

Negative Treatment
Declined to Extend by In re Bradley, 5th Cir.(Tex.), November 11, 2009
248 F.3d 617
United States Court of Appeals,
Seventh Circuit.

HISPANICS UNITED OF DuPAGE COUNTY, et
al., Plaintiffs–Appellees,
v.
VILLAGE OF ADDISON, Illinois,
Defendant–Appellant.

No. 99–2249.

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Argued Sept. 18, 2000.

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Decided April 18, 2001.

Synopsis

Coalition of private parties, and federal government, brought suit against village under Fair Housing Act (FHA). After settlement agreement was reached, and consent decree was approved, 988 F.Supp. 1130, plaintiffs filed motion for restraining order and interpretation and enforcement of decree. Following entry of order which granted motion to extent allowed in open court, the United States District Court for the Northern District of Illinois, Ruben Castillo, J., entered second order which modified initial restraining order to permit village to acquire two properties, and granted motion for interpretation/modification of consent decree to extent stated in open court. Village appealed. The Court of Appeals, Easterbrook, Circuit Judge, held that second order would be construed as one which did not modify or add to consent decree, and which was thus not appealable by village.

Appeal dismissed.

Ripple, Circuit Judge, concurred and filed opinion.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

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Leadership Council for Metropolitan Open Communities, Jennifer Kay Soule, Soule & Bradtke, Mathew J. Piers (argued), Dana H. Sukenik, Gessler, Hughes & Socol, Joan C. Laser, Office of the U.S. Attorney, Civil Division, Chicago, IL, Theresa A. Amato, Citizen Advocacy, Center, Elmhurst, IL, for plaintiffs–appellees.

Barry L. Moss (argued), Moss & Bloomberg, Bolingbrook, IL, Stuart D. Gordon, Zukowski, Rogers, Flood, McArdle & Orr, Chicago, IL, for defendnat–appellant.

Before EASTERBROOK, RIPPLE, and WILLIAMS,
Circuit Judges.

Opinion

EASTERBROOK, Circuit Judge.

Three years ago, in order to settle litigation under the Fair Housing Act, the Village of Addison agreed to restrictions on its redevelopment of several neighborhoods. One part of the ensuing consent decree provides that, before it may undertake redevelopment of the Michael Lane neighborhood, “the Village must develop a new public park and acquire a building for a community center in the neighborhood.” The decree obliges the Village to acquire several identified properties to carry out this plan.

Plaintiffs (a coalition of private parties plus the United States) believe that redevelopment is an all-or-none proposition—and in particular that the Village may not remove any of the identified properties from the rental market until it has acquired all of them for purposes of opening the park and community center. Addison, by contrast, believes that it is entitled to acquire and raze one property at a time, and that its obligations concerning the park are deferred until owners have agreed to sell it all the land it needs. When the Village was on the verge of purchasing and demolishing a subset of the properties mentioned in the decree, plaintiffs asked the district court to bring the plan to a halt. On April 19, 1999, the district court entered this unrevealing order:

Plaintiff’s [sic] emergency motion
for temporary restraining order and
for interpretation and enforcement

of consent decree is granted to the extent allowed in open court.

If the district judge meant this as an interpretation of the existing consent decree (rather than as a new mandatory injunction), then it would have been preferable to use the language of interpretation rather than command (for the consent decree itself does the commanding). If instead this was meant as an independent judicial order, then it does not conform to Fed.R.Civ.P. 65(d), which provides that “every restraining order shall set forth the reasons for its issuance; shall be specific in terms; [and] shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained”. This order mentions no reasons, contains no details, and refers to an oral colloquy that by the time of the order’s issuance had not been transcribed and therefore could not have fleshed out the court’s directions. When asked by Addison’s counsel for details—a reasonable request whether the district judge sought to issue a new order or only to interpret the existing one—the judge closed the proceedings with this comment: “You know, this status hearing is deteriorating. I’ve ruled. I will see you May 7th at 9:30 A.M. Thank you very much.” To avoid trouble the Village stopped dead in its tracks.

After a second hearing the district court entered an order that is slightly more informative but still leaves much to the imagination:

***620** Defendant’s motion to modify the court’s restraining order of 04/19/99 to permit the acquisition of properties known as 193 and 199 Michael Lane, Addison, Illinois is granted. Plaintiffs’ motion for interpretation and/or modification of consent decree in response to the defendant’s motion to modify the court’s restraining order of 04/19/99 is granted to the extent stated in open court.

The first sentence seems favorable to the Village, which as the prevailing party cannot appeal. The second throws a monkey wrench into appellate jurisdiction. If the district

judge just interpreted the consent decree—letting the parties know his sense of their entitlements but not changing their legal obligations—then there is nothing for the Village to appeal. See *Gautreaux v. Chicago Housing Authority*, 178 F.3d 951 (7th Cir.1999); *Bogard v. Wright*, 159 F.3d 1060 (7th Cir.1998). But if the district judge modified the injunction to impose new substantive obligations, then the order is appealable. 28 U.S.C. § 1292(a)(1). And if this order is appealable, then it is also a violation of Rule 65(d). But if it is not appealable (because only an interpretation of the decree), then there is a procedural shortcoming—for district judges are free to provide parties with their thoughts informally, and they need not repeat on every interpretive occasion all of the formalities required when issuing injunctions.

Granting a “motion for interpretation and/or modification of consent decree” to some unspecified extent is Delphic. Did the judge interpret the decree (nonappealable), modify the decree (appealable), or do neither (that is, just afford the parties a window into his thinking)? The order suggests that something of legal significance has occurred (a motion has been granted, which differs from the judge giving the parties a piece of his mind) but does not say what. Rule 65(d) means that the parties need not guess their obligations at peril of contempt sanctions, and it also means that this court should not have to guess what the district court has done. See, e.g., *Schmidt v. Lessard*, 414 U.S. 473, 94 S.Ct. 713, 38 L.Ed.2d 661 (1974); *International Longshoremen’s Association v. Philadelphia Marine Trade Association*, 389 U.S. 64, 74–76, 88 S.Ct. 201, 19 L.Ed.2d 236 (1967). Unfortunately, here the district judge has kept everyone guessing. Even when Rule 65(d) does not require detailed orders, they are helpful to both the parties and the appellate courts. The more complex the subject, the more useful a careful and compact statement of the ruling.

Although we cannot be certain, we think it best under the circumstances to conclude that the district judge has not modified or added to the decree—that the only judicial *order* is the one approving the Village’s purchase of two identified parcels, and the Village cannot appeal from this order because it is not aggrieved by this grant of permission. Reading the district court’s actions as having any other effect would create the clash with Rule 65(d) that we have already mentioned.

Sometimes it is so plain that the district judge meant to *command* something—but so unclear just what—that appellate judges must say that the order is appealable but in violation of Rule 65(d); and unless the content of the

directive can be found in some other writing, the error leads to reversal. See *Chathas v. Local 134 IBEW*, 233 F.3d 508, 512–13 (7th Cir.2000); *Metzl v. Leininger*, 57 F.3d 618 (7th Cir.1995). But if the district judge neither puts pen to paper nor identifies an authoritative document, nothing of legal significance has happened—for oral statements are not judgments and under Rule 65(d) have no legal effect, and until the judge *621 enters something meeting the general description of an injunction or other judgment, the matter remains pending in the district court. See *Bates v. Johnson*, 901 F.2d 1424 (7th Cir.1990); *Bethune Plaza, Inc. v. Lumpkin*, 863 F.2d 525 (7th Cir.1988). A party can no more appeal from a district judge’s ruminations about an existing (and unmodified) decree than it can seek certiorari from statements made at oral argument by appellate judges.

If the district judge had granted plaintiffs’ motion outright, then we could look at that motion to see whether it sought modification, interpretation, or both. The motion’s plea for relief would resolve the jurisdictional question. But the judge did not do this, and although he said that he was granting an unspecified part of the motion we think that the best reading of the context is that the judge meant only to inform the parties of his understanding about the existing decree’s meaning. That spares the parties from any surprise legal obligations and the district court from any concern under Rule 65(d). There is accordingly no new order from which the Village can appeal—and, correspondingly, nothing the district judge said in open court alters the legal obligations imposed by the consent decree. The parties should take the district judge’s oral statements as his view of the decree’s meaning, but until this view leads to a concrete order there is nothing from which either side can appeal.

If the Village believes that the judge’s understanding is incorrect, it may make a motion to modify the decree to reflect its own understanding. If the judge denies that motion, the order will be appealable. 28 U.S.C. § 1292(a)(1); *Bogard*, 159 F.3d at 1065.

The appeal is dismissed for want of jurisdiction.

RIPPLE, Circuit Judge, concurring.

The panel opinion correctly determines that the district court simply interpreted an existing consent decree; the district court did not issue a new mandatory injunction. Therefore, we are without jurisdiction to hear this appeal. I write separately because I believe that we ought to be somewhat more charitable about the district court’s handling of the matter. Characterizing the district court’s action as the interpretation of an existing consent decree is not, in my view, a very close call. Nor do I believe that, in the context in which they were made, we can say that the district court’s remarks were vague or misleading. The administration of a consent decree in a case such as this one is a very difficult task, and the district court conducted the hearing in a manner quite compatible with the delicate nature of these proceedings.

All Citations

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