1993 WL 372252
United States District Court, N.D. California.

Jack Wayne FRIEND, et al., Plaintiffs,
v.
Ronald KOLODZIECZAK, et al., Defendants.

No. C 87–0161 MHP. | Sept. 14, 1993.

Opinion

MEMORANDUM AND ORDER RE ATTORNEYS' FEES AND COSTS (ON REMAND)

PATEL, District Judge.

***1** This case is back before this court on remand from the Supreme Court and the Ninth Circuit Court of Appeals for re-examination of the reasonableness of the attorneys' fees award in light of the Supreme Court's recent decision in *Farrar v. Hobby,* 506 U.S. 103, 113 S.Ct. 566 (1992). Plaintiffs also seek fees and costs for time spent defending the fee award and seek interest on the fee award.

Having considered the submissions of the parties, the court re-affirms its original fee award, orders that plaintiffs be awarded fees and costs for time expended defending the fee award, and orders that all fee awards be paid with interest.

BACKGROUND

The facts of this case are treated in detail in this court's previous order of September 29, 1989. Briefly, plaintiffs, a class of all Roman Catholic inmates at Alameda County's North County Jail, brought this suit against county officials under the Civil Rights Act of 1864, 42 U.S.C. § 1983, seeking to secure access to Roman Catholic services and to possess certain sacramental articles (rosary beads and scapulars).

At hearings on cross-motions for summary judgment in October 1988 and March 1989, the parties indicated to the court that all issues regarding inmates' access to religious services had been resolved. Defendants further represented to the court that they were willing to allow inmates to possess rosaries and scapulars, but only under supervision. In September 1989, this court granted defendants' motion for summary judgment on the issue of whether jail officials were required to permit inmates access to rosaries and scapulars at all times, finding that unfettered and unsupervised possession of the sacramental articles was not constitutionally required. *Friend v. Kolodzieczak,* No. C–87–0161 (N.D.Cal. September 29, 1989). At the court's instruction, the defendants put in writing a policy regarding accommodation of inmates' religious needs.

Plaintiffs subsequently brought a motion for attorneys' fees and costs under the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. § 1988. On June 20, 1990, the court granted plaintiffs' motion, awarding $72,445.00 in fees and $6462.22 in out-of pocket costs for the original litigation on the merits; the court furthered ruled that plaintiffs were entitled to fees and costs for time spent litigating the fee award. On July 10, 1990, the court fixed this latter amount at $14,875.50. On July 18, 1990, the court issued an amended order consolidating the previous two orders.

Defendants appealed this court's award of fees to the Ninth Circuit, which affirmed. *Friend v. Kolodzieczak,* 965 F.2d 682 (9th Cir.1992). Defendants then appealed the Ninth Circuit ruling to the Supreme Court, which granted certiorari, vacated the judgment, and remanded the fee award to the Ninth Circuit for consideration in light of *Farrar. Friend v. Kolodzieczak,* 113 S.Ct. 1038 (1993). The Ninth Circuit subsequently remanded to this court with instructions to "re-examine its determination of the reasonableness of the attorneys' fees award" in light of *Farrar. Friend v. Kolodzieczak,* 992 F.2d 243 (9th Cir.1993).

LEGAL STANDARD

***2** Under the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. § 1988, a court may award reasonable attorneys' fees to a prevailing party in a civil rights action. In the absence of special circumstances, a prevailing party should recover reasonable attorneys' fees. *Chalmers v. City of Los Angeles,* 796 F.2d 1205, 1210 (9th Cir.1986), *reh'g denied and opinion amended,* 808 F.2d 1373 (9th Cir.1987) (citing *Hensley v. Eckerhart,* 461 U.S. 424, 429 (1983)).

As an initial matter, a court must first determine whether or not the party seeking fees has "prevailed." In order to qualify as a prevailing party, a plaintiff must obtain some relief on the merits of his claim that materially alters the legal relationship between the parties. *See Texas State Teachers Ass'n v. Garland Independent School Dist.,* 489 U.S. 782 (1989).

Having determined that a civil rights plaintiff is a prevailing party, the court may award reasonable attorneys' fees. In determining the amount of the award, a

court generally should begin by calculating the so-called "lodestar" amount, arrived at by multiplying the number of hours reasonably spent in achieving the results obtained by a reasonable hourly rate. *Gates v. Deukmejian,* 987 F.2d 1392, 1397 (9th Cir.1992). A court may also consider other factors, including the degree of success obtained, and make adjustments to the lodestar accordingly. *See Kerr v. Screen Extras Guild, Inc.,* 526 F.2d 67, 70 (9th Cir.1975) (enumerating the factors that may be considered in adjusting the lodestar amount), *cert. denied,* 425 U.S. 951 (1976).

DISCUSSION

I. Reasonableness of the Fee Award in Light of Farrar

The Supreme Court in *Farrar* did not dramatically alter the law relevant to attorneys' fees awards; instead the Court refined its analysis of the fee award issue while in large part re-affirming its precedents. The *Farrar* decision does not undermine this court's original determination of what constitutes a reasonable fee award in this case.

In *Farrar,* the plaintiffs sued multiple defendants for $17 million but were ultimately awarded only one dollar in damages against a single defendant. *Farrar,* 113 S.Ct. at 570. On the plaintiffs' motion for attorneys' fees under section 1988, the district court awarded over $300,000 in fees, costs, and interest. *Id.* The Fifth Circuit reversed the fee award, holding that plaintiffs could not be considered prevailing parties, given the minimal recovery. *Estate of Farrar v. Cain,* 941 F.2d 1315 (5th Cir.1991).

The Supreme Court affirmed the denial of fees. Although the Court held that the plaintiffs were in fact prevailing parties, *see* note 2 *infra,* the Court found that the plaintiffs were nonetheless not entitled to attorneys' fees, since the only reasonable fee award for such a hollow victory was no award at all.

In reaching this conclusion, the Court reiterated that a court must determine a reasonable fee award in light of the degree of success obtained in the action. *Id.* at 574–75 (*citing Hensley v. Eckerhart,* 461 U.S. 424 (1983)). In certain circumstances, the minimal nature of the party's "success" will compel an award of no fee at all. *Id.* The Court held that in such a case a court may by-pass the initial step of calculating the lodestar fee. The district court's error in *Farrar* was its award of substantial fees "without 'consider[ing] the relationship between the extent of success and the amount of the fee award.' " *Id.* at 575 (citing *Hensley,* 424 U.S. at 438).

***3** The plaintiffs in the instant case achieved far more than the type of "technical" or "de minimus" victory won by the plaintiffs in *Farrar,* and the fee award originally ordered is reasonable.[1] The plaintiffs here requested primarily injunctive relief and were for the most part successful in obtaining the relief that they requested. As this court stated in its original order, "[p]laintiffs achieved the right sought to expanded access to Roman Catholic services and sacraments, and gained explicit, written acknowledgment of the right to at least limited use of rosaries and scapulars." *Friend,* No. C–87–0161 (N.D.Cal. June 20, 1990), at 11. The changes accomplished were the result of the instigation of this lawsuit. This court found that these policies reflected changes in jail policy brought about by plaintiffs' suit and were not, as defendants claimed, pre-existing jail policies. *Id.* at 7. The record establishes that without this action defendants would not have developed the policy ultimately adopted in this case. This result was more than merely "technical"; it "materially alter[ed] the legal relationship between the parties" in a manner that was meaningful and substantial. *Farrar,* 113 S.Ct. at 574.

In making its determination of reasonable fees, this court relied on the same precedent that is re-affirmed in *Farrar.* Specifically, this court noted that *Hensley* dictates that a court consider the overall results achieved by plaintiffs. *See Friend,* No. C–87–0161 (N.D.Cal. June 20, 1990), at 11. Although this court noted in its original ruling that it had granted defendants' motion for summary judgment on the issue of whether jail officials were required to permit inmates unlimited access to rosaries and scapulars at all times, it found then, and re-affirms now, that plaintiffs nonetheless prevailed on a significant portion of the relief sought. After assessing the degree of success achieved by the plaintiffs, this court found that plaintiffs were entitled to recover the fees they requested, equal to 85% of the lodestar amount. *Id.*[2]

The fact that plaintiffs received no monetary relief is of no import, since, unlike the *Farrar* plaintiffs, the primary goal of the plaintiffs in this case was to obtain injunctive relief. *See Pembroke v. Wood County,* 981 F.2d 225, 231 n. 27 (5th Cir.) (distinguishing *Farrar* on this ground), *cert. denied,* 508 U.S. 973, 113 S.Ct. 2965 (1993). Nor is it relevant that plaintiffs obtained the relief they sought through settlement rather than a judgment in their favor. The Supreme Court in *Farrar* reaffirmed the principle relied on by this court in its original fee award that fees may be awarded due to relief obtained through a settlement or consent decree. *See Farrar,* 113 S.Ct. at 503 (citing *Maher v. Gagne,* 448 U.S. 122 (1980)).

In short, there is nothing in *Farrar* that affects this court's original analysis of the reasonableness of the attorneys' fees in this case. Plaintiffs' victory in this case was no pyrrhic victory, as in *Farrar,* but rather was substantial and significant. Thus *Farrar* and the precedents on which it relies dictate that this court follow the "lodestar" method of calculating a reasonable fee award that it did in the first instance, with due consideration given to the degree of success obtained by the prevailing party.[3]

II. ***Plaintiffs' Entitlement to Fees For Hours Expended Defending The Award of Attorneys' Fees.***

***4** Plaintiffs are entitled to compensation for all time reasonably spent defending this court's original orders awarding fees and costs, including time spent unsuccessfully opposing defendants' petition to the Supreme Court for a writ of certiorari. *See Cabrales v. County of Los Angeles,* 935 F.2d 1050, 1052–53 (9th Cir.1991). The fact that plaintiffs lost one battle along their road to ultimate victory does not deprive them of their entitlement to fees and costs for that setback. *Id.*[4]

Plaintiffs have already been awarded fees and costs through the time of the court of appeals ruling on the fee issue. Plaintiffs now claim a lodestar amount of $17,005.00 for time spent litigating the fee award between the time of the court of appeal's ruling and July 9, 1993.[5] Plaintiffs also seek $779.58 in expenses for this time period. *See* Schwartz Dec. at 4; Supp. Schwartz Dec. at 2. Defendants contest this amount and contend that plaintiffs' documentation is inadequate. The court finds that given the total hours expended in this case, plaintiffs' documentation is sufficiently specific to justify an award of fees, and that the number of hours claimed is reasonable for the tasks described. Plaintiffs are therefore entitled to fees and costs in the amounts requested.

III. ***Post–Judgment Interest***

Pursuant to 28 U.S.C. § 1961(a), plaintiffs are entitled to post-judgment interest on judgments "from the date of the entry of the judgment." The statute applies to awards of attorneys' fees and costs under section 1988. *Spain v. Montanos,* 690 F.2d 742, 747–48 (9th Cir.1982).[6] Interest runs from the date that entitlement to fees is secured, rather than from the date that the exact quantity of fees is set. *Finkelstein v. Bergna,* 804 F.Supp. 1235, 1239–40 (N.D.Cal.1992); *see also Perkins v. Standard Oil Co.,* 487 F.2d 672, 674–76 (9th Cir.1973) (post-judgment interest runs from date attorneys' fees are first awarded even though the fee award is later reduced on appeal).

On June 20, 1990, this court entered an order for $72,445.00 in attorneys' fees, plus costs in the amount of $6,462.22, related to plaintiffs' litigation on the merits. In the same order, the court awarded plaintiffs their fees and costs related to the fee award litigation. Although the exact amount of this latter award was not fixed until July 10, 1990, interest on this award, as on the original award, runs from June 20, 1990, the date on which the entitlement to fees was secured. Plaintiffs state, and defendants do not dispute, that the rate of interest under 28 U.S.C. § 1961 on that date was 8.09 percent. Plaintiffs will therefore be awarded interest at this rate.

The court of appeals has previously awarded plaintiffs $17,244.17 for time spent defending this court's fee award through September 17, 1992 (the date on which the Ninth Circuit affirmed the fee award). Plaintiffs are entitled to interest on this amount from the date of that award on September 17, 1992. 28 U.S.C. § 1961; *Finkelstein,* 804 F.Supp. at 1239–40. Plaintiffs state, and defendants do not dispute, that the interest rate under 28 U.S.C. § 1961 on that date was 3.13 percent; accordingly, this court will order interest to be paid at this rate.

CONCLUSION

***5** For the foregoing reasons, the court re-affirms its previous orders and HEREBY ORDERS:

1) that defendants pay the sum of $72,445.00 to plaintiffs as compensation for services rendered in connection with the original litigation;

2) that defendants pay the sum of $6,462.22 to plaintiffs as compensation for costs in the original litigation; and

3) that defendants pay the sum of $14,875.50 to plaintiffs as compensation for services rendered in connection with the fee litigation.

IT IS FURTHER ORDERED:

4) that the foregoing amounts be paid with interest at the rate of 8.09 percent from June 20, 1990;

5) that the amount awarded in fees by the Ninth Circuit ($17,244.17) be paid with interest, at the rate of 3.13 percent from September 17, 1992;

6) that the defendants pay the sum of $17,005.00 to plaintiffs in compensation for services rendered in connection with the defense of the fee award from September 17, 1992 through July 9, 1993; and

7) that defendants pay the sum of $779.58 to plaintiffs for costs incurred in defense of the fee award from September 17, 1992 through July 9, 1993.

IT IS SO ORDERED.

[1] The issue of whether or not plaintiffs are "prevailing parties" is not before this court on remand; the Ninth Circuit order instructed this court to re-examine only the reasonableness of the award. *Friend,* 992 F.2d at 243.

At any rate, *Farrar* clearly does not affect this court's original determination, affirmed by the Ninth Circuit, that plaintiffs prevailed in this case. In fact, the *Farrar* Court's refinements to the prevailing

party analysis make it *easier* for parties to meet this threshold requirement, if anything. In reversing the Fifth Circuit's finding that the plaintiffs were not "prevailing parties," the *Farrar* Court reiterated that a party has prevailed "when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Farrar,* 113 S.Ct. at 573 (citing, *inter alia, Texas State Teachers,* 489 U.S. at 792–93). The Court held that even a plaintiff who is awarded only nominal relief is a "prevailing party" under this definition. *Farrar,* 113 S.Ct. at 573.

In the instant case, as pointed out in this court's original order and as detailed below, plaintiffs achieved substantially all of the results they originally sought in a way that clearly altered the legal relationship between the parties. *See Friend,* No. C–87–0161 (N.D.Cal. June 20, 1990), at 6 (citing, *inter alia, Texas State Teachers,* 489 U.S. at 792–93).

[2] The Ninth Circuit, in affirming this court's fee award, also noted the extent of plaintiffs' success. *See Friend,* 965 F.2d at 684–85. Although the Ninth Circuit's discussion of plaintiffs' success was in the context of analyzing whether plaintiffs qualified as "prevailing parties," as opposed to whether the award was reasonable, the two prongs of the fee award analysis are clearly related.

[3] The court declines defendants' invitation to view this remand as an opportunity for a full-scale re-assessment of the court's initial fee award, including such matters (not raised by defendants at the time of the initial fee award) as whether plaintiffs' attorneys spent too much time on this litigation or exaggerated their hours. This court has already determined in its original orders that plaintiffs' attorneys have submitted sufficiently detailed records to substantiate the number of hours claimed. The court's mission on remand is to re-examine its ruling in light of *Farrar,* not in light of any new or previously litigated claim that defendants wish to raise.

[4] Contrary to defendants' assertion, plaintiffs have not requested fees for their appeal of this court's summary judgment ruling regarding inmates' unsupervised possession of rosaries and scapulars, a claim on which plaintiffs ultimately were unsuccessful.

[5] Plaintiffs calculate this figure based on the following formula:

Amitai Schwartz	51.0 hrs.	x	$275/hr.	=$14,025.00
Sue Ochs	2.5 hrs.	x	$175/hr.	=$437.50
Dennis Farias	8.9 hrs.	x	$150/hr.	=$1,335.00
Antonio Ponvert III	4.0 hrs.	x	$130/hrs.	=$520.00

See Schwartz Dec. at 3 (reflecting time spent through June 18, 1993). Mr. Schwartz spent an additional 2.5 hours (equalling $687.50 at the rate of $275 per hour) in reviewing defendants' opposition to this motion and preparing a reply. *See* Supp. Schwartz Dec. at 1–2.

Plaintiffs' attorneys have increased slightly the hourly rate claimed from the rates accepted by this court in the original fees motion in 1990. *See Friend,* C–87–0161 (N.D.Cal. June 20, 1990), at n. 3 (reflecting a rate of $235 per hour for Mr. Schwartz and $140 per hour for Ms. Ochs). Defendants have not disputed this increase in rates and the court finds the increase reasonable in view of inflation and rising cost of legal services over the past three years.

[6] Although *Spain* addresses only the issue of interest on fees, it follows that costs, as part of the same judgment, are also covered by the post-judgment interest statute. *See R.W.T. v. Dalton,* 712 F.2d 1225, 1234–35 (8th Cir.) (awarding interest on both fees and costs), *cert. denied,* 464 U.S. 1009 (1983).

Parallel Citations

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