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Assem Abulkhair v. President USA

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12-3358

ASSEM A. ABULKHAIR, Appellant

v.

*PRESIDENT OF THE UNITED STATES OF AMERICA, in his official capacity;
GEORGE W. BUSH, President of the United States, individually;
*ATTORNEY GENERAL UNITED STATES OF AMERICA, in his official capacity;
MICHAEL MUKASEY, individually; *SECRETARY UNITED STATES
DEPARTMENT OF HOMELAND SECURITY, in his official capacity;
MICHAEL CHERTOFF, individually; US CITIZENSHIP AND IMMIGRATION
SERVICES; JOHN THOMPSON, individually and in his capacity as District Director,
Newark Office, U.S. Citizenship & Immigration Services; EMILIO T. GONZALEZ,
individually and in his capacity as Director U.S. Citizenship & Immigration Services;
ROBERT S. MUELLER, III, individually and in his capacity as Director, Federal Bureau
of Investigation; MICHAEL HAYDEN, individually and in his capacity as Director,
Central Intelligence Agency; THE UNITED STATES OF AMERICA

*(Substituted pursuant to Fed. R. App. P. 43(c)(1))

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil No. 2-11-cv-06616)
District Judge: Honorable Jose L. Linares

Submitted for Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
December 6, 2012

Before: SLOVITER, VANASKIE and WEIS, Circuit Judges

(Opinion filed: January 7, 2013)

OPINION

PER CURIAM.

Assem A. Abulhair, proceeding pro se, appeals from the denial of his request for pro bono counsel due to lack of jurisdiction and the denial of his motion for recusal as moot. For the reasons that follow, we will summarily affirm.

I.

The facts being well-known to the parties, we highlight only those that are pertinent to this appeal. Abulhair initiated this civil action in November 2011. His complaint was dismissed by the District Court for failure to state a claim upon which relief may be granted, pursuant to 28 U.S.C. § 1915(e)(2)(B). (Dkt. Nos. 2, 3.) On May 18, 2012, Abulhair filed a notice of appeal, (Dkt. No. 4), a request for pro bono counsel, and a motion for recusal of the trial judge.¹ Relying on Venen v. Sweet, 758 F.2d 117, 120 (3d Cir. 1985), the Magistrate Judge denied Abulhair's request for pro bono counsel. Abulhair appealed to the District Court. (Dkt. No. 12.)

The District Court agreed with the Magistrate Judge that the filing of Abulhair's notice of appeal divested it of jurisdiction over his case. The District Court affirmed the denial of the motion for pro bono counsel and deemed the motion for recusal moot, as no

¹ We summarily affirmed the dismissal of Abulhair's complaint on August 30, 2012. (C.A. No. 12-2476). The primary basis of the recusal motion was that the presiding trial judge was appointed by President George W. Bush, a named defendant. (Dkt. No. 6.)

complaint was pending before the District Court. (Dkt. No. 15.) Now before us is Abulkhair's appeal of the District Court's decision.

II.

Generally, the filing of a notice of appeal confers jurisdiction on this Court and divests the District Court of its control over those aspects of the case involved in the appeal. Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982) (per curiam). Some exceptions to this rule exist, such as when an appeal is taken from a non-appealable order. Venen, 758 F.2d at 121. However, the order dismissing Abulkhair's complaint was unquestionably appealable, and it is well-settled that Abulkhair's appeal of the order dismissing his complaint divested the District Court of jurisdiction over his case. Id.

As such, the District Court properly affirmed the Magistrate Judge's decision denying Abulkhair's request for pro bono counsel due to lack of jurisdiction, as that request was filed after the notice of appeal. We similarly agree with the District Court's decision denying Abulkhair's motion for recusal as moot, given that no active complaint was pending at the time it was filed.²

III.

There being no substantial question presented on appeal, we will summarily affirm the July 11, 2012 order of the District Court. 3d Cir. LAR 27.4 and I.O.P. 10.6.

² We note that the District Court appropriately denied the recusal motion without prejudice in the event that the dismissal of Abulkhair's complaint was reversed on appeal.