitle a prevailing defendant to fees and costs. TEX. CIV. PRAC. & REM. CODE §§ 134.005(b), 134A.005(1). The magistrate judge granted the motion and ordered the plaintiffs to pay \$69,204.12.

Automation Support appealed that ruling as well as the denial of requests to vacate the judgment under Federal Rule of Civil Procedure 60. We affirmed and remanded for an award of appellate attorneys' fees. *Automation Support, Inc. v. Humble Design, LLC*, 734 F. App'x 211, 216 (5th Cir. 2018). The magistrate judge entered an additional fee award of \$33,997.58.

Todd Phillippi, an attorney, and Billy and Renee McElheney, the plaintiff corporations' owners, then filed a Rule 60 motion for relief from the judgment. Phillippi and the McElheney's asserted that they had a right to seek relief because the plaintiffs had assigned litigation rights to them and their property was used to fund the appeal bond. The magistrate

judge denied the Rule 60 motion. Phillippi and the McElheneyes filed repeated objections to the ruling. Because Phillippi and the McElheneyes were not parties to the case, the magistrate judge barred them from making additional filings other than a notice of appeal.

Not to be deterred, Phillippi and the McElheneyes attempted to appeal to the chief judge of the district the magistrate judge's grant of attorney's fees and order not to file more papers. As the parties had consented to have the case heard by a magistrate judge, the district court ruled that any appeal of the magistrate judge's rulings must be made to the court of appeals. Phillippi now appeals the district court's order to us.

"[A]n appeal from a judgment by a magistrate judge in a civil case must be filed in the same tribunal as any other district court judgment"—that is, in the appropriate circuit court of appeals. FED. R. APP. P. 3(a)(3). The district court thus correctly recognized that it lacked jurisdiction to hear an appeal of the magistrate judge's rulings. An order noting that a party has filed an appeal to the wrong court is not an appealable final judgment. Put another way, because the district court had no jurisdiction over the case, we lack jurisdiction to review its order. *Cf. In re Stangel*, 219 F.3d 498, 500 (5th Cir. 2000) ("When the district court lacks jurisdiction over an appeal from a bankruptcy court, this Court lacks jurisdiction as well."). To the extent that Phillippi seeks to appeal the magistrate judge's denial of his request for Rule 60 relief, or the underlying judgment awarding fees, this appeal was filed well beyond the 30-day deadline for appealing those rulings. FED. R. APP. P. 4(a)(1)(A).

The appeal is DISMISSED for lack of jurisdiction.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

Civil Action No. 3:14-cv-04455-BK

AUTOMATION SUPPORT INC., et al.,
Plaintiffs,
v.

HUMBLE DESIGN, LLC, et al.,
Defendants.

ORDER

Before the Court is the “Federal Rule of Civil Procedure Rule 72 Objections to the Magistrate ‘Order’ of April 22, 2019 and Referral to Chief District Judge Barbara M. G. Lynn as Allowed by Representative Parties and Parties in Privity to Preserve Appeal” (ECF No. 111), filed by non-party movant Todd Phillippi.

The parties in this case consented to a trial before Magistrate Judge Toliver, (ECF No. 25 at 2), and the case was transferred to Judge Toliver “to conduct all further proceedings and entry of judgment, in accordance with 28 U.S.C. § 636(c) and the consent of the Parties.” (ECF No. 26). On December 4, 2018, Judge Toliver entered an order barring Movant from making any further filings in this case, other than a notice of appeal, without first obtaining leave of Court, and instructing the Clerk to immediately terminate any motions filed by Movant without first obtaining leave of Court. (ECF No. 105). On April 22, 2019, Movant filed a Motion

for Relief from Judgment without first obtaining leave of Court, (ECF No. 109), and the Clerk terminated the Motion. Movant now requests that this Court “vacate or modify” the denial of his Motion for Relief from Judgment.

Because the parties in this case consented to a trial before Judge Toliver, Movant cannot appeal Judge Toliver’s orders to this Court. If Movant wishes to challenge Judge Toliver’s ruling, he may appeal to the Fifth Circuit. *See* 28 U.S.C. § 636(c)(3).

IT IS ORDERED that Movant’s Objections are DENIED.

SO ORDERED.

June 11, 2019.

/s/ BARBARA M. G. LYNN
CHIEF JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**CIVIL ACTION NO. 3:14-cv-04455
JURY**

**AUTOMATION SUPPORT, INC. d/b/a
TECHNICAL SUPPORT, and SOYOKAZE, INC.,
Plaintiffs,**

v.

**BECKY WALLACE, WARREN DAVID HUMBLE
and HUMBLE DESIGN, LLC
Defendants.**

**JOINT STIPULATION OF VOLUNTARY
DISMISSAL WITH PREJUDICE OF
PLAINTIFFS' CLAIMS AGAINST
DEFENDANTS**

COME NOW, Automation Support, Inc. d/b/a Technical Support, and Soyokaze, Inc. ("Plaintiffs") and Warren David Humble and Humble Design, LLC ("Defendants"), and pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), hereby dismiss with prejudice all claims and all associated relief requested in such claims filed in this case by Plaintiffs.

Defendants reserve the right to seek recovery of their attorney's fees and costs from Plaintiffs in accordance with their answer and motion for summary judgment and supporting brief on file herein (Dkt. 34, 46-47).

Respectfully submitted,
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**U.S. District Court
Northern District of Texas (Dallas)
CIVIL DOCKET FOR CASE#: 3:14-cv-04455-BK**

Automation Support Inc et al v. Wallace et al
Assigned to: Magistrate Judge Renee Harris Toliver
Case in other court: 17-10433
USCA5, 19-10769
USCA5, 20-10386

Date Filed: 12/18/2014
Date Terminated: 08/05/2016
Jury Demand: Both
Nature of Suit: 190 Contract: Other Contract
Jurisdiction: Diversit

Cause: 28:1332 Diversity-Breach of Contract

99: ELECTRONIC ORDER Plaintiff Automation Support's *Federal Rule of Civil Procedure Rule 60(b) Motion*, Doc. 97 is **DENIED**. (Ordered by Magistrate Judge Renee Harris Toliver on 10/24/2018) (chmb) (Entered: 10/24/2018)

06/12/2019:

113: ORDER: Because the parties in this case consented to a trial before Judge Toliver, Movant cannot appeal Judge Toliver's orders to this Court. If Movant wishes to challenge Judge Toliver's ruling, he may appeal to the Fifth Circuit. IT IS ORDERED that Movant's Objections are DENIED. (Ordered by Chief Judge Barbara M.G. Lynn on 6/12/2019) (epm) (Entered: 06/12/2019)