

210 F.3d 375

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA7 Rule 53 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Seventh Circuit.

William W. MOORE, Plaintiff-Appellant,

v.

FINAL REVIEWING AUTHORITY BOARD, et al., Defendants-Appellees.

No. 98-4276. | Submitted Feb. 18, 2000.* | Decided March 7, 2000.

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division. No. 3:87cv420AS. Allen Sharp, Judge.

Before Hon. WILLIAM J. BAUER, Hon. FRANK H. EASTERBROOK, Hon. KENNETH F. RIPPLE, Circuit Judges.

Opinion

Order

*1 Thirteen years ago, William Moore filed this suit under 42 U.S.C. § 1983, contesting aspects of his classification and discipline by the Indiana prison system. Most claims in the case were decided adversely to Moore in 1991, No. 90-2535 (7th Cir. Mar. 20, 1991) (unpublished order), but one claim was remanded for further proceedings: Moore's contention that defendants violated the due process clause when an administrative body failed to allow him to review the information it had used to find that he had attempted to escape from prison.

In 1992 the parties reached a settlement. Defendants promised that the "guilty finding by the CAB [Conduct Adjustment Board] may not be used against [Moore] or considered in any future decisions regarding classification, status, assignment or transfer"; defendants also promised that all documents related to the finding would be "removed from the portion of [Moore's] institutional packet which is not confidential and shall be placed in the confidential portion of his institutional packet." The settlement agreement was entered as a judgment of the district court.

Five years later, when seeking a transfer to less restrictive confinement, Moore discovered that documents supposed to be in the confidential packet were in the public portion of his file, and that five bad-conduct points-enough to preclude his transfer-had been assessed on account of his supposed escape. Moore contends that he brought this violation of the 1992 judgment to the attention of prison officials, who refused to take corrective action. After he filed a petition asking the district judge to hold the defendants in contempt of court, however, the prison officials took action-the points were removed, and the documents put back in the sealed packet, though this proved to be of little use, because while by the time defendants came to reevaluate his transfer request, Moore had been assessed six additional demerits for new bad conduct (attempted distribution of drugs within the prison), and he was still ineligible for transfer.

The district court declined to hold any of defendants in contempt of court. After observing that Moore had received the prospective relief he sought (compliance with the 1992 judgment), the judge concluded that a monetary award would be improper. Civil contempt is a compensatory proceeding, and Moore could not demonstrate injury. Moreover, the judge surmised that the persons responsible for violating the 1992 judgment may have been unaware of its terms. (The record does not establish how or by whom the documents were moved to the public file.) Moore challenges this decision on appeal but cannot prevail-not only because he could not establish injury but also because a district judge has considerable discretion over the whole contempt process. See *Haskins v. Stanton*, 794 F.2d 1273 (7th Cir.1986); *Golube v. Ripon School District*, 45 F.3d 1035 (7th Cir.1995). Having concluded that any violation was unintentional and that Moore could not establish a concrete adverse effect, the district judge was not obliged to award damages, even nominal damages.

*2 Having denied Moore's motion to hold the defendants in contempt of court, the district court assessed costs against him

Moore v. Final Reviewing Authority Bd., 210 F.3d 375 (2000)

under Fed.R.Civ.P. 54(d)(1). See *McGill v. Faulkner*, 18 F.3d 456 (7th Cir.1994). This award was appropriate, if the defendants were the prevailing parties. Defendants prevailed to the extent they avoided a formal declaration of contempt and an award of damages, but Moore prevailed to the extent he obtained prospective relief: removal of the five points and damaging contents from the public file. Cases such as *Maher v. Gagne*, 448 U.S. 122 (1980), hold that a plaintiff “prevails” when defendants capitulate to his request. As in *Maher*, the suit was the catalyst of at least some relief. Moore did not receive everything he wanted, but he did obtain an important part. The outcome therefore should have been deemed a split decision, with each side bearing its costs. See *Testa v. Mundelein*, 89 F.3d 445, 447 (7th Cir.1996).

Moore contends that the defendants have *again* assessed points for the escape and placed the documents back in his public file. That evidence was not properly before the district court and is not part of the record on appeal. But now that this appeal is concluded, Moore is free to file a renewed contempt motion. If he proves this allegation, the district judge may elect not to be so forgiving a second time. See Fed.R.Civ.P. 65(d) (an injunction binds “the parties to the action, their officers, agents, servants, employees, and attorneys, and ... those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise”).

The judgment is modified by deleting the award of costs and is otherwise affirmed.

Parallel Citations

2000 WL 266491 (C.A.7 (Ind.))

Footnotes

* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary, and the appeal is submitted on the briefs and the record. See Fed. R.App. P. 34(a); Cir. R. 34(f).