

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

ERVING WILLIAMS,	:	CIVIL ACTION
	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
SOUTHEASTERN PENNSYLVANIA	:	
TRANSIT AUTHORITY, TIMOTHY	:	
MASLIN, MICHAEL CANNON, and	:	
THOMAS HAWK,	:	
	:	
Defendants.	:	NO. 95-4786

MEMORANDUM - ORDER

AND NOW, this 27th day of April, 1998, upon consideration of the motion by defendant Southeastern Pennsylvania Transportation Authority (“SEPTA”) for an award of attorney fees and costs against plaintiff Erving Williams (“Williams”) (Document No. 44), and the response by Williams thereto (Document No. 46), having found and concluded that:

1. Williams filed a complaint against the defendants under 42 U.S.C. § 1983 claiming excessive use of police force, false arrest, and malicious prosecution. Williams voluntarily withdrew his case on November 24, 1997;
2. SEPTA seeks an award of attorney fees and costs under 42 U.S.C. § 1988. Section 1988 provides that “[i]n any action or proceeding to enforce a provision of section[] . . . 1983. . . of this title, . . . 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. . . .” A defendant may be able to recover attorney’s fees under §1988 “when ‘a court finds that [the plaintiff’s] claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly becomes so.’” Brown v. Borough of Chambersburg, 903 F.2d 274, 277 (3d Cir. 1990) (quoting Christianburg Garment Co. v. E.E.O.C., 434 U.S. 412, 422 (1978)). In determining whether to award attorney’s fees to the defendant, the court may

consider whether the plaintiff knew or should have known the legal or evidentiary deficiencies of his claim. See Brown, 903 F.2d at 277;

3. SEPTA contends that it has evidence that Williams was maintaining a double identity and that “Williams’ two identities, two Social Security account numbers, criminal record under the name Edwin Williams, two driver’s licenses, and his denials, some under oath” of this double identity “doomed his case.” (Def.’s Mem. at 4). SEPTA argues that Williams pursued his claims for thirteen months after SEPTA clearly established that Williams committed perjury during discovery. Williams argues that his claims were meritorious and submits with his response to the motion the statements of three eyewitnesses which corroborate the allegations of Williams. Williams also submits the personnel file of defendant Timothy Maslin, including the reports of prior investigations conducted by SEPTA into alleged civil rights violations by Timothy Maslin;

4. While evidence of Williams’ alleged double identity would likely have undercut his credibility had the case gone to trial, it does not conclusively undermine the merits of his claim that the defendants violated his constitutional rights. In addition, the testimony of the other witnesses and the prior record of Officer Maslin were available to Williams as evidence to support his claim and to counteract the potential damage to his credibility from the evidence of his alleged double identity.

This Court does not condone the alleged conduct of Williams in perpetuating a double identity by posing as a non-existent twin brother. However, Williams never had an opportunity to defend against these allegations, as no hearing was held on the issue. This Court gave Williams several alternatives, including withdrawal of his suit in light of SEPTA’s allegations, which Williams did, ending the controversy. Despite the allegations of bad conduct on the part of Williams, he had at the least a legally cognizable and colorable claim under § 1983, the merits of which were never adjudicated because his credibility problem forced him to withdraw the case;

5. In light of these factors, this Court does not find that the claim was frivolous, unreasonable, or groundless.¹ See Hughes v. Unified School District No. 330, 872 F. Supp. 882 (D. Kan. 1994) (finding that defendant was not entitled to attorney fees even though plaintiff superintendent voluntarily dismissed his civil rights case prior to any adjudication on the merits in order to prevent the defendant from deposing a principal about rumors involving the principal and

¹ SEPTA also argues that Williams should have known that his chances of success in his case were remote because he lost his case in arbitration, even though evidence of his alleged double identity was not presented. However, the fact that Williams lost his case in arbitration does not support a finding that his claims was frivolous, unreasonable, or groundless.

superintendent). Cf. Brown, 903 F.2d at 278 (upholding the award by the district court of attorney's fees to the defendant and finding that "only plaintiff's testimony supported his version of the arrest and that this testimony was contradicted by every other witness, including disinterested witnesses");

it is accordingly hereby **ORDERED** that the motion is **DENIED**.

LOWELL A. REED, JR., J.