SPRING GARDEN UNITED NEIGHBORS, INC. v. CITY OF PHILADELPHIA

United States District Court for the Eastern District of Pennsylvania
February 4, 1986
No. 85-3209

Reporter: 1986 U.S. Dist. LEXIS 29688; 1986 WL 1525
SPRING GARDEN UNITED NEIGHBORS, INC., et al., v. CITY OF PHILADELPHIA, et al.

Counsel: [*1] David Kairys, Esq., Kairys & Rudovsky, Suite 300, 1425 Walnut St., Phila., Pa. 19102, (co-counsel), Stefan Presser, American Civil Liberties Union, 21 S. 5th Street, Bourse Bldg., Phila., Pa. 19107, for plaintiffs.

Armando A. Pandola, Jr., Esq., 1401 Arch St. 8th Fl., Phila., Pa. 19102, for defendants.

Opinion by: NEWCOMER

Opinion

MEMORANDUM

NEWCOMER, J.

Plaintiffs, a Spring Garden community group and three members of that group, brought this civil rights action commenced on June 6, 1985, on behalf of themselves and on behalf of others similarly situated, seeking redress from alleged unlawful stops, searches, detentions, arrests and assaults of persons in the Spring Garden community following the tragic killing of Officer Trench in late May, 1985.

Presently before the Court is plaintiffs' motion for approval of a proposed final settlement agreement on behalf of a class, pursuant to *Fed. R. Civ. P. 23(e)*. Upon due notice to members of the proposed settlement class, the Court held a hearing on January 13, 1986. No objections to the settlement agreement were filed of record, nor did any individual show up at the settlement hearing to register any objections. In addition, plaintiffs' counsel [*2] seek an award of counsel fees and expenses incurred in this litigation. For the reasons set forth below, the Court will approve the class action settlement, in the amount of $45,000.00 for a total class size of 82 individuals, and will also award counsel fees in the amount of $15,591.55, and costs of $686.05.

I. *Procedural and Factual History*

As noted above. plaintiffs brought this civil rights class action seeking injunctive and declaratory relief and damages regarding what were termed "police sweeps" of the Spring Garden community based on the plaintiffs' claim that "persons of Puerto Rican ancestory were indiscriminately and without appropriate cause or justification stopped, frisked, searched, questioned, threatened, coerced, detained, arrested and, in some cases, physically assaulted by defendants." Complaint P1. The Court held a hearing on plaintiffs' request for a preliminary injunction on June 11, 1985, and thereafter granted plaintiffs' requested injunction and issued a bench opinion on June 12, 1985. [1]

[*3] Plaintiffs, on September 23, 1985, filed a motion for class certification pursuant to *Fed. R. Civ. P. 23(a)* and *(b)(3)*. The proposed class members were to consist of "all persons of Puerto Rican or other hispanic ancestory or appearance who were stopped, detained, taken into custody, frisked, searched and/or questioned without probable cause, reasonable suspicion or warrant in police "sweeps" in the Spring Garden neighborhood in late May and early June, 1985 following the murder of Officer Thomas Trench." Plaintiffs' Motion For Class Certification at 1. Thereafter, prior to defendant responding to the motion for class certification, the parties reached an agreement to settle the case.

On November 25, 1985, the parties submitted a joint settlement agreement and stipulation, including a proposed notice to the class as defined above. The Court preliminarily approved the class action settlement and scheduled a hearing for January 13, 1986. Pursuant to the agreement between the parties, on December 5, 1985, first class mail notices were sent out to the proposed individual class members, thereby giving potential class members more than 30 days notice prior to the scheduled hearing date. [*4] As explained in the notice, the proposed terms of the settlement are as follows:

> a. The injunction issued on June 12, 1985 shall remain in effect.
>
> b. The City of Philadelphia shall establish a fund of $45,000.00 to be equally divided

---

[1] The City appealed this decision to the Third Circuit Court of Appeals on July 9, 1985. Subsequently, the City agreed to withdraw their appeal and on October 24, 1985, the action was dismissed under *Rule 42(b), Federal Rules of Appellate Procedure*.

among the members of the class. There now appear to be [82] members of the class, which means each one's share will be [$548.78]. [2]

[*5]

It is possible that the number of members and therefore the share each receives will change somewhat, but the list of members has been reviewed by counsel for plaintiffs and defendants and is believed to be completed.

c. The City shall pay all counsel fees and costs.Settlement Agreement P2(a)-(c) at 3-4.

II. *Approval of the Class and the Settlement*

Fed. R. Civ. P. 23 governs class actions in federal court. An action may be maintained as a class action if the four prerequisites of *Rule 23(a)* are satisfied and in addition, if the Court finds that one of the three subparagraphs of *Rule 23(b)* are applicable. *Rule 23(a)* provides:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. There is no dispute with the respect to the satisfaction of the four requirements in [*6] *Rule 23(a)*. Plaintiffs' motion and memorandum for class certification provide adequate and persuasive uncontested support to fulfill the four 23(a) factors. *See* Plaintiffs' Memorandum at 2-6.

Plaintiffs initially sought to certify the class pursuant to 23(b)(3). Subsection (b)(3) of *Rule 23* requires the court to find "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." However, plaintiffs now seek to certify the class on the basis of *Rule 23(b)(2)*. As plaintiffs noted in their motion to certify the class,

> A (b)(2) is appropriate where injunctive relief predominates and damages are secondary, and it offers the possibility of dispensing with individual notice to class members. However, plaintiffs prefer to provide such notice; their counsel are compiling a computerized list of names, addresses and other information regarding each class member. (See Appendix A) [attaching the proposed class member list]. Plaintiffs' Memorandum in Support of Class Certification [*7] at 2 n.1. In fact, plaintiffs actually seek what I would refer to as a "modified" (b)(2) certification. Both counsel agreed to settle this matter on behalf of their respective clients as a (b)(2) certified class because under (b)(2) potential class members are not permitted to opt out, whereas under (b)(3), members retain that option. Nonetheless, plaintiffs took it upon themselves to provide first-class notice to potential members. Counsel for plaintiffs agreed to this (b)(2) certification in order to allow the City a final resolution to the disputes. In other words, the City did not wish to agree to a certification such as (b)(3), because it could then be subject to subsequent suits should any individuals opt out of the class. As discussed below, the damages appear to the Court to be adequate and fair, and the lack of an opt-out provision is more than compensated for by the individual notice combined with the fair monetary dispensation to each member. Thus, based upon the lack of opposition and the fair notice to class members of the proposed class certification for settlement purposes, I approve the class as proposed and stated above.

The approval or disapproval of a class action [*8] settlement is left to the sound discretion of the trial court, which must determine whether the proposed settlement is fair, adequate, and reasonable. *Walsh v. Great Atlantic &*

---

[2] When the parties submitted the settlement agreement to the Court, counsel believed and therefore represented, that the class included approximately ninety individuals. Subsequently, at the time of the hearing held on January 13, counsel for plaintiffs represented to the Court that there were 6 members of the proposed class (then totalling 88) whose notices were returned as undeliverable by the Post Office. The Court allowed plaintiffs' counsel 10 days from that hearing in which to determine the status of those six remaining proposed class members. On January 24, 1986, plaintiffs' counsel submitted its final figures to the Court for the class. This submission reflected that the additional 6 people either did not exist or were no longer able to be located. As a result, the final class figure is 82 members, and each member receives $548.78. The $45,000.00 fund remained a constant figure throughout the determination of the final disposition of the class size.

Pacific Tea Company, 726 F.2d 956 (3d Cir. 1983). The Third Circuit, in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975). identified several factors generally considered relevant to the Court's overall determination of the adequacy, fairness and reasonableness of a proposed settlement, including, *inter alia*: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Girsh*, 521 F.2d at 157 (citing *City of Detroit v. Grinnell Corporation*, 495 F.2d 448 (2d Cir. 1974)).

As noted above, no objections to the proposed settlement were filed of record. nor did anyone appear at the settlement hearing to register an objection. Further, I note that the parties were able to [*9] resolve this dispute at a relatively early stage in the proceedings. While it appears that some discovery was conducted, the plaintiffs were saved the inevitable rising expense of continued discovery, and also the time and expense involved in conducting a trial. Moreover, it appears that plaintiffs' main goal was to obtain a favorable order from the preliminary injunction hearing. Having accomplished that goal rather quickly, and since there were not even any allegations of a violation of this order since that time, plaintiffs appear to have gained the most important redress that they sought from this litigation -- namely swift judicial support for the alleged "sweeps" of the Spring Garden community.

The settlement amount of $45,000.00, divided by a class of 82, resulting in a damages award of $548.00 per member, seems more than reasonable. I base this conclusion on the record created during the preliminary injunction hearing, the plaintiffs' motion for class certification, and the recommendation of plaintiffs' counsel, who are experienced counsel in the civil rights litigation area. Although the Court must independently evaluate a proposed class action settlement, the professional [*10] judgment of counsel involved in the litigation is entitled to significant weight. *See Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975).

As plaintiffs explain in the motion for class certification

> Mr. Kairys, a partner in Kairys & Rudovsky, is one of the preeminent civil rights lawyers in the country. Mr. Kairys' civil right litigation includes a variety of leading cases. *See*, *e.g.*, *Greer v. Spock*, 424 U.S. 828 (1976); *Trotman v. Board of Trusteesof Lincoln University*, 635 F.2d 216 (3d Cir. 1980); *United Statesv. Bearden*, 659 F.2d 590 (5th Cir. 1981); *Pennsylvania PublicInterest Coalition v. York Township*, 569 F.Supp. 1398 (M.D. Pa. 1983). During his seventeen years in Philadelphia, he has handled many lawsuits involving claims of misconduct against the Philadelphia Police Department. *See*, *e.g.*, *Wilkinson v. Ellis*, 484 F.Supp. 1072 (E.D. Pa. 1980); *Marvasi v. Shorty*, 70 F.R.D. 14 (E.D. Pa. 1976). For the last five years, Mr. Presser [plaintiffs' co-counsel] has been associated with the American Civil Liberties Union. He has held the position of staff counsel for its Greater Houston Chapter and is presently [*11] legal director of its Pennsylvania affiliate. Throughout that time his entire caseload has been comprised of civil rights and constitutional issues. Both in Texas, where he was class counsel in *Quinlin v.Estelle*, C.A. No. H-78-2117 (S.D. Tex.) (successful sex discrimination challenge to the conditions of confinement of women within the Texas Department of Corrections), and in Pennsylvania, where he is presently class counsel in *ICU v.Shapp*, C.A. No. 70-3054 (E.D. Pa.), he has handled class certified litigation. Mr. Presser and Mr. Kairys are also counsel in the *Cold Turkey* case, *Cliett v. City of Philadelphia*, (E.D. Pa.), C.A. No. 85-1846. Plaintiffs' Motion for Class Certification at 6 n.4. This representation went unchallenged by defendants, and the presentations of Mr. Kairys and Mr. Presser before this Court have borne out the representation that they are eminent civil rights lawyers.

In addition, the parties based the standard for the appropriate amount of recovery for class members on the previous Eastern District of Pennsylvania case of *Farber v. Rizzo*. C.A. No. 72-2052.

> In that case Philadelphia police officers took into custody [*12] persons carrying signs critical of then President Richard Nixon at Independence Hall during the course of President Nixon's signing of the recently passed Revenue Sharing Act. The plaintiffs were held in custody for periods ranging from about two hours to over ten hours and their claim was based on the *First Amendment* as well as the constitutional provisions at issue in this case. Judge Daniel H. Huyett, 3rd, issued a temporary restraining order and later found the order was violated by numerous officers

> and high police officials, who were held in contempt of court. The damage issue on the contempt and the underlying claim was settled at a series of conferences mediated by Judge Edward R. Becker. The plaintiffs received $200.00 if they were in custody for a short period, $500.00 if they were in custody for up to 4 hours, and $750.00 if they were in custody for more than 4 hours.Supplemental Motion to Approve the Proposed Settlement at 3.

Here, in lieu of a detailed investigation as to the amount of time each member of the class spent in custody, counsel agreed that the settlement should provide for an equal distribution among all the class members. This decision was supported [*13] by the fact that the police records were rather scanty regarding how long each member of the class had been in custody. Thus, any individual investigation would run up counsel costs and fees, which would not, in all likelihood, lead to a greater measure of damages. Moreover, this settlement provides a speedy resolution of the matter concomitant with a fair payment of damages.

Last, I note that plaintiffs may have encountered some difficulty in proving the liability portion of their case in regard to the policy or custom requirement encompassed within §1983 claims. Plaintiffs were able to successfully leap this hurdle at the preliminary injunction stage, *see* June 12 Slip op. at 8-9; however, in my opinion this still would have remained a substantive hurdle for plaintiffs at trial.

In sum, the recommendation of experienced counsel in this area, combined with the reasonableness of the amount of settlement per class member and the early stage at which this litigation was settled, as well as the lack of any opposition by duly notified class members, militate in favor of approving the class action settlement as fair, reasonable and adequate. Thus, for the foregoing reasons I will [*14] approve the settlement agreement.

IV. *Counsel Fees and Expenses*

Counsel for plaintiffs in this class action, namely David Kairys, Esquire and Stefan Presser, Esquire seek approval of proposed counsel fees and costs, to be paid by the City, not out of the settlement fund. The proposed amounts are a total of $15,591.55 in counsel fees for both Mr. Kairys and Mr. Presser, and costs in the amount of $691.55. As to the counsel fees, Mr. Kairys avers that he spent 71 1/2 hours on this matter, and that his rate is $175.00 per hour; and he seeks a rounded-off total of $12,500.00. Mr. Presser
seeks compensation for 26 hours devoted to this case at the hourly rate of $100.00 an hour, for a total of $2,600.00. While counsel have not provided the court with a detailed breakdown or affidavits on these counsel fee requests, based on the uncontested representations in the petition for class certification quoted above, the high quality of work which the Court had the first-hand opportunity to observe during the course of this case, and the lack of opposition to the settlement agreement and the counsel fees, I will award both counsel the full amount sought for their counsel fees, namely $15,591.55.

[*15] Plaintiffs' counsel also seek reimbursement for costs in the amount of $691.55. The bulk of these costs stem from an interpreter who was required at the preliminary injunction hearing, transcripts of the hearing which were required because of the City's appeal, and implementation of the settlement -- namely bilingual notice to members of the class. The City has agreed to pay all of these costs; however, similar to my colleague the Honorable Joseph S. Lord, III, I will disallow the $15.50 for telephone calls as operating overhead expenses which are not compensable. *See June 2 Coalition v. Delaware River Port Authority*, C.A. No. 84-2323, slip op. at 7 (E.D. Pa. March 12, 1985) (citing *Vecchione v. Wohlgemuth*, 481 F.Supp. 776 (E.D. Pa. 1979)). Thus, plaintiffs' counsel is entitled to $686.05 in costs and $15,591.55 in counsel fees amounting to a total award of $16,277.60. An appropriate Order follows.

ORDER

AND NOW, this 3rd day of February, 1986, having considered the Stipulation and Agreement of Compromise and Settlement entered into by the parties, dated November 24, 1985 (filed in this case as Docket Entry No. 19) which, by this reference is incorporated herein, and having [*16] held a hearing in open court on January 13, 1986, pursuant to the duly executed notice to members of the class, who had the opportunity at that hearing to object to the proposed settlement, to the proposed judgment to be entered, or to the award of counsel fees and expenses to class counsel, and had the opportunity to present any evidence or argument that may be proper or relevant, it is hereby Ordered that:

1. The class as described in the accompanying Memorandum is certified as a 23(b)(2) class.

2. The settlement is APPROVED as fair, reasonable and adequate, and shall be consummated in accordance with its terms and conditions.

3. This action is DISMISSED with prejudice on the merits as to all defendants, the dismissal to be subject only to the settlement thereafter becoming effective.

4. Jurisdiction is reserved over all matters relating to the administration and consummation of the settlement provided for herein. The City shall pay $45,000.00 forthwith to a fund to be equally divided among the 82 members of the class. The settlement funds shall be paid to counsel for plaintiffs, who shall maintain said amounts in an interest bearing checking account. Plaintiffs' counsel shall [*17] make diligent efforts to distribute the settlement amount of $548.78 to each class member, and at the conclusion of three months (measured from counsel's receipt of the settlement fund) plaintiffs' counsel shall return any remaining balance to the City of Philadelphia (including any interest which has accrued).

5. This Court hereby awards counsel for plaintiffs counsel fees and reimbursement expenses in the amount of $16,277.60. This amount covers the counsel fees in the amount of $15,591.55 ($12,500 payable to David Kairys, Esquire, and $2,600 payable to Stefan Presser, Esquire), and expenses in the amount of $686.05.

AND IT IS SO ORDERED.