PB Legacy, Inc. v. Am. Mariculture, Inc.: Appellate Court Provides Guidance on Boundaries of Magistrate Judge Authority

Magistrate judges are a crucial part of the federal judiciary. Though deployed in different ways depending on the jurisdiction, generally, they provide much-needed support to district judges in such ways as refereeing discovery disputes, presiding over preliminary matters in criminal proceedings, and ruling on or providing recommendations on dispositive motions.[1] With the consent of the parties, they may even preside over civil matters from beginning of the case up through a jury verdict. But what if a magistrate judge performs the duty of a district judge without consent from the parties? The answer in *PB Legacy, Inc. v. Am. Mariculture, Inc.*, 104 F.4th 1258 (11th Cir. 2024), is that such an occurrence requires a new trial.

Background

TB Food USA, LLC ("TB Food"), was a company engaged in the breeding and sale of shrimp it developed to be more resistant to disease.[2] TB Food contracted with American Mariculture, Inc. ("American Mariculture"), for the use of its grow-out facility. However, per American Mariculture, TB Food failed to hold up its end of the bargain, Importantly, TB Food allegedly did not retrieve its shrimp from American Mariculture's facility on the agreed-upon timeline. Eventually, despite claiming that it would destroy the shrimp, American Mariculture used the shrimp to form its own shrimp company. Predictably, litigation ensued. Eventually, the matter came on for trial.

However, there was a problem. The district judge presiding over the case had immovable travel plans. Though the case was submitted to the jury before the deadline imposed by the court to conclude it, it gradually became clear that deliberations would likely go past the district judge's flight out. The judge held a conference on the matter the day before his scheduled departure and informed counsel that a fellow district judge had agreed to preside for the remainder of the day after he left but that no arrangements had yet been made for the day after that one. The next day, the court presented the parties with a possible solution for the remainder of deliberations—that the magistrate judge could sit and take the verdict:

> THE COURT: Counsel, I've not heard anything from the jury. I wanted to gather because, as you know, although I moved back my flight, apparently, not far enough. I need to be out of here at 3:30. My proposal is that we have the Magistrate Judge who has been assigned to the case take my place in terms of receiving the verdict from the jury. Judge Mizell is available and, of course, can do that. What are your thoughts?

PB Legacy, Inc., 104 F.4th at 1262. The parties agreed:

> MR. BRINSON [Defendants' Counsel]: We actually informally discussed that, Judge, and we're—I think we're fine with that.
>
> MS. THOMPSON [Plaintiff's Counsel]: That is correct, Your Honor. On behalf of PB Legacy, we would have no objection to that. I know that Magistrate Mizell is familiar with the case.
>
> MR. GARGANO: No objection, no.
>
> THE COURT: Okay. I didn't know of any other way, frankly.
>
> MS. THOMPSON: Right.
>
> THE COURT: So, come 3:30, I'll be gone. And if anything happens from that point on, Judge Mizell will be here.

Id.

The magistrate judge presided over the case for three days.[3] During that time, he responded to six jury notes or questions, read the multimillion dollar verdict in favor of the plaintiffs, polled the jury, and denied a request to have the jury clarify its award.[4]

The Appeal

As relevant here, the issue on appeal was whether, as the appellants argued, the magistrate judge played an improper role in the trial.

The manner and extent of a magistrate judge's participation in a judicial proceeding invokes both the general constitutional principles of Article III and the statutory parameters set forth in the Magistrate Judges Act:

> The Federal Magistrates Act provides that "[u]pon the consent of the parties," a magistrate judge "may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court." 28 U.S.C. § 636(c)(1). Consent is a "critical limitation on this expanded jurisdiction." Gomez v. United States, 490 U.S. 858,

> 870, 109 S. Ct. 2237, 104 L.Ed.2d 923 (1989). Indeed, section 636(c) is constitutional in part because it requires that the parties and the district court "consent to the transfer of the case to a magistrate [judge]." Day v. Persels & Assocs., 729 F.3d 1309, 1323 (11th Cir. 2013) (citation and internal quotation marks omitted). Without consent, delegation to a magistrate judge "would violate the constitutional requirement that the judicial power of the United States must be vested in Article III courts." Fowler [v. Jones, 899 F.2d 1088, 1093 (11th Cir. 1990)].

PB Legacy Inc. at 1263.

The court noted that while a district judge may delegate certain "ministerial" tasks, such as accepting a verdict or polling a jury, to a magistrate judge without consent of the parties, consent is required for a magistrate to conduct a "critical stage" of the trial.[5] Relying on circuit precedent, the court identified instructing a jury and responding to jury questions as critical stages of a trial.[6] Therefore, for the magistrate judge's exercise of authority to have been proper, the record would have to reflect consent thereto.

The court noted that there are two types of consent. The more common, preferred practice is the one with which most readers of this piece are familiar: A written statement, considered and filed outside the presence of the court, indicating consent.[7] However, as that did not happen here, these facts presented a potential instance of implied consent. The test for this strain of consent is whether the parties' actions indicated consent:

> In limited circumstances, consent may be implied from the parties' conduct. The Supreme Court has found implied consent when the parties were informed in advance about the scope of a magistrate judge's authority, were "made aware of the need for consent and the right to refuse it," and "still voluntarily appeared to try the case before the Magistrate Judge." [*Roell v. Withrow*, 538 U.S. 580, 586, 590 (2003)]. The doctrine of implied consent—where consent is signaled "through actions rather than words"—is an exception to the ordinary rule that consent to a magistrate judge's exercise of Article III authority must be expressed in writing. *See id.* at 589, 123 S.Ct. 1696; Fed. R. Civ. P. 73(b)(1).

PB Legacy, Inc. at 1263.

The panel held that because the parties had only consented to the magistrate judge's reading of the verdict, instructing the jury by fielding notes and questions and ruling on the motion to clarify the verdict was outside the bounds of the parties' consent.[8] In that vein, Supreme Court precedent cited for the proposition that the parties *did* impliedly consent was held inapplicable: "TB Food insists that consent to the magistrate judge's exercise of Article III authority can be implied from the parties' conduct. But the Supreme Court has found implied consent only when the parties were informed about the scope of the magistrate judge's authority before they expressed consent."[9] By contrast, the magistrate judge performed Article III duties even though the parties in the instant case had only consented to the magistrate judge's completion of a ministerial task for which consent was not actually required. Therefore, the judgment was vacated and remanded for a new trial.

Lessons

It is unclear whether the acts the court determined warranted reversal had any actual effect on the outcome of the trial. Indeed, the court vacated a large jury verdict arrived at after a lengthy trial on the merits and ordered it re-tried, holding that no showing of actual prejudice was necessary.[10] The deep seriousness with which the court treated these errors provides lessons for both courts and practitioners.

As a general matter, courts and parties should ensure that appropriate consent is obtained in all instances in which a magistrate judge will take on something greater than a ministerial task. The risk to the court of losing valuable docket space and to a party of losing a good verdict should be mitigated at all costs.

This decision also makes clear that, on appeal, losing parties involved in trials in which a magistrate judge was involved should make sure the record reflects that binding consent was provided. While whether trial counsel objected is typically a crucial consideration in whether to raise an issue on appeal, appealing parties should note that the *PB Legacy* court reversed despite the issue being raised for the first time on appeal. Therefore, this is that rare argument that may provide a path to victory despite not being raised below.

However, counsel should be aware that there is something of a split of authority on whether issues of magistrate judge consent may be raised for the first time on appeal.*11* Therefore, while counsel practicing in jurisdictions that have foreclosed the raising of such arguments for the first time on appeal may be well-served to give this issue little thought if it was not raised at the trial court level, counsel who practice in a jurisdiction that expressly allows such arguments or one in which the question remains open should certainly at least look into the issue of magistrate judge consent. And though *PB Legacy Inc.* presents a rather specific set of circumstances, arguments relating to magistrate judge consent may come in multiple forms.[12]

Parties who are involved in a case in which a magistrate judge is involved should be attentive to whether the role the magistrate judge is playing is in line with relevant constitutional and statutory principles and the ambit of the parties' consent.

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Though considerations may differ somewhat based on the jurisdiction, what exactly the magistrate judge has done, the manner of consent, whether the case is civil or criminal,[13] etc., it is clear that this issue is a potentially powerful one.

Endnotes

[1]A white paper commissioned by the FBA provides a thorough examination of the role they play. *See* Peter G. McCabe, *A Guide to the Federal Magistrate Judges System*, Federal Bar Ass'n (2016), *available at* https://www.fedbar.org/minnesota-chapter/wp-content/uploads/sites/54/2021/12/A-Guide-to-the-Federal-Magistrate-Judges-System.pdf.

[2]The opinion details a somewhat involved corporate history. The company that actually contracted with American Mariculture was Primo Broodstock ("Primo"), a company owned by two cousins who developed this line of shrimp. However, TB Food USA, LLC, acquired Primo and renamed it PB Legacy, Inc. But despite the case caption and these companies' sharing of counsel, PB Legacy is not actually designated as an appellate party. Therefore, this side of the litigation will be identified as TB Food.

[3]*Id.* at 1262.

[4]*Id.*

[5]*Id.* at 1263 (citing *United States v. Desir*, 257 F.3d 1233, 1238 (11th Cir. 2001) & 28 U.S.C. § 636(b)(3)).

[6]*Id.* (citing *Desir*, 257 F.3d at 1238).

[7]*Id.*

[8]*Id.* at 1264.

[9]*Id.* at 1265 (citing *Roell*, 538 U.S. at 586).

[10]*Id.* ("TB Food finally argues that it was harmless error for the magistrate judge to preside over portions of jury deliberations. But that argument is foreclosed by our precedent. It can never be genuinely harmless for a litigant to be compelled to try some or all his case before a non-Article III judicial officer not entitled to exercise the power of an Article III judge." (cleaned up)).

[11]*See, e.g., Roell*, 538 U.S. at 591 n. 8 (declining to address whether "lack of consent is a 'jurisdictional defect' that can be raised for the first time on appeal"); *Yeldon v. Fisher*, 710 F.3d 452, 453 (2d Cir. 2013) (considering *Roell*, noting that circumstances presented by instant case warranted consideration of non-consent argument for first time on appeal, holding lack of consent is a non-waivable jurisdictional defect, and vacating judgment and remanding for further proceedings); *Booker v. Collins*, 252 F.3d 1357 (5th Cir. 2001) ("For the first time on appeal, Booker contends that the case was not properly referred to the magistrate judge and that the Defendants failed to consent prior to the magistrate judge's grant of partial summary judgment. Even though these contentions are raised now for the first time, we must address them because they implicate the magistrate judge's jurisdiction."); *but see, e.g., Moses v. Sterling Com. (Am.), Inc.*, 122 Fed. Appx. 177, 181 (6th Cir. 2005) (holding argument, raised for first time on appeal, that magistrate consent was not voluntary waived).

[12]For example, if parties have consented to allowing a specific magistrate judge to preside over some aspect of the case, that consent does not necessarily apply to if a different magistrate judge is subsequently assigned to the case. *See, e.g., Kalan v. City of St. Francis*, 274 F.3d 1150, 1152-54 (7th Cir. 2001); *Mendes Jr. Int'l Co. v. M/V Sokai Maru*, 978 F.2d 920, 922-24 (5th Cir. 1992).

[13]The concurrence provides a useful examination of the nuances of magistrate judge consent.