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United States District Court, N.D. Illinois, Eastern Division.

JOAN W. Plaintiff,
v.
CITY OF CHICAGO, Defendant

No. 83 C 327. | March 21, 1986.

Opinion

MEMORANDUM OPINION AND ORDER

SUSAN GETZENDANNER, District Judge:

***1** This civil rights action for an unconstitutional strip search is before the court on the plaintiff's motion for attorneys' fees and costs. Plaintiff seeks $39,597.50 in fees for work performed in the district court, taxable costs of $1,916.81, and additional expenses of $302.48. Plaintiff also seeks $15,379.73 in costs and fees for time spent defending her judgment on appeal and $1,725.50 for time spent litigating her entitlement to fees since the filing of the initial fee petition. For the reasons set forth herein, the court awards $49,860.52 in fees and costs.

The chief legal issue involved in this motion is whether the plaintiff "prevailed" on appeal and is therefore entitled to legal fees incurred in defending that appeal. At the close of trial in which liability was conceded, the jury awarded $112,000 in compensatory damages. This court denied the City's motion for judgment notwithstanding the verdict or alternatively a remittitur. On appeal, the City argued that plaintiff's counsel's closing argument warranted a reversal and that the jury's award was so grossly excessive as to justify a new trial or remittitur. The Seventh Circuit held that the closing argument was not reversible error, but directed a remittitur reducing the award to $75,000. Each party was directed to bear its own costs.

The City makes two arguments for a total denial of fees incurred in the appellate portion of this litigation. First is that the Seventh Circuit, in directing each party to bear its own costs, effectively determined that no attorneys' fees could be awarded. In *Ekanem v. Health & Hospital Corp.,* 778 F.2d (7th Cir.1985), the Seventh Circuit explicitly stated that an appellate mandate for each side to bear its own costs does not control whether a subsequent attorney's fee award should be granted. *Id.* at 1257. Therefore this argument is rejected.

The City secondly argues that, because the plaintiff's damage award was reduced on appeal, she cannot be considered the prevailing party on appeal for purposes of § 1988. In order to be considered a "prevailing party," a § 1983 plaintiff need only "succeed on any significant issue in litigation which achieves some of the benefit sought in bringing suit." *Hensley v. Eckerhart,* 103 S.Ct. 1933, 1939 (1983). While the extent of success is a factor to be considered in determining the reasonableness of the fee request, *id.* at 1937 n.3, less than complete success on appeal should no more bar attorneys' fees than would a failure to recover the full amount of damages sought at trial. (The issue of course would be much different had this court ordered a remittitur and had plaintiff then unsuccessfully appealed. *See Buian v. Baughard,* 687 F.2d 859 (6th Cir.1982).)

A decision holding to the contrary is *Levka v. City of Chicago,* 605 F.Supp. 197 (N.D.Ill.1985). In that case, a strip search plaintiff's jury award of $50,000 was reduced to $25,000 on appeal. *Levka v. City of Chicago,* 748 F.2d 421 (7th Cir.1984). When the plaintiff's attorneys (who had already received fees for their trial work) sought further fees for their work on appeal, Judge Shadur denied the request. He noted that the plaintiff, being "worse off" after her appeal, could not be considered the prevailing party on appeal. 605 F.Supp. at 199.

***2** Judge Shadur also stressed, however, that only a single issue was presented on appeal—namely the reasonableness of the damage award—and that the plaintiff was the distinct loser on that issue. Since his earlier fee award was based on the $50,000 judgment, he felt that to increase the fee award for a smaller award would be inexplicable. In this case, by contrast, the damages issue was one of two on appeal, and the City argued that a new trial was required for both reasons. *See Joan W. v. City of Chicago,* 771 F.2d 1020 (7th Cir.1985). The City apparently suggested at oral argument that a remittitur in the range of $52,000 to $77,000 would be appropriate. The request for a new trial was denied, and the size of the remittitur ordered was only $37,000. The resulting award of $75,000 was still the highest strip search judgment collected by a § 1983 plaintiff in this district. (The highest previous award was that of Hinda Hoffman for $60,000. *See Mary Beth G. v. City of Chicago,* 723 F.2d 1263, 1275 (7th Cir.1983).) Thus, plaintiff remained a substantial victor after appeal, and is entitled to attorneys' fees incurred in defending her award.

This leaves the court to assess the reasonableness of the fee request itself. The documentation of the fees is generally adequate, and the rates requested are not

unreasonable given the attorneys' level of experience. The court is nonetheless perturbed by counsel's decision to double team the plaintiff's case at trial with two partners, both of them billing at over $100 per hour. Some of this double teaming is explicable by unique circumstances. After the litigation began, plaintiff realized that she was more comfortable working with a female attorney, and Susan Vance was thereupon brought in on the case. This does not explain, however, why Peter Carey, the male attorney who had earlier handled the case, kept up a full level of involvement, nor can it fully justify saddling the City with a higher fee bill than would ordinarily have been required. Plaintiff's attorneys are charging rates comparable to those that major law firms charge for junior partners, but they have failed to staff this case the way a major firm would. The court therefore finds that of the 259 hours spent in trial preparation, post-trial matters, and work on the initial fee petition, approximately 150 of these hours should have been billed at an associate rate no higher than $80 per hour. Since much pre-trial work was performed by an associate at $60 per hours, the court will leave the fee for pre-trial work undisturbed. Since counsel's billing rates were $120 and $125 per hour, a $42.5 reduction per hour for this time results in a reduction of $6,375.

Similarly, in connection with the appellate work, the court finds that legal research should have been performed by an associate and billed at a rate no greater than $80 an hour. Reducing each attorney's research time as indicated on the first page of plaintiff's supplemental petition would result in a reduction of appellate fees by $2,026.50. The court otherwise finds the appellate fees and expenses to be reasonable, notwithstanding the plaintiff's limited success on appeal.

***3** Finally, the court agrees with the City that reductions are in order for $360 billed for talking to the press; and $300 billed, Invoice No. 09958, for which no explanation is offered. The other particular objections of the City are unpersuasive. Subtracting all of these figures from the plaintiff's total request yields a figure of $49,860.52.

Accordingly, the plaintiff is awarded $49,860.52 in fees and costs under 42 U.S.C. § 1988.

It is so ordered.