United States Court of Appeals
For the Eighth Circuit

No. 23-1879

Stecklein & Rapp Chartered

Plaintiff - Appellee

v.

Experian Information Solutions, Inc.

Defendant - Appellant

No. 23-2977

Stecklein & Rapp Chartered

Plaintiff - Appellee

v.

Experian Information Solutions, Inc.

Defendant - Appellant

Appeals from United States District Court
for the Western District of Missouri - Kansas City

Submitted: April 9, 2024
Filed: August 28, 2024

Before BENTON, ARNOLD, and STRAS, Circuit Judges.

STRAS, Circuit Judge.

How much is too much in discovery? The district court[1] concluded that Experian Information Solutions crossed the line when it demanded mostly irrelevant information. We affirm, including the decision to award attorney fees for the extra work it created.

I.

Craig and Brianna Dulworth were surprised to learn that Experian, a credit-reporting agency, was reporting an automobile loan as "[d]ischarged through [b]ankruptcy." It had to be a mistake, they thought, because they had reaffirmed the loan and made payments on it for years. Letters pointing out the error did no good.

Desperate to fix their credit report, the Dulworths sued in Indiana state court. They argued that ignoring the letters and failing to "conduct a reasonable reinvestigation" violated the Fair Credit Reporting Act. *See* 15 U.S.C. § 1681i(a)(1)(A). Experian removed the case to federal court, at which point discovery took on a life of its own.

Experian issued subpoenas seeking documents and deposition testimony from the Missouri-based "consumer credit" law firm the Dulworths had hired, Stecklein & Rapp. The requests reached far and wide, from the assistance the firm had provided to the Dulworths to how it structured its business. They even asked about the assistance provided to *other* clients.

---

[1]The Honorable Roseann A. Ketchmark, United States District Judge for the Western District of Missouri.

Rather than answer, Stecklein & Rapp sought relief from the subpoenas in the Western District of Missouri, where its offices were located and "compliance [would be] required." Fed. R. Civ. P. 45(d)(3)(A). The court concluded that the requested materials were "not relevant" to the Dulworths' lawsuit, quashed the subpoenas, and awarded $93,243.50 in attorney fees and costs. Experian challenges both the fee award and the discovery ruling that led to it.[2]

II.

Even in "ancillary proceeding[s]" like this one, when "the main action is pending in a district court outside this [c]ircuit," our review of a ruling quashing a subpoena is for an abuse of discretion. *See Miscellaneous Docket Matter # 1 vs. Miscellaneous Docket Matter # 2*, 197 F.3d 922, 925 (8th Cir. 1999). We will reverse only if the decision "result[ed] in fundamental unfairness." *In re Bair Hugger Forced Air Warming Devices Prods. Liab. Litig.*, 9 F.4th 768, 790 (8th Cir. 2021).

"Broad discovery" is the norm. *See WWP, Inc. v. Wounded Warriors Fam. Support, Inc.*, 628 F.3d 1032, 1039 (8th Cir. 2011). "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case . . . ." Fed. R. Civ. P. 26(b)(1). Although the standard for discovery is broader than for admissibility at trial, the requested information still must clear a "threshold . . . of relevance." *Hofer v. Mack Trucks,*

[2]The fee award gives Experian a continuing financial interest in the outcome. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396 (1990) ("[T]he imposition of . . . attorney's fees . . . is not a judgment on the merits of an action. Rather, it requires the determination of a collateral issue[, which] may be made after the principal suit has been terminated."); *see also Schell v. OXY USA Inc.*, 814 F.3d 1107, 1124 (10th Cir. 2016) ("[A] controversy over attorneys' fees does not become moot simply because the underlying dispute becomes moot on appeal."). For that reason, we can address the otherwise moot discovery dispute. *See Dulworth v. Experian Info. Sols., Inc.*, No. 1:22-cv-00469 (S.D. Ind., May 22, 2024), *appeal docketed*, No. 24-2066 (7th Cir. June 21, 2024).

Inc., 981 F.2d 377, 380 (8th Cir. 1992); *cf.* Fed. R. Evid. 401 (stating that evidence is relevant at trial if "it has any tendency to make a fact" that "is of consequence" to the "determin[ation] [of] the action" any "more or less probable"). That is, it must still be probative of the "claim or defense" that a party is trying to establish, or at least aimed at the discovery of evidence that could be. Fed. R. Civ. P. 26(b)(1); *see Miscellaneous Docket Matter # 1*, 197 F.3d at 925–26 (affirming the district court's conclusion that "an inquiry into voluntary relationships would be irrelevant" because they could not form the basis of a sex-discrimination suit).

The "claim" here was brought by the Dulworths under the Fair Credit Reporting Act, which required Experian to "conduct a reasonable reinvestigation" and respond "if the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency [wa]s disputed by the consumer and the consumer notifie[d] the agency directly, or indirectly through a reseller, of such dispute." 15 U.S.C. § 1681i(a)(1)(A). Experian's defense was that it had no duty to investigate or respond because the Dulworths did not "notif[y] [it] directly, or indirectly through a reseller." In its view, "directly" modifies "notif[y]," meaning that only letters coming *directly* from a "consumer"—not a law firm or someone else—can trigger a duty to act.

The problem is that Experian's reading of the statute is not the most natural one. The word "directly" describes who the letter must *go to*, not where the letter must *come from*. The statute lists two possibilities. One is sending a notice to the agency itself, "without any intervening agency or instrumentality." Webster's Third New International Dictionary 641 (2002) (defining "directly"). The other is "indirectly through a reseller." Nothing, however, says that it must go directly from a consumer's mailbox to the credit agency's post office box or business address.

A letter sent from a law firm like Stecklein & Rapp is still "direct[]" in the sense that it does not go through a reseller first. And contrary to Experian's argument, nothing suggests that by using the word "consumer," Congress intended to do away with the attorney-client relationship by requiring consumers to personally

handle their own credit disputes even after hiring someone else to represent them. Under basic agency law, a letter from a lawyer is good enough. *See Link v. Wabash R.R. Co.*, 370 U.S. 626, 634 (1962) (explaining that "each party is deemed bound by the acts of his lawyer-agent").

The lesson here is that Experian should not have cast its discovery net so wide. *See, e.g.*, *Moses.com Secs., Inc. v. Comprehensive Software Sys., Inc.*, 406 F.3d 1052, 1060 (8th Cir. 2005). Consider the sheer scope of the request, which included documents and deposition testimony about Stecklein & Rapp's "advertising, retention letters, interactions and communications with *other clients*, [and] compensation structure." (Emphasis added). It was not "fundamental[ly] unfair[]," *Moses.com Secs.*, 406 F.3d at 1060, to deny the request rather than allow a "fishing expedition[]" into the firm's internal operations and its relationship with clients other than the Dulworths, *Hofer*, 981 F.2d at 380. Especially when the only information "relevant to [Experian's] . . . defense" was the firm's authority to write letters on their behalf. Fed. R. Civ. P. 26(b)(1).

Compliance with Experian's request would have caused significant "delay and expense," not to mention invaded the "privacy interests of litigants and third parties" like Stecklein & Rapp's other clients. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35 (1984). As the district court put it, the subpoenas posed an "undue burden" precisely because much of the requested information was irrelevant. Fed. R. Civ. P. 45(d)(3)(A)(iv); *see Miscellaneous Docket Matter # 1*, 197 F.3d at 926. Quashing them was well within its discretion.[3] *See Roberts v. Shawnee Mission Ford, Inc.*, 352 F.3d 358, 362 (8th Cir. 2003); *see also Jackson v. Allstate Ins. Co.*, 785 F.3d 1193, 1202 (8th Cir. 2015) (explaining that "frivolous" requests for admission justified a protective order because they suggested an intent "to annoy and burden" the other side).

[3]We deny Experian's request to supplement the record with other irrelevant information. *See Vandevender v. Sass*, 970 F.3d 972, 978 (8th Cir. 2020) (explaining that motions to supplement "are not favored").

III.

Once it did so, the district court had the authority to grant attorney fees for the extra work that Stecklein & Rapp had to pay its outside counsel to do. Under the rule governing subpoenas, the district court "*must* . . . impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees"—when the requesting party fails to "take reasonable steps to avoid imposing [an] undue burden or expense on a person subject to the subpoena." Fed. R. Civ. P. 45(d)(1) (emphasis added).

Experian did not "take reasonable steps" to reduce the burden on Stecklein & Rapp. *Id.*; *see In re Genetically Modified Rice Litig.*, 764 F.3d 864, 871 (8th Cir. 2014); *see also Legal Voice v. Stormans Inc.*, 738 F.3d 1178, 1185 (9th Cir. 2013) (explaining that "failure [to] narrowly . . . tailor a subpoena may be a ground for sanctions"). Some examples are the requests for documents related to the firm's "contracts between [it] and [its] clients" and testimony about "[t]he amount of compensation [it] charged or billed [the Dulworths]" for sending the letters. Complying with them would have required a privilege log to shield attorney-client and other confidential communications and possibly even an accounting to fully explain its "compensation structure." *See In re Mod. Plastics Corp.*, 890 F.3d 244, 251 (6th Cir. 2018) (affirming a Rule 45(d)(1) sanction because the "experienced commercial litigator" should have known that the discovery request "would involve considerable time and resources, implicate significant concerns about customer privacy . . . , and require review for privileged communications"). All for information that would be of little "relevan[ce] to . . . [Experian's] defense." Fed. R. Civ. P. 26(b)(1).

Experian has two counterarguments, but neither leads to the conclusion that the district court abused its discretion. The first one, which questions whether

attorney fees were even an option, confuses two rules.[4] Stecklein & Rapp requested an award of attorney fees under the rule governing subpoena requests, Fed. R. Civ. P. 45(d)(1), not the one focused on failures to cooperate in discovery, Fed. R. Civ. P. 37(b)(2). The subpoena-specific rule expressly recognizes that overly broad requests creating an "undue burden" will trigger an "appropriate sanction [] which may include . . . reasonable attorney's fees." *Id.*

It makes no difference that Experian believes it acted in good faith. For one thing, the district court disagreed. But even if it had come out the other way, there is no good-faith defense for issuing an overly burdensome subpoena. *Cf. Mod. Plastics*, 890 F.3d at 251 (explaining that bad faith is sufficient but not necessary to impose sanctions under Rule 45(d)(1)); *Mount Hope Church v. Bash Back!*, 705 F.3d 418, 429 (9th Cir. 2012) (listing several grounds for sanctions, including "bad faith on the part of the requesting party"). To be sure, good faith can play a role in determining the "appropriate" type and size of the sanction. Fed. R. Civ. P. 45(d)(1). It just does not shield a party who goes too far from receiving one. *See id.*

IV.

We accordingly affirm the judgment of the district court.

---

[4]It does not, however, challenge the overall reasonableness of the $93,243.50 award.