

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|                 |   |              |
|-----------------|---|--------------|
| DIANA M. HOLMES | : | CIVIL ACTION |
|                 | : |              |
| v.              | : |              |
|                 | : | NO. 04-1299  |
| KEVIN McGUIGAN  | : |              |

**MEMORANDUM**

**Baylson, J.**

**September 19, 2006**

**I. Background**

The underlying action was brought under 28 U.S.C. § 1983 by Diana Holmes, (“Holmes”), a woman who alleged that she was unlawfully arrested, charged and injured by Defendant Kevin McGuigan, (“McGuigan”), a police officer employed by the city of Coatesville, Pennsylvania.

Holmes initially alleged that she was lawfully driving an automobile and stopped for speeding (which, at the time, she denied). Holmes alleged that McGuigan was engaged in racial profiling. Holmes also alleged that McGuigan handcuffed her with unnecessary force, unlawfully searched her car and her purse, caused her humiliation and embarrassment, and took her to a police station where she was kept in a holding cell for over two hours. Holmes acknowledged an outstanding bench warrant at the time of her arrest, but asserted that it was issued for a minor traffic offense and did not justify what occurred. She was found guilty of the traffic citation issued for the automobile stop.<sup>1</sup>

Holmes initially brought claims against Officer McGuigan for false arrest, malicious

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<sup>1</sup> However, on appeal to the Court of Common Pleas, the case against Holmes was dismissed because McGuigan did not appear for trial.

prosecution, and excessive force, and claimed that McGuigan was motivated by racial discrimination. Prior to trial, McGuigan filed a motion for partial summary judgment based upon Holmes's failure to produce any evidence to support her false arrest, malicious prosecution, and racial discrimination claims. The Court initially denied the motion, but upon review of McGuigan's motion for reconsideration, granted the summary judgment motion in part and entered judgment in favor of Officer McGuigan on the false arrest and malicious prosecution claims. Plaintiff dropped any claim based on race.

The excessive force claim proceeded to trial. At trial, Holmes claimed that McGuigan used excessive force when he placed her in the handcuffs, causing a severe and permanent injury to her right wrist. Holmes testified the left handcuff was too tight and she so advised McGuigan, but he made the right handcuff even tighter. (N.T. 6/7/05, 3:17 p.m., p. 17). Thus, Holmes presented evidence upon which the jury could find that Officer McGuigan tightened the right handcuff after she claimed the left handcuff was too tight. Holmes supported her claim with medical records which corroborated her claim of excessive force, and she missed work due to the incident, as her doctor recommended. Although the case was not a strong one relatively speaking with other civil rights cases based on claims of excessive force, the Court denied a defense motion for directed verdict because the jury could have concluded that Defendant McGuigan acted with intent to cause harm to Holmes. However, Holmes's claim was rejected by the jury, which promptly rendered a verdict in favor of McGuigan.

McGuigan subsequently filed the pending Application for Counsel Fees and Associated

Costs (Doc. No. 46).<sup>2</sup> McGuigan asserts that Holmes's action was groundless, frivolous, and pursued in contravention of the facts and law. McGuigan seeks an award of approximately \$81,751.00 in attorney's fees.<sup>3</sup>

On June 15, 2006, the United States Court of Appeals for the Third Circuit, in an unpublished opinion, affirmed this Court's grant of summary judgment in favor of Officer McGuigan on the false arrest and malicious prosecution claims in all respects. The Court also denied Holmes' effort to secure a new trial based on her excessive force claim. See Holmes v. McGuigan, 2006 U.S. App. LEXIS 15599 (3d Cir. June 15, 2006).

Following the issuance of the Third Circuit's decision, this Court ordered Holmes to respond to McGuigan's application for attorney's fees. Holmes responded on August 22, 2006, by arguing that Holmes had subjectively believed her claims were not groundless or frivolous.

McGuigan filed a reply on September 5, 2006, reiterating the request for attorney's fees and costs, and providing a detailed breakdown, consisting of approximately 100 pages of specific time sheets and cost itemizations, of the requested attorney's fees and costs.

For the reasons that follow, the Court will deny McGuigan's application for attorney's fees.

## **II. Discussion**

42 U.S.C. § 1988(b) permits prevailing defendants to receive attorney's fees and

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<sup>2</sup> Because the Court, in its August 8, 2006 Order, directed the Clerk to proceed with the taxation of costs as requested by McGuigan (see Docket No. 45), the Court need not take up the issue again here. The Court addresses only attorney's fees in this Memorandum.

<sup>3</sup> Holmes originally sought fees and expenses totally \$68,577, however this number was adjusted upward by McGuigan based on additional necessary efforts between the date of the original application (6/24/05) and the current time. See Def's Reply Br. at 4.

associated expenses in a federal civil rights action brought under 42 U.S.C. § 1983 if a plaintiff's claims are "frivolous, unreasonable or without foundation," Barnes Found. v. Township of Lower Merion, 242 F.3d 151, 157-58 (3d Cir. 2001) (quoting Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 416-17, 421 (1978)), or if "the plaintiff continued to litigate after [they] clearly became so." Brown v. Borough of Chambersburg, 903 F.2d 274, 277 (3d Cir. 1990).

The Court agrees with McGuigan that, under the law, if a plaintiff's discovery efforts fail to provide any factual support for allegations originally deemed to be reasonable, or if the facts clearly undercut the plaintiff's claims, the court may award fees to the defendant(s) if the plaintiff persists in prosecuting a groundless claim. "[I]t is not necessary that the prevailing defendant establish that the plaintiff had subjective bad faith in bringing the action in order to recover attorney's fees. Rather, the relevant standard is objective."<sup>4</sup> Barnes Found., 242 F.3d at 158 (emphasis added). Moreover, "it is possible for a plaintiff to establish a prima facie case which is weak but which is sufficient to survive a directed verdict, but which is nonetheless groundless in light of a defense readily apparent to the plaintiff from the outset of the litigation." Introcaso v. Cunningham, 857 F.2d 965, 967-68 (4<sup>th</sup> Cir. 1988) (emphasis added).

The Court concludes that there was objective evidence that Holmes had suffered some injury because her subjective belief was corroborated by the medical records and her loss of work. Furthermore, the jurors could have credited her testimony, but did not do so. The Court finds that imposing fees and costs against an unsuccessful plaintiff in a civil rights case would

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<sup>4</sup> Holmes' sole argument in opposition to an award of attorney's fees is based on her "belief that the lawsuit had merit." Pl's Br. at 5 (emphasis added). However, as McGuigan correctly indicates, caselaw dictates that Holmes' subjective belief about the merits of her case is irrelevant to the Court's determination of the issue at hand; the Court, clearly, must employ a purely objective standard.

frequently have a chilling effect on the bringing of these cases. Furthermore, it is well known that most municipalities and police officers are covered by insurance so that they are not personally responsible for the defense costs. There is no indication to the contrary in this case. Imposing defense counsel fees on Plaintiff is too high a price for this Plaintiff to pay.

The Court finds that the record does not support Defendant McGuigan's claim that Plaintiff Holmes' case was objectively frivolous or brought in bad faith.

### **III. Conclusion**

For the foregoing reasons, the Court will deny McGuigan's Application for attorney's fees and costs.

An appropriate Order follows.

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**ORDER**

AND NOW, this 19<sup>th</sup> day of September, 2006, it is hereby ORDERED that Defendant McGuigan's Application for Attorneys Fees (Doc. No. 46) is DENIED.

BY THE COURT:

s/Michael M. Baylson

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Michael M. Baylson, U.S.D.C.