1986 WL 7554
Only the Westlaw citation is currently available.
United States District Court, D. Minnesota, Fourth Division.

John Does 1–100, on behalf of themselves and all others similarly situated, Plaintiffs,
v.
Dakota County, Minnesota, a political subdivision, Defendant.

Civ. No. 4–84–378. | Jan. 8, 1986.

Attorneys and Law Firms

Charles S. Zimmerman, Barry G. Reed, Zimmerman, Caplan & Reed, Minneapolis, Minn., for plaintiffs.

Douglas J. Muirhead, Meagher, Geer & Brennan, Minneapolis, Minn., Joseph B. Marshall, Circle Pines, Minn., Martin Burke, Sally Johnson, Faegre & Benson, Minneapolis, Minn., for defendant.

Opinion

MEMORANDUM AND ORDER

MacLAUGHLIN, District Judge.

***1** This matter is before the Court on plaintiffs' motion for an award of interim attorneys' fees. The Court will grant that motion.

FACTS

Plaintiffs, four anonymous individuals, brought this action under 42 U.S.C. § 1983 to challenge the constitutionality of the Dakota County Sheriff's practice of strip searching all persons detained at the Dakota County Jail for traffic offenses, regulatory offenses, bench warrants, and misdemeanors. Plaintiffs sought preliminary and permanent injunctive relief, damages, and certification of a class action. In addition to Dakota County, plaintiffs named as defendants a number of individual Dakota County officials.

In a Memorandum and Order dated July 30, 1985, the Court agreed with plaintiffs' assessment of the strip search policy, and the Court held that this policy violated the fourth amendment. Does v. Boyd, 613 F.Supp. 1514 (D.Minn. 1985). The Court, however, granted summary judgment to the individual named defendants on the basis of qualified immunity under Harlow v. Fitzgerald, 457 U.S. 800 (1982). The Court also denied plaintiffs' motion for class certification (denial of class certification constituted denial of plaintiffs' request for injunctive relief). Finally, the Court concluded that the fourth amendment rights of the individual named plaintiffs were violated, but the Court reserved the issue of the individual plaintiffs' damages. Subsequently, the Court vacated its holding that the strip searches of the individual named plaintiffs violated the fourth amendment. The Court concluded that the issue of the constitutionality of the strip searches of the individual named plaintiffs remained before the Court. Does v. Boyd, CIVIL 4–84–378 (D.Minn. Oct. 8, 1985).

DISCUSSION

Prevailing Party

A party who prevails in an action under 42 U.S.C. § 1983 may receive reasonable attorneys' fees under 42 U.S.C. § 1988. A court should normally grant a prevailing plaintiff attorneys' fees unless unique circumstances would make an award inappropriate. Hensley v. Eckerhart, 461 U.S. 424, 429 (1983). A plaintiff qualifies as 'prevailing party' if he or she succeeds on any significant issue which yields some of the benefits sought in the lawsuit. Hensley, 461 U.S. at 433. The United States Court of Appeals for the Eighth Circuit 'emphasizes the need for a favorable determination of a significant issue raised by the party seeking to recover attorney's fees.' Paragould Music Co. v. City of Paragould, Ark., 738 F.2d 973, 974 (8th Cir. 1984) (per curiam), quoting ACORN v. Wallis, 717 F.2d 451, 453 (8th Cir. 1983) (per curiam).

Under this standard, plaintiffs are unquestionably prevailing parties. Plaintiffs' lawsuit had two goals, putting a halt to defendant's abhorrent strip search policy and obtaining compensatory damages for individuals unconstitutionally subjected to strip searches. Plaintiffs have clearly accomplished this first objective, and in doing so they have greatly benefited the public. As far as their second objective is concerned, plaintiffs will have the opportunity in the future to attempt to establish fourth amendment violations and damages with respect to each individual plaintiff.

***2** Nevertheless, defendant argues that plaintiffs are not prevailing parties because they did not obtain certification of a class action. The Court denied plaintiffs' motion to certify a class action because the Court concluded that plaintiffs lacked standing to pursue injunctive relief. Defendant argues that plaintiffs' lack of standing to pursue injunctive relief means that plaintiffs are not prevailing parties. Citing Laurenzo v. Mississippi High

School Activities Ass'n, 708 F.2d 1038 (5th Cir. 1983) (per curiam).

Defendant's reliance on Laurenzo is totally misplaced. Initially, the Laurenzo court dismissed the plaintiff's case because it was moot, not for lack of standing. Laurenzo, 708 F.2d at 1040. More importantly, Laurenzo simply held that the plaintiff was not a prevailing party since the only relief he obtained was an injunction pending his appeal. The court held that this temporary relief, which was granted without notice and opportunity for the other side to respond, did not constitute success on the merits. See Laurenzo, 708 F.2d at 1042–43. The Eighth Circuit has similarly held that a plaintiff who only obtains a temporary restraining order is not a prevailing party because the issuance of the order does not involve a determination on the merits. Paragould Music Co., 738 F.2d at 975.

Here, however, plaintiffs did achieve favorable determination on the merits regarding the issue which was the major focus of the litigation, i.e., the constitutionality of defendant's strip search policy. Plaintiffs' failure to obtain class certification as part of their successful challenge to the strip search policy does not negate their status as prevailing parties. See Crocker v. Boeing Co., 444 F.Supp. 890, 893 (E.D.Pa. 1977), mod. on other grounds, 662 F.2d 975 (3d Cir. 1981) (en banc). In sum, plaintiffs are prevailing parties under section 1988.

Interim Award

Plaintiffs have prevailed on the major issue of the constitutionality of the strip search policy, although the individuals must still establish violations of his or her fourth amendment rights and individual damages. In the meantime, plaintiffs have understandably sought an interim award of attorneys' fees. Congress intended to allow an interim award of attorneys' fees only to a party who has 'established his [or her] entitlement to some relief on the merits of his [or her] claims, either in the trial court or on appeal.' Hanrahan v. Hampton, 446 U.S. 754, 757 (1980) (per curiam); see also Chu Drua Cha v. Levine, 701 F.2d 750, 751 (8th Cir. 1983) (order) (plaintiff who obtained preliminary injunction was a prevailing party entitled to an interim award of attorneys' fees). Interim attorneys' fees may be appropriate in a situation where, although final remedial orders have not been issued, the defendant's liability has been established. Hanrahan, 446 U.S. at 757. The Eighth Circuit has also held that the duration of litigation is a controlling factor in determining whether an interim fee award is appropriate under Title VII. See Hameed v. Bridge, Structural and Ornamental Iron Workers, Local Union No. 396, 637 F.2d 506, 523 (8th Cir. 1980).[1]

***3** In the present action, plaintiffs have obtained significant relief on the merits of their claims because they have been successful in putting a halt to the unconstitutional strip search policy. Under the standards set forth in Hanrahan and Hameed, an interim award of attorneys' fees is appropriate. Defendant, however, appears to be concerned that if it is able to overturn the Court's ruling regarding the strip search policy on appeal, recouping the attorneys' fees award will prove troublesome. At oral argument, plaintiffs' counsel graciously offered to post a bond for the amount of a fee award to quell defendant's fears. The Court will accept counsel's offer.

Computation of the Award

Having concluded that an interim fee award is appropriate, the Court next must determine what attorneys' fees are reasonable in the present case. The starting point in such a determination is an evaluation of the number of hours worked by plaintiffs' attorneys and their requested rates. Hensley, 461 U.S. at 433.

A. Rates and Multiplier

Here, plaintiffs are requesting $125 per hour for Zimmerman and $100 per hour for Reed. These hourly rates are one of the few items defendant does not contest, and these rates are reasonable. See Dick v. Watonwan County, 562 F.Supp. 1083, 1109 (D.Minn. 1983), rev'd in part on other grounds, 738 F.2d 939 (8th Cir. 1984).

Plaintiffs also argue that they should be entitled to a multiplier. The Supreme Court, however, has declared that multipliers are appropriate only in exceptional cases because awarding attorneys reasonable market rates usually provides adequate compensation. See Blum v. Stenson, 104 S.Ct. 1541, 1549–50 (1984). Here, the Court will be awarding plaintiffs' counsel hourly rates which appear to be toward the higher end of the spectrum for civil rights actions. In Stark v. Perpich, CIVIL 4–84–656 (D.Minn. Nov. 28, 1984) (roadside survey case) the Court allowed hourly rates of $90 and in Upper Midwest Booksellers Association v. City of Minneapolis, CIVIL 4–85–5 (D.Minn. May 15, 1985) (opaque magazine cover case) the Court allowed a rate of $100 per hour. True, plaintiffs' counsel assumed risk in taking the strip search cases, but their hourly rate should compensate for their risk.

B. Hours

The Court also must determine whether it should disallow compensation for certain hours. Where a party has prevailed to a limited extent or only on certain claims, the district court should either eliminate specific hours or simply reduce the award to reflect the less than complete

success. Hensley, 461 U.S. at 436–37; Williams v. Butler, 746 F.2d 431, 443 (8th Cir. 1984), aff'd by an equally divided court, 762 F.2d 73 (1985) (en banc). Here, plaintiffs have been overwhelmingly successful, but defendant points out that plaintiffs' motion for class certification and consolidation of the strip search cases were both denied. Defendant argues that the specific hours devoted to these motions should be disallowed, and defendant has segregated certain hours associated with these motions.[2] By losing these motions, however, plaintiffs did not lose certain 'claims,' rather they simply did not prevail in all of their procedural maneuvers. Where, as is the case here, plaintiffs have obtained excellent results, their attorneys should recover full compensation for all hours reasonably incurred. Hensley, 461 U.S. at 435 and n.11. In such a situation, 'the fee award should not be reduced simply because the plaintiff[s] failed to prevail on every contention raised in the lawsuit.' Hensley, 461 U.S. at 435; see also Northcross v. Board of Education of Memphis City Schools, 611 F.2d 624, 636 (6th Cir. 1979), cert. denied, 447 U.S. 911 (1980). Thus, the Court will award fees which compensate plaintiffs' counsel for their work on the consolidation and class certification motions.

***4** Defendant also raises a number of objections to the reasonableness and compensability of specific hours. Defendant asserts that the Court must hold an evidentiary hearing to determine the fee award. Defendant quotes the passage of an Eighth Circuit case which states that where 'serious factual disputes surround an application for attorney's fees, a hearing is required.' Herrera v. Valentine, 653 F.2d 1220, 1233 (8th Cir. 1981). Defendant fails to note, however, that the court went on to conclude that a hearing was not necessary in the case before it because the only disputed issue was duplication of effort. The court stated that the trial court could have resolved this issue through the detailed time sheets and affidavits before it. Herrera, 653 F.2d at 1233. In the present action, defendant's objections to specific billable hours caused plaintiffs' counsel to submit additional affidavits and documentation to justify their hours. The materials before the Court are sufficiently detailed to enable the Court to resolve questions without an evidentiary hearing.

Some of defendant's objections to specific hours have merit, and in response, plaintiffs' counsel conceded that one hour and $41.66 in costs were not, at present, compensable, see Reed Oct. 15, 1985 aff. ¶18, 27. Plaintiffs' counsel also conceded that 2.6 hours were not compensable at all. Id. at ¶15. Unfortunately, a number of defendant's objections are without merit. For instance, defendant complains at length that plaintiffs' second set of interrogatories were identical to the interrogatories plaintiffs' counsel used in another lawsuit challenging Hennepin County's strip search policy. As plaintiffs point out, their use of the same discovery requests achieved economies of scale and kept litigation costs down, thus actually saving defendant money. Another of defendant's criticisms is that two plaintiffs' counsel attended the deposition of defendant Sheriff Boyd. See Muirhead Oct. 11, 1985 aff. ¶5. Yet, at this same deposition, two defense attorneys were present. Reed Oct. 15, 1985 aff. ¶4. The final example the Court will mention is defendant objecting to Zimmerman billing two hours for a strategy meeting. Muirhead Oct. 11, 1985 aff. ¶11. An occasional strategy meeting, though, is far from unreasonable. In sum, the vast majority of defendant's objections to specific hours are to no avail.

The Court's review of plaintiff's counsel's hours, however, indicates that Reed's requested hours, 190.60, are too high. Adding Reed's hours yields a somewhat lower total of 175.10 hours. See Zimmerman Sept. 26, 1985 aff. exh. B (time sheets). This figure includes 3.6 hours which plaintiffs' counsel now concede are not, or not at present, recoverable. In addition, the 4.5 hours of work Reed performed on August 5 and 15, 1985 are not presently compensable. See id. exh. B, at 5. Thus, Reed's total hours for purposes of the fee award (excluding work on the fee petition itself) are 167.[3]

C. Work on Fee Application

***5** The resolution of the present fee application has been hard fought. In seeking to obtain a fee award, Zimmerman has worked 8.2 hours and Reed has worked 41.75 hours. Consequently, plaintiffs' counsel request an additional $5,159 for thier time spent on the fee application. Attorneys are entitled to compensation for work litigating their claim to attorneys' fees. E.g., Jones v. MacMillian Bloedel Containers, Inc., 685 F.2d 236, 239 (8th Cir. 1982); Bond v. Stanton, 630 F.2d 1231, 1235 (7th Cir. 1980). The Court, however, will not grant the entire requested amount for work on the fee application; rather the Court will increase the fee award by $1,000 for briefs and arguments to the Court concerning the amount of the fee.

Based on the foregoing, and upon review of all the files, records, and proceedings in this matter,

IT IS ORDERED that plaintiffs' motion for interim attorneys' fees is granted and plaintiffs' attorneys are awarded $35,576.07, which represents $31,693.75 in fees and $3,882.32 in costs.

IT IS FURTHER ORDERED, in the event of an appeal by defendant, that plaintiffs' post a bond in the amount of $35,600, such that defendant would be able to recoup the award from the bond in the event plaintiffs' status as prevailing parties changes.

APPENDIX POINT IS NOT DISPLAYABLE

TABULAR OR GRAPHIC MATERIAL SET AT THIS

Footnotes

1 The standards for attorney fee awards under Title VII and 42 U.S.C. § 1988 are the same. Hensley, 461 U.S. at 433 n.7; Hanrahan, 446 U.S. at 758 n.4.

2 Defendant has pointed to 23.7 such hours which total $2,457.50 worth of fees. See Muirhead Oct. 11, 1985 aff. ¶7 and 9. (Reed billed 20.2 of these hours at $100 per hour and Zimmerman billed 3.5 hours at $125 per hour.)
Defendant also suggests that the Court reduce by 25 percent the hours of plaintiffs' counsel with respect to hours billed for work on the cross motions for summary judgment. Defendant reasons that this reduction is warranted because 25 percent of the documentation submitted on these motions dealt with the issue of class certification. Plaintiffs correctly point out, however, that the work their counsel performed in preparing, briefing, and arguing the summary judgment motions was separate from the work performed on the class certification motions. (The Court was originally going to hear the class certification motion on December 10, 1984, but this motion was not heard until May 30, 1985, the same day as oral argument on the summary judgment motions.)

3 See the appendix for the computation of the award.