

NOV 23 2010

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD W. LEWIS,

Plaintiff-counter-defendant  
- Appellee,

v.

TYRONE DUFF; LINDA DUFF,

Defendants-counter-claimants  
- Appellants,

and

DAVID ANTONUCCIO; et al.,

Defendants.

No. 08-17314

D.C. No. 3:99-cv-00386-LRH-  
RAM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Larry R. Hicks, District Judge, Presiding

Submitted November 16, 2010\*\*

---

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: TASHIMA, BERZON, and CLIFTON, Circuit Judges.

Tyrone and Linda Duff appeal pro se from the district court's judgment imposing monetary sanctions and entering a pre-filing review order against them under its inherent power. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1135 (9th Cir. 2001); *De Long v. Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990). We vacate and remand.

The district court did not clearly err by finding that the Duffs engaged in bad faith conduct by willfully refusing to appear at hearings and by filing duplicative and frivolous documents, and thus the court had the inherent power to sanction them. *See Gomez v. Vernon*, 255 F.3d 1118, 1133-34 (9th Cir. 2001). The Duffs' contentions that the district court lacked jurisdiction to sanction them or jurisdiction over the action are without merit.

However, we vacate the \$23,149.98 sanction imposed. The sanction was criminal in nature, because it was intended to punish the Duffs for their conduct and to vindicate the court's authority, not solely to compensate plaintiff or coerce the Duffs into compliance with a court order. *See F.J. Hanshaw Enters.*, 244 F.3d at 1137-38. The amount of the sanction was a "serious criminal penalt[y]." *See id.* at 1138. Because the sanction was criminal in nature and the amount was a

“serious” penalty, the Duffs were entitled to the full due process protections of a criminal jury trial, *see id.*, which they did not receive. On remand, the district court may reinstitute criminal sanction proceedings so long as the Duffs are provided the requisite protections. *See id.* at 1141-42. Alternatively, the district court may impose a monetary sanction that is civil in nature or not “serious,” without further proceedings, because the Duffs were previously given adequate notice and an opportunity to be heard. *See Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1110-12 & n.7 (9th Cir. 2005).

We also vacate the entry of the pre-filing review order, because the district court did not comply with the factors set forth in *De Long*. *See* 912 F.2d at 1147-48. On remand, the district court may consider whether to impose a narrowly-tailored pre-filing review order after expressly addressing the relevant factors.

The Duffs shall bear their own costs on appeal.

**VACATED and REMANDED.**