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United States District Court, W.D. Virginia.

RAHIM X, Plaintiff,
v.
E.C. MORRIS, et al., Defendants.

No. Civ.A. 96–0493–R. | Oct. 27, 1997.

Opinion

MEMORANDUM OPINION

WILSON, J.

***1** This matter is before the court on plaintiff's motion for costs pursuant to Rule 54(d) of the Federal Rules of Civil Procedure. For the reasons stated below, the court finds that plaintiff is not a "prevailing party" entitled to costs under Rule 54(d). Accordingly, the court denies plaintiff's motion for costs.

I.

The plaintiff, Rahim X, is an inmate in the custody of the Virginia Department of Corrections ("VDOC") at Buckingham Correctional Center. On May 23, 1996, plaintiff filed this action challenging the VDOC's newly-enacted policy for inmates requesting religious diets. Plaintiff alleged that the policy violated his rights under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, and the Free Exercise and Establishment Clauses of the First Amendment. On June 4, 1996, the court granted plaintiff's motion for a temporary restraining order and enjoined the defendants from enforcing or implementing the portion of the policy that required an inmate to provide a written statement from a religious official as a precondition to the receipt of a religious diet. On June 19, 1996, following a hearing, the court issued a preliminary injunction enjoining the enforcement of the new policy. The VDOC subsequently rescinded the challenged policy. The defendants then filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. On March 27, 1997, the court dismissed as moot plaintiff's claims for declaratory and injunctive relief. In addition, the court found that the defendants were entitled to qualified immunity and granted summary judgment in favor of the defendants as to plaintiff's claims for monetary relief. Plaintiff now asserts that he is entitled to recover his costs from the defendants because the defendants rescinded the challenged policy "as a direct result of the plaintiff's lawsuit."

II.

Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, a trial court may award, at its discretion, the payment of costs, but only to a "prevailing party." Fed.R.Civ.P. 54(d).[1] To establish itself as a prevailing party, a plaintiff must demonstrate that "actual relief on the merits of his claim materially alter[ed] the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Farrar v. Hobby,* 506 U.S. 103, 111–12, 113 S.Ct. 566, 121 L.Ed.2d 494 (1992); *see Texas State Teachers Ass'n v. Garland Indep. School Dist.,* 489 U.S. 782, 792–93, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989).[2] No such "material alteration" exists unless "the plaintiff becomes entitled to enforce a judgment, consent decree, or settlement against the defendant." *Farrar,* 506 U.S. at 113.

Because Rahim X obtained no final relief on the merits which materially altered his legal relationship with the defendant, he is not a prevailing party and is not entitled to receive costs. The parties did not enter into a settlement or consent decree, nor did Rahim X receive a final, enduring determination by the court vindicating his claim. The only relief Rahim X received was a preliminary injunction granted until final resolution of his claim. Receipt of a preliminary junction is not sufficient to establish Rahim X as a prevailing party, and, therefore, he is not entitled to costs.

***2** Although the court considered the merits of Rahim X's complaint when it granted the preliminary injunction, this provisional remedy is not the type of "relief on the merits" which constitutes an "enforceable judgment" entitling him to prevailing party status. In *Smith v. University of North Carolina,* the Fourth Circuit specifically held that the plaintiff did not qualify as a prevailing party where she obtained a preliminary injunction but did not ultimately prevail in a final judgement. 632 F.2d 316, 346–52 (4th Cir.1980).[3] According to the Fourth Circuit, "to 'prevail' a party must establish *in an enduring way* that he or she was right on the matter in issue and that the litigation activities served to establish the existence of the right or contributed to an enjoyment of the right." *Id.* at 346 (emphasis added). To determine if a plaintiff is a prevailing party, the district court must "look to the appropriate and determining question of whether there had been a *final disposition* in

favor of the party claiming that it had prevailed." *Id.* at 349 (emphasis added).

A preliminary injunction is not such a "final disposition." It is a provisional remedy only. *See id.* at 347. Whereas Rule 54(d) demands "a finding of liability which settles some aspect of the controversy," a preliminary injunction is no more than a "prognosis of probable or possible success" *Id.* at 347–48. Therefore, the granting of a preliminary injunction does not entitle a party to receive costs from its opponent.[4]

S–1 and S–2 v. State Board of Education supports the conclusion that receipt of a preliminary injunction is insufficient to establish a plaintiff as a prevailing party when the court ultimately dismisses the complaint as moot. *See* 21 F.3d 49, 50–52 (4th Cir.1994) (en banc). In *S–1 and S–2,* the plaintiffs originally prevailed on the merits when the district court granted their motion for summary judgment. *See id.* at 50. However, while the appeal was pending, the controversy became moot, causing the circuit court to vacate the summary judgment order. *See id.* At 50–51. Despite their successful summary judgement motion, the court held that the plaintiffs were not prevailing parties. *See id.* at 51. It follows that Rahim X is not a prevailing party although he received a preliminary injunction. If receipt of summary judgment is insufficient to establish a plaintiff as a prevailing party, a preliminary injunction can not serve as an adequate basis for awarding costs.[5]

Nor can Rahim X assert prevailing party status for purposes of Rule 54(d) merely because his lawsuit was a catalyst leading to the VDOC's decision to rescind the challenged regulation.[6] The fact that a lawsuit causes a change in a defendant's post-litigation behavior does not establish a plaintiff as a prevailing party. *S–1 and S–2,* 21 F.3d at 51. The Fourth Circuit has explicitly rejected this so-called "catalyst theory," and demanded that success result from a court's final and enduring resolution of the merits before a party may claim prevailing party status. *See S–1 and S–2 v. State Bd. of Educ.,* 6 F.3d 160, 171 (4th Cir.1993), (Wilkinson, J., dissenting), *vacated,* 21 F.3d 49, 51 (4th Cir.1994) (en banc) (adopting Judge Wilkinson's dissent as the majority view); *Smith,* 632 F.2d at 346–52. Absent relief through a consent decree or settlement, "[t]he plaintiff must obtain an enforceable *judgment* against the defendant from whom fees are sought." *Farrar,* 506 U.S. at 111 (emphasis added). Thus, even assuming that Rahim X's efforts were the exclusive cause of the VDOC's change in policy, the defendants' voluntary recision of the challenged policy cannot serve as the basis for receiving costs as a prevailing party. *See S–1 and S–2,* 6 F.3d at 170–72 (Wilkinson, J., dissenting). Rahim X must establish some legally binding success to establish himself as a prevailing party. *See id.* As described above, he is unable to meet this burden.

III.

***3** For the reasons stated above, plaintiff's motion for costs is denied. An appropriate order will be entered this day.

Footnotes

1 Rule 54(d) states: "Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs ...." FedR.Civ.P. 54(d). This rule establishes a presumption in favor of awarding costs when a party establishes itself as the "prevailing party." *Teague v. Bakker,* 35 F.3d 978, 996 (4th Cir.1994). Although the award of costs to a prevailing party "is a matter firmly in the discretion of the trial court," *Oak Hall Cap and Gown Co. v. Old Dominion Freight Line, Inc.,* 899 F.2d 291, 296 (4th Cir.1990), "in the ordinary course, a prevailing party is entitled to an award of costs." *Teague,* 35 F.3d at 996. Thus, a court may not refuse to grant costs to a prevailing party unless it has articulated a good reason for doing so. *Id.* (listing what might constitute a "good reason.")

2 The court borrows the definition of "prevailing party" from cases dealing with 42 U.S.C. § 1988. However, the meaning of prevailing party is the same in both contexts. *Manildra Milling Corp. v. Ogilvie Mills, Inc.,* 76 F.3d 1178, 1180 n. 1 (Fed.Cir.1996); *Institutionalized Juveniles v. Secretary of Public Welfare,* 758 F.2d 897, 926 (3d Cir.1985); *Studiengesellschaft Kohle mbH v. Eastman Kodak Co.,* 713 F.2d 128, 132 (5th Cir.1983); *see Farrar,* 506 U.S. at 118–20 (O'Connor, J., concurring); *see also Hensley v. Eckerhart,* 461 U.S. 424, 433 n. 7, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983).

3 Although the plaintiff in *Smith* ultimately lost a final judgment on the merits, the reasoning of the circuit court applies to all cases where a plaintiff obtains no further relief than a preliminary injunction, including cases where the plaintiff's action is rendered moot.

4 Certain circuits that have addressed this issue have found that granting of a preliminary injunction may entitle a plaintiff to prevailing party status. *See Haley v. Pataki,* 106 F.3d 478, 482–84 (2d Cir.1997); *Libby by Libby v. Illinois High School Ass'n,* 921 F.2d 96, 99 (7th Cir.1990); *Dahlem by Dahlem v. Board of Education of Denver Public Schools,* 901 F.2d 1508, 1512 (10th Cir.1990); *Taylor v. City of Fort Lauderdale,* 810 F.2d 1551, 1557–58 (11th Cir.1987). However, many of these decisions are

inextricably linked to an acceptance of the catalyst theory. *See, e.g., Kansas Health Care Ass'n. v. Kansas Dep't of Social and Rehabilitation Services,* 31 F.3d 1052, 1054–56 (10th Cir.1994); *Libby,* 921 F.2d at 99. As discussed below, the Fourth Circuit has rejected the catalyst theory. *See S–1 and S–2 v. State Bd. of Educ.,* 21 F.3d 49, 50–52 (4th Cir.1994) (en banc). In addition, in many cases where courts have found a preliminary injunction sufficient, the preliminary injunction provided complete relief to the plaintiff. *See, e.g., Dahlem,* 901 F.2d at 1512–14; *Coalition for Basic Human Needs v. King,* 691 F.2d 597, 600–02 (1st Cir.1982). In any event, the Fourth Circuit has not been reluctant to break with these circuits in determining who is a prevailing party, as evidenced by its rejection of the catalyst theory.

5 It is true that, in a footnote, the court in *S–1 and S–2* acknowledged that certain circuits have found that "when a plaintiff is successful in obtaining a preliminary injunction based on its probability of success, the defendant's voluntary cessation of unlawful conduct need not deprive plaintiffs of prevailing party status." *S–1 and S–2 v. State Bd. of Educ.,* 6 F.3d 160, 170 n. 3 (4th Cir.1993) (Wilkinson, J., dissenting), *vacated,* 21 F.3d 49, 51 (4th Cir.1994) (en banc) (adopting Judge Wilkinson's dissent as the majority view). The court then proceeded to distinguish the facts then under consideration. *Id.* However, at no point did the court endorse the holding of those other circuits. In fact, it appears that the footnote in question is discussing the determination of prevailing party status under the catalyst theory. As explained below, the Fourth Circuit abandoned the catalyst theory. In any event, this court does not believe that the footnote in *S–1 and S–2* in any way undermines this court's logic or conclusions. Given the expressed reasoning and holdings of prior Fourth Circuit cases on this subject, it would be inappropriate to follow ambiguous dicta.

6 The court assumes, without deciding, that Rahim X's lawsuit caused the VDOC to abandon its newly enacted policy.