1995 WL 248111
United States District Court, N.D. Illinois, Eastern Division.

DONNELL C., et al., Plaintiffs,
and
United States of America
v.
The ILLINOIS STATE BOARD OF EDUCATION, et al., Defendants.

No. 92 C 8230. | April 25, 1995.

Opinion

MEMORANDUM OPINION AND ORDER

NORDBERG, District Judge.

***1** Before the Court is the County Defendants' Motion for Partial Summary Judgment on the issue of attorney's fees and costs.

UNDISPUTED FACTS

The Plaintiffs in this action are a certified class of all pretrial detainees who are or will be confined within the divisions of the Cook County Jail and who are or will be entitled under state or federal law to free regular or special education services. (Stipulation of the Parties as to the Certification of the Class.) Plaintiffs originally filed this action on December 17, 1992 against the Illinois State Board of Education and its members (State Defendants), and the Board of Education of the City of Chicago and the Superintendent of the Chicago Public Schools (Chicago Defendants). Plaintiffs made amendments to their Complaint on April 8, 1993 and November 1, 1993. In their Second Amended Complaint, Plaintiffs seek to enforce their rights under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 - 1485, and its implementing regulations, Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794, and its implementing regulations and under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. (Second Amended Complaint at ¶ 1.) Plaintiffs also assert the City Defendants have violated their duties under 105 ILCS 5/10-20.12.

Plaintiffs allege that, pursuant to 20 U.S.C. § 1412(6), the State Defendants are responsible for assuring that all children with disabilities within Illinois are identified, located, evaluated and provided with a free appropriate public education. (Second Amended Complaint at ¶ 6.) Regarding the education of all students, disabled and non-disabled, the State Defendants have the following additional duties: (1) supervising all public schools in the state, 105 ILCS 5/2-3.3; (2) making rules necessary to carry into efficient and uniform effect all laws for establishing and maintaining free schools in the state, 105 ILCS 5/2-3.6; and (3) determining for all schools efficient and adequate standards for instruction and teaching, curriculum, library operation, maintenance, administration and supervision, 105 ILCS 5/2-3.5. (Second Amended Complaint at ¶ 6.)

As to the City Defendants, Plaintiffs allege that, pursuant to 20 U.S.C. § 1414, the City Defendants are responsible for the administration of special education for all persons within School District # 299, which includes Cook County Jail detainees, from age 6 to 21. (Second Amended Complaint at ¶ 9.) The City Defendants are also required to secure for all school age persons, within School District # 299, the right and opportunity to an equal education by establishing and operating a sufficient number of free schools for the education of such persons. (Second Amended Complaint at ¶ 9 citing 105 ILCS 5/10-20.12.) According to Plaintiffs, the State and City Defendants have not fulfilled their duties under the IDEA and Section 504, and thus have violated Plaintiffs' rights to educational services secured by these statutes and by the Due Process and Equal Protection Clauses of the Fourteenth Amendment. (Second Amended Complaint at ¶¶ 43-47.)

***2** The President and members of the Cook County Board of Commissioners, Sheriff Michael Sheahan, and executive Director J.W. Fairman (County Defendants) were later joined by Plaintiffs as necessary parties to this litigation pursuant to Rule 19 of the Federal Rules of Civil Procedure. In their Motion to Join the County Defendants, the Plaintiffs asserted that, without the County Defendants, the Court would be able to afford Plaintiffs only partial or conditional relief. (Motion to Join County Defendants at 2.) Plaintiffs explained that, while the State and City Defendants are required by state and federal law to provide educational services in the form of teachers and materials, the County Defendants are responsible for providing the necessary space and security staff at the Cook County Jail for the educational services provided by the State and City Defendants. *Id.* In their Motion, Plaintiffs stated further that they did not name the County Defendants in the original Complaint because, to Plaintiffs' knowledge, the County Defendants had committed no acts subjecting them to liability in the present action. *Id.*

On March 18, 1993, the Court granted Plaintiffs' Motion

to Join the County Defendants pursuant to Rule 19. Subsequently, Plaintiffs filed their Second Amended Complaint alleging that, as the County Defendants are responsible for the cost and expense of keeping, maintaining, and furnishing the Cook County Jail and of keeping and maintaining its detainees, 730 ILCS 125/20, they are joined so that they can provide "the additional facilities and personnel necessary to provide a complete remedy for the violations of Plaintiffs' rights by the Illinois and Chicago defendants named above." (Second Amended Complaint at ¶¶ 11-14.)

In May 1994, the United States of America filed a Complaint in Intervention seeking to enforce a settlement agreement entered into in August 1992 by the City Defendants and the United States Department of Education, Office for Civil Rights (OCR). Pursuant to the settlement agreement, the City Defendants committed themselves to make available free appropriate education to all detainees under age 21 who do not have a high school diploma, are in need of special education services, have expressed an interest in obtaining educational services and have been given permission to participate by prison officials. (Complaint in Intervention at ¶ 9.) The City Defendants also committed themselves to implementing procedures to identify detainees for screening and evaluation. *Id.* According to the United States, the City Defendants have failed to provide a free, appropriate education to all eligible students and to timely screen and evaluate school-age detainees with or suspected of having disabilities. *Id.* at ¶ 10. Thus, the United States brought its Complaint in Intervention to enforce the terms of the August 1992 settlement agreement. In addition to enforcing the settlement agreement, the United States' Complaint in Intervention seeks to enforce Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134.

***3** The Plaintiffs and the United States have reached a tentative settlement agreement regarding liability with the State, City and County Defendants. Defendants believe that the settlement agreement will also provide for the payment of Plaintiffs' fees and costs including fees and expenses relating to the court appointed expert. Although Plaintiffs have not petitioned the Court for fees and costs, the State and Chicago Defendants have apparently acknowledged liability for fees and costs. However, the County Defendants, in opposition to the State and Chicago Defendants contentions, assert that they are not liable for Plaintiffs' fees and costs.

Consequently, the County Defendants have brought the instant Motion for Partial Summary Judgment on the issue of liability relating to fees and costs. The County Defendants assert that, because the pleadings filed by the Plaintiffs and the United States do not implicate the County Defendants as wrongdoers, this Court should hold that the County Defendants are not liable for any of the Plaintiffs' attorney's fees and costs including the fees and expenses related to the court appointed expert. The State and City Defendants contend that this Court should order the County Defendants to pay one third of the Plaintiffs' attorney's fees and costs and one third of the expenses relating to the court appointed expert who will monitor the parties' compliance with the settlement agreement

ANALYSIS

Under the Federal Rules of Civil Procedure, summary judgment is appropriate if "there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The initial burden rests on the moving party to show that the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any" fail to establish a genuine issue of material fact, and entitle the moving party to judgment as a matter of law. *Id.* Once the moving party has met its initial burden, the nonmoving party must produce evidence that creates a genuine issue; the nonmoving party may not rest upon its pleadings. *Celotex Corp. v. Catrett,* 477 U.S. 317, 322-326 (1986). Although the evidence and all reasonable inferences from the record are drawn in the non-movant's favor, *see Griffin v. Thomas,* 929 F.2d 1210, 1212 (7th Cir. 1991), the non-movant must cast more than "some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986). As the material facts relevant to this motion are undisputed, the issue of attorney's fees and costs is ripe for summary judgment.

The fee shifting provisions of § 1988 must be applied against a pre-existing background of substantive liability rules. *Kentucky v. Graham,* 473 U.S. 159, 171 (198??). In *Kentucky v. Graham,* the plaintiffs brought suit against various police officers, in their individual capacities, alleging that the officers had violated the plaintiffs' constitutional rights. After the plaintiffs settled with the individual officers, they sought attorney's fees from the officers' employer, the Commonwealth of Kentucky, under 42 U.S.C. § 1988. The Supreme Court rejected the petition for attorneys fees noting that, even though the language of § 1988 does not define the parties who must pay the fees and costs, the "logical place to look for the recovery of fees is to the losing party - the party legally responsible for relief on the merits." 473 U.S. at 164.

***4** In *Independent Federation of Flight Attendants v. Zipes,* 491 U.S. 754 (1989), the Supreme Court further emphasized the crucial connection between liability for a violation of federal law and liability for attorney's fees under federal fee shifting statutes. The Supreme Court determined that § 706(k) does not permit a court to assess liability for attorney's fees against intervenors who have

not been found to have violated the Civil Rights Act or any other federal law unless the intervenors' action is frivolous, unreasonable or without foundation.[1] *Id.* at 761. The *Zipes* Court explained that the purpose of § 706(k) is to promote the national policy against wrongful discrimination by encouraging victims to make the wrongdoers pay their attorney's fees and costs and by insuring that the incentive to bring a civil rights suit is not undermined by the prospect of attorney's fees and costs consuming any possible recovery. *Id.* The Court concluded that assessing fees against blameless intervenors was not essential to vindicating the purpose of § 706(k), because the intervenors had not violated anyone's civil rights. *Id.*

Relying on the Supreme Court's opinions in *Graham* and *Zipes,* the County Defendants assert that, as they did not violate anyone's civil rights and have no responsibility for the practices, which according to Plaintiffs, caused the deprivation, they should not be liable for Plaintiffs' attorneys fees and costs. *See Zipes,* 491 U.S. at 762 (noting that courts should not award fees against intervenors who did not violate anyone's civil rights and who bore no responsibility for the practice alleged to have violated Title VII.) The Court agrees with the County Defendants that, like the intervenors in *Zipes,* they bear no responsibility for the practices alleged to have violated Plaintiffs rights.

In their Second Amended Complaint, Plaintiffs allege that the State and City Defendants have violated Plaintiffs' rights under the IDEA, Section 504, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. (Second Amended Complaint at ¶¶ 43-47.) Plaintiffs detail five distinct ways in which the State and City Defendants violated Plaintiffs' rights: (1) by denying completely the special education and related services needed by educationally disabled Plaintiffs whose need for such services Defendants failed to identify; (2) by denying completely the special education and related services needed by Plaintiffs, who have been identified as needing such services, by failing to provide sufficient teachers, programs, and related services; (3) by denying appropriate special education and related services to educationally disabled Plaintiffs, who are enrolled in the Cook County Jail school, by failing to provide sufficient teachers, programs, related services and procedural protections to meet federal standards for the provision of appropriate, individualized special education services; (4) by denying completely regular education services to the great majority of Plaintiffs who are eligible for such services; and (5) by denying Plaintiffs, who are eligible for and receive regular education services, such services that are equal to the services made available to eligible children who are not pretrial detainees. *Id.* at ¶ 3.

***5** Plaintiffs' Second Amended Complaint explicitly acknowledges that the County Defendants are joined in the action, pursuant to Rule 19, only because "they are responsible for providing the additional [Cook County Jail] facilities and personnel necessary to provide a complete remedy for the violations of Plaintiffs' rights by the Illinois and Chicago Defendants named above." *Id.* at ¶¶ 11-14. Additionally, Plaintiffs' Motion to Join the County Defendants noted that Plaintiffs did not originally join the County Defendants because, to Plaintiffs' knowledge, the County Defendants had committed no acts subjecting them to liability in this action. (Plaintiffs' Motion to Join the County Defendants at ¶ 4.)

Both the allegations in the Second Amended Complaint and the statements in Plaintiffs' Motion to Join the County Defendants indicate that the County Defendants have not violated the Plaintiffs' civil rights or any other rights provided under federal law. The crux of Plaintiffs' complaint is the inadequacy or absence of educational services provided to school age Cook County Jail detainees and Plaintiffs' complaint makes clear that it is the State and City Defendants who are obligated to provide such services under federal and state law. Heeding the Supreme Court's teachings in *Graham* and *Zipes,* this Court holds that assessing liability for fees against the County Defendants would not vindicate the purposes of the IDEA or Section 504 - to deter discriminatory practices against and violations of the civil rights of disabled individuals - because the County Defendants have not violated Plaintiffs' civil rights and bear no responsibility for the practices alleged to have violated Plaintiffs' rights.

The City Defendants charge that, although the County Defendants are not responsible for actually educating school age pretrial detainees, they control the City and State Defendants' ability to provide such education. Specifically, the City Defendants note that the County Defendants control access to the pre-trial detainees and allotment of classroom space at the Cook County Corrections Alternative School which is located at 2700 South California at the Department of Corrections. The City Defendants cite the County Defendants' inability to provide additional classroom space and additional access to the pre-trial detainees as the cause which promoted the filing of the instant lawsuit and prolonged the resolution of the suit.

However, the City Defendants provide no support for their allegation that the County Defendants' inability to provide additional classroom space and access to pre-trial detainees resulted in the filing of the instant lawsuit. As noted previously, the allegations in the Second Amended Complaint indicate that it was the State and City Defendants' failure to provide required educational services to school age pre-trial detainees which caused Plaintiffs' to bring the instant suit. The County Defendants are not obligated, pursuant to the IDEA,

Section 504 or the Due Process or Equal Protection Clauses of the Fourteenth Amendment, to provide educational services to Plaintiffs and none of the allegations in the Second Amended Complaint suggest that the County Defendants have violated any of the Plaintiffs' constitutional or statutory rights.

***6** Additionally, Plaintiffs do not indicate that the County Defendants caused the State or City Defendants to violate their duties to provide educational services by refusing or failing to provide additional facilities or access to the pre-trial detainees upon Plaintiffs' or the City and State Defendants' request. In fact, Plaintiffs joined the County Defendants so that they could provide the facilities and personnel necessary to provide a complete remedy for the State and City Defendants' violations of Plaintiffs' civil rights. Contrary to the City Defendants' assertion, the Court does not find that the County Defendants' prior inability to provide increased classroom space and extended access to school-age pre-trial detainees caused Plaintiffs to file the instant lawsuit.

The City Defendants also charge that the Court should assess liability for fees against the County Defendants because the County Defendants' inability to immediately provide additional classroom space and access to school age pre-trial detainees (once the parties determined that additional space and access was necessary to remedy the violations of civil rights) prolonged the resolution of the suit. The City Defendants charge that, on February 8, 1995, the parties appeared before the Court to report on settlement negotiations. At that time, the parties notified the Court that the only three unresolved issues remained: (1) the County Defendants' inability to provide additional classroom space, (2) the County Defendants' inability to provide longer access to pre-trial detainees, and (3) issues regarding Illinois State Board of Education funding. A month later on March 10, 1995, the parties again appeared before the Court and informed the Court that the City Defendants could implement a double shift at the Cook County Corrections Alternative School to compensate for the lack of available classroom space. The parties also informed the Court that the County Defendants agreed to find whatever additional classroom space they could and to provide access to school age pre-trial detainees from 8:00 a.m. to 5:00 p.m.

Initially, this Court notes that, on February 8, 1995, the City Defendants cited not only the County Defendants' inability to provide adequate classroom space and adequate access to school age pre-trial detainees, but also Illinois State Board of Education funding issues, as the reasons for the delay in the settlement of the suit. Moreover, this Court finds that the one month delay before the City Defendants, the County Defendants and the Plaintiffs came to an agreement on a plan for implementation of required educational services does not warrant holding the County Defendants liable for attorney's fees and costs given that they have not violated the Plaintiffs' civil rights and have no responsibility for the practices alleged to have violated the IDEA, Section 504 or the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Thus, the Court will not assess liability for fees and costs against the County Defendants on the basis that they prolonged the resolution of the suit.

***7** Additionally, the City Defendants assert that, even if the Court determines that the County Defendants are not liable for a percentage of Plaintiffs' attorney's fees and costs, the Court should require the County Defendants to pay one third of the cost of the expert appointed by the Court to monitor the settlement agreement. The City Defendants note that the County Defendants are the only ones who can provide access to the facilities at the Cook County Department of Corrections. The City Defendants hypothesize that, if the County Defendants deny the court-appointed expert access to the facilities at the Cook County Department of Corrections, the expert will not be able to effectively monitor the settlement agreement and the City Defendants will have no power to compel the County Defendants to grant the expert access. Similarly, the City Defendants assert that the County Defendants control the allotment of space at the Cook County Department of Corrections and if the monitor determines that school age pre-trial detainees are being denied educational services because of lack of space, the City Defendants will be unable to remedy the situation. Finally, the City Defendants note that the settlement agreement requires the County Defendants to notify all pre-trial detainees of their right to educational services, to notify the City Defendants of all detainees eligible to attend school, and to provide the City Defendants with access to school age pre-trial detainees from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. The City Defendants posit that, if the monitor determines that school age pretrial detainees are being denied their right to educational services because the County Defendants have failed to notify the pre-trial detainees of their right to educational services, to notify the City Defendants of an eligible pre-trial detainee's existence, or to provide the required access, the City Defendants will be unable to force the County Defendants to amend their actions to ensure compliance with the settlement agreement.

The numerous hypotheticals posited by the City Defendants regarding the ways in which the County Defendants might violate their obligations under the settlement agreement does not persuade the Court that the County Defendants should now pay one third of the cost of the court appointed monitor. This Court appointed an expert to monitor compliance with the settlement agreement. The settlement agreement represents the concerted efforts of all parties to resolve their differences and to ensure that school age pre-trial detainees are provided educational services to which they are allegedly

entitled pursuant to the IDEA, Section 504 and the Due Process and Equal Protection Clauses of the Fourteenth Amendment. However, as the County Defendants are not responsible for any of the activities, which allegedly violated Plaintiffs' civil right and which prompted the instigation of the present action, they should not have to foot the bill for the cost of monitoring the settlement which ultimately resolved the parties' dispute.

***8** Undeniably, the settlement agreement imposes several responsibilities on the County Defendants which directly effect the provision of educational services to pre-trial school age detainees. Yet, the Court does not find that the most appropriate means of enforcing the settlement agreement is to require the County Defendants to pay part of the cost of the court appointed expert. The settlement agreement provides a remedy for noncompliance by allowing any party, unable to resolve informally a dispute regarding noncompliance, to submit such dispute to this Court for further orders as may be appropriate. Thus, if any of the hypotheticals, posed by the City Defendants, become a reality, this Court is available, if necessary, to resolve any noncompliance issues which the parties cannot resolve on their own. As the County Defendants are not responsible for any of the activities alleged to have violated Plaintiffs' right to educational services and as the settlement agreement provides a mechanism for addressing any party's failure to comply, this Court finds that ordering the County Defendants to pay now one third of the cost of the court appointed monitor would be inappropriate and improper.

CONCLUSION

For the foregoing reasons, the Court grants the County Defendants' Motion for Partial Summary Judgment. The County Defendants are not liable for Plaintiffs' attorney's fees and costs or for the cost of the court expert appointed to monitor the settlement.

[1] Section 706(k) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(k), provides in relevant part that a "court in its discretion may allow the prevailing party, other than the [Equal Employment Opportunity] Commission or the United States, a reasonable attorney's fee as part of the costs."

Parallel Citations

10 A.D.D. 263