

UNREPORTED- NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-1848

In Re:

MICHAEL R. SHEMONSKY,

Appellant

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Misc. No. 03-MC-00008)
District Judge: Honorable Thomas I. Vanaskie

Submitted Under Third Circuit LAR 34.1(a)
September 8, 2003

Before: ALITO, BARRY and ALDISERT, Circuit Judges

(Filed September 19, 2003)

OPINION

PER CURIAM

Michael R. Shemonsky appeals from an order of the United States District Court for the Middle District of Pennsylvania, denying reconsideration of its order barring him

from making any further filings in that Court related to certain matters without prior leave of the Court. We will affirm.

We review the denial of a motion for reconsideration for an abuse of discretion. Koshatka v. Philadelphia Newspapers, Inc., 762 F.2d 329, 333 (3d Cir.1985). “Because an appeal from a denial of a Motion for Reconsideration brings up the underlying judgment for review, the standard of review varies with the nature of the underlying judgment.” McAlister v. Sentry Ins. Co., 958 F.2d 550, 552-53 (3d Cir.1992) (citations omitted). A District Court’s issuance of an order barring future filings is likewise reviewed for abuse of discretion. Abdul-Akbar v. Watson, 901 F.2d 329, 331 (3d Cir. 1990).

District courts in this circuit may issue an injunction under the All Writs Act, 28 U.S.C. § 1651(a), to require litigants who have engaged in abusive, groundless, and vexatious litigation to obtain approval of the court before making further filings. See Brow v. Farrelly, 994 F.2d 1027, 1038 (3d Cir. 1993). However, the District Court must comply with certain requirements when issuing this type of injunctive order against pro se litigants: (1) such an order should only be entered in exigent circumstances, such as when a litigant continuously abuses the judicial process by filing meritless and repetitive actions; (2) the District Court must give notice to the litigant to show cause why the proposed injunctive relief should not issue; and (3) the scope of the injunctive order must be narrowly tailored to fit the particular circumstances of the case. Brow, 994 F.2d at 1038. We find that the District Court met all of these requirements.

The District Court was justified in finding exigent circumstances. Shemonsky's claims relating to Atlantic Financial were dismissed in 1990 in Shemonsky v. Office of Thrift Supervision, 733 F. Supp. 892 (M.D. Pa.), aff'd 922 F.2d 833 (3d Cir. 1990). Since that time, Shemonsky has filed at least ten lawsuits in the Middle District, and has also filed suits in the United States District Court for the Eastern District of Pennsylvania, related to the Atlantic Financial claims, and/or his 1994 arrest. Shemonsky has also initiated more than thirty proceedings in this Court. There is no doubt that the series of meritless lawsuits filed by Shemonsky shows an abuse of the court system that, because it is likely to continue, warrants some restriction on his litigating opportunities. Chipps v. United States Dist. Ct. For the Middle Dist. Of Pennsylvania, 882 F.2d 72, 73 (3d Cir. 1989); see also In re Oliver, 682 F.2d 443, 444 (3d Cir. 1982).

The District Court also gave Shemonsky ample notice, issuing an order to show cause on January 1, 2003. Shemonsky had an opportunity to respond, and indeed filed numerous documents following that order. The Court entered its injunction about six weeks later. Thus, the notice requirement was followed.

We further find that the District Court order was properly narrow in scope, enjoining Shemonsky only from making filings in the United States District Court for the Middle District of Pennsylvania, "pertaining to issues previously resolved by this or any other Court re Shemonsky's claims dealing with Atlantic Financial or his 1994 arrest" without prior leave of the Court. As the Court noted, Shemonsky may seek leave "to file a new action, provided he certifies that the claims he wishes to present are new claims,

never before raised and disposed of on the merits in any federal court.” Thus, Shemonsky’s Due Process rights are not infringed by the injunction.

For the foregoing reasons, we will affirm.¹

¹ Shemonsky’s “Motion to Disbar and Permanently Enjoin U.S. Attorney and Ass’t U.S. Attorney” is denied as frivolous.

