

2004 WL 1161380

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United States District Court,
N.D. Texas, Dallas Division.

Oscar D. WILLIAMS, Jr., et al., Plaintiffs,
v.
KAUFMAN COUNTY and Kaufman County Sheriff
Robert Harris, Defendants.

No. Civ.A. 397CV0875L. | May 24, 2004.

Attorneys and Law Firms

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TX, pro se.

Opinion

MEMORANDUM OPINION AND ORDER

LINDSAY, J.

*1 Before the court is Plaintiffs' Second Supplemental Application for Attorney's Fees and Related Expenses, filed March 29, 2004. After considering the motion, response,¹ appendix of Plaintiffs, and the applicable law, the court grants Plaintiffs' Second Supplemental Application for Attorney's Fees and Related Expenses. For the reasons stated herein, Plaintiffs are awarded attorney's fees and costs in the amount of \$23,748.60.

¹ Plaintiffs did not file a reply to Defendant's response.

I. Background

On March 15, 2004, the court denied Defendant Kaufman County's Motion for New Trial on the Issue of Attorney's Fees and Request for Leave to Take Related Discovery. The court also held that Plaintiffs were entitled to attorney's fees incurred as a result of Defendant Kaufman County having filed the motion, and allowed Plaintiffs 14

days to submit a supplemental application for fees and costs incurred in filing the motion.² Plaintiffs filed a second supplemental motion for attorney's fees and costs. In their motion, Plaintiffs seek a total of \$28,181.10. Plaintiffs seek \$14,807.80 (\$13,680 as attorney's fees and \$1,127.80 as costs) for the fees and costs incurred in responding to Kaufman County's Rule 59 motion, and seek \$13,373.30 (\$12,915 as attorney's fees and \$458.30 as costs) in fees and costs incurred in responding to Kaufman County's motion for reconsideration of the Fifth Circuit's order awarding Plaintiffs \$75,000 for attorney's fees.³ Plaintiffs contend that the amount of fees and costs requested is reasonable and that the fees and costs were reasonable and necessary to prosecute and defend the fee award.

² Plaintiffs' assertion that the court "encouraged" them to file the supplemental request is incorrect. The court merely allowed Plaintiffs 14 days to file a second supplemental request because, under the law, they were entitled to the additional fees and costs incurred by responding to Kaufman County's motion and defending their award of attorney's fees.

³ This was the amount the Fifth Circuit awarded Plaintiffs for attorney's fees and costs incurred on the appeal of the merits.

Kaufman County objects to the fees requested by Plaintiffs and requests the court to reduce the fees. Kaufman County contends that the Rule 59 motion was entirely warranted and "absolutely necessary for purposes of appeal."⁴ Defendant also contends that Plaintiffs' request of \$28,181.10 in fees and costs is "inflated, excessive, and unreasonable." *Id.* at 3.

⁴ Defendant Kaufman County states, "It will come as no surprise to this Court or the Plaintiffs that the Court's Judgment awarding attorney's fees and expenses will be appealed to the Fifth Circuit." Kaufman County's Objections and Response at 3. Such statement comes as no surprise, but an appeal of the judgment at this stage appears to be problematic. The court issued its order denying Defendant Kaufman County's motion for a new trial on March 15, 2004. Pursuant to Fed. R.App. P. 4(a)(1)(A), an appeal must be filed within thirty days after a Rule 59 motion is denied. More than thirty days have passed with the docket sheet reflecting no notice of appeal filed, and, unless the court is missing something, the time to appeal has expired. On the other hand, the parties may have elected not to pursue an appeal of the judgment awarding attorney's fees.

II. Analysis

A. Introduction

The court has set forth the legal standard and applicable law for an award of attorney's fees in its previous orders addressing this issue and finds no reason to repeat them in this opinion and order. Those standards are made a part of this opinion and order as if repeated herein verbatim. The court now "cuts to the chase."

B. Attorney's Fees regarding the Motion for New Trial

The court now turns to the fees and costs requested regarding the motion for new trial. First, with respect to the time and expenses incurred by Plaintiffs regarding Kaufman County's motion for new trial, Kaufman County does not set forth specific objections or inadequacies regarding this aspect of the second supplemental motion for attorney's fees and costs. Kaufman County merely makes a global and conclusory statement that the fees are "inflated, excessive, and unreasonable"; it does not state the basis for this belief or provide any evidence. Moreover, it does not specify which entries are excessive or state which entries regarding attorney's fees should be reduced or excluded. The party challenging the amount of attorney's fees must explain or state why they are unreasonable. *See Wegner v. Standard Ins. Co.*, 129 F.3d 814, 823 (5th Cir.1997). It is not enough for the challenging party to "simply state that the rate submitted is too high." *Von Clark v. Butler*, 916 F.2d 255, 260 (5th Cir.1990). For these reasons, Kaufman County's objections are of no benefit to the court in determining reasonable attorney's fees.

*2 Despite Kaufman County's lack of specificity in its objections, the court nevertheless must ensure that the fees awarded are reasonable. To reach this point, the court must determine the reasonable hourly rate and the number of hours reasonably expended. The court has some concern regarding the hourly rate requested for Plaintiffs' lead counsel, Mr. Wm. Charles Bundren. Plaintiffs seek \$450 per hour for Mr. Bundren's services, and submit the affidavits of Mr. Bundren and Mr. Robert T. Mowrey, a partner in the law firm of Locke Liddell and Sapp LLP, in support of the \$450 per hour rate. Kaufman County does not specifically contest the hourly rate of \$450.

The parties agreed to an hourly rate of \$340 per hour when the initial fee application was submitted. *See* Joint Status Report Concerning Attorneys Fees Issue, filed August 9, 2002, at 3, 5. The court realizes that this hourly rate was agreed to more than one and one-half years ago; however, this rate was used in the court's order in late 2003 as the rate for attorney's fee requested by Plaintiffs for Mr. Bundren. Plaintiffs provide evidence that their lead counsel's rate was \$375-\$400 per hour when the \$340 per hour was negotiated. The court has difficulty

accepting that the hourly rate has gone up by as much as \$75 in less than two years. This is a 20% increase. Other than the price of gasoline, dairy products, college tuition, and real estate, the court can think of few costs that have increased by such an amount in less than two years. Moreover, both sides are responsible and share equally for the delay regarding the resolution of the attorney's fees issue, and the court has discussed the prolonged battle over attorney's fees in previous orders. Neither side should benefit from such conduct, and under these circumstances, the \$375 hourly rate that Plaintiff's lead counsel was normally charging at the time of the fee application in 2002 constitutes a reasonable hourly rate for Mr. Bundren. The court believes that, in light of its experience in setting fees in other recent and similar civil rights and employment cases involving attorneys with similar ability, competence, experience, and skill as that of Mr. Bundren, \$450 per hour is too high under the circumstances of this case.⁵ The court believes that \$375 per hour more accurately reflects a reasonable hourly fee for Mr. Bundren, and certainly adequately compensates Mr. Bundren for his services in this case.

⁵ This court's reduction in no way reflects on the competence or ability of Mr. Bundren. The court noted in a previous opinion that Mr. Bundren is a highly competent attorney and an experienced litigator. Were this another case with different circumstances, the court could well reach a different result regarding the hourly rate.

The court determines that the 30.4 hours⁶ requested by Plaintiffs were reasonably and necessarily expended to respond to Kaufman County's motion for new trial, and that \$375 per hour is a reasonable hourly rate *under the circumstances of this case*. The court also determines that the costs requested, \$1,127.80, are reasonable. Accordingly, Plaintiffs are hereby awarded fees in the amount of \$11,400 (30.4 hours x \$375 per hour) and costs in the amount of \$1,127.80. The amount of attorney's fees and costs awarded Plaintiffs for this aspect of their second supplemental motion is \$12,527.80.

⁶ The court notes that Plaintiffs exercised "billing judgment" by excluding 18.8 hours.

C. Attorney's Fees regarding the Motion for Reconsideration at the Fifth Circuit

*3 Plaintiffs request a total amount of \$13,373.30 for attorney's fees and related costs in responding to Kaufman County's motion to reconsider the Fifth Circuit's award of \$75,000 for attorney's fees and costs incurred on the appeal of the merits of the case. The court

determines that any request for fees and costs incurred at the appellate level should have been presented to the Fifth Circuit to determine. The Fifth Circuit determined the amount of attorney's fees and costs incurred on appeal initially and requested Plaintiffs to file a response to the motion to reconsider. As this motion to reconsider requested the Fifth Circuit to reconsider its order, prudentially and procedurally, the request for attorney's fees should have been presented to that court to decide the amount of attorney's fees and costs to which Plaintiffs are entitled by responding to the motion.

Under these circumstances, ordinarily, the court does not believe it should decide this portion of Plaintiffs' second supplemental fee request. In all cases the court has reviewed, the district court determined the amount of attorney's fees incurred relating to an appellate matter only after the case had been remanded by the Fifth Circuit with instructions to the district court to determine the amount of attorney's fees and costs to be awarded. *See, e.g., League of Latin American Citizens v. Roscoe Indep. Sch. Dist.*, 119 F.3d 1228, 1236 (5th Cir.1997); *Coghlan v. Starkey*, 852 F.2d 806, 818 (5th Cir.1988); *Knoblauch v. Commissioner of Internal Revenue*, 752 F.2d 125, 128 n. 4 (5th Cir.1985); *Marston v. Red River Level and Drainage Dist.*, 632 F.2d 466, 568 (5th Cir.1980). Plaintiffs have not sought relief at the Fifth Circuit, and no order has been issued to this court to determine the amount of appellate attorney's fees.

The court believes, however, that this case presents an exception for several reasons. First, this litigation has been going on since 1997 and needs to conclude. Second, the Fifth Circuit has ruled on the merits and the amount of attorney's fees Plaintiffs incurred in appealing the merits. Third, Defendant Kaufman County did not object to this court addressing Plaintiffs' request for fees and expenses incurred in responding to the motion to reconsider; it *only* objected to the fees as being "inflated, excessive, and unreasonable." Fourth, this court has more familiarity with the intricacies of this case and is in a better position to address the matter. Fifth, judicial economy and convenience of the parties, in light of the other four factors, simply dictate that this court proceed with the determination of the amount of attorney's fees and costs incurred by Plaintiffs in responding to the motion to

reconsider before the Fifth Circuit. Finally, if the Fifth Circuit disagrees with this court, it can simply reverse and render, as it will have all necessary information before it.

Plaintiffs seek payment for 28.7⁷ hours for services rendered by Mr. Bundren in responding to the motion to reconsider. The court determines that the 28.7 hours requested by Plaintiffs were reasonably and necessarily expended to respond to Kaufman County's motion to reconsider before the Fifth Circuit. For the reasons previously stated, the court finds that \$375 per hour is a reasonable hourly rate; and the court also determines that the costs requested, \$458.30, are reasonable. Accordingly, Plaintiffs are hereby awarded fees in the amount of \$10,762.50 (28.7 x \$375 per hour) and costs in the amount of \$458.30. The amount for attorney's fees and costs for this aspect of their second supplemental motion is \$11,220.80.

⁷ Once again, the court notes that Plaintiffs exercised "billing judgment" and excluded 13.4 hours.

III. Conclusion

*4 For the reasons and to the extent stated herein, the court grants Plaintiffs' Second Supplemental Application for Attorney's Fees and Related Expenses. For the reasons set forth herein, Plaintiffs shall recover from Defendant Kaufman County the total amount of \$23,748.60 as attorney's fees and costs. Kaufman County shall pay this amount to Plaintiffs within 30 days of the entry of this order. If the total amount is not paid within thirty days, postjudgment interest shall accrue on any remaining amount at the applicable, lawful federal rate until it is paid in full. All relief not expressly granted herein is denied. Pursuant to Fed.R.Civ.P. 58(a)(1)(C), this order also serves as the judgment, and the court elects not to set forth the judgment by separate document.

It is so ordered.