



**ROBINSON, Chief Judge**

**I. INTRODUCTION**

On November 20, 2001 pro se plaintiffs Romie D. Bishop and Shirley A. Bishop filed a complaint alleging violations of 42 U.S.C. § 1985 and various state laws against defendant Eunice Woodward Deputy. (D.I. 1) Plaintiffs are the parents of a minor child, W.E.B., presently enrolled in the Appoquinimink School District (the "District"). Defendant is a social worker employed by the District. Plaintiffs believe that their child was being harassed and bullied by other students in the District. They, therefore, sought alternative educational arrangements for him and consulted with defendant. The instant allegations stem from defendant's conduct during her interactions with plaintiffs.

Soon after bringing suit, plaintiffs filed motions for a temporary restraining order and default judgment, both of which were denied. (D.I. 15, 16, 28) Thereafter, plaintiffs filed a motion to compel discovery, and defendant filed a motion for summary judgment. (D.I. 64, 68) The court granted defendant's motion for summary judgment and denied plaintiffs' motion to compel as moot on April 28, 2003.<sup>1</sup> (D.I. 82) The court is presently asked to consider defendant's motion for award of attorney's fees pursuant to Federal Rule of Civil Procedure 54, Local Rule 54, 42 U.S.C. § 1988, and the common law. (D.I. 84)

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<sup>1</sup>On May 19, 2003, plaintiff filed a notice of appeal to seek review of the award of summary judgment in favor of defendant. (D.I. 86)

At the same time, the court is also asked to decide plaintiffs' motion characterized as a motion for stay of judgment and order as allowed under Federal Rule of Civil Procedure 62(a). (D.I. 89) The court will further consider plaintiffs' request for compensation applied for under Federal Rule of Civil Procedure 9(g). (D.I. 90) For the reasons that follow, the court denies defendant's motion for award of attorney's fees, denies plaintiffs' motion for stay of judgment, and denies plaintiffs' request for compensation.

## **II. DEFENDANT'S MOTION FOR ATTORNEY'S FEES**

### **A. The American Rule**

Under the "American Rule," a court generally may not award attorney's fees without a legislative instruction to do so. See Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 269 (1975). Litigants consequently must each bear their own legal fees. A court, however, may assess attorney's fees for the "willful disobedience of a court order... as part of the fine to be levied on the defendant" or when the losing party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." Id. at 258 (citations omitted).

### **B. 42 U.S.C. § 1988**

To provide the authorization Alyeska required for fee awards, Congress has authorized district courts to award a prevailing party who enforces certain civil rights statutes

reasonable attorney's fees under the Civil Rights Attorney's Fees Awards Act of 1976, codified as 42 U.S.C. § 1988. Section 1988 provides, in relevant part, that "[i]n any action or proceeding to enforce a provision of sections . . . 1983 [and] 1985 . . . 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 . . . ." 42 U.S.C. § 1988(b) (2003). The Reports supporting § 1988 explain that civil rights statutes vindicate public policies of the highest priority and, at the same time, depend heavily on private enforcement. See Buckhannon Bd. and Care Home Inc., v. West Virginia Dep't of Health and Human Res., 532 U.S. 598, 635 (2001) (internal quotations and citations omitted). The Reports also acknowledge that persons who bring meritorious civil right claims often cannot afford legal counsel and experience hardship under the "American Rule" as a result. Id. at 636. Thus, the Report explains that "Congress enacted § 1988 to ensure that nonaffluent plaintiffs would have 'effective access' to the Nation's courts to enforce civil rights laws." Id. (quoting H.R. Rep. No. 94-1558, 1 (1976)).

Concerning the precise language of the statute, a party is considered to prevail if he "succeed[s] on any significant issue in litigation which achieves some of the benefit the part[y] sought in bringing suit." Hensley v. Eckerhart, 461 U.S. 424,

433 (1983) (quoting Nadeau v. Helgemoe, 581 F.2d 275, 278-79 (1st Cir. 1978)). The Supreme Court also recognized that a prevailing plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust," while a prevailing defendant is entitled to attorney's fees only "when it is found that the plaintiff's action was brought in bad faith." Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 416-17 (1978). Nevertheless, the prevailing defendant need not establish that the plaintiff acted with subjective bad faith in bringing the action. The Barnes Found. v. Township of Lower Merion, 242 F.3d 151, 158 (3d Cir. 2000) (citing Hughes v. Rowe, 449 U.S. 5, 14 (1980)). Rather, the Supreme Court recognized that the applicable standard is objective. Id.

The actual process to determine the appropriate statutory award of attorney's fees is well settled. "The most useful starting point . . . is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Hensley, 461 U.S. at 433. The result of this calculation is called the lodestar, and it provides an objective basis on which to make an initial estimate of the value of a lawyer's services. Id. With respect to the number of hours expended, the prevailing party must establish that those hours were "reasonably expended." Id. 434 (citing S. Rep. No. 94-1011, 6 (1976)). "Cases may be overstaffed, and the skill and experience of lawyers vary

widely." Id. The prevailing party's counsel, therefore, should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary. Id. Regarding a "reasonable hourly rate," a court references the prevailing market rates in the community to make this determination. See Blum v. Stenson, 465 U.S. 886, 895-96 n. 11 (1984). The prevailing party bears the burden of establishing, by way of satisfactory evidence and the attorney's own affidavits, that the requested hourly rate aligns with this standard. Id.

Calculation of the lodestar does not end the inquiry. The court may adjust the fee upward or downward. First, the court may exclude from the lodestar calculation hours spent by the prevailing party's counsel on claims that were unrelated to the claim on which the prevailing party succeeded. Hensley, 461 U.S. at 434. Second, the court may also exclude hours not commensurate with the degree of success obtained. Id. If a party has achieved only partial or limited success, the lodestar may be an excessive amount. Id. at 436. Finally, the party opposing the fee award may challenge, by affidavit or brief with sufficient specificity to give fee applicants notice, the reasonableness of the requested fee. See Bell v. United Princeton Properties, Inc., 884 F.2d 713, 715 (3d Cir. 1989).

Based on the opposing party's evidence, the court may further adjust the fee.

### **C. Analysis**

Defendant argues that the court should award attorney's fees because defendant was a prevailing party within the meaning of 42 U.S.C. 1988 and because plaintiffs' action was without foundation, frivolous, and unreasonable. Defendant contends that plaintiffs' complaint contained a random list of legal terms and phrases alleging various conspiracies. Defendant asserts that plaintiffs failed, however, to produce any evidence in the form of deposition testimony, interrogatory answers, admissions, or documents to support their allegations. Additionally, defendant points out that plaintiffs did not dispute any of the facts established by defendant in responding to defendant's motion for summary judgment. Rather, plaintiffs merely reiterated their initial allegations, asserted new ones, and accused defendant of lying. Hence, defendant contends that plaintiffs pursued the instant lawsuit for the sole purpose of intimidating and harassing District employees.

In defending against plaintiffs' allegations, defendant explained that it was forced to obtain counsel, incur legal fees and costs, and expend public funds. Defendant offers a summary of the activities and hours expended by her counsel Morris, James, Hitchens & Williams LLP in preparing for this litigation

against plaintiffs. Based upon this summary, Morris, James billed 144.3 hours at hourly rates ranging from \$115.00 to \$190.00 for a total cost of \$17,977.00. Defendant thus requests an award of attorney's fees in the amount of \$17,977.00.

In response to defendant's motion for award of attorney's fees, plaintiffs fail to address defendant's arguments regarding the baseless, frivolous, and unreasonable nature of the instant litigation. Instead, plaintiffs repeat their allegations concerning civil rights violations and now include deposition testimony to support their cause of action. Concerning the actual fees, plaintiffs contend that defendant's attorney's fees have been paid by an insurance policy. Plaintiffs, therefore, argue that defendant should not be awarded any fees since no direct expenses were incurred.

Taking plaintiffs' pleadings, motions, and statements in a light most favorable to them because they do not have the benefit of counsel, the court agrees with defendant that plaintiffs made bald allegations without offering any evidentiary support. The court does not condone frivolous litigation and deems that the instant case was entirely without foundation. The court, however, does not believe that plaintiffs acted in bad faith. Rather, the court believes that plaintiffs' intent in bringing the instant action was to avail the court system at every

opportunity, as best they could, to ensure a safe school environment for their child.

Finding the instant litigation to be without merit, the court, nevertheless, does not think that a pro se litigant should be financially burdened because he fails to recognize deficiencies in his legal claims. In Hughes v. Rowe, 449 U.S. 5 (1980), the Supreme Court ruled that the fact an unrepresented prisoner's complaint under 42 U.S.C. § 1983, even when liberally construed, cannot survive a motion to dismiss does not, without more, entitle the defendant to attorney's fees. Specifically, the Supreme Court stated that attorney's fees should rarely be awarded against an uncounseled prisoner. Hughes, 449 U.S. at 15. The court concludes that the Supreme Court's logic applies equally well to the instant pro se plaintiffs. They, like the uncounseled prisoner in Hughes, should not be required to pay defendant's attorney's fees.

Moreover, in reviewing the intent behind § 1988, the court appreciates Congress's concern for the financial status of nonaffluent litigants who bring civil rights violation claims. Although the instant plaintiffs did not succeed in their civil rights claims, it is apparent that Congress intended to ease the financial hardship on pro se civil rights litigants, not to impose substantial financial risks on such litigants in the event of failure. For these reasons, the court rules that an award of

attorney's fees under either 42 U.S.C. § 1988 or the "American Rule" is inappropriate under the facts of record. The court, therefore, denies defendant's motion for an award of attorney's fees.

### **III. PLAINTIFFS' MOTION TO STAY JUDGMENT**

Plaintiffs motioned the court for a stay of judgment pursuant to Federal Rule of Civil Procedure 62(a). Rule 62(a), entitled "Automatic Stay," provides that "no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry." FED. R. CIV. P. 62(a). Plaintiffs support this motion by essentially repeating, once again, all of the allegations contained in their complaint.

As defendant noted in her answering brief, Rule 62(a) is not applicable to the instant case since (1) there is no pending judgment against plaintiffs subject to execution and (2) defendant has not initiated any proceeding to enforce a judgment against plaintiffs. Mindful that the plaintiffs are acting pro se, the court considered the possible applicability of all other subsections of Rule 62 and does not find that any of them offer relief to the plaintiffs. Furthermore, the court reviewed plaintiffs' motion in light of all the other Federal Rules of Civil Procedure. The court did not discern that the plaintiffs triggered a single recognizable rule in their motion. Plaintiffs

appear, instead, to use this motion as a forum to resurrect their allegations of wrongdoing against the defendant. Accordingly, the court denies plaintiffs' motion for stay of judgment.

#### **IV. PLAINTIFFS' SPECIAL PLEADINGS**

Plaintiffs request the court to award compensation to them for having to respond to defendant's motion for summary judgment. Plaintiffs base their request on Federal Rule of Civil Procedure 9(g). Rule 9(g) entitled, "Pleading Special Matters: Special Damage," states that "[w]hen items of special damage are claimed, they shall be specifically stated." Plaintiffs' brief in support of their request is identical to the one they submitted in answering defendant's motion for award of attorney's fees. Plaintiffs only changed the title of the brief and updated signature information.

Plaintiffs do not appear to understand the utility of Rule 9, the Federal Rules of Civil Procedure in general, or the fact that the court does not award compensation to a party for partaking in the litigation process which he initiated by filing suit. Accordingly, the court denies plaintiffs' request for compensation.

#### **V. CONCLUSION**

For the reasons stated above, the court denies defendant's motion for award of attorney's fees. The court also denies plaintiffs' motion to stay judgment and declines to grant

compensation to the plaintiffs for responding to defendant's motion for summary judgment. The court will issue an order to this effect in conjunction with this opinion.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ROMIE D. BISHOP and )  
SHIRLEY A. BISHOP, )  
 )  
Plaintiffs, )  
 )  
v. ) C.A. No. 01-753-SLR  
 )  
EUNICE WOODWARD DEPUTY, )  
 )  
Defendant. )

**O R D E R**

At Wilmington, this 29th day of September, 2003,  
consistent with the memorandum order issued this same day;

IT IS ORDERED that:

1. Defendant's motion for award of attorney's fee (D.I. 84) is denied.
2. Plaintiffs' motion to stay judgment (D.I. 89) is denied.
3. Plaintiffs' request for compensation (D.I. 90) is denied.

Sue L. Robinson  
United States District Judge