

United States of America, Appellee, v. Mary Sue Hubbard, et al., Church of Scientology of California, Appellant/Intervenor

No. 85-5813

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

259 U.S. App. D.C. 487; 816 F.2d 791; 1987 U.S. App. LEXIS 9453

May 5, 1987, Filed

NOTICE: UNPUBLISHED DISPOSITION - NOT TO BE CITED AS PRECEDENT. SEE LOCAL RULE 8 (f) D.C. CIRCUIT.

PRIOR HISTORY:

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

OPINION: Before ROBINSON and STARR, Circuit Judges, and WRIGHT, Senior Circuit Judge.

MEMORANDUM

The Church of Scientology of California sought to intervene in this closed criminal case to combat a nunc pro tunc docketing of a sentencing memorandum submitted herein by the Government but never made part of the District Court record while the case was ongoing. This status of the memorandum purportedly affects the Church's ability to enjoin its dissemination by the Government. N1 The District Court denied leave to intervene. The sole issue on appeal is whether, for purposes of protesting a retroactive entry on the docket, the Church properly could and should have been permitted to intervene in a criminal case that has run its full course.

n1 See Brief for Appellant at 1-3.

Another case, *Founding Church of Scientology v. Webster*, n2 is one of two civil actions n3 filed by the Church seeking, inter alia, injunctive relief respecting treatment of the sentencing memorandum by the Government. n4 In that case, the Church asserted that certain of its constitutional rights were violated by illegal investigative [*2] tactics of the Government, improper seizure of confidential documents, and subsequent distribution of those documents and related information to the public. Pursuant to Federal Civil Rule 37 (b) (2), n5 the District Court dismissed the action because of the Church's repeated failure to produce a witness for deposition.

n2 Civ. No. 78-107 (D.D.C.)

n3 The other civil action, *Church of Scientology of California v. Linberg*, CV 77-2654 Kn (Mcx) (C.D. Cal.), was dismissed on summary judgment on the ground that dismissal of *Founding Church of Scientology v. Webster* interposed a res judicata bar. See Brief for

Appellant at 2; 9 & n.11, 10; Brief for Appellee at 3, 4 & n.5, 9

n4 See Brief for Appellant at 2 ("[a] principle [sic] issue in these civil damage cases, rests in major part, upon the status of the Memorandum in Aid of Sentencing when it was wrongfully disseminated").

N5 Fed R. Civ. P. 37 (b) (2).

A panel of this court has now upheld the dismissal as an appropriate sanction. n6 Unless a district court directs otherwise, Rule 37(b) (2) operates as an adjudication upon the merits and precludes subsequent prosecution of claims forming the gravamen of the earlier suit. [*3] n7 The preclusive effect of the holding in *Founding Church* is made even clearer by an express stipulation in the District Court's order that the dismissal was with prejudice. N8 The Church is thus barred from further asserting the unlawfulness of the Government's dissemination of the sentencing memorandum.

n6 *Founding Church of Scientology v. Webster*, U. S. App.D.C., 802 F.2d 1448 (1986)

n7 See, e.g., *Stebbins v. State Farm Mut. Auto. Ins. Co.*, 134 U.S. App. D.C. 193, 195, 413 F.2d 1100, 1102 (1969) ("since it did not specify otherwise, the [Rule 37] dismissal was an involuntary one; under Rule 41(b), which provides that such a dismissal ... operates as an adjudication upon the merits"); *Nasser v. Isthmian Lines*, 331 F.2d 123 (2d Cir. 1964).

n8 See *Founding Church of Scientology v. Webster*, supra note 6 U.S. App. D.C. at, 802 F.2d at 1450.

It follows that the panel's decision in *Founding Church* renders moot the question whether the Church should have been allowed to intervene in the case before us. The Church's interposition is premised wholly on the effect that public filing of the sentencing memorandum assertedly will [*4] have on civil litigation by the Church. n9 Save for its claim of enhanced ability to challenge dissemination in court actions, the Church has no cognizable interest in blocking augmentation of the District Court's docket by an entry concerning the memorandum. Since *Founding Church* now precludes such actions, no decision by this panel on docketing of the memorandum could benefit the Church.

n9 See Brief for Appellant at 2-3; Reply Brief for Appellant at 2-4.

Inability of a court to provide meaningful relief to a litigant is a classic attribute of a moot proceeding. N10 That such is the immutable situation here is beyond peradventure. We accordingly vacate the District Court's order denying intervention n11 and remand the case to that court for dismissal on the ground of mootness.

n10 See, e.g., *Ashcroft v. Mattis*, 431 U.S. 171, 97 S.Ct. 1739, 52 L.Ed.2d 219 (1977) (failure of plaintiff to appeal liability ruling left plaintiff with only an abstract, nonjusticiable interest in a declaratory ruling as to the legality of a state statute authorizing use of deadly force by police); *In re Mental Bank of Am., Inc.*, 700 F.2d 910, 913 (3d Cir. 1983) (an issue is moot "if reversal of the trial court's order would provide the appellant with no actual, affirmative relief"); *Florida Wildlife Fed'n v. Goldschmidt*, 611 F.2d 547 (5th Cir. 1980). [*5]

n11 See, e.g., *United States v. Muningswear, Inc.*, 340 U.S. 36, 39-40 (1950).

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was briefed and argued by counsel.

Upon consideration thereof, it is

ORDERED by the Court, for the reasons set forth in the accompanying memorandum, that the order of the District Court denying appellant leave to intervene by and hereby is vacated, and that this case be and hereby is remanded to the District Court with instruction to dismiss for mootness.

Per Curiam