For Opinion See 108 S.Ct. 151

Supreme Court of the United States.
Bill Ross CREAMER, Petitioner,
v.
Michael S. RAFFETY, et al., Respondents.
No. 87-109.
October Term, 1986.
July 18, 1987.

Petition For Writ of Certiorari to the Court of Appeals of the State of Arizona

Petition for Writ of Certiorari
David Rudovsky, Kairys & Rudovsky, 924 Cherry Street, Suite 500, Philadelphia, Pa. 19107, (215) 925-4400, Attorney of Record For Petitioner.
QUESTION PRESENTED FOR REVIEW

Whether the Civil Rights Attorney's Fees Act, 42 U.S.C. § 1988 requires a trial court to state reasons for an award of fees that is substantially less than requested by a prevailing plaintiff in a civil rights action.

***ii** PARTIES TO THE PROCEEDINGS

Petitioner, who was plaintiff below, is Bill Ross Creamer.

Respondents, who were defendants below, are Michael S. Raffety, Jean Raffety, Huey Lee Morris, Ruth Ann Morris, and City of Willcox.

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CASES

***1** To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The petitioner, Bill Ross Creamer, plaintiff-appellant in the court below, respectfully prays that a writ of certiorari***2** issue to review the judgment of the Court of Appeals of the State of Arizona entered in this case on December 26, 1986, affirming the trial court's decision on the issue presented. A Petition for Review was denied by the Arizona Supreme Court on March 24, 1987.

OPINION BELOW

The opinion of the Court of Appeals of Arizona is reproduced at page 2a in the Appendix. The opinion of the Superior Court of Arizona is reproduced at page 7a of the Appendix.

JURISDICTION

The Supreme Court of Arizona denied review of this case on March 24, 1987. On June 2, 1987 Chief Justice William H. Rehnquist granted a Motion For Extension of Time to file this petition to July 22, 1987.

The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. § 1257.

STATUTORY PROVISION INVOLVED

42 U.S.C. § 1988:
Proceedings in vindication of civil rights; attorney's fees
***3** The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this

Title, and of Title “CIVIL RIGHTS,” and of Title

“CRIMES,” for the protection of all persons in the

United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Publio Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevail. ing party, other than the United States, a reasonable attorney's fee as part of the costs.

STATEMENT OF THE CASE

Petitioner commenced this civil rights case in 1980 by filing an action for damages and equitable relief in the Arizona Superior Court. The action presented claims under 42 U.S.C. § 1983 and related state causes of action.

Petitioner claimed that he had been unlawfully arrested, maliciously prosecuted, denied timely bail, subjected to an improper strip search, and denied due process of law with respect to an incident that occurred on January 28, 1980 in the City of Willcox, Arizona.

At about 1 a.m. on that date petitioner was a passenger in an automobile that was stopped by the police because they suspected the driver of driving while intoxicated. Petitioner was arrested when he questioned the officer's right to conduct a search of the automobile and for his refusal to stand at a distance from the car. He was charged with

obstructing a police officer, a misdemeanor under a City ordirnanee.

Petitioner was not searched or frisked at the scene. He was handcuffed in such a manner as to cause severe marks and bruises. At the police station, petitioner was subjected to a strip search and visual body cavity inspection under a policy requiring such searches for *all* incoming prisoners regardless of the charges or any other factors. The search was conducted on a cold cement floor and caused petitioner humiliation and mental anguish.

Because the City of Willcox had failed to establish a bail schedule for violations of City ordinances such as the charge against petitioner (a schedule existed for all other criminal charges) and because the police interfered with petitioner's attempt to contact his family, petitioner was forced to spend the night in custody. He was released the next morning.

On April 2, 1980 petitioner was convicted in magistrate's court, but on trial *de novo* in the Superior Court of Arizona he was acquitted of all charges.

In his civil rights action, petitioner challenged the arrest, strip search, denial of release on bail, and the prosecution. The trial court granted summary judgment to the defendants on the malicious prosecution claim and at trial granted directed verdicts against petitioner on all other counts.

On appeal, the Court of Appeals reversed in part and remanded for a new trial. *Craemer v. Raffety*, 145 Ariz. 34, 699 P.2d 908 (1984). The court ruled that the strip search policy was unconstitutional and directed that the lower court issue an injunction requiring the City to limit the circumstances under which such searches could be conducted. The court also remanded for trial petitioner's claims based on tile failure to have a bail schedule for this offense and for the defendants' arbitrary interference with petitioner's attempts to contact his family to secure release on bail. According to the Court of Appeals, this claim presented valid due process and equal protection issues. 699 P.2d, at 917.

On remand, the trial court granted deelaratory and injunctive relief on the strip search claim. The damages claim was settled for an amount of $5,250.00

Petitioner thereupon filed a Motion for Attorney's Fees and Costs under 42 U.S.C. § 1988 that, as supplemented, requested the following:

1.	Attorney's fees 464.8 hours at $90 per hour, plus 50% contingency miltiplier	$69,720.00
2.	Paralegal fees 89.5 hours at $30 per hour	$ 2,685.00
3.	Costs	$ 6,140,81
	TOTAL	$78,545.81

In support of this motion, petitioner submitted a detailed affidavit of counsel's time, records, and bills.

Defendants opposed the request arguing first, that no fee was appropriate, and second, that if a fee was to be awarded, it should be far less than claimed by petitioner. Litigation of the motion included the testimony of petitioner's counsel, Tony K. Behrens, and two attorneys who testified ae experts for the defendants.

The trial court, after hearing, awarded counsel fees and costs in the amount of $15,000.00.[FN1] No reasons were provided for awarding less than one-fourth of the fee request. The court did not find that the hours expended or the hourly rate were excessive; rather, the trial court adopted a "Proposed Form of Judgment" submitted by the respondents, which in boilerplate fashion stated that the court had considered the legal factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), and that it would award $15,000 in attorney's fee. A. 7a.8a.

> FN1. Since no reasons were given for the fee award, it is im possible to determine whether the trial court rejected petitioner's requested enhancement on the contingency factor. This factor was cited by the court, A. 7a, and if this case is remanded the state courts would have to consider this issue in light of *Pennsylvania v. Delaware Valley Citizen's Council for Clean Air*, 55 LW 5113 (U.S., June 26,1987)

On appeal, the Court of Appeals affirmed the award (as amended to include taxable costs and expenses) and re. jeoted petitioner's claims that the trial court had erred in failing to state reasons for its ruling. The Court of Appeals ruled that where a fee was denied "altogether," reasons must be given, but where a fee is awarded, even if far less than requested, "the trial court is not required to state reasons in support of the award." A. 4a-5a.

The Court of Appeals quite clearly ruled that no reasons had been provided by the trial court. A. 4a. Accordingly, the issue is properly before this Court on this very specific legal question. Respondents made an argument be. low that reasons in fact were provided. First, it was asserted that while the matter was pending, the Court of Appeals directed the trial court to clarify whether, "out-ofpocket expenses were allowed either as costs or otherwise." In response, the trial court purported to state reasons for its fee award. Procedurally, this addition to the record was not proper (since not requested by the Court of Appeals). More important, it was not given any mention or weight by that court. The Court of Appeals decision is based on the understanding that no reasons were provided. In addition, the reasons given are not, we submit, sufficient to meet the requirements under § 1988.

Second, respondents pointed to remarks made by the trial court at the close of the evidentiary hearing. At that point the trial judge merely stated that in light of the nature of the case he was troubled by the amount requested, but that he would probably grant some part of the request. Hearing, Dec. 24, 1985, pp. 87-88. Obviously, these comments during a hearing are not the kind of reasons required by § 1988.

The Supreme Court of Arizona denied review on March 24, 1987. On June 2, 1987, Chief Justice Rehnquist extended the date for filing the Petition for Certiorari to July 22, 1987.

***8** REASONS FOR GRANTING THE WRIT

The Decision Of The Court Of Appeals Of Arizona Is In Conflict With The Applicable Decisions Of This Court And Of The Federal Circuit Courts Of Appeals With Regard To The Proper Interpretation Of 42 U.S.C. § 1988.

One important issue is presented for this Court's consideration whether the Civil Rights Attorney's Fees Award Act, 42 U.S.C. § 1988, requires a trial court to state reasons in support of a decision awarding or denying fees to a prevailing plaintiff.

In this case, petitioner was clearly the prevailing party. He succeeded in obtaining a leading appellate court decision requiring a fundamental Constitutional change in strip search and bodily cavity searches procedures in Arizona. In addition, he received compensation by way of a settlement for the damages occasioned by the strip search and by his post-arrest incarceration.

Petitioner's Motion for Attorney's Fees was seriously contested with regard to the hours expended, the appropriate hourly fee, and the applicability of a contingency enhancement. The trial court expressly found that petitioner was entitled to a fee award, noting that "they did prevail. They did change the status of the law in this State." Hearing, Dec. 24,1985, p. 88. However, after hearing, the trial court made an award of less than one-fourth of that requested by petitioner, and the court failed to provide a single reason for its decision. This action was sustained on appeal; accordingly, unless reviewed by this Court, in civil rights actions in Arizona state courts, trial courts will be under no obligation to provide reasons in adjudicating***9** fee requests under § 1988. This clearly erroneous ruling conflicts with the decisions of this Court and of the Federal Circuit Courts of Appeals.

This Court has made it clear that in exercising its discretion under § 1988, the trial court must provide reasons for its decision. In *Hensley v. Eckerhart,* 461 U.S. 424 (1983) the Court set forth the basic framework for awarding fees. First, the "party seeking an award of fees should submit evidence supporting the hours worked and rates claimed." *Id.* at 433. Based on this evidence, and any other records or evidence in the case, the court should deternline the fee by multiplying the reasonable number of the hours expended by a reasonable hourly fee.

Second, this amount may be adjusted depending on the factor of "results obtained," *id.* at 434, which comes into play most often where a plaintiff has prevailed on less than all of the litigated claims. In making this determination the court may consider the twelve factors of *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714 (5th Cir. 1974), but no precise rule or formula is mandated for all cases.

Third, the trial court has discretion in determining the amount of a fee award, but in exercising this discretion the court must articulate its rationale:
We reemphasize that the district court has discretion in determining the amount of a fee award.

This is appropriate in view of the district court's superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters. *It remains important, however, for the district court to provide a concise but clear explanation of its reasons for the fee award.* When an adjustment is requested on the basis of either the exceptional or limited nature of ***10** the relief obtained by the plaintiff, the district court should make clear that it has considered the relationship between the amount of the fee awarded and the results obtained. *Hensley, supra,* at 437 (Emphasis added).

In *Hensley,* the Court remanded for a further hearing on the fee award, in part because the district court despite having made a "conmendable effort to explain the fee award", *id.* at 438, had not adequately explained the relationship between the award and the actual level of success. The Court ruled that the issue of which claims were actually successfully litigated requires a statement of reasons that is not satisfied "by a mere conclusionary statement that this fee was reasonable in light of the success obtained." *Id.* at 439, n.15.

While *Hensley* contains the most explicit statement on this issue, this Court's decisions in other § 1988 cases also stress the significance of stated reasons in ruling on a fee award. In *City of Riverside v. Rivera,* 477 U.S. 561, 106 S.Ct. 2686 (1986), the Court sustained a fee award in part because of the district court's specific fact findings on the issues of whether (1) the time claimed was reasonably expended, (2) whether the attorneys' performance entitled them to be compensated at prevailing market rates, and (3) whether the award should be adjusted to account for the fact that not all claims were successfully litigated. 106 S.Ct. at 2692-93.[FN2] See also *Pennsyl****11** *vania v. Delaware Valley Citizens' Council for Clean Air,* 55 LW 5113 (June 26, 1987); *Blum v. Stenson,* 465 U.S. 886, 900 (1984) (any upward adjustment of fee based on claim that outcome was of great benefit to class must be based on specific finding of exceptional success).

> FN2. Justice Powell, concurring, stated that affirmance of the fee award was "required by the District Court's detailed findings of fact, which were approved by the Court of Appeals." 106 S.Ct. at 2698.

The federal circuit courts of appeals are nearly unanimous in requiring district courts to state reasons in ruling on fee requests under § 1988 or analogous statutes. See, e.g., *Sargeant v. Sharp,* 579 F.2d 645 (1st Cir. 1978); *Lucero v. Trinidad,* 815 F.2d 1384 (10th Cir. 1987); *Ursic v.*

Bethlehem Mines, 719 F.2d 670 (3rd Cir. 1983); *Maimmamo v. Pittston Co.*, 792 F.2d 1242 (4th Cir. 1986); *Van Ooteghem v. Gray*, 628 F.2d 488 (5th Cir. 1980); *Walje v. City of Winchester*, 773 F.2d 729 (6th Cir. 1985); *Greer v. Holt*, 718 F.2d 206 (6th Cir. 1983); *Murphy v. Kolovitz*, 635 F.2d 662 (7th Cir. 1981); *Jordan v. Mulltnomah Cy.*, 799 F.2d 1262 (9th Cir. 1986); *Gaines v. Dougherty County Board of Education*, 775 F.2d 1565 (11th Cir. 1985); *Crumbaker v. Merit Systems Protection Board*, 781 F.2d 191 (Fed. Cir. 1986). *But cf., Davis v. City of Abbeville*, 633 F.2d 1161 (5th Cir. 1981).

The rationale of these cases is consistent with *Hensley*. Articulation of reasons is necessary to ensure that the standards mandated by this Court in determining fee awards are followed and that discretion is properly applied. Further, an order that does not provide for "a deliberate articulation of its rationale, including some appraisal of the factors underlying the court's decision [does not] allow for [an] informed review of the Court's discretion." *Sargeant v. Sharp*, *supra*, at 647. See also *Ursic v. Bethlehem Mines*, *supra*, at 675; *Van Ootegheem v. Gray*, 628 F.2d 488, 497 (5th Cir. 1980) ("absent specific***12** findings by the district court ... appellate review of the reasonableness of the fee award becomes a task of sheer speculation."); *Thorne v. City of El Scgludo*, 802 F.2d 1131, 1141-42 (9th Cir. 1986). In *Northcross v. Board of Educ. of Memphis City Schools*, 611 F.2d 624, 632 (6th Cir. 1979), the court stated that:

... both the court's findings and its mode of analysis must be clear to enable an appellate court to intelligently review the award. The plaintiffs are entitled to some explanation of the reasoning used to exclude those hours ... and some description of the findings relied upon to find that expenses and billing rates were excessive. Any review of the court's awards in this case would require ... sheer conjecture on our part as we speculate as to reasons why the court might have cut certain documented hours. In fact, it is impossible to tell whether the district judge might not have simply overlooked certain services provided by plaintiffs' attorneys. Certainly no more substantial reason appears in this record.

In this case, petitioner prevailed on appeal on a major issue under the Fourth Amendment, thus limiting the circumstances under which the Arizona police can strip search arrestees. This ruling resulted in an injunction and a new state wide rule of law. A. 9a. Further, petitioner received by way of a settlement $5,250 in damages for his constitutional claims. And while he did not prevail on all of his claims, the record on the attorney's fee motion, including counsel's affidavit and deposition, would surely justify the full fee requested. There is absolutely no way of determining whether the trial court applied the proper standards in reaching its decision. Further, it is not possible to determine which hours may have been discounted or whether the hourly fee was considered excessive.***13** For all the record shows, this award may have been based solely on the theory of proportionality, an approach which was rejected in City of *Riverside v. Rivera. supra.*

This is not to say that based on other evidence before the Court, that the fee request could not be reduced in some respects under the *Hensley* standards. But the court does not meet its responsibilities under *Hensley* by merely holding a hearing and then stating that it has considered the *Johnson Express* factors. It must also provide some reasons for its action, particularly when it reduces a facially valid request by over 75%.

We do not suggest that unnecessarily detailed fact findings or reasons must be given; rather, the court should give reasons sufficient to demonstrate it has considered the evidence in light of the standards under § 1988, that it has in fact applied the proper standards, and that in making the award it has properly determined the appropriate hourly rate, reasonable time expended, and any other factors cognizable under the statute. The decision should state why the award is less than the fee requested.

A grant of certiorari and reversal is particularly important in this case, where a federal civil rights claim was litigated in state court.[FN3] To ensure that the state courts properly adjudicate fee requests under § 1988 it is ***14** important that the decision of the Arizona Court of Appeals be expressly repudiated. An increasing number of these cases are being heard by the state courts and it is critical that they adhere to the standards which govern attorney's fee litigation in such cases.

FN3. The Arizona Court of Appeals noted that it had previously required a trial court to give reasons when it denied a fee award altogether. A. 4a. But the difference between denying a fee and the kind of substantial reduction made in this case is wholly arbitrary.

CONCLUSION

For all of the foreging reasons, it is respectfully requested that this Court issue a writ of certiorari to review the judgment of the Court of Appeals of Arizona.

Creamer v. Raffety
1987 WL 955062 (U.S.)

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