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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

APRIL AARON-BRUSH,	}	
	}	
Plaintiff,	}	
	}	
v.	}	**Case No.: 2:14-cv-01091-RDP**
	}	
ROBERT BENTLEY, et al,	}	
	}	
Defendants.	}	

ORDER

This matter is before the court on Plaintiffs' Renewed Motion for Attorneys' Fees. (Doc. # 49). The matter has been fully briefed. (Docs. # 52 and 53).

In federal civil rights litigation, "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 42 U.S.C. § 1988(b). Because Plaintiffs have elected not to submit an itemized fee summary at this time, whether they are the prevailing party in this litigation is the only question before the court.

Plaintiffs filed this case on June 10, 2014. (Doc. # 1). Plaintiffs are a same-sex couple who were lawfully married outside the State of Alabama. They brought this action to challenge the constitutionality of Section 36.03 of the Alabama Constitution and Ala. Code § 30-1-19 (the "Alabama Marriage Prohibitions") which prohibit the State of Alabama from recognizing the marriages of same sex couples entered into in other jurisdictions. (Doc. # 1). However, while this action was pending, in June of this year, the Supreme Court decided *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015). In *Obergefell*, the Supreme Court held that the Fourteenth Amendment requires States to recognize same-sex marriages performed in other States. Following the *Obergefell* decision, Defendants acknowledged that *Obergefell* is now the law of the land and

that *Obergefell* binds them in this and other cases.

While this case was pending, the Honorable Callie V. Granade in the Southern District of Alabama granted permanent injunctions with respect to Attorney General Luther Strange which (1) prohibit him from enforcing Alabama's marriage laws to deny same-sex couples the right to marry, and (2) require the recognition of marriages performed in other states. *Searcy v. Strange*, 2015 WL 328728 (S.D. Ala. 2015); *Strawser v. Strange*, 44 F. Supp. 1206 (S.D. Ala. 2015).

In light of *Obergefell*, on July 21, 2015, Defendants moved to dismiss this case as moot. (Doc. # 30). On October 8, 2015, the parties filed a Joint Status Report indicating that Defendants had effectuated all of the specific injunctive relief Plaintiffs sought in this case. (Doc. # 43). Therefore, because no live case or controversy remained, the court dismissed this case without prejudice. (Doc. # 44).

Plaintiffs now argue that they are entitled to an award of attorneys' fees as prevailing parties pursuant to Rule 54 of the Federal Rules of Civil Procedure, 42 U.S.C. § 1983, and 42 U.S.C. § 1988. (Doc. # 49). The court's inquiry in determining a party's entitlement to attorney's fees is whether the party has 'prevailed' in the statutory sense. *Dillard v. Colbert Cty. Comm'n*, 494 F. Supp. 2d 1297, 1299 (M.D. Ala. 2007). The prevailing party inquiry is governed by *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources*, 532 U.S. 598 (2001), and our circuit's law that interprets and applies that decision. "It is now established that in order to be considered a prevailing party under § 1988(b), there must be a court-ordered material alteration of the legal relationship of the parties necessary to permit an award of attorney's fees. In other words, there must be: (1) a situation where a party has been awarded by the court at least some relief on the merits of his claim or (2) a judicial imprimatur on the change in the legal relationship between the parties." *Smalbein v. City of*

Daytona Beach, 353 F.3d 901, 904-05 (11th Cir. 2003) (internal quotation marks, ellipses, and citations omitted). This second option, the "judicial imprimatur," requires a settlement agreement the court has approved, either by incorporating the terms of the settlement into the final judgment or by explicitly retaining jurisdiction to enforce the terms of the settlement. *Id*. at 905 (citing *Am. Disability Ass'n v. Chmielarz*, 289 F.3d 1315, 1320 (11th Cir. 2002)). Thus, the second is not applicable here.

As to the first option, there has not been any court-ordered change in the legal relationship between these parties. Plaintiffs have not shown that they (or their actions) generated any judicial relief. Instead, this case became moot because Defendants voluntarily came into compliance with new law created by decisions in other cases. "*Buckhannon* requires that the plaintiff be a party to the judicial relief, not simply benefit from the defendant's compliance with a court order entered" in another case or cases. *See Buckhannon*, 532 U.S. at 605–06. Therefore, Plaintiffs are not "prevailing parties" entitled to an award of attorneys' fees under Section 1988.

Plaintiffs' Renewed Motion for Attorneys' Fees (Doc. # 49) is **DENIED**.

DONE and **ORDERED** this December 8, 2015.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE