

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

INFORMAL BRIEF

No. 21-2437, Paul Okanes v. SWIFT, Inc.

1:21-cv-00285-LO-TCB

This informal brief is filed by the appellant, pro se, in accordance with the informal briefing order that was filed on December 30, 2021.

The notice of appeal was filed on December 21, 2021, with the clerk of the U.S. District Court for the Eastern District of Virginia, Alexandria Division.

Review is sought from the United States District Court for the Eastern District of Virginia, Alexandria Division.

The order from which review is sought was entered on December 3, 2021.

Issue 1.

The appellant was not represented in good faith.

Supporting facts and argument.

I retained my former counsel in this case, Mr. Beliles, after I had already filed the original complaint pro se. Mr. Beliles agreed to represent me with the intention of causing my case to be dismissed when the defense filed its pretrial motion to dismiss. I was not represented in good faith.

Mr. Beliles' intent to cause my case to be dismissed, is proved by the following.

The original complaint that I filed pro se obviously alleges a hostile environment of sexual harassment, and the amended complaints that were filed by counsel obviously don't, nor do they allege a quid pro quo. The claims for hostile environment and quid pro quo in the amended complaints were designed to be struck down.

Furthermore, Mr. Beliles silenced my objections to the omission of my allegations from the amended complaints, by lying to me about the role of the amended complaint, and about the role of the original complaint. This is described in the memorandum that accompanied the motion to alter judgment, and it can be proved by email evidence.

After the first amended complaint was dismissed, Mr. Beliles resurrected the case with a motion to reconsider, despite his intention to ultimately cause the case to be dismissed. Mr. Beliles did

RECEIVED
2021 JAN 21 PM 2:08
COURT OF APPEALS
FOURTH CIRCUIT

not have the option of allowing the dismissal of the first amended complaint to stand, because the dismissal was caused by a factual inaccuracy in the first amended complaint. I pointed it out, and I would obviously have tried to get the inaccuracy corrected. The first amended complaint states that the primary period of harassment by Ms. Deshpande was late January to May 9 of 2018, but it was actually late January to May 9 of 2019. That's why the sexual harassment counts were dismissed in the first amended complaint, i.e. the court believed that I was not alleging harassment within 300 days of the filing of my EEOC charge, but that was incorrect.

Issue 2.

The order denying the motion to alter judgment was entered prior to the scheduled hearing for the motion, so information relevant to the motion was suppressed.

Supporting facts and argument.

The order denying the motion to alter judgment was entered on December 3, while the hearing for the motion had been scheduled for December 17. A hearing on the motion was warranted given the strong indications that the plaintiff was not represented in good faith, and given the severe disparity between the allegations in the original complaint filed pro se and the amended complaints filed by counsel. More information relevant to the motion could have been brought out at the hearing, including additional conclusive proof that the appellant was not represented in good faith, and that Mr. Beliles' intent was to cause his client's case to be dismissed.

Specifically, Mr. Beliles attempted to prevent me from appealing any ruling that was unfavorable to me, by advising me that two rulings in the case were not subject to appeal, when in fact they were. This can be proved by email evidence.

After the first amended complaint was dismissed in June, Mr. Beliles filed a motion to reconsider. At that time, I asked him about the deadline to appeal a denial of the motion to reconsider, in case it was denied. He replied:

“There is no appeal to a denial of the motion to reconsider. The motion to reconsider is the appeal to the judge essentially to change his mind. There is only an appeal to a higher court the fourth circuit court of appeals for the overall ruling that already issued.”

When the case was dismissed on November 3, I believed that the ruling dismissing the case was not subject to appeal, due to other emails that Mr. Beliles had sent me earlier. After I had conversations with other attorneys, I emailed Mr. Beliles the following question on November 8:

“Do the rules allow appeal of the judge's dismissal of the proposed second amended complaint?”

He replied by forwarding one of his earlier emails that had caused me to believe the ruling was not subject to appeal, and by making the following additional statement, on November 8:

“I’m forwarding this email I sent you back on June 18, 2021. It addresses your question in your last email, which I sent to you back in June. I don’t believe you can appeal the dismissal of the second amended complaint. I believe there are no more appeal rights. You are free to get a second opinion from another lawyer if you like. I believe even if you had some appeal rights, you would have no realistic shot of winning on appeal on these rulings because it is highly unusual for these rulings to be second guessed by the appellate court, especially one like this ruling unfortunately.”

If the hearing on the motion to alter or amend the judgment had taken place before the ruling on the motion was entered, I would have tried to bring out these additional ways in which I was not represented in good faith.

Issue 3

Mitigating factor for the need to file a second amended complaint.

Supporting facts and argument.

Two amended complaints have been filed in this case. The first was ordered by the court in response to the defense motion for a more definite statement. The second was filed after Mr. Beliles requested leave to amend the complaint to correct the dates of harassment. The number of amended complaints that had already been filed, would have had a bearing on the court’s ruling on the motion to alter judgment, that was entered on December 3. And, there would not have been a second amended complaint in this case, had it not been for irregularities at the EEOC in the handling of my charge of discrimination. This is pointed out in the memorandum that accompanied the motion to alter judgment, and it’s described in the affidavit I made in June. The text of my EEOC charge suggests that none of the harassment described therein occurred within 300 days of filing the charge, but that would not have been the case if the EEOC had not acted improperly in my case. The first amended complaint contains language that allows for harassment by Ms. Deshpande outside the specified primary period. So, if the text of the charge of discrimination had not been influenced by irregularities at the EEOC, the sexual harassment counts in the first amended complaint would not have been dismissed as procedurally barred due to harassment not being alleged within 300 days of filing the charge.

Issue 4

Rule 15(a) states that leave to amend a pleading should be granted by the court “when justice so requires”

Supporting facts and argument.

The ruling that was entered on December 3 denied the appellant’s request for leave to amend the complaint. Rule 15(a) states:

The court should freely give leave when justice so requires [to amend a pleading] I (the appellant) should be granted leave to amend the complaint, in the interest of justice, according to rule 15(a), for the following reasons.

1. I was not represented in good faith by Mr. Beliles, and he deliberately caused my case to be dismissed, and he lied about the law to silence my objections to that effort, and he tried to prevent me from appealing any ruling that was unfavorable to me by telling me that rulings were not subject to appeal when they were.
2. The EEOC did not act in good faith, and tried to sabotage my case in many ways, most of which can be proved, and some of those are referenced in the affidavit I submitted in this case, including the following two, either of which, had it not been done, would have prevented the second amended complaint:
 - a. I was told that documents I provided in the intake interview would be considered part of my charge of discrimination, even if the documents' contents were omitted from the text of the charge itself.
 - b. The initial draft of the charge of discrimination that I received from the EEOC did not include significant allegations of sexual harassment that occurred within 300 days of filing the charge, although in the intake interview it was made clear that such harassment had occurred within 300 days, and that harassment is also described in the documents I provided to the EEOC in the intake interview. When I added those allegations to the charge, I didn't mention the year they occurred, so the year 2018 that I carried forward from the initial draft was assumed to apply to those allegations, which occurred in 2019, within 300 days of filling the charge. The year 2019 was mentioned in the initial draft from the EEOC, but not in the context of significant sexual harassment that occurred within 300 days of filing the charge (February 13 or later).

Relief Requested

I (the appellant) request that the Court of Appeals reverse the ruling that was entered on December 3, 2021, so that leave to amend the complaint is granted, and I can pursue my claim.

After leave to amend the complaint has been granted, I request a pause of three weeks in the case, if possible, so I can try to retain an attorney who will represent me in good faith, and if that's not possible I will proceed pro se.

Prior Appeals

I have filed no other cases in this court.

 January 19, 2022

Paul Okanes - Appellant, pro se

CERTIFICATE OF SERVICE

I certify that on January 19, 2022, I served a copy of this Informal Brief on all parties, addressed as shown below:

Genevieve Claire Bradley
RUTH DONER JACKSON, PLC
8200 Greensboro Drive
Suite 820
McLean, VA 22102

Mr. Sean Michael Gibbons
WILLIAMS MULLEN
P.O. Box 1320
16th floor
Richmond, VA 23218-1320



Signature

