

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

WILLIAM FEEHAN,

Plaintiff-Appellee,

Appellate Case No. 22-2704

v.

TONY EVERS, in his official capacity
as Wisconsin's Governor

District Court No. 2:20-cv-01771
District Judge Pamela Pepper

Defendant-Appellant.

**Counsel and Plaintiff's Motion to Dismiss
Defendant Tony Evers's Seventh Circuit Appeal**

Introduction

Counsel for and Plaintiff William Feehan move to dismiss Defendant Tony Evers' appeal to this Circuit because there is no jurisdiction. Defendant's appeal is meritless and was filed to continue harassing and increasing fees and costs to counsel for Plaintiff who represent Mr. Feehan at no charge to him.

As the district court found, Mr. Evers request for sanctions under 28 U.S.C. Section 1927 was barred as a matter of law as without jurisdiction. *See Overnite Transp. Co. v. Chi. Indus. Tire Co.*, 697 F.2d 789, 793-794 (7th Cir. 1983). Defendant Evers brought his motion for sanctions long after all appeals were

disposed—nearly two months after this Circuit ordered the case dismissed as moot and remanded it with instructions to vacate the court’s prior decision. *Feehean v. Evers*, No. 20-cv-1771, E.D. WI (2022), ECF Nos. 95, 97. Under this Court’s controlling precedent, the district court correctly held that it has neither jurisdiction nor authority to entertain the Motion for Sanctions. *Id.* at ECF No. 113. Alternately, she also held sanctions should not be imposed.¹ This appeal should be dismissed upon jurisdictional screening—as a matter of law based on the controlling precedent in *Overnite*. Furthermore, the jurisdictional statement filed by Defendant Evers does not provide jurisdiction, nor does it address substantive issues on appeal.

Background

On December 1, 2020, Plaintiff filed *Feehan*, challenging the integrity of the 2020 presidential election results in Wisconsin. *Id.* at ECF No. 1. Two days later, on December 3, 2020, Plaintiff amended his complaint. *Id.* at ECF No. 9. On December

¹ See *Id.* at pg. 24 “In an abundance of caution, the court notes that if it did have jurisdiction to rule on the motion, it would not have awarded fees under 28 U.S.C. §1927. The court would be hard-pressed to find that the plaintiff unreasonably and vexatiously “multiplied” the litigation; other than the original complaint, the plaintiff filed only eight affirmative pleadings...the court has no basis on which to conclude that the plaintiff was “dilatory” or that he needlessly delayed proceedings; if anything (as the defendant also has argued), the plaintiff was pushing an extremely expedited schedule, which the court and the defendants struggled to accommodate.” See also, *Moss v. Bush*, 828 N.E. 2d 994, 997 (Ohio 2005) “An election contest ... is not a typical lawsuit.” (refusing to sanction Democrats for litigation challenging the 2004 Presidential Election in Ohio for the same kind of alleged vote flipping and computer rigging of voting machines).

9, 2020, eight days from plaintiff's commencement of this action, the court granted defendants' motion to dismiss, denied the plaintiff's motion for injunctive relief as moot, and dismissed the case. *Id.* at ECF No. 83. Judgment was entered on December 10, 2020. *Id.* at ECF No. 85. Plaintiff filed a notice of appeal on December 10, 2020, and an amended appeal on December 15, 2020. *Id.* at ECF Nos. 84, 90. On February 1, 2021, this Court dismissed the case as moot with instructions to vacate the district court's earlier decision as moot. *Id.* at ECF No. 95.

One hundred and twelve (112) days after the Court's Order of Dismissal on December 9, 2020, and two months after the Seventh Circuit dismissed the appeal, defendant/appellant Governor Tony Evers filed a motion for sanctions and to recover attorney fees. *Id.* at ECF No. 97. On August 24, 2022, the district court correctly denied this motion because under Seventh Circuit authority in *Overnite Transp. Co.*, 697 F.2d at 793-794, the court lacks jurisdiction over defendant's motion filed long after the case was closed. *Id.* at ECF No. 113.

About six weeks after this order was issued from the District Court, Defendant filed his Amended Docketing Statement to the Seventh Circuit, *see* Dkt. 3, challenging the court's decision.

Feehan and his counsel, against whom the sanctions are sought, move to dismiss the appeal, because as the lower court correctly determined, "the court lacks jurisdiction over defendant Evers's motion to recover attorney fees." *Feehan* at ECF

No. 113, pg. 2. The controlling law in this Court leaves no room for doubt that when there is no live case or controversy sufficient to give the district court jurisdiction at the time the defendant seeks a sanction order, the district court does not have jurisdiction to grant that order. *Id.* at 23; *see also, Overnite*. This is precisely the circumstance in *Feehan*: the case was dismissed, the matter is closed, and the court lacks jurisdiction over any post-dismissal motions. This appeal should be dismissed as a matter of law. The district court had no jurisdiction, and therefore there is no jurisdiction in this Court—other than to determine it has no jurisdiction.

Argument

The District Court had no jurisdiction over Plaintiff's Motion for Sanctions.

a. Controlling Seventh Circuit Precedent Decides This Issue on Its Face.

Under controlling Seventh Circuit precedent, plaintiff's motion for sanctions may not be considered by the lower court because it lacks jurisdiction over the motion. In *Overnite*, this Circuit held that a party *may not* bring a motion for sanctions after an appeal has been dismissed. 697, F.2d 789, 793-794 (7th Cir. 1983). This Court explains:

In the instant case no motion requesting attorney's fees was filed with either the district court or this court during the pendency of *Overnite's* original appeal on the merits. It was not until two months after this court affirmed the district court's dismissal of the plaintiff's action that the defendant filed its motion for fees and costs. Therefore, since the defendant failed to file a motion before any court requesting attorney's fees while the appeal on the merits was pending, and because the district court did not reserve jurisdiction nor was

jurisdiction expressly reserved by statute, we hold the defendant did not file its motion within a reasonable time and the district court was without jurisdiction to act on the motion. Therefore, the order granting the defendant's motion for attorney's fees is hereby set aside and vacated.

Id.

The law is clear and controlling in this Circuit, and the District Court was correct in determining that it does not have “jurisdiction to decide a sanctions motion after the appellate court has affirmed the district court’s dismissing the case and issued its mandate.” *Feehan* at ECF No. 113, pgs 19-20. Upon plaintiff’s filing of the amended notice of appeal on December 15, 2020 (*Feehan*, ECF No. 90), jurisdiction vested with the Seventh Circuit. *Id.* at 113 at pg 20. This Court issued its mandate on February 23, 2021, vacating the district court’s order and dismissing the case as moot. *Id.* at ECF No. 96.

As the district court explains, it “did not reserve jurisdiction, no statute provided it with post-appeal jurisdiction and no party filed motions regarding the case during the two months the appeal was pending. The defendant filed his motion for fees on March 31, 2021—over a month after the Seventh Circuit issued the mandate. Dkt. No, 97.” *Feehan* at ECF No. 113, pg 20. *Overnite* precludes an award of sanctions under Section 1927 and under the court’s inherent authority. Without a live case or controversy, there is no jurisdiction. *Id.* at pg 23.

b. Any Argument that Overnite is not Controlling Law is Meritless.

This Circuit held in *Overnite* that, once the mandate issues, there is no longer a case or controversy over which the district court may exercise Article III jurisdiction. As the district court pointed out in its order denying defendant's motion, there is no indication from this Circuit that it does not consider *Overnite* to be good law. See *Feehan* at ECF No. 113, pg. 23 (citing *Trump v. The Wisconsin Elections Commission, et al.*, Case No. 20-cv-1785-BHL (E.D. Wis.), Dkt. No. 178, where the same jurisdictional argument set forth by the defendant was rejected.) *Id.* Furthermore, as the district court noted, the Seventh Circuit has cited *Overnite* in several decisions over the past forty years, "including in *Badillo, Knorr Brake Corp.* and, most recently, *Lightspeed Media Corp. v. Smith*, 761 F.3d 699, 707 (7th Cir. 2014) (the appellants were "correct that motions under section 1927 must not be unreasonably delayed," citing *Overnite*). *Id.* *Overnite* was good law when the district court issued its Order Denying Defendant's Motion for Attorney Fees, and it is good law today. *Id.* This appeal must be dismissed as a matter of law for lack of jurisdiction.

Conclusion

Without jurisdiction over a case or controversy, the court may not consider motions set before it. See *Overnite*; See also, *Linder v. Union Pac. R.R. Co.*, 762 F.3d 568, 569 (7th Cir. 2014) (finding that "an order for...lack of [] jurisdiction 'is not reviewable on appeal or otherwise.'") Defendant Evers's last-ditch effort to

harass plaintiff and his counsel with a non-meritorious motion for sanctions *two months* after the case was vacated as moot is unavailing—as is his present appeal. Defendant’s motion was meritless for lack of jurisdiction, and the district court correctly decided this based upon controlling precedent in this Circuit. This Court’s initial screening for issues of jurisdiction was right, and Governor Evers’s response does not and cannot establish it. For these reasons, Plaintiff and his counsel request defendant’s appeal be dismissed as a matter of law.

Respectfully submitted, this 7th day of October, 2022

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Certificate of Service

I hereby certify that on this 7th day of October 2022, the foregoing motion was served electronically on all counsel of record in this matter via electronic mail and the Court's electronic filing system.

/s/ Sidney Powell
Sidney Powell