FILED
United States Court of Appeals
Tenth Circuit

October 27, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

LYNN D. BECKER,

Plaintiff - Appellee,

v.

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, a federally recognized Indian Tribe and a federally chartered corporation; UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE; UTE ENERGY HOLDINGS, LLC, a Delaware LLC,

Defendants - Appellants,

and

JOHN P. JURRIUS,

Movant - Appellee.

No. 22-4022
(D.C. No. 2:16-CV-00958-TC)
(D. Utah)

ORDER

Before **TYMKOVICH**, **KELLY**, **AND EID** Circuit Judges.

This matter is before the court on the *Appellants' Petition for Panel Rehearing and Rehearing En Banc and to Correct Opinion* ("Petition"), and Appellees' *Joint Brief in Opposition to Petition for Rehearing*. Appellants have also filed an *Unopposed Motion to Correct Petition for Rehearing or Rehearing En Banc and to Correct Decision* ("Motion"). Upon careful consideration, we direct as follows.

Pursuant to Fed. R. App. P. 40, Appellants' request for panel rehearing is denied by a majority of the panel. Judge Eid would grant panel rehearing.

The Petition was transmitted to all non-recused judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, the request for rehearing en banc is denied. *See* Fed. R. App. P. 35(f).

Appellants' request for the court to make factual corrections to order and judgment is granted to the extent of the modifications in the attached revised order and judgment. The court's August 8, 2023 order and judgment is withdrawn and replaced by the attached revised order and judgment, which shall be filed *nunc pro tunc* to the date the original order and judgment was filed.

Appellants' Motion is denied as moot.

Entered for the Court,

CHRISTOPHER M. WOLPERT, Clerk

FILED
United States Court of Appeals
Tenth Circuit

August 8, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

LYNN D. BECKER,

Plaintiff - Appellee,

v.

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, a federally recognized Indian Tribe and a federally chartered corporation; UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE; UTE ENERGY HOLDINGS, LLC, a Delaware LLC,

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No. 22-4022
(D.C. No. 2:16-CV-00958-TC)
(D. Utah)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **KELLY**, and **EID**, Circuit Judges.

Lynn Becker and the Ute Indian Tribe have been mired in litigation for over a decade. Mr. Becker's relationship with the Tribe began in 2004, when the Tribe

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

hired him to help market and develop its mineral resources. The Tribe hired Mr. Becker at the recommendation of John Jurrius, who then served as the Tribe's financial advisor. The relationship between the Tribe and both Mr. Jurrius and Mr. Becker eventually soured. According to the Tribe, the two men improperly ingratiated themselves with the Tribe to gain access to tribal assets. It subsequently sued them for, among other alleged wrongdoings, fraud.

The lawsuit resulted in a settlement agreement between Mr. Jurrius and the Tribe. As part of the settlement, Mr. Jurrius agreed that, should he become subject to a legal obligation to disclose tribal records or information produced in connection with his relationship to the Tribe, he would notify the Tribe and discuss good-faith ways to disclose that information. The settlement stipulated that the Tribe and Mr. Jurrius would resolve any controversy over disclosure through arbitration.

The relationship between Mr. Becker and the Tribe remained strained. The Tribe did not come to a similar agreement with him; its claims remain pending in Ute Indian Tribal Court. And in February 2013, Mr. Becker filed a complaint in federal district court against the Tribe alleging, among other things, breach of contract. Mr. Becker's lawsuit faced a series of setbacks across jurisdictions. Continuing litigation between the parties gave rise to the present lawsuit, wherein Mr. Becker sought to enjoin related tribal court proceedings.

To help resolve the new conflict, Mr. Becker subpoenaed Mr. Jurrius. Mr. Becker sought documents and testimony bearing on his independent contractor agreement with the Tribe. The Tribe claimed that Mr. Jurrius's settlement agreement

required him to consult with the Tribe before disclosing sensitive tribal documents. But the parties agreed to a process where Mr. Jurrius could produce documents and provide in-court testimony regarding the settlement agreement, with the Tribe retaining the right to object to the introduction of any disputed materials. Nonetheless, the Tribe initiated arbitration proceedings against Mr. Jurrius, contending he had violated the settlement agreement.

The district court viewed the arbitration as an attempt to frustrate the pending litigation between Mr. Becker and the Tribe by intimidating or punishing a witness—Mr. Jurrius—for complying with legal process—the subpoena. The court subsequently invoked its inherent sanctioning power to order the Tribe to pay the attorney fees Mr. Jurrius and Mr. Becker accumulated litigating proceedings related to the arbitration.

The Tribe appeals that sanction. We consider whether the court abused its discretion by sanctioning the Tribe and denying its motion to reconsider. We identify no erroneous legal or factual determinations underlying either order and affirm the district court.

I. Background

The relationship between Mr. Becker, Mr. Jurrius, and the Tribe spans two decades and three court systems. We have resolved various appeals implicating the parties. *Ute Indian Tribe of the Uintah & Ouray Rsrv. v. Lawrence*, 22 F.4th 892 (10th Cir. 2022); *Becker v. Ute Indian Tribe of Uintah & Ouray Rsrv.*, 11 F.4th 1140 (10th Cir. 2021); *Ute Indian Tribe v. Lawrence*, 875 F.3d 539 (10th Cir. 2017);

Becker v. Ute Indian Tribe of the Uintah & Ouray Rsrv., 868 F.3d 1199 (10th Cir. 2017); *Becker v. Ute Indian Tribe of the Uintah & Ouray Rsrv.*, 770 F.3d 944 (10th Cir. 2014). Those opinions ably recount the long history of litigation; we relay here only those facts relevant to the issues presented.

In short, in February 2013, Mr. Becker sued the Tribe for breach of contract. He sought unpaid fees under his independent contractor agreement with the Tribe. This lawsuit helped spark the chain of appeals cited above involving a range of federal court/tribal court jurisdictional matters. In July 2019, to help resolve some of the pending appeals, we ordered supplemental fact-finding to help us determine (1) where the parties executed the independent contractor agreement, (2) whether the parties to the agreement anticipated that either one would need to perform their duties outside Tribal lands, and (3) where the parties performed their contractual duties.

The district court set an evidentiary hearing for January 6 and 7, 2020 to resolve our questions. In anticipation of the hearing, Mr. Becker filed a notice of intent to serve a subpoena on Mr. Jurrius's attorneys. He sought document production, including materials from Mr. Jurrius's settlement agreement. The Tribe instructed Mr. Jurrius not to produce protected documents without its approval, citing the terms of the arbitration agreement, which reads in relevant part:

> The Parties agree that the terms of this Agreement are strictly confidential, and that neither Party shall disclose this Agreement or its terms to any other person or entity. *If either Party becomes subject to any legal obligation to disclose the existence of the Agreement or its terms*, that Party shall, if lawfully permitted to do so and before making any disclosure, promptly notify the other of the

> fact and the Parties shall promptly discuss in good faith ways in which the Parties can reasonably comply with both the obligation to disclose and the obligations of confidentiality in this Agreement . . . .

App. 1960–61 (emphasis added).

Before the hearing, the Tribe and Mr. Becker came to an agreement: Mr. Jurrius could produce the documents to Mr. Becker's counsel, who would then forward them to the Tribe. Mr. Becker could use the documents unless the Tribe timely objected to them.

At the evidentiary hearing, Mr. Jurrius's counsel expressed concern that the Tribe might retaliate against Mr. Jurrius for testifying. To address this concern, the court invited the Tribe to object to Mr. Jurrius's testimony if it feared prejudicial testimony involving the settlement agreement. During the course of the hearing, the Tribe made several objections on confidentiality grounds; the court overruled each one.

One week after the evidentiary hearing, the Tribe notified Mr. Jurrius that it intended to initiate arbitration. It cited his violation of the settlement agreement's confidentiality requirement, specifically flagging his production of internal tribal documents without disclosing his legal obligation to the Tribe. App. 924. It also alleged past violations of the agreement unrelated to the confidentiality requirement—violations that had occurred over two-and-a-half years earlier. App. 925.

Mr. Becker learned that the Tribe planned to subpoena documents from him and his counsel to aid in the arbitration. In response, Mr. Becker subpoenaed Mr. Jurrius's counsel, seeking evidence that would reveal the extent to which the arbitration related to Mr. Jurrius's participation in the Becker matter. The Tribe moved to quash the subpoena. The court held a hearing on the motion to quash and instructed the Tribe to submit the settlement agreement and its arbitration claims for *in camera* review.

Four days later, the court *sua sponte* ordered the Tribe to show cause (1) why the settlement agreement and arbitration filings should not be made public, and (2) why the Tribe should not be sanctioned for bad-faith abuse of the judicial process by initiating the arbitration proceedings. The court ultimately concluded that the Tribe initiated the arbitration in bad faith after walking through each claim leveled by the Tribe in the arbitration and finding each meritless. It determined that the Tribe intended to either punish Mr. Jurrius for his participation in the evidentiary hearing or intimidate him from testifying in future proceedings. And it invoked its inherent sanctioning power to order the Tribe to pay Mr. Becker and Mr. Jurrius's attorney fees related to the resolution of the issue. This amount would ultimately total $330,272.25.

After the court imposed sanctions, the arbitration panel issued its findings. The panel found that Mr. Jurrius had not violated the settlement agreement by participating in the hearing, citing the agreed-upon procedures between the Tribe and Mr. Becker for handling Mr. Jurrius's documents. App. 2637–38. For the arbitration

panel, it was immaterial that Mr. Jurrius had not taken the first step of alerting the Tribe to his legal obligation. The Tribe ultimately received notice and knowledge of the production and testimony and was given the opportunity to object. The panel either resolved the remaining claims in favor of Mr. Jurrius or kicked them back to the parties for further briefing.

The Tribe petitioned the district court for reconsideration of its judgment in light of the arbitration panel's decision, arguing that the panel did not find all of the claims meritless, which undermined the court's bad-faith finding. But after the Tribe filed its motion, the mandate from one of our earlier decisions issued, requiring the dismissal of the underlying case. The next day, the district court judge recused himself from the proceedings. One week later a substitute district court judge considered the motion and summarily determined that there were no grounds warranting a motion to reconsider, declining to "second-guess the reasoning underlying the district court's firm conclusions." *Becker v. Ute Indian Tribe of Uintah & Ouray Rsrv.*, No. 2:16-CV-00958-TC, 2022 WL 794986, at *1 (D. Utah Jan. 28, 2022).

The Tribe appeals the attorney fees award and the denial of its motion to reconsider.

II. Analysis

The Tribe mounts four key objections to the district court's sanction award: (1) the court lacked jurisdiction to sanction the Tribe, (2) the court did not provide the Tribe with protections required by due process, (3) the court relied upon unsupported

factual findings, and (4) the court failed to tie the attorney fees to the harm the Tribe allegedly caused. Finally, the Tribe claims (5) the district court abused its discretion by denying the Tribe's motion for reconsideration.

A. Sanctions

The Tribe first argues the district court improperly awarded attorney fees. It alleges both legal errors and erroneous factual findings. "We review a court's imposition of sanctions under its inherent power for abuse of discretion. An abuse of discretion occurs when the district court bases its ruling on an erroneous conclusion of law or relies on clearly erroneous fact findings." *Xyngular v. Schenkel*, 890 F.3d 868, 872 (10th Cir. 2018) (internal citations and quotation marks omitted).

1. Jurisdiction on Remand

The Tribe argues the district court acted outside its authority by sanctioning the Tribe under its inherent power. And if the court acted outside its authority, it committed a legal error that would render its imposition of sanctions an abuse of discretion.

Federal courts possess the inherent power to manage proceedings before them and sanction conduct that undermines those proceedings. "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates . . . ." *Anderson v. Dunn*, 19 U.S. 204, 227 (1821). Inherent power is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of

cases." *Link v. Wabash R. Co.*, 370 U.S. 626, 630–31 (1962). Accordingly, district courts can investigate and sanction conduct that is "intended to improperly influence the judicial process." *Xyngular*, 890 F.3d at 873. We have recognized that this power extends so far as to justify sanctioning disruptive *pre*-litigation conduct. *Id*.

The district court's sanction proceedings fit within the well-established inherent power framework. Mr. Becker subpoenaed Mr. Jurrius for information that would help the court "achieve the orderly and expeditious" resolution of our remand order. *Link*, 370 U.S. at 631. In response, the Tribe initiated arbitration proceedings against Mr. Jurrius. While the arbitration proceedings would not take place before the district court, the district court suspected that the proceedings were initiated to "delay[] or disrupt[] the litigation" before it by intimidating or punishing Mr. Jurrius. *Hutto v. Finney*, 437 U.S. 678, 689 n.14 (1978); *cf. Chambers v. NASCO, Inc.*, 501 U.S. 32, 57 (1991) ("[A] party may be sanctioned for abuses of process occurring beyond the courtroom, such as disobeying the court's orders."). That brought the matter squarely within the court's jurisdiction, which extends to the investigation of conduct "intended to improperly influence the judicial process." *Xyngular*, 890 F.3d at 873.

The Tribe, however, argues the district court stepped outside its jurisdiction in three crucial ways. The Tribe first claims that the court unlawfully penalized conduct that took place in connection with an arbitration rather than litigation before the court. It primarily relies on *Positive Software Solutions, Inc. v. New Century Mortgage Corp.*, in which the Fifth Circuit found that a district court lacked inherent

power to sanction a party for her conduct during arbitration proceedings. 619 F.3d 458, 463 (5th Cir. 2010).

To be sure, the Fifth Circuit warned against courts acting as "roving commission[s] to supervise a private method of dispute resolution." *Id.* at 462. But in that case, "the sanctioned conduct took place in connection with the arbitration, not in connection with discovery under the Court's supervision." *Id.* at 461 (internal quotation marks omitted). And in the Fifth Circuit—like the Tenth—a court can only exercise its inherent sanctioning power over conduct in "collateral proceedings that . . . threaten the court's own judicial authority or proceedings." *Id.* at 460–61. *Positive Software Solutions* is therefore unlike this case, where the district court found that the collateral proceeding—the arbitration—threatened the court's own proceedings because the Tribe intended to use the arbitration to intimidate a potential future witness.

The Tribe next claims that the district court acted outside its jurisdiction by adjudicating the "merits" of the arbitration claims. To be sure, the court could not wrest authority to resolve the claims from the arbitration panel. But the court did not do so, nor did it claim to. Instead, the court considered whether the Tribe initiated the arbitration to *intimidate or punish* Mr. Jurrius for his participation before the district court. It evaluated the legal merit of the claims under the theory that, if the claims were frivolous, the Tribe might have brought the suit for an inappropriate reason. The court's analysis formed an important part of its ultimate decision to invoke its inherent sanctioning power.

The Tribe also argues that the limited authority we granted the court on remand did not permit it to facilitate its bad-faith sanctioning proceedings. The court concededly enjoyed only limited authority on remand. We expressly limited its jurisdiction to finding facts important to our resolution of the appeals. App. 2575; *cf. Texaco, Inc. v. Hale*, 81 F.3d 934, 937 (10th Cir. 1996) ("We start from the premise that the scope of the district court's jurisdiction was narrow following remand."). But a limited remand does not extinguish a court's inherent power to "achieve the orderly and expeditious disposition of cases," *Link*, 370 U.S. at 631, or sanction actions that "impugn the district court's integrity," *United States v. Kouri-Perez*, 187 F.3d 1, 7 (1st Cir. 1999). In other words, nothing about the limited nature of a remand limits the court's ability to police activity arising from that remand.[1]

We are satisfied that the district court did not misapprehend its authority.[2]

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[1] We disagree with the dissent's contention that the remanding circuit court panel needed to vest the district court with authority to exercise its inherent power. A court's inherent power is just that: inherent. *See Chambers*, 501 U.S. at 43 ("It has long been understood that certain implied powers must necessarily result to our Courts of justice from the nature of their institution, powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others." (internal quotation marks omitted)). While our limited remand order refined the district court's task, it did not extinguish the court's ability to protect the integrity of its own proceedings; to hold otherwise would create a strange rule welcoming bad behavior from parties whenever a remand order does not plainly empower a court to police that behavior. This conclusion does not unsettle or expand our approach to a court's inherent power. We have consistently recognized its reach and have never suggested that another court can extinguish its force. *See, e.g.*, *United States v. Akers* (10th Cir. 2023), No. 21-3226, draft at 14–18.

[2] The Tribe also argues that, because the court acted outside its scope of authority, it unlawfully denied the Tribe's motion to quash Mr. Becker's subpoena and improperly made the settlement agreement public. Because the remand order did not

2. Procedural Protections

The Tribe also argues that the sanction—attorney fees—constituted what amounts to a criminal sanction, and that the court did not provide the procedural guardrails required for the sanction's imposition. And because the court misapprehended the process it owed the Tribe, it committed a legal error giving rise to an abuse of discretion.

The Supreme Court has established that fee awards which "redress the wronged party for losses sustained"—*i.e.*, are compensatory rather than punitive—need only follow "civil procedures." *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 108 (2017) (internal quotation marks omitted); *see also Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994) ("[C]ivil contempt sanctions . . . may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard."). But a court can only issue awards which "impose an additional amount as punishment for the sanctioned party's misbehavior" pursuant to "procedural guarantees applicable in criminal cases," like findings of fact beyond a reasonable doubt. *Goodyear*, 581 U.S. at 108.

We have previously articulated the procedural requirements for imposing civil penalties. "[T]he basic requirements of due process with respect to the assessment of costs, expenses, or attorney's fees are notice that such sanctions are being considered

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preclude the district court from invoking its inherent power to investigate and sanction bad-faith abuse of the judicial process before it, the district court did not exceed its jurisdiction by facilitating the subpoena and docketing the settlement agreement as regular incidents to litigation.

by the court and a subsequent opportunity to respond." *Dominion Video Satellite, Inc. v. Echostar Satellite, L.L.C.*, 430 F.3d 1269, 1279 (10th Cir. 2005) (quoting *Braley v. Campbell*, 832 F.2d 1504, 1514 (10th Cir. 1987)). And where, as here, "the court intends to consider such sanctions sua sponte, due process is satisfied by issuance of an order to show cause why a sanction should not be imposed and by providing a reasonable opportunity for filing a response." *Campbell*, 832 F.2d at 1515.

The court provided the requisite process. First, the court imposed civil, not criminal, sanctions. The court limited the penalty to payment for "the fees that Becker and Jurrius incurred in prosecut[ing]" the Tribe's initiation of arbitration against Jurrius. App. 1911. The court instructed Mr. Becker and Mr. Jurrius to report fees accrued in connection with specified motions and hearings, and even stopped short of requiring compensation for activity before the arbitration panel itself. In short, the sanction went "no further than to redress the wronged part[ies] for losses sustained" and did not "impose an additional amount as punishment for the sanctioned party's misbehavior." *Goodyear*, 581 U.S. at 108 (internal quotation marks omitted).

Second, the court afforded the protections required for imposing civil penalties: notice and an opportunity to respond. The Tribe objects that the court should have granted a hearing on a piece of evidence the Tribe submitted—an affidavit contending that the Tribe only had legitimate intentions in initiating arbitration—because it appears the court disregarded or discounted it by not

addressing it in its sanctioning order. We are aware of no authority that suggests a district court must hold special hearings on pieces of evidence that it does not weigh as strongly as a party would like.[3]

The Tribe also objects that the court did not provide notice that it planned to consider the merits of the arbitration complaint. If it had known as much, it would have provided more or different evidence. But the court plainly explained that it wanted to determine whether the Tribe initiated the arbitration in "bad-faith." App. 318. The Tribe rightfully suspected that the merits of its claims would be under some scrutiny, because it led its response to the court with the header, "The Court Should Not Sanction the Tribe Because it Initiated the Arbitration . . . To Pursue Legitimate Claims." App. 329. The court not only signaled its interest in the legitimacy of the arbitration claims—the Tribe raised the issue itself.

The court provided the Tribe all the process required: notice and an opportunity to be heard.

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[3] The Tribe cites to *Wilkerson v. Siegfried Ins. Agency, Inc.*, 621 F.2d 1042 (10th Cir. 1980), for the proposition that it is entitled to an evidentiary hearing on the contents of the affidavit. *Wilkerson* was an age discrimination case, wherein we were confronted with an issue on the availability of equitable tolling. In that "particular matter," we decided the question "could not be resolved by summary judgment, and that its resolution require[d] an evidentiary hearing" because of the extent to which the legal question "invariably involve[d] the credibility of the various witnesses," which "is difficult to determine from affidavits, or depositions." *Id.* at 1045. That case does not control here, and at any rate, the district court was well placed to discern the motives of the parties.

3. Findings of Fact

The district court's sanctions hinged on its finding that the Tribe intended to abuse or improperly influence the judicial process. The Tribe argues that the court's finding was clearly erroneous.

We review a district court's finding of fact for clear error. That review is colored by the standard that guided the court's inquiry below. We lack precedent establishing the standard of proof required by a fee-shifting sanction leveled under a court's inherent power. But in the past we have required clear-and-convincing evidence that a litigant acted in bad faith to support a dismissal sanction. *Xyngular*, 890 F.3d at 873–74; *see also FTC v. Kuykendall*, 371 F.3d 745, 754 (10th Cir. 2004) (applying the clear-and-convincing-evidence standard for proof of contempt of court in connection with civil contempt sanctions). And other circuits require district courts to find evidence of bad-faith abuse of the judicial process by clear-and-convincing evidence. *See, e.g.*, *Yukos Cap. S.A.R.L. v. Feldman*, 977 F.3d 216, 235 (2d Cir. 2020). We see no reason why that standard should not apply here.

The clear-and-convincing-evidence standard requires that "evidence places in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable." *United States v. Valenzuela-Puentes*, 479 F.3d 1220, 1228 (10th Cir. 2007) (internal quotation marks omitted). Our clear error review thus requires us to ask whether we are firmly convinced that the district court erred in finding that it was highly probable the Tribe acted in bad faith. *See Koszola v. F.D.I.C.*, 393 F.3d 1294, 1300 (D.C. Cir. 2005).

At the outset, we find it legally proper to equate witness intimidation with bad-faith abuse of the judicial process. The court's inherent power to sanction abuse of the judicial process is justified by a court's interest in "manag[ing] [its] own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers*, 501 U.S. at 43 (quoting *Link*, 370 U.S. at 630–31). Intimidating a potential future witness surely implicates the expeditious resolution of cases. *Cf. Thomas v. Tenneco Packaging Co., Inc.*, 293 F.3d 1306, 1328 (11th Cir. 2002) (finding sanctions under the district court's inherent power supported by the filing of documents "containing remarks that served no purpose other than to harass and intimidate opposing counsel").

The Tribe objects to the conclusion it knew Mr. Jurrius could appear as a witness before the court in future proceedings. *See generally* Appellants' Motion for Judicial Notice, *Becker v. Ute Indian Tribe of the Uintah and Ouray, et al.*, No. 22-4022 (10th Cir.), ECF #10971475 (filed Jan. 24, 2023).[4] If the Tribe knew that Mr. Jurrius would *not* appear before the court again, a witness intimidation theory could not support sanctions. In its motion, the Tribe primarily highlights prior tribal court legal findings that it says proves Mr. Becker's independent contractor agreement is unenforceable. Because of this finding, the logic goes, Mr. Jurrius will have no role in resolving issues arising from Mr. Becker's agreement.

[4] We grant the Tribe's motion for judicial notice.

That is neither here nor there. At the time the Tribe initiated arbitration proceedings—January 27, 2020—the specter of future litigation on remand loomed over the district court. Indeed, two relevant appeals were not resolved until August 3, 2021, *Becker*, 11 F.4th 1140, and another was not resolved until January 6, 2022, *Lawrence*, 22 F.4th 892. As it turns out, neither party would need to call Mr. Jurrius before the District of Utah following the resolution of either appeal. But particularly given the multiplicative quality of the litigation between the parties, had we ordered more factual findings or resolved the issues in a different way, Mr. Jurrius's participation might well have been required.[5] We detect no conceptual or logical problem with the court's theory that the Tribe intended to chill Mr. Jurrius's participation in potential future proceedings.

The district court's finding that the Tribe acted in bad faith to influence the judicial process revolved around four observations. *First*, it found that the arbitration claims leveled against Mr. Jurrius were frivolous. *Second*, it found that the claims were not only frivolous, but misrepresented the terms of the settlement agreement. *Third*, the Tribe initiated the arbitration right after the evidentiary hearing and initially sought $2.5 million in damages, giving the arbitration a retaliatory gloss.

[5] For example, in *Becker*, we ultimately held that the tribal exhaustion rule required the District of Utah to dismiss Mr. Becker's action without prejudice for resolution by the tribal court. 11 F.4th 1140, 1150. But had we agreed with Mr. Becker that the district court properly precluded the tribal court's orders from having preclusive effect and properly enjoined tribal court proceedings, it is possible that Mr. Jurrius's testimony would have been implicated as the district court untangled other issues surrounding Mr. Becker's contract.

And *fourth*, the Tribe amended its complaint to soften and focus its language after the bad-faith show cause order was issued.

To the above observations, we add one more. *Fifth*, the Tribe slept on the lion's share of its arbitration claims for almost two years before bringing them alongside the claims connected to Mr. Jurrius's participation in the evidentiary hearing, suggesting that the Tribe only found interest in bringing the action when it wanted to intimidate Mr. Jurrius.

The district court concluded that the only reason for the Tribe to act in bad faith was to "punish Jurrius for testifying against it and/or to discourage him from testifying in future proceedings in this matter." App. 1910.

To be sure, some of the proceedings are equivocal. For example, Mr. Jurrius failed to abide by the precise procedural mechanisms outlined in the settlement agreement. He did not initially contact the Tribe when subjected to the subpoena, although that problem was eventually resolved. It is also true the arbitration panel might have found that he did not violate the agreement because the Tribe seemingly waived the procedural requirement by agreeing to alternative terms with Mr. Becker's counsel. And we bear in mind the Tribe's contractual and constitutional interests in seeking redress—buttressed by the public policy preference for resolving conflict through arbitration—hanging in the background.

But we review for clear error, not de novo. While we may not be convinced that the bad-faith finding was established by clear-and-convincing evidence on de

novo review, we are also not firmly convinced that the district court was wrong to find as much.

The Tribe resists this conclusion by pointing to several of our cases. For example, they cite to our unpublished decision in *Martin for Estate of Martin v. Greisman*, 754 F. App'x 708 (10th Cir. 2018). In that case, we assessed a district court's invocation of inherent authority to sanction an attorney for bringing a frivolous lawsuit. The Tribe claims the case stands for the proposition that "lack of evidence for a claim does not establish bad faith." Aplt. Br. at 42. In fact, *Greisman* held that lack of evidence, "without more, doesn't establish that counsel brought the claim in bad faith." 754 F. App'x at 713 (citing *Mt. W. Mines, Inc. v. Cleveland-Cliffs Iron Co.*, 470 F.3d 947, 954 (10th Cir. 2006)). The court here did not rely solely on the arbitration claims' frivolousness to impose sanctions; instead, it inferred bad-faith from additional elements, like *when* the Tribe filed its arbitration claims.[6]

The Tribe also argues that the district court relied on "inadmissible" evidence in its bad-faith finding, violating its due process rights. Aplt. Br. at 43. It complains that the district court relied on "statements of counsel in lieu of admissible evidence; purported anonymous statements; hearsay-upon-hearsay and inadmissible lay opinions." *Id.*

[6] For this reason, the Tribe's additional cases also fail to persuade us. *See, e.g.*, *Ctr. For Legal Advocacy v. Earnest*, 89 F. App'x 192, 194 (10th Cir. 2004) (holding that it is not enough to merely "believe" that an adverse litigant's position is unsupported by law to warrant sanctions); *Burkhart v. Kinsley Bank*, 852 F.2d 512, 514–15 (10th Cir. 1988) (holding that Rule 11 sanctions were properly denied where counsel allegedly lacked *only* an argument supported by existing law).

The Tribe cites little to no authority for its argument. Flatly declaring that the court relied on "inadmissible" evidence and gesturing to the whole of the sanction proceedings, without reference to or analysis of the relevant rules, falls short of a meaningful challenge. *See* Fed. R. App. P. 28(a)(8)(A) ("The appellant's . . . argument . . . must contain[] appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies"). That is enough to reject the Tribe's challenge, but we note that the weight of precedent cuts against its argument, too. *See, e.g.*, *Jensen v. Phillips Screw Co.*, 546 F.3d 59, 66 n.5 ("We do not suggest that the rules of evidence necessarily apply to factfinding in the context of sanctions. That is not the case."); *Cook v. American S.S. Co.*, 134 F.3d 771, 775 (6th Cir. 1998) (finding the argument that a court violates due process by failing to apply the Federal Rules of Evidence when imposing sanctions without merit).

The district court—a witness to both parties' interactions—was well situated to weigh the relevant facts. It did not clearly err by finding that the timing and substance of the arbitration claims added up to a bad-faith attempt to intimidate Mr. Jurrius from participating in future proceedings.

4. Attorney Fees Award

Finally, the Tribe argues that the district court abused its discretion by (1) awarding attorney fees unconnected to the harm the Tribe caused and (2) declining to require Mr. Becker and Mr. Jurrius to produce their attorney retainer agreements.

First, the Tribe mounts a legal argument: there needs to be a causal connection between the alleged bad-faith act and the damages, and there is no evidence that the arbitration affected Mr. Jurrius's document production or testimony.

Compensatory damages must "track[] the loss resulting from" the sanctioned wrong. *Goodyear*, 581 U.S. at 108. But that does not mean the damages must reflect the harm the offending party allegedly intended to cause. Indeed, a party is not relieved from sanctions just because it was unsuccessful in undermining the judicial process: we ask whether a party "intended" to abuse the judicial process. *Xyngular*, 890 F3d at 868; *see Enmon v. Prospect Capital Corp.*, 675 F.3d 138, 145 (2d Cir. 2012) (holding that "sanctions may be warranted even where bad-faith conduct does not disrupt the litigation before the sanctioning court," and focusing instead on the purpose behind the activities).

Furthermore, the Supreme Court has expressly permitted an award of attorney fees following a bad-faith finding tethered to the "portion of [a party's] fees that [the party] would not have paid but for the misconduct." *Goodyear*, 581 U.S. at 109 (internal quotation marks omitted). The district court tied the attorney fees to motions practice that would not have occurred but for the arbitration. It listed the motions and hearings related to the arbitration and required the Tribe to pay those fees. The court did not need to find that the arbitration succeeded in intimidating Mr.

Jurrius and tie the damages to Mr. Jurrius's absence or hesitancy to participate in future proceedings.[7]

Second, the Tribe claims the district court abused its discretion by denying the Tribe's Rule 54(d)(2)(B)(iv) motion to compel Mr. Becker and Mr. Jurrius to produce their attorney retainer agreements. The Tribe explains that they were interested in the retainer agreements because of the disparity in fee amounts requested by the two, the significant fees Mr. Becker claimed for non-lawyer time, the high hourly rates, and the suspicion that Mr. Becker and Mr. Jurrius had contingent fee arrangements with their lawyers.

Under the Federal Rules of Civil Procedure, a motion for attorney fees must "disclose, *if the court so orders*, the terms of any agreement about fees for the services for which the claim is made." Fed. R. Civ. P. 54(d)(2)(B)(iv) (emphasis supplied). The district court denied the Tribe's motion to require production of attorney retainer agreements for Mr. Becker and Mr. Jurrius, reasoning that "[t]he

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[7] Relatedly, the Tribe argues that Rule 54(d)(2)(C) of the Federal Rules of Civil Procedure required the district court to make findings of fact and conclusions of law to accompany its attorney fees award, and that it failed to do so. The Rule sets out: "Subject to Rule 23(h), the court must, on a party's request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c) or 78. The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a)." Fed. R. Civ. P. 54(d)(2)(C). In relation to this rule, the Tribe claims "there is no evidence—and no finding by the district court," that the Tribe's conduct impacted the remand litigation or harmed Mr. Becker or Mr. Jurrius. Aplt. Br. at 45–46. But as explained, the district court found that the Tribe abused the judicial process in bad faith and tied damages to motions practice stemming from that abuse. The Tribe does not explain how, or cite any cases suggesting, that these findings ran afoul of Rule 54(d)(2)(C).

Tribe has not showed good cause for its request, as the attorney fee statements filed by Becker and Jurrius contain and reflect the actual amounts charged in this matter." App. 2043. Rule 54 lodges discretion firmly with the district court judge, and the Tribe cites no case law and develops no argument establishing that the court's reasoning was flawed or otherwise insufficient.

We find no legal errors and no clearly erroneous factual findings underpinning the fee-shifting award. The district court did not abuse its discretion.[8]

B. Motion for Reconsideration

In district court, the Tribe also moved for reconsideration of the sanction order, alleging (1) lack of jurisdiction over the substantive merits of the Tribe's arbitration claims, (2) that the arbitration panel rulings contradicted the court's determination that the claims were meritless, and (3) that the court deprived the Tribe of due process by denying it an opportunity to present arbitration evidence and failing to provide an evidentiary hearing on a supportive affidavit submitted by the Tribe.

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[8] The Tribe also asserts that "the district court failed to provide due process, or even to exercise judicial discretion, in determining the amount of the sanctions imposed, the court simply granting Messrs. Becker and Jurrius the full amount each requested, with no review for reasonableness or a causal link to the alleged bad-faith conduct." Aplt. Br. at 22–23. We cannot agree that the court failed to exercise judicial discretion. At the outset, the court was permitted to "decide issues of liability for fees before receiving submissions on the value of services." Fed. R. Civ. P. 54(d)(2)(c). Even so, the district court plainly reviewed the briefing on attorney fees, as it cited to and recounted the attorney fees affidavits, the Tribe's objections, and Mr. Jurrius's concessions to the Tribe's objections. App. 2474. While the district court's order was short, the Tribe cites to no authority holding that it amounted to a denial of due process or a total absence of discretion.

We review denials of motions to reconsider for abuse of discretion. "Abuse of discretion requires arbitrary, capricious, whimsical or manifestly unreasonable judgment." *United States v. Maldonado-Passage*, 56 F.4th 830, 837 (10th Cir. 2022) (internal quotation marks omitted). "Grounds for reconsideration include changes in controlling law; new, previously unavailable evidence; and clear error or manifest injustice." *Id.*

Strictly speaking, the federal rules do not recognize a "motion to reconsider." *Price v. Philpot*, 420 F.3d 1158, 1167 n.9 (10th Cir. 2005). Because the motion was filed within twenty-eight days of the district court's entry of judgment, we treat it as a Rule 59(e) motion to alter or amend the judgment. And a Rule 59(e) motion "should be granted only to correct manifest errors of law or to present newly discovered evidence." *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997) (internal quotation marks omitted).

The district court did not abuse its discretion by denying the Rule 59(e) motion. As discussed above, the Tribe's first and third objections lack merit. And the arbitration panel's decision did not constitute "newly discovered evidence," nor did it demonstrate that "manifest injustice" had occurred. The arbitration panel's willingness to entertain the Tribe's claims suggested only that another authority might disagree with some of the court's analysis. That does not rise to the exceptional circumstances required to support a Rule 59(e) motion.

Nor did the district court abuse its discretion by failing to exercise discretion by resolving the motion with a short order. The Tribe complains that the court

offered too cursory an explanation of its denial. But courts are not required to march through each argument presented in detail. It was enough for the court to conclude that it had "not misapprehended the facts, a party's position, or the controlling law," "[n]or ha[d] the Tribe shown 'clear error' or 'manifest injustice.'" App. 2475.

III. Conclusion

We affirm the district court.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge