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NOT RECOMMENDED FOR PUBLICATION

No. 21-2737

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GANIYU AYINLA)
JAIYEOLA,)
Plaintiff-Appellant,)
v.)
TOYOTA MOTOR NORTH) ON APPEAL FROM
AMERICA, INC., et al.,) THE UNITED
Defendants,) STATES DISTRICT
and) COURT FOR THE
TOYOTA MOTOR) WESTERN DISTRICT
CORPORATION,) OF MICHIGAN
a foreign corporation;)
AISAN INDUSTRY CO.,)
LTD, a foreign corporation,)
Defendants-Appellees.)

ORDER

(Filed Oct. 7, 2022)

Before: BATCHELDER, GIBBONS, and THAPAR,
Circuit Judges.

Ganiyu Ayinla Jaiyeola, a pro se California resident, appeals the district court's order denying his motion for sanctions against two defense attorneys. Jaiyeola has filed two motions asking this court take judicial notice that he is suing a third defense attorney

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for allegedly engaging in the unauthorized practice of law during this litigation. He also asks this court to strike defense counsel's response to his first motion for judicial notice. Toyota Motor Corporation ("TMC") and Aisan Industry Company, Ltd. ("Aisan") ask the court to take judicial notice of certain proceedings in the Western District of Michigan and the State Bars of California and Michigan that purportedly belie some of Jaiyeola's allegations. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In November 2016, Jaiyeola filed a lawsuit against several defendants, including TMC and Aisan, in state court, alleging that in 2013 he was driving a 1996 Toyota Camry in Portland, Michigan, when it suddenly accelerated, causing him to hit a guardrail and suffer severe injuries. Jaiyeola asserted state-law claims for gross negligence, negligent production, failure to warn, and breach of implied and express warranty. TMC and Aisan removed the lawsuit to federal court based on diversity jurisdiction, *see* 28 U.S.C. §§ 1331, 1332, 1441(a), and the district court thereafter dismissed all defendants other than TMC and Aisan from the case due to Jaiyeola's failure to timely serve them with process.

Extensive and contentious discovery and motion practice ensued. As relevant here, Jaiyeola filed a contested motion in which he asked the district court to sanction two defense lawyers, Carmen Bickerdt and David Ayers, for committing fraud on the court,

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specifically by authoring and submitting a court filing containing purported misinformation. At the close of discovery, the district court awarded summary judgment in favor of TMC and Aisan on each of Jaiyeola's claims and denied Jaiyeola's motion for sanctions as moot. *Jaiyeola v. Toyota Motor N. Am., Inc.*, No. 1:17-cv-562, 2019 WL 3543628 (W.D. Mich. Aug. 5, 2019). On appeal, we affirmed the district court's judgment but reversed its denial of Jaiyeola's sanctions motion against Bickerdt and Ayers and remanded for consideration of that motion. *Jaiyeola v. Toyota Motor N. Am., Inc.*, No. 19-1918, 2021 WL 518155, at *6 (6th Cir. Feb. 1, 2021). In doing so, we concluded that “[t]he district court should have considered and ruled on the merits of Jaiyeola's request for sanctions, “which is separate from Jaiyeola's request for relief on a merits issue.” *Id.* at *5 (alteration in original) (quoting *Knight Cap. Partners Corp. v. Henkel AG & Co., KGaA*, 930 F.3d 775, 787 (6th Cir. 2019)).

On remand, the district court denied Jaiyeola's motion for sanctions, concluding that he had failed to meet his burden of proving by “clear and convincing evidence that Defendants' counsel presented intentionally false material to the Court.” The district court thereafter denied Jaiyeola's motion for reconsideration.

In this appeal, Jaiyeola challenges the district court's denial of his motion for sanctions.

We review for abuse of discretion a district court's decision whether to impose sanctions. *Jones v. Ill. Cent.*

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R.R. Co., 617 F.3d 843, 850 (6th Cir. 2010). “A district court abuses its discretion when it relies on erroneous findings of fact, applies the wrong legal standard, misapplies the correct legal standard when reaching a conclusion, or makes a clear error of judgment.” *Randleman v. Fid. Nat'l Title Ins.*, 646 F.3d 347, 351 (6th Cir. 2011). District courts possess the inherent authority to sanction a party or attorney who litigates “in bad faith, vexatiously, wantonly, or for oppressive reasons.” *First Bank of Marietta v. Hartford Underwriters Ins.*, 307 F.3d 501, 512 (6th Cir. 2002) (quoting *Big Yank Corp. v. Liberty Mut. Fire Ins.*, 125 F.3d 308, 313 (6th Cir. 1997)).

Jaiyeola moved the district court to sanction Bickert and Ayers on the basis that they had committed fraud on the court by authoring and submitting a court filing—namely, a response brief to Jaiyeola’s motion asking the court to deny the defendants’ motion for summary judgment as premature—that contained purported misinformation. In denying that motion on remand, the district court applied Sixth Circuit precedent stating that a party seeking to show a fraud on the court must present clear and convincing evidence of the following elements:

- 1) [conduct] on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court.

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Carter v. Anderson, 585 F.3d 1007, 1011 (6th Cir. 2009). But the district court erred in doing so. “The problem with applying this test is that the fraud-on-the-court doctrine deals with courts’ inherent power to vacate their judgments, whereas this case involves a court’s inherent power to sanction for misconduct in litigation.” *Williamson v. Recovery Ltd. P’ship*, 826 F.3d 297, 302 (6th Cir. 2016).

Despite the district court’s application of the wrong legal test, “we may affirm the district court’s order on any ground that is supported by the record.” *Id.* (citing *Moore v. Lafayette Life Ins.*, 458 F.3d 416, 446 (6th Cir. 2006)). Jaiyeola argued below that sanctions were warranted against Bickerdt and Ayers because they fraudulently claimed in a response brief, filed on July 5, 2018, that the parties had conducted “[f]our (4) post-suit vehicle inspections, which [Jaiyeola] attended and [at which Jaiyeola] took his own photographs and video footage.” Jaiyeola alleged that Bickerdt and Ayers knew that this statement was false because they knew (or should have known) that he did not take any photographs or video recordings during any of the vehicle inspections. But Bickerdt and Ayers fiercely contested this allegation of bad faith, explaining that they were “in view of [Jaiyeola]” during a vehicle inspection that occurred on August 3, 2017, “and observed him hold his cellular [phone] in an upright position as if he were taking photographs and/or video footage.”

Jaiyeola further alleged that Bickerdt and Ayers wrongly stated that the parties had conducted four

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post-suit vehicle inspections of his Toyota Camry as of July 5, 2018, where his records indicated that five post-suit inspections had occurred as of that date. Bickerdt and Ayers disputed this allegation as well, reiterating that only four post-suit inspections of Jaiyeola's Toyota Camry were conducted prior to July 5, 2018, with those inspections occurring on the following dates: (1) May 16, 2017; (2) August 3, 2017; (3) April 16, 2018; and (4) May 2, 2018. Although Jaiyeola claimed that a fifth post-suit inspection occurred on March 29, 2018, Bickerdt and Ayers explained that the inspection that was originally slated for that date had to be postponed until April 16, 2018, due to a scheduling conflict.

On this record, we cannot say that the district court abused its discretion by concluding that Jaiyeola had failed to show that either Bickerdt or Ayers presented intentionally false material to the court. And though “[t]here is a dearth of caselaw explicating the meaning of bad faith” in this context, *Williamson*, 826 F.3d at 303, any test of bad faith requires a showing of some misconduct, *see, e.g.*, *First Bank of Marietta*, 307 F.3d at 512; *Wu v. T.W. Wang, Inc.*, 420 F.3d 641, 643 (6th Cir. 2005) (holding that, to support a finding of bad faith, an individual's conduct “must display either an intent to thwart the judicial proceedings or a reckless disregard for the effect of [his] conduct on those proceedings” (alteration in original)). Since the district court found that Jaiyeola failed to prove the only misconduct he alleged, he couldn't show bad faith. Although Jaiyeola argues that the district court should have held an evidentiary hearing on his sanctions

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motion, permitted him to file a reply brief in support of the motion, or referred the matter to a special master, the district court was not required to do so before ruling on his motion. *See Cook v. Am. S.S. Co.*, 134 F.3d 771, 774 (6th Cir. 1998).

Accordingly, we **AFFIRM** the district court's order and **DENY** as moot TMC and Aisan's motion to take judicial notice. We **DENY** Jaiyeola's miscellaneous motions as unnecessary because they do not affect the outcome of this appeal.

ENTERED BY ORDER OF
THE COURT

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GANIYU AYINLA
JAIYEOLA,

Plaintiff,

v.

TOYOTA MOTOR NORTH
AMERICA, INC., et al.,

Case No. 1:17-cv-562

HON. JANET T. NEFF

Defendants. /

MEMORANDUM OPINION AND ORDER

(Filed Apr. 14, 2021)

In this motor vehicle product liability case, the United States Court of Appeals for the Sixth Circuit reversed and remanded to this Court Plaintiff's "sanctions motion (R. 264) for consideration as to the request for sanctions related to issues collateral to the merits" (ECF No. 346 at PageID.7439). *Jaiyeola v. Toyota Motor N Am., Inc.*, No. 19-1918, 2021 WL 518155, at *6 (6th Cir. Feb. 1, 2021). A decision on the merits of the suit has already resulted in summary judgment for the Defendants (ECF No. 305). The pending motion asks for sanctions against Defendants' counsel allegedly for misrepresentations in its submission to the Court (ECF No. 264). For the reasons that follow, the motion for sanctions is denied.

The Court received "Plaintiff's Motion To Strike the Defendants' Response (ECF No. 156) Because It

Contains Lies Against Plaintiff And Sanction The Defendants' Attorneys (CARMEN M. BICKERDT and DAVID L. AYERS) For Misconduct (Authoring a Response That Contains Lies)" on December 6, 2018 (ECF No. 264). Defendants responded on December 14, 2018 with "Defendants Toyota Motor Corporation and Aisan Industry Co, Ltd's Response in Opposition to Plaintiff's Motion to Strike the Defendants' Response (ECF No. 156) Because It Contains Lies Against Plaintiff and Sanction the Defendants' Attorneys (Carmen M. Bickerdt and David L. Aers) for Misconduct (Authoring a Response that Contains Lies) [ECF 256]" (ECF No. 274). The Court entered a judgment in favor of Defendants and against Plaintiff on August 5, 2019 (ECF No. 305) and denied as moot Plaintiff's various other motions, including its motion for sanctions (ECF No. 304 at PageID.6728). On appeal the Sixth Circuit reversed and remanded on February 1, 2021, finding that ECF No. 264 "requests that the court strike a filing *and* sanction defense counsel. It seems to delineate between relief on a merits issue and relief on a collateral issue[,] . . . [t]he district court should have considered and ruled on the merits of that request, which is separate from Jaiyeola's request for relief on a merits issue." *Jaiyeola*, 2021 WL 518155, at *5 (quoting *Knight Capital Partners Corp. v. Henkel AG & Co., KGaA*, 930 F.3d 775, 787 (6th Cir. 2019)). The Court thus rules on the merits of Plaintiff's sanctions request.

Plaintiff's motion for sanctions argues that sanctions are warranted because Defendants' representation that the parties conducted "Four (4) post-suit

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vehicle inspections, which Plaintiff attended and [at which Plaintiff] took his own photographs and video footage" (ECF No. 156 at PageID.2642) committed a fraud on this Court (ECF No. 264 at PageID.6250, 6254). Plaintiff asserts that the alleged misrepresentations fulfill the elements of fraud on the court as articulated by the Sixth Circuit: conduct "1) on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court" (*id.* at PageID.6254, quoting *Johnson v. Bell*, 605 F.3d 333, 339 (6th Cir. 2010)). Plaintiff contends that Defendants knew that its statement was fraudulent because Defendants knew that "Plaintiff neither took photographs nor did any video recording during the August 3, 2017 inspection," and Defendants wrongly stated the number of post-suit vehicle inspections conducted as of its filing on July 5, 2018 (ECF No. 264 at PageID.6253).

Defendants respond that they correctly identified the number of vehicle inspections Defendants conducted because one of the scheduled inspections had to be re-noticed; and, to the extent Defendants' counsel were mistaken about whether Plaintiff took photography and/or video footage at the inspection, they offered to amend their Response to clarify the issue, even though they observed Plaintiff hold his cell phone in an upright position as if he were taking photographs

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and/or video footage, (ECF No. 274 at Page ID.6409, 6411, 6412, 6413).

Plaintiff “has the burden of proving the existence of fraud on the court by clear and convincing evidence.” *Johnson*, 605 F.3d at 339. Plaintiff maintains that Defendants have not offered any proof that Plaintiff took photographs or made a video recording at the August 3, 2017 inspection; but that fact alone does not make Defendants’ belief a lie or a fraud on this Court, as Plaintiff contends (ECF No. 264 at PageID.6252, 6254). Plaintiff has not fulfilled his burden here because Plaintiff has not come forward with clear and convincing evidence that Defendants’ counsel presented intentionally false material to the Court. *See id.* Thus, the motion must be denied.

For the foregoing reasons,

IT IS HEREBY ORDERED that “Plaintiff’s Motion To Strike the Defendants’ Response (ECF No. 156) Because It Contains Lies Against Plaintiff And Sanction The Defendants’ Attorneys (CARMEN M. BICKERDT and DAVID L. AYERS) For Misconduct (Authoring a Response That Contains Lies)” (ECF No. 264) is DENIED.

Dated: April 14, 2021

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge

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No. 21-2737

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GANIYU AYINLA)	
JAIYEOLA,)	
Plaintiff-Appellant,)	
v.)	ORDER
TOYOTA MOTOR NORTH)	(Filed Nov. 15, 2022)
AMERICA, INC., ET AL.,)	
Defendants,)	
TOYOTA MOTOR)	
CORPRATION, A FOREIGN)	
CORPORATION; AISAN)	
INDUSTRY CO., LTD, A)	
FOREIGN CORPORATION,)	
Defendants-Appellees.)	

BEFORE: BATCHELDER, GIBBONS, and THAPAR,
Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

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Therefore, the petition is denied.

**ENTERED BY ORDER OF
THE COURT**

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk
