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United States District Court, D. Massachusetts.

Harold WILLIAMS
v.
Michael LESIAK, et al.

CIV. A. No. 72–0571MC. | Dec. 22, 1989.

Opinion

ORDER ON REQUESTS FOR ATTORNEYS' FEES

McNAUGHT, District Judge.

***1** In January of 1987, by reason of negotiation and stipulation the plaintiffs in this class action were awarded $60,000 in attorneys' fees, covering their work from November of 1979 to October of 1986.

In November of 1986 defendants moved for Relief From Judgment under Rule 60(b), Fed.R.Civ.P. They asked that the Authorized Absences Program be governed thereafter by a state statute, St.1985, ch. 752, amending Massachusetts General Laws, c. 123A rather than under the orders of this Court. Argument took place November 5, 1986. I denied the motion for relief from judgment after the hearing, and the defendants appealed to the First Circuit Court of Appeals.

On July 7, 1987 the First Circuit Court of Appeals remanded the matter to me for specific findings of fact and reconsideration. Evidentiary hearings took place in October of last year, and proposed findings and conclusions were submitted by the parties. Although I had concluded, in denying defendants' motion for relief, that they had not shown a change of circumstances which would warrant allowance of the motion, the First Circuit Court of Appeals directed that we concentrate on two tests: (1) whether the defendants had shown wisdom and experience in operating the Program, and (2) whether proposed regulations under the State statute would offend the Constitution. After a consideration of the evidence, and the arguments of counsel, I concluded that the defendants had satisfied the tests and that the time had arrived for this Court to bow out of the picture and allow the defendants to operate the Program without oversight. A decision to that effect was rendered December 19, 1989.

There remains for determination the question of the allowance of requests for attorneys' fees by counsel for plaintiffs (and reasonable expenses). These requests are to be found in documents entitled Motion For Attorneys' Fees and Supplemental Motion for such fees. The first, filed in November of 1987 sought an award of $10,709.25 and $627.61 in disbursements. That request covered the period September 1986 through September 1987. The second (see docket document ## 62) asks for $23,642.75 in fees and $274.97 in disbursements for the time between September 1987 and June of 1989. The second request should have, but did not include a request for the expense of transcripts of the hearings on October 11 and 12, 1988 in the amount of $633.00 from the Federal Court Reporter; hence, we treat the second request as asking for a total in disbursements of $1,007.97. Plaintiffs' counsel should file an amended request in that amount.

By way of opposition the defendants raise two issues. First, they argue that the plaintiffs are entitled to fees only on those aspects of the case on which they have "succeeded", and defendants claim success on the Motion for Relief from Judgment Under Rule 60(b) by reason of the remand from the First Circuit Court of Appeals. Since the motion has now been decided in favor of defendants at the District Court level, defendants may claim absolute success (unless the matter be appealed afresh). It does not follow, however, that the plaintiffs have not been "successful" in their pursuit of the objectives of the original decrees, simply because they did not prevail on the motion.

***2** Secondly, the defendants argue that plaintiffs are asking to be paid for work which was "duplicative", "unspecified" and "excessive". In the submission entitled "Defendants' Opposition to the Plaintiffs' Supplemental Request for Attorneys' Fees" filed in open court on December 29, 1987, the defendants appended a copy of the plaintiff attorneys' printouts of times spent and amounts claimed, and then, in pen, used footnotes to indicate those items claimed to be "duplicative" (with a number "3") "unspecified" (with a number "4") and "excessive" (with a number "5"). A similar practice was followed with respect to docket document # 62, the opposition to the supplemental motion, filed June 19, 1989 in the clerk's office.

Taking first things first, I conclude that the plaintiffs are entitled to attorneys' fees for the work done from September 1986 through September 1987, and for the work done from October 1987 through May of 1989. For ten years I have watched Mr. Bass and his associates involved in this litigation. Their work (and indeed that of Mr. Gray for the Commonwealth parties) has been most impressive. Each has shown in open court talent and devotion to duty which is worthy of applause. For present purposes we must concentrate on the activity of plaintiff

counsel only. They have accomplished much. Once the constitutional direction of the Treatment Center had been pointed out by Judges Wyzanski and Garrity, with particular reference to the Authorized Absence Program, these attorneys have appeared and fought constantly to maintain the vigor of the rights which were set through the consent decrees and the regulations ordered by the court. They have attended conferences, done discovery, conducted evidentiary hearings, and have even lobbied the Great and General Court of the Commonwealth to be certain that goals once achieved were not thereafter defeated. They would be the first to concede that they have not prevailed at each twist and turn. The court has disagreed with them on proposed factual findings on more than one occasion, and has now done a reversal of an earlier plaintiff success by allowing the defendants' motion for relief under Rule 60(b). Each and every time, however, plaintiffs' counsel has succeeded in the accomplishment of the major objectives: to establish *andmaintain* the primacy of the Department of Mental Health over the Department of Corrections at the Treatment Center; to establish and maintain a valid treatment program for the residents, and to establish and maintain an Authorized Absence Program. They have succeeded admirably.

While plaintiffs' counsel will no doubt disagree with the conclusion of this Court that the oversight of the federal court should come to an end, they may claim success for the fact that it was by reason of their work, particularly during the last ten years that provided the foundation for vast improvement in the management of the Treatment Center and the availability of furloughs and work release for Center patients. It was their oversight, and their opposition to anything which they deemed a threat to progress at the Center which prompted much of the good work done there. The law doesn't require that plaintiffs succeed on every issue. They succeeded on the whole in achieving precisely the goals open to them: the stengthening of the objectives of the consent decrees. Until the administration of Ian Tink showed solidity of progress and the exercise of wisdom and experience sufficient to take this court out of the picture, the presence and work of plaintiffs' counsel was needed and valuable. *Nadeau v. Helgemoe,* 581 F.2d 175 (1st Cir., 1978). *Brewster v. Dukakis,* 786 F.2d 16 (1st Cir., 1984). There were common legal and factual threads wound all the way through the fabric of this litigation over the last ten years. I conclude that any work done in connection with this action may be the proper subject of an attorneys' fee under 42 U.S.C. Section 1988, provided that it was connected with preparation for, taking part in, or preserving the achievments of court work. This means of course, that I conclude that there may not be a fee for work done before the state legislature. *Webb v. County Board,* etc 715 F.2d 254 (6th Cir., 1983). That activity was undertaken in connection with the *Tate* claim. It may not be the subject of compensation.

***3** The exhibit attached to the Defendant's Opposition to Plaintiffs' Supplemental Request for Attorneys' Fees" filed December 29, 1987, through footnote numbered 1, identify matters attributable to what I shall refer to simply as "Tate matter". They are:

Ref. No 81 in the amount of $31.50

84	26.25
95	35.00
101	87.50
110	78.75
113	47.25
114	89.25

115	22.75
117	393.75
118	210.00
120	79.50
123	52.50
125	246.75
128	63.00
144	141.75

Total $1579.25

From the sum of $10,709.25 (the fee request covering the period September 1986 through September of 1987) we deduct the $1,579.25 leaving $9,130 to which plaintiffs are entitled under that request, unless further deduction is to be made for duplication, "unspecified" tasks and/or excessive work.

As for the objection that there was "duplicative work" involved here, I am not prepared to rule that having more than just one person work on a pleading or confer on a matter is unnecessary. It *may* be, but I indulge in the assumption that plaintiffs' counsel would avoid assiduously the assignment of unnecessary people to a task. Having more than one lawyer in a courtroom, for a hearing or a conference is another matter. *King v. Greenblatt,* 560 F.2d 1024 (1st Cir., 1977) I conclude that the following should be disallowed: Ref 40, $164.50; Ref 153 $304.50; Ref 154 $271.25. These total $740.25, further reducing the fee to the figure $8,389.75.

Although the defendants complain of "unspecified work", I conclude that the objection is not well taken. They say that although the print-out may be accurate, it can't be interpreted. I disagree. One example is fairly clear to me, although defendants say it is "nonspecific". It tells me that Victor Bass conferred with two people. One had the initials DPH and the other was Steven Schreckinger.

Conclusion: For the period September 1986 to September 1987, plaintiffs are entitled to fees in the amount of $8,389.75 and expenses of $627.61.

The second request, contained in docket document # 62 asks for $23,642.75 in fees and a total (see page 2 herein) of $1,007.97 in disbursements (assuming amendment). The legal arguments advanced in opposition to the November 1987 fee request were offered also on this request. Disposition of those arguments has been made above. As with the earlier request, the defendants appended to their opposition an attachment of the computer printouts supplied by plaintiffs, and noted objection to specific items by penning footnotes numbered 3 for allegedly duplicative work, the number 4 for "unspecified" work and the number 5 for "excessive"

work.

I agree that a deduction is required for duplicative court appearances; therefore, Ref. No. 178 results in a deduction of $126.00; Ref. No 213 requires a deduction of $340; Ref. No. 237 in a deduction of $760; Ref. No. 238 in a deduction of $522.50—for a total of $1,748.50. The request for 23,642.75 is reduced to $21,894.25 by the subtraction.

***4** Once again, the objections "unspecified" and "excessive" are overruled. I confess in this regard that I feel a bit uneasy about the number of persons who devoted their energies to individual tasks during the litigation, but again am satisfied that Mr. Bass and other plaintiff counsel would not unnecessarily "load" hours for the sake of a higher fee.

On the second request, plaintiffs' counsel are granted $21,894.25 in fees and expenses in the amount of $1,007.97.

With the exceptions above noted, the Court finds and rules, to employ language used by Attorney Bass in his affidavit, that "the time in the plaintiff's lodestar reflects an efficient division of labor among lawyers and assistants of different levels of expertise and (it) was reasonably spent". The rates applicable to the work of the persons involved reflect reasonably the hourly value of the time of each.

It is ORDERED accordingly that, the motions having been allowed in the amounts specified, those sums be paid to plaintiffs' counsel.