

SIXTH CIRCUIT ORDERS REINSTATEMENT OF CWA FINE

The Sixth Circuit Court of Appeals has held that a district court judge lacked the authority to vacate a Clean Water Act (CWA) fine, which had been issued by another judge, *sua sponte* (of his own accord, instead of on motion by a party in the case). In 2000, Alice Pauley, her husband Joseph Morrison (collectively, the Pauleys), and her father, Samuel Pauley, were found liable for trenching, grading, and filling wetlands on Harsens Island, Michigan without a permit, in violation of the CWA. A penalty hearing was set for 2001. Shortly after the ruling, Samuel Pauley quitclaimed his interest in the property at issue to the Pauleys. After selling his interest, he entered into a consent decree with the United States by which he agreed to hire a contractor to restore the property. The consent decree was, however, contingent upon his receiving permission to enter the property, either from the Pauleys themselves or through a court order requiring the Pauleys to allow access. In early 2001, the court ordered the Pauleys to allow a contractor and the United States Army Corps of Engineers (Corps) to access the property.

At the penalty hearing a few weeks later, the court imposed a \$25,000 fine against the Pauleys, citing their long history of noncompliance with the law and false promises to remedy their violations. The court observed the “strong indications that the [Pauleys] were, essentially, stringing the Corps along, and trying to see if...the Corps would simply give up after a period of time.”

Later that year, it became apparent that the Pauleys would not allow access to their property despite the court order requiring them to do so, and the United States filed an emergency motion to enforce the consent decree. The case was assigned to a different judge than the one who had imposed the penalty against the Pauleys. At the hearing on the emergency motion, in an attempt to convince the Pauleys to allow access to the property, the new judge

indicated his distaste for using fines as a coercive tool, and entered an order vacating the civil penalty. The United States appealed that order.

The Sixth Circuit held that the judge had exceeded his authority by vacating the fine. The court noted that the judge's action was tantamount to relieving the Pauleys from a "final judgment," and that such relief is governed by Federal Rule of Civil Procedure 60(b)(6), which provides that "[o]n motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment" for "any...reason justifying relief from the operation of the judgment" (emphasis added). Citing past precedent, the court observed that the phrase "on motion" had been interpreted to limit the use of Rule 60(b)(6) to situations where a party has made a motion for relief from a final judgment. Therefore, the court held, the judge could not vacate the fine in the absence of a motion from the Pauleys.

The court also pointed out that "district courts should not use their authority under Rule 60(b) to reward parties' contempt of prior orders," and noted that "exceptional or extraordinary circumstances" were necessary in order to justify Rule 60(b) relief. While changed circumstances affecting the statutory penalty factors, such as the Pauleys' ability to pay the fine, could have justified the use of Rule 60(b), "the only unusual circumstance present was that the [Pauleys] intransigently refused to comply with the district court's order to allow access to the property for remediation." Instead, the fine had been vacated to induce the Pauleys to comply with the order requiring them to allow access to their property. In the court's eyes, "[v]acating a prior order for the sole purpose of inducing compliance with another order would reward contempt," and, therefore, did not justify Rule 60(b) relief. In closing, the court offered the scathing observation that "[the Pauleys'] blatant refusal to comply with a court order would have warranted contempt proceedings, but certainly not a reward for their obstruction."

Because the vacation of the fine was not warranted under Rule 60(b), the court reversed the judge's order and returned the case to his court for reinstatement of the fine.

United States v. Pauley, 321 F.3d 578 (6th Cir. 2003)

H. Kirk Meadows

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