

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

FRANK MCDANIELS : CIVIL ACTION
 :
 v. :
 :
 JAMES R. FLICK, et al. : NO. 92-932

O R D E R - M E M O R A N D U M

AND NOW, this 14th day of July, 1998 the motion of defendant Delaware County Community College for relief from the November 7, 1994 order awarding attorney's fees and costs to plaintiff, 42 U.S.C. § 1988 (1994), is granted. Fed. R. Civ. P. 60(b)(4), (5), (6).¹

On February 13, 1992, this action was filed under 42 U.S.C. § 1983 alleging a violation of plaintiff Frank McDaniel's 14th Amendment procedural due process rights. On July 15, 1994, upon jury trial, plaintiff received a verdict of back pay and benefits of \$134,081. His faculty reinstatement was ordered separately. Defendant appealed. On November 7, 1994, plaintiff was awarded \$123,735.50 in attorney's fees and \$6,783.86 in costs under § 1988.²

¹ Rule 60(b) states:

On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void; (5) . . . a prior judgment upon which [the judgment] is based has been reversed or otherwise vacated . . .; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time.

² A prevailing § 1983 party may be awarded "a
(continued...)

Defendant did not appeal the fees and costs order. On July 11, 1995 the Court of Appeals reversed the jury verdict, finding no procedural due process violation and ordering that judgment be entered in favor of defendant. See McDaniels v. Flick, 59 F.3d 446, 461 (3d Cir. 1995), cert. denied, 516 U.S. 1146, 116 S. Ct. 1017, 134 L. Ed.2d 97 (1996). On April 20, 1998 – almost three years later – plaintiff, through his attorney, made demand for the amount of the attorney’s fees award. Defendant’s motion, exh. e.

The defense motion asserts that the reversal of the underlying judgment (1) prevents plaintiff from being a “prevailing party” under § 1988; and (2) negates any orders based upon the judgment. Defendant’s motion, at 6-9. A “prevailing party” has been defined by the Court as follows:

[T]o qualify as a prevailing party, a civil rights plaintiff must obtain at least some relief on the merits of his claim. The plaintiff must obtain an enforceable judgment against the defendant from whom fees are sought or comparable relief through a consent decree or settlement. . . . In short, a plaintiff “prevails” when actual relief on the merits of his claim materially alters 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, 573, 121 L. Ed.2d 494 (1992) (citations omitted).

As to the effect of the reversal of the underlying judgment: “In general, when a judgment in favor of a plaintiff is reversed on the merits, that party is no longer a ‘prevailing party’

²(...continued)
reasonable attorney’s fee as part of the costs.” 42 U.S.C. § 1988 (1994).

under 42 U.S.C. § 1988 and no longer entitled to attorney's fees under that statute." Clark v. Township of Falls, 890 F.2d 625, 626-27 (3d Cir. 1989). Clark held that a plaintiff could be a "partially prevailing" party if the unsuccessful litigation was the catalyst for significant changes³ in defendant's behavior that inured to plaintiff's benefit. 890 F.2d at 627-28. Here, however, plaintiff does not contend that he is a partial prevailing party. Nor, given the reversal on appeal, can he claim to have secured "actual relief on the merits of his claim" that "materially alter[ed] [his] legal relationship" to defendant. Plaintiff, therefore, cannot be considered a prevailing party under § 1988.

Instead, plaintiff's response asserts that (1) defendant's failure to appeal from the fees order precludes relief under Rule 60(b) notwithstanding the reversal of the judgment; and (2) the request for relief was not made within a reasonable time. Plaintiff's response, at 6-8, 9-11. The former proposition is not supportable. "In general, reversal of a judgment nullifies not only that judgment but any order based upon it. . . . In particular, an order awarding attorney's fees based on a party having prevailed in a trial court cannot survive the reversal of that party's judgment on appeal." Pedigo v. P.A.M. Transport, Inc., 98 F.3d. 396, 398 (8th

³ The alleged changes were that after the jury verdict in his favor, but before reversal on appeal, plaintiff moved for injunctive relief in the form of a grievance procedure, which procedure the defendant implemented. See Clark, 890 F.2d at 627. Because the district court had not considered the issue, the Court of Appeals remanded for further consideration of whether the grievance procedure met the "statutory threshold of significance and causation." Id. (internal quotations and citation omitted).

Cir. 1996). In Pedigo, plaintiff was awarded damages and \$30,000 in attorney's fees under § 1988; defendant did not appeal as to the fees. See id. at 397. The Court of Appeals vacated the damages award, see 60 F.3d 1300 (8th Cir. 1995), and on remand the district court granted plaintiff declaratory relief but refused to allow any additional attorney's fees. See 98 F.3d at 397. On cross-appeals, the Court of Appeals rejected all fees – even without an appeal from the initial \$30,000 award. The court explained:

Although plaintiff had been awarded \$30,000 in fees before we vacated the jury verdict, the prior award cannot stand in light of our holding that plaintiff is not a prevailing party. . . . Mr. Pedigo ceased to be a prevailing party when his judgment was vacated and the case was remanded, and he never subsequently prevailed in this suit in such a way as would allow the district court to hold that he was a prevailing party on the merits. Plaintiff thus is not entitled to recover any attorney's fees.

Id. at 398. The lack of an appeal, therefore, does not preserve a fees award when plaintiff, as here, ceases to be a prevailing party.

Given the reversal of the jury verdict in this case, defendant understandably perceived no need to request Rule 60(b) relief from the nullified fees award until plaintiff made demand three years later. Defendant moved for relief within two months of the demand, a not unreasonable time.

Accordingly, the order of November 7, 1994 is vacated.⁴

⁴ The award of \$6,783.86 in costs is also vacated in that plaintiff is no longer a prevailing party. Fed. R. Civ. P. 54(d).

Edmund V. Ludwig, J.