

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

RENEE GILLIARD : CIVIL ACTION
 :
v. :
 :
THE CITY OF PHILADELPHIA, :
et al. : CASE NO. 03-3939

MEMORANDUM AND ORDER

McLaughlin, J.

August 24, 2004

The plaintiff petitions the Court for attorney's fees and costs pursuant to 42 U.S.C. § 1988. The defendants dispute that the plaintiff's claimed fees and costs are reasonable. The plaintiff seeks the sum of \$26,912.75 in attorney's fees and costs. The Court awards fees and costs to plaintiff in the amount of \$16,717.75.

I. Procedural History

The plaintiff filed a complaint on July 2, 2003, against the City of Philadelphia and four correctional officers, alleging various constitutional and state law violations. Prior to trial, the plaintiff dismissed the City of Philadelphia and two of the officers. On July 6, 2004, trial started against Correctional Officer Lakeya Fryer and Correctional Officer Timothy Wilson on four claims: excessive force; federal malicious

prosecution; assault and battery; and, state malicious prosecution.

On July 6, 2004, the jury found in the plaintiff's favor and against Correctional Officer Fryer on the excessive use of force and assault and battery claims and in favor of Correctional Officer Wilson and against plaintiff on all counts. The jury awarded no compensatory damages to the plaintiff but did award \$1,800 in punitive damages.

II. Discussion

The defendants do not dispute that the plaintiff is entitled to reasonable attorney's fees and costs. They raise several issues, however. First, they argue that the plaintiff's reported time expended on the case is unreasonably excessive and inadequately documented. Second, they argue that the request for an hourly rate of \$325 is excessive and unsupported by proper proof. Third, they argue that the fee request is out of line with the degree of success obtained.

The United States Supreme Court has adopted the "lodestar" formula for a district court to use in the calculation of an award of attorney's fees. Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939 (1983); see also Pennsylvania Environmental Defense Foundation v. Canon-McMillan School Dist., 152 F.3d 228, 231 (3d Cir. 1998). This formula calls for the multiplication of the number of hours reasonably expended by the

reasonable hourly rate of the attorneys. Hensley, 461 U.S. at 433; Cannon-McMillan, 152 F.3d at 231. Application of the lodestar is strongly presumed to yield a reasonable fee. City of Burlington v. Dague, 505 U.S. 557, 562, 112 S. Ct. 2638, 2641 (1992). Once the court has performed this calculation, it may later make adjustments depending primarily on the degree of success achieved by the petitioner. Canon-McMillan, 152 F.3d at 232.

A. Reasonableness of Hours Expended

In calculating the number of hours to determine the lodestar, the Court must exclude hours that were not "reasonably expended." Hours are unreasonably expended when they appear to be excessible, redundant, when a case is overstaffed, or when the plaintiff's attorney has otherwise not exercised billing judgment. Hensley, 461 U.S. at 434.

After considering the defendants' objections to specific hours billed by the plaintiff's attorney, the Court concludes that the plaintiff seeks fees for time that was unreasonably expended. Specifically, the Court finds that the following hours were unreasonably spent.

1. 3.0 Hours for Drafting the Complaint

The defendants have presented the Court with other complaints filed by the plaintiff's counsel that are identical in many respects to this complaint. Based on that evidence, the Court concludes that the drafting of this complaint should not have taken any longer than two hours.

2. 4.5 Hours for Drafting a Motion for Default

The Court does not see why the plaintiff prepared this motion at all. Lawyers from the City Solicitor's office were representing the defendants. It was unreasonable to think that the defendants were not going to answer the complaint. The Court, nevertheless, will allow two hours spent on this motion.

3. 3.8 Hours for Drafting of Discovery Requests

These were boilerplate requests that closely resemble requests filed by this lawyer in other cases. The amount of 3.8 hours is excessive in view of that fact. The Court finds that 2.5 hours is a reasonable amount of time to spend on these discovery requests.

4. 7.4 Hours for the Review of Prison Health Service Records and the Defendants' Documents

These documents were by and large irrelevant to the plaintiff's case. That became clear during the trial of this

matter. Only one of the health service records was used and a few of the defendants' documents. The Court cannot justify the amount of hours spent on the review of these largely irrelevant documents. The Court will allow five hours for the review of these documents.

5. 15.7 Hours for Trial Preparation

The plaintiff submitted no other description for this time other than "prepared for trial." Because of the vagueness of the description of the work performed and the Court's observations about counsel's preparation for trial, the Court will reduce the number of hours to ten hours.

6. 8.4 Hours for Drafting of Points for Charge, the Pre-Trial Memorandum, and the Verdict Slip

This appears excessive. The pre-trial memorandum was a simple three-page document. The proposed verdict sheet was another routine-type of document prepared in federal litigation. An attorney with significant federal court experience should have had little difficulty in preparing these documents in a short amount of time. The defendant submitted to the Court jury instructions in the Best case, another case brought by the plaintiff's attorney. The jury instructions in that case were almost identical to those proposed by the plaintiff in this case.

Considering all of that, the Court concludes that five hours was reasonable for the work produced by the plaintiff.

B. Reasonableness of Counsel's Hourly Rate

In determining an appropriate hourly rate, the Court must look to "prevailing market rates" in the relevant community. Public Interest Research Group of New Jersey, Inc. v. Windall, 51 F.3d 1179, 1185-1186 (3d Cir. 1995). Counsel for the plaintiff has the "burden of establishing by way of satisfactory evidence, in addition to the attorney's own affidavits, that the requested hourly rate meets this standard." Washington v. Philadelphia Court of Common Pleas, 89 F.3d 1031, 1035 (3d Cir. 1996) (internal quotations omitted).

The defendants argue that the plaintiff has not submitted sufficient proof to establish the \$325 requested hourly rate. The affidavit submitted by the plaintiff's attorney is insufficient to support the requested hourly rate, and the other information provided does not give the Court enough information. Considering the whole record, including the performance during the litigation and at trial of counsel for the plaintiff, the Court concludes that \$250 is a reasonable hourly rate in this case.

The Court overrules all of the other objections of the defendants to the time expended. The Court has reviewed each one

of the objections but concludes that other than what is listed above, the time expended for various tasks was reasonable. The Court finds that the costs expended are reasonable.

C. Success Obtained

The defendants argue that the attorney's fees should be decreased because of what the defendants characterize as the plaintiff's "limited success." The Court will not reduce the fees on this ground. The jury found against the defendants on two claims and awarded punitive damages. That is a significant victory.

It is true that the jury found for the other defendant on all counts; but, the claims were so interrelated that the Court cannot find that the hours spent were unreasonable in comparison to the success achieved.

An appropriate order follows.

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ORDER

AND NOW, this 24th day of August, 2004, IT IS HEREBY
ORDERED that the petition is granted in part and denied in part.

IT IS FURTHER ORDERED that attorney's fees and costs in
the amount of \$16,717.75 are hereby awarded to the plaintiff.

BY THE COURT:

MARY A. McLAUGHLIN, J.