Automatic Fire Alarm Co. v. Perry

1968 | Cited 0 times | Seventh Circuit | April 1, 1968

Before HASTINGS, Chief Judge, SCHNACKENBERG and SWYGERT, Circuit Judges.

Order

We have before us for consideration five original and separate petitions filed herein, each naming the Honorable Joseph Sam Perry, United States District Judge for the Northern District of Illinois, Eastern Division, as respondent. Each petitioner seeks the issuance of a writ of mandamus against respondent. The five proceedings were ordered consolidated for oral argument and will be treated together in this order.

Each petition was supported by a written memorandum brief and attached exhibits. Respondent filed written answers in response to rules to show cause, supporting memorandum briefs and attached exhibits and appendix. Oral arguments were heard by the court and the petitions were thereupon submitted for decision.

Upon careful consideration of the record and briefs, with supporting documents, filed in this court, the oral arguments made in open court by all parties, and having conferred thereon, the court will enter an order that each of said petitions for a writ of mandamus directed to respondent be denied.

The petitions in each of the five mandamus proceedings all involve orders entered by respondent in Civil Action No. 66-C-2125, entitled Brink's Incorporated, et al. v. Grinnell Corporation, et al ., pending in the United States District Court for the Northern District of Illinois, Eastern Division. This underlying suit below is a private antitrust action brought by plaintiffs, Brink's Incorporated and Brink's Express Company of Canada, Limited, under Sections 4 and 16 of the Clayton Act, 15 U.S.C.A. §§ 15, 26, for treble damages and injunctive relief as a result of alleged violations by defendants of Sections 1 and 2 of the Sherman Act, 15 U.S.C.A. §§ 1,2.

Five corporations, petitioners in the instant proceedings, were named as defendants in the suit below: Automatic Fire Alarm Company of Delaware (AFA), Holmes Electric Protective Company (Holmes), Dominion Electric Protection Company (DEP), Grinnell Corporation (Grinnell) and American District Telegraph Company (ADT).

AFA, Holmes and DEP are, respectively, the petitioners in related proceedings, Nos. 16509, 16510 and 16520. On August 8, 1967, respondent entered the contested orders denying the motions of AFA, Holmes and DEP to dismiss for lack of proper venue. In the alternative, Holmes requested and was

denied a transfer of its part of the case to the United States District Court for the Southern District of New York.

Grinnell and ADT are, respectively, the petitioners in related proceedings, Nos. 16512 and 16521, in which they request transfer of the action below to the Southern District of New York, pursuant to 28 U.S.C.A. § 1404(a).Transfer was denied by respondent.

Extensive briefs and affidavits were filed by all parties prior to the entry of the contested orders. On August 18, 1967, all five petitioners herein filed motions below for reconsideration, and alternatively, for certification of the orders for an interlocutory appeal, pursuant to 28 U.S.C.A. § 1292(b). Oral argument on such motions was heard by respondent, who then requested all parties to file proposed findings and conclusions, which was done. Subsequently, on October 12, 1967, respondent denied the motions to reconsider and for certification.

The several instant petitions for writs of mandamus were thereafter filed in the court.

A full examination of the record and briefs before us in this matter reveals that there was and now is a material and substantial dispute of the material facts in issue. All such disputes were before respondent in his consideration of the questions raised below. These disputed facts directly relate to relevant matters involved in the determination of motions to quash service of process for insufficient service, the resolution of motions to dismiss for lack of proper venue and the consideration of factors pertinent to the right of transfer to another district.

On questions concerning disputed facts, such matters lie within the province of the trial court and, absent clear error by the trier of the facts, we may not exceed the bounds of our jurisdiction by entering into a trial de novo of such factual questions. Mandamus will not lie to reach such a result.

On questions concerning the right to transfer the action to another district, absent a clear and convincing abuse of discretion by the trial court, mandamus will not lie to reach and reverse a denial of transfer below.

The orders challenged in Nos. 16509, 16510 and 16520, denying motions to dismiss for lack of proper venue are interlocutory and generally not appealable. Petitioners here seek to obtain immediate review by mandamus under the All Writs Act, 28 U.S.C.A. § 1651(a). However, "it is clear that only exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy." Will v. United States , 389 U.S. 90, 94 (1967). We fail to find any claim or evidence of "usurpation of power" by respondent; merely an unestablished assertion at best that respondent erred in his rulings. Such a de novo determination by mandamus may not be utilized to avoid piecemeal appeals, Roche v. Evaporated Milk Ass'n , 319 U.S. 21, 31 (1943), the right to the writ not having been shown to be clear and indisputable, Bankers Life & Casualty Co. v. Holland , 346 U.S. 379, 382, 384 (1953), and mandamus having been proscribed by this court in Comfort Equipment Co.

v. Steckler , 7 Cir., 212 F.2d 371 (1954).

The orders challenged in Nos. 16512 and 16521, and, in part in No. 16510, were entered by respondent denying motions filed by petitioners requesting transfer of the action below pursuant to 28 U.S.C.A. § 1404(a). Section 1404(a) reads: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

At the outset, we are compelled to note that Grinnell, in No. 16512, asks us to issue a writ directing respondent "to grant" its motion to transfer, and ADT, in No. 16521, asks for a writ directing respondent "to vacate and reverse" his order denying its transfer motion. Of course, in this respect petitioners request us to do that which we may not do. Platt v. Minnesota Mining & Mfg. Co ., 376 U.S. 240, 245 (1964).

However, aside from the awkwardness of the requests here made, we place the rule attempted to be invoked in its proper context in terms of the statute. "For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer * * *." The action of the district court is not mandatory in nature but is to be resolved in the sound discretion of the district court on the basis of all relevant factors concerning the "convenience of parties and witnesses" and "interest of justice."

Something more than an erroneous decision must be shown, Chicago, Rock Island & Pacific R. v. Igoe , 7 Cir., 220 F.2d 299, 304 (1955); and an abuse of discretion must clearly appear, Sypert v. Miner , 7 Cir., 266 F.2d 196, 199 (1959).

Recognizing as we do that the writ of mandamus is an extraordinary writ expressly designed for use under exceptional circumstances, our examination of the record and the multitude of cases cited by various parties here leads us to the inescapable conclusion that petitioners have failed to carry their burden, and the right to the writ has not been shown to be clear and indisputable. We see no reason, therefore, to further belabor this order with a recitation of the shortcomings of the claims made. We fail to find that respondent usurped any judicial power, committed any clear error as the trier of facts, or was guilty of any clear abuse of discretion in his orders below.

It Is, Therefore, Considered, Ordered and Adjudged by the court that the petitions for writs of mandamus in Nos. 16509, 16510, 16520, 16512 and 16521 be and the same are each hereby denied.