NONPRECEDENTIAL DISPOSITION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 April 3, 2025
Decided April 29, 2025

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 24-2876

AAA GAMING LLC and ILLINOIS GAMING INVESTMENTS, LLC,
Plaintiffs-Appellees,

v.

MIDWEST ELECTRONICS GAMING, LLC,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:16-cv-04997

John F. Kness,
Judge.

O R D E R

This appeal comes to us against the backdrop of an ongoing and protracted dispute about the validity and enforcement of a contract. The district court determined it lacked authority to convert the plaintiffs' voluntary dismissal without prejudice to one with prejudice and, separately, to award the defendant attorney's fees pursuant to a provision of the underlying contract. We affirm.

I

AAA Gaming LLC and Illinois Gaming Investments, LLC entered into an agreement with Midwest Electronics Gaming, LLC. As relevant here, the agreement provided that in any dispute or litigation to enforce it, the "prevailing party" could recover reasonable attorney's fees and costs from the other party.

Invoking diversity jurisdiction, AAA Gaming and Illinois Gaming brought suit against Midwest Electronics in federal district court alleging breach of contract. The district court twice dismissed the complaint for failure to state a claim, concluding that the Illinois Gaming Board had sole authority under Illinois law to determine the validity and enforceability of the agreement. See *J&J Ventures Gaming, LLC v. Wild, Inc.*, 67 N.E.3d 243, 253 (Ill. 2016) (explaining that the Gaming Board has "exclusive jurisdiction" to "determine the validity and enforceability of contracts that purport to control the location and operation of video gaming terminals within licensed establishments"). The dismissals were without prejudice, however, allowing AAA Gaming and Illinois Gaming to petition the Board for a determination of whether the agreement is in fact valid and enforceable.

The plaintiffs did so. But in the wake of proceedings before the Gaming Board and in Illinois state court, AAA Gaming and Illinois Gaming then filed in the federal district court a notice of voluntary dismissal without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). Why plaintiffs separately sought dismissal under Rule 41 is not clear. Regardless, because the plaintiffs filed their notice of dismissal before Midwest Electronics answered the complaint or moved for summary judgment, the district court concluded that the filing of the Rule 41(a)(1)(A)(i) notice effected the immediate dismissal of the suit without any necessary further action of the court. See *Nelson v. Napolitano*, 657 F.3d 586, 587 (7th Cir. 2011).

For its part, Midwest Electronics responded by filing a Rule 60(b) motion seeking to modify the dismissal to one with prejudice and separately asking the district court to determine that Midwest Electronics was the "prevailing party" within the meaning of the agreement so it could recover costs and attorney's fees. The district court determined it lacked jurisdiction both to convert a Rule 41(a)(1)(A)(i) voluntary dismissal without prejudice to a dismissal with prejudice and, after such a dismissal, to award costs and fees based on the agreement.

Midwest Electronics now appeals.

II

Rule 60(b) permits a district court to reopen a case that a plaintiff voluntarily dismissed without prejudice. See *Waetzig v. Halliburton Energy Servs., Inc.*, 145 S. Ct. 690, 693 (2025). But while Rule 60(b) "give[s] a court the power to reopen a case," the party moving under the Rule must point to an independent basis that "would authorize a federal court" to provide the specific relief it seeks. *Id.* at 696. As applied here, Midwest Electronics must identify some grant of authority empowering the district court to convert the voluntary dismissal into one with prejudice and award attorney's fees pursuant to its agreement with AAA Gaming and Illinois Gaming. We address each request in turn and, in the end, conclude that the district court lacked authority to do either in the circumstances of the case.

A

We begin with a district court's authority to modify a Rule 41(a)(1)(A)(i) voluntary dismissal without prejudice. Unless the plaintiff's notice of dismissal pursuant to Rule 41(a)(1)(A)(i) states otherwise, the voluntary dismissal is without prejudice. See Fed. R. Civ. P. 41(a)(1)(B). And while a district court may dismiss a case by court order under Rule 41(a)(2) "on terms that the court considers proper," Rule 41(a)(1)(A)(i) contains no corresponding provision. Consequently, where a plaintiff properly proceeds under Rule 41(a)(1)(A)(i) and requests a dismissal *without* prejudice, the district court is not permitted to impose conditions on that dismissal—including by dismissing the case *with* prejudice instead. See *Scam Instrument Corp. v. Control Data Corp.*, 458 F.2d 885, 889–91 (7th Cir. 1972) (setting aside conditioned order of dismissal with prejudice where plaintiff properly proceeded under Rule 41(a)(1)(A)(i)); see also 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2366 (4th ed. 2025) ("The district court has no power to impose terms and conditions if a plaintiff properly dismisses by notice under Federal Rule of Civil Procedure 41(a)(1).").

Indeed, where a plaintiff files a notice of voluntary dismissal that complies with Rule 41(a)(1)(A)(i), the notice "terminates the case all by itself," and "[t]here is nothing left to adjudicate." *Szabo Food Serv., Inc. v. Canteen Corp.*, 823 F.2d 1073, 1078 (7th Cir. 1987). So, we have emphasized, "a judge may not reject the Rule 41(a)(1)(A)(i) notice and then decide the case on the merits." *Id.*; see *Smith v. Potter*, 513 F.3d 781, 782–83 (7th Cir. 2008) (concluding the district court "was not authorized to dismiss the suit with prejudice" and its order doing so "was void" where the plaintiff sought voluntary dismissal before the defendant answered the complaint or moved for summary judgment); *Winterland Concessions Co. v. Smith*, 706 F.2d 793, 794–96 (7th Cir. 1983) (holding that a district court lacked authority to vacate a voluntary dismissal without prejudice and enter an order dismissing the action with prejudice).

By extension, Rule 60(b) does not empower a court to do indirectly what it cannot do directly under Rule 41(a)(1)(A)(i). Absent extraordinary circumstances in which a plaintiff seeks to set aside its own notice, see *Nelson*, 657 F.3d at 589, Midwest Electronics identifies no authority permitting district courts to vacate a voluntary dismissal without prejudice pursuant to a Rule 60(b) motion and instead enter a dismissal with prejudice.

These principles find straightforward application to the facts before us. At the time AAA Gaming and Illinois Gaming filed their notice pursuant to Rule 41(a)(1)(A)(i), Midwest Electronics had neither answered the complaint nor moved for summary judgment. Further, the plaintiffs specified that the dismissal would be "without prejudice." Their notice, then, resulted in immediate dismissal of the entire action without prejudice. We therefore have little trouble concluding that the district court lacked authority to convert the dismissal into one with prejudice.

B

We next address Midwest Electronics's contention that the district court retained authority to award costs and attorney's fees pursuant to its underlying agreement with AAA Gaming and Illinois Gaming.

To be sure, a Rule 41(a)(1)(A)(i) dismissal does not eliminate wholesale a district court's authority to award post-dismissal relief. Even after a plaintiff voluntarily dismisses its suit, the Supreme Court has explained, a federal court may still consider particular "collateral issues," which are "independent proceeding[s] supplemental to the original proceeding." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990) (alteration in original) (quoting *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 170 (1939)). *Cooter & Gell* held that a dismissal pursuant to Rule 41(a)(1)(A)(i) does not deprive a district court of jurisdiction over a Rule 11 motion for sanctions. See *id.* at 398. "Because a Rule 11 sanction does not signify a district court's assessment of the legal merits of the complaint," the Court reasoned, "the imposition of such a sanction after a voluntary dismissal does not deprive the plaintiff of his right under Rule 41(a)(1) to dismiss an action without prejudice." *Id*. at 396.

Cooter & Gell identified two additional categories of collateral issues: the imposition of contempt sanctions and motions for costs and attorney's fees. See *id.* at 395–96. As to the latter, the Supreme Court cited *White v. New Hampshire Department of Employment Security*, which held that a request for attorney's fees pursuant to 42 U.S.C.

§ 1988 is a collateral matter, not a motion to alter or amend the judgment subject to the requirements of Rule 59(e). See 455 U.S. 445, 451–52 (1982). A district court, therefore, retains authority to award attorney's fees under § 1988 after it enters final judgment—without having to alter or amend the judgment. See *id.*

Applying these cases, we have found that a court may lack authority to resolve the merits of a claim yet nevertheless have jurisdiction to award attorney's fees to the prevailing party where federal law expressly grants courts the authority to do so—as is the case in § 1988, Rule 11, and the like. See, *e.g.*, *Szabo Food Serv.*, 823 F.2d at 1076–79 (explaining that a Rule 41(a)(1)(A)(i) dismissal does not deprive a district court of authority to award attorney's fees under Rule 11); *Citizens for a Better Env't v. Steel Co.*, 230 F.3d 923, 925–28 (7th Cir. 2000) (concluding the district court retained authority to award attorney's fees pursuant to a federal statute following dismissal for lack of subject matter jurisdiction).

The Supreme Court's language in *Cooter & Gell* could be read to suggest that attorney's fees are, as a categorical matter, a collateral issue over which district courts always retain authority—regardless of whether a party is entitled to them by virtue of a federal statute, rule, or contract. But that construction would extend *Cooter & Gell* beyond its more narrow holding about Rule 11. And, to date, neither the Supreme Court nor our court has had occasion to address whether, following a Rule 41(a)(1)(A)(i) dismissal, a court may award attorney's fees pursuant to an agreement between the parties that underlies their dispute. This is an unresolved and difficult question.

The district court concluded it lacked this authority, explaining that to determine whether Midwest was the "prevailing party" would essentially require a merits interpretation of the disputed contract. "[T]he definition of a contractual term and the concomitant enforcement of the relevant contractual provision," the district court reasoned, "is not a collateral issue."

On these facts, we agree. Ruling on Midwest Electronics's request for fees would require the district court to first find that the agreement between the parties is a valid contract and, from there, interpret the specific attorney's fees provision to determine who is the "prevailing party" within the meaning of the agreement. But whether that provision is part of a valid contract is the subject of much controversy and disagreement. This core dispute dominated the parties' briefing and oral argument on appeal. And the question of the agreement's validity led the district court to twice dismiss the complaint without prejudice under Rule 12(b)(6) and, as a result, the parties to litigate the issue before the Illinois Gaming Board.

Against the backdrop of this procedural history, Midwest Electronics's application for attorney's fees is bound up in the merits of the underlying dispute—so much so that we are hesitant to hold that the district court committed any error in not seeing the request as collateral. An award of attorney's fees here would necessarily require the district court to assess the legal merits of the breach of contract claim. In the final analysis, then, we conclude the district court lacked authority to award fees.

Perhaps in some set of circumstances a request for attorney's fees pursuant to a contract between the parties could appropriately be considered a collateral matter, such that a court may award fees following a Rule 41(a)(1)(A)(i) voluntary dismissal without prejudice. But these facts are not before us today. So we save the broader legal question for another day and another case where it is more cleanly presented—unencumbered by an extraneous dispute about the validity of the underlying agreement containing the attorney's fee provision.

AFFIRMED

HAMILTON, *Circuit Judge*, concurring. I join the order affirming the district court's denial of relief under Federal Rule of Civil Procedure 60(b). I write separately to highlight an issue that the order does not address expressly, the appropriate standard of review for such a denial of relief. I would review the district court's denial of relief here only for an abuse of discretion and would find the denial here was not an abuse of discretion.

When questions are framed in terms of "jurisdiction," as was the case here, appellate courts are accustomed to thinking in terms of firm rules of law and de novo review. See generally, e.g., *Village of DePue v. Exxon Mobil Corp.*, 537 F.3d 775, 782 (7th Cir. 2008) (applying de novo review to denial of motion to remand to state court). Closer to this case, the same tends to be true when considering the scope of a district court's power to take certain actions after a case has been closed, whether by a final judgment or, as in this case, a voluntary dismissal. See *Continental Indemnity Co. v. BII, Inc.*, 104 F.4th 630, 636 (7th Cir. 2024) (reviewing denial of request for post-judgment ancillary enforcement of judgment); *Philos Technologies, Inc. v. Philos & D, Inc.*, 802 F.3d 905, 911 (7th Cir. 2015) (grants of relief under Rule 60 generally reviewed for abuse of discretion, but de novo review applied to grant of Rule 60(b)(4) motion challenging a judgment as void for lack of personal jurisdiction).

In fact, though, on a number of questions framed in terms of "jurisdiction," a district court has substantial discretion. Examples include whether to exercise supplemental jurisdiction under 28 U.S.C. § 1367, whether to exercise jurisdiction under the Declaratory Judgment Act, 28 U.S.C. § 2201, and perhaps whether to exercise ancillary jurisdiction over an effort to enforce a federal judgment, at least where the enforcement would require the court to decide the merits of a separate and substantial dispute that could be heard just as well in another forum. See *Continental Indemnity*, 104 F.4th at 636–37 (collecting cases).

I suggest that the question here—whether to adjudicate Midwest's claim for attorney fees under the terms of the parties' contract, which may or may not be void and unenforceable—may be another of those matters best committed to the sound discretion of a district court. The district court is most familiar with the case, the parties, history, and other avenues for resolving their dispute, such as in this case a separate breach-of-contract action in the Illinois state courts.

SCUDDER, *Circuit Judge*, concurring. Like Judge Hamilton, I write to offer perspective on a question that our decision does not answer. Today's holding is limited to the unique factual circumstances and procedural history of the case before us. But I would go further and conclude that, following a plaintiff's Rule 41(a)(1)(A)(i) voluntary dismissal without prejudice, a district court always lacks authority to award attorney's fees pursuant to the terms of a contract underlying the parties' dispute.

"Our basic point of reference when considering the award of attorney's fees," the Supreme Court has emphasized, "is the bedrock principle known as the American Rule: Each litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise." *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 126 (2015) (quoting *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 252–53 (2010)). When a district court awards attorney's fees under a federal statute or federal rule, the court has authority to do so on the basis of federal law.

Relying on its Article I power, Congress created a right to attorney's fees by enacting, for example, 42 U.S.C. § 1988 and Rule 11 (via the Rules Enabling Act). And "a motion seeking an award under any of these rules or statutes," we have explained, "is a case or controversy that may be adjudicated to the extent the movant has suffered at its adversary's hands an injury [that] may be redressed by a decision in its favor." *Citizens for a Better Env't v. Steel Co.*, 230 F.3d 923, 927 (7th Cir. 2000). So Article III, too, "presents no obstacle to fee-shifting." *Id.* at 928. A district court, therefore, retains authority to award attorney's fees where "federal law authorizes the district court to make the award"—even where it lacks jurisdiction to resolve the merits of an underlying claim. See *id.* at 926–28.

Not so for a request for attorney's fees brought pursuant to a contractual fee-shifting provision. The district court derives its authority to award fees in such instances from the contract itself. As this case shows, the question of whether a particular contract allows an award of attorney's fees can itself pull a federal court into determining the contract's validity, interpreting its terms, and enforcing its provisions—all aspects of the merits analysis in a classic breach of contract dispute like the one here. So I fail to see how an award of attorney's fees under a contract is an "independent proceeding[] supplemental to the original proceeding" that "does not signify a district court's assessment of the legal merits," such that it can properly be considered collateral to the underlying dispute. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395–96 (1990) (quoting *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 170 (1939)).

This matters in cases like the one before us because a Rule 41(a)(1)(A)(i) voluntary dismissal divests a district court of its jurisdiction to adjudicate the merits of a breach of contract action. See *Szabo Food Serv., Inc. v. Canteen Corp.*, 823 F.2d 1073, 1078 (7th Cir. 1987). Following a Rule 41(a)(1)(A)(i) dismissal, the contract authorizing the award of attorney's fees is no longer before the federal court—unlike the various federal statutes or rules that empower federal courts to award fees after a case has been terminated.

Yes, this is a question of jurisdiction—a court either has authority to grant the requested relief or it does not. See *Cooter & Gell*, 496 U.S. at 393–95 (framing the issue as whether the district court had "jurisdiction to award attorney's fees"). So, for my part, I do not see why a district court's ability to award fees would turn on the individual facts and circumstances of a given case. Nor do I see the question presented as implicating standards of review. If a district court is without jurisdiction to consider an application for attorney's fees, the court must deny that request. A matter cannot be committed to a court's discretion where federal law has not authorized the district court to undertake the relevant action. See *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause." (quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868))). And the fact that Congress—in unrelated provisions of Title 28—affirmatively vests district courts with jurisdiction over certain actions but, at the same time, provides them discretion in *whether* to exercise it says nothing about a court's jurisdiction to consider the relief requested here: the authority to award fees in the absence of any grant of judicial authority, based on a contract no longer before the court.

While the question must await another day, I would conclude that, following a Rule 41(a)(1)(A)(i) dismissal, a district court cannot award attorney's fees pursuant to a contract underlying the parties' dispute. It lacks the jurisdiction to do so.