

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VALERIE DANIELS, individually :
and in her own right and as :
parent and/or guardian of :
Christopher Michael Daniels, :
and CHRISTOPHER MICHAEL :
DANIELS, :
:
Plaintiffs, :
:
v. : Civil Action No. 96-009 JJF
:
RUDOLF HAWKINS, :
:
Defendant. :

Martin C. Meltzer, Esquire of LAW OFFICES OF MARTIN C. MELTZER,
Wilmington, Delaware.
Of Counsel: Gerald J. Williams, Esquire and Gerald J. Grant, Jr.,
Esquire of WILLIAMS CUKER & BEREZOFSKY, Philadelphia,
Pennsylvania.
Attorneys for Plaintiff.

Christopher J. Curtin, Esquire of ERISMAN & CURTIN, Wilmington,
Delaware.
Attorney for Defendant.

MEMORANDUM OPINION

June 15, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is Plaintiff's Motion For Attorney's Fees And Costs, Pursuant To 42 U.S.C. § 1988 And Federal Rule Of Civil Procedure 54. (D.I. 177.) For the reasons that follow, the Court will grant in part the Motion.

BACKGROUND

Plaintiff, an inmate at the Women's Correctional Institute at New Castle, Delaware (the "Women's Correctional Institute"), initiated this 42 U.S.C. § 1983 action in 1996 alleging that her constitutional rights were violated by Defendant, a correctional officer at the Women's Correctional Institute, when he forcibly engaged in sexual intercourse with her, causing her to become pregnant and give birth to a child. DNA tests were conducted to determine the paternity of Plaintiff's child. However, prior to the first trial, Plaintiff did not comply with the Court's deadline for identifying expert witnesses for the admission of DNA evidence, and Defendant moved in limine to exclude this evidence. At the pretrial conference, because of the Plaintiff's failure to comply with the scheduling order, the Court ordered that the DNA evidence would be admissible for the limited purpose of demonstrating Defendant's state of mind when he resigned his position as a corrections officer¹ and not to prove Defendant's

¹ During the course of an internal investigation over Plaintiff's allegations against the Defendant, Defendant denied that he had engaged in any sexual activity or contact with the Plaintiff. Defendant was then confronted with the results of the DNA tests performed on Plaintiff's child and resigned his

paternity. The jury returned a verdict in favor of Plaintiff in the amount of \$25,000 in compensatory damages and \$100,000 in punitive damages.

On appeal, the Third Circuit found that the Court's ruling on the DNA evidence was prejudicial error and remanded for a new trial on all issues. Daniels v. Delaware, No. 01-3954, 2002 WL 31716422, *3 (3d Cir. Dec. 4, 2002). Following a second trial, the jury again found for Plaintiff, awarding her \$7,500 in compensatory damages and \$50,000 in punitive damages. By her present motion, the Plaintiff seeks an award of attorney's fees incurred in preparing for and conducting both the first and second trials.

DISCUSSION

I. Contentions

Plaintiff contends that she is entitled to attorney's fees and costs pursuant to 42 U.S.C. § 1988. Plaintiff argues that attorney's fees are awarded to a "prevailing party" pursuant to Section 1988 and that she was the prevailing party in all aspects of the second trial. Accordingly, Plaintiff requests the Court to award her attorney's fees for time spent in preparation for and conducting each trial. Plaintiff does not request fees for the time spent in preparation of her appeal to the Third Circuit.

In response, Defendant contends that Plaintiff is not entitled to attorney's fees for either the motion in limine or

position.

time expended in conducting the first trial because she was not the "prevailing party." Defendant does not contest that the Plaintiff is entitled to attorney's fees incurred in preparation of the first or second trials, nor does Defendant dispute the costs incurred or the hourly rates at which Plaintiff seeks recovery.

II. Applicable Legal Standards

Pursuant to the "American Rule," litigants are generally responsible for their own attorney's fees. Truesdell v. Philadelphia Hous. Auth., 290 F.3d 159, 163 (3d Cir. 2002) (citing Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 247 (1975)). However, Congress has provided an exception to the American Rule in civil rights actions and permits a "prevailing party" to recover attorney's fees. See 42 U.S.C. § 1988(b). In relevant part, Section 1988 permits a court, "[i]n any action or proceeding to enforce a provision of section[] . . . 1983 . . . of this title . . ., in its discretion, [to] allow the prevailing party . . . a reasonable attorney's fee as part of the costs." Id. In deciding whether to award attorney's fees, the district court "has discretion in making this equitable judgment." Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). However, in the Third Circuit, a district court should award attorney's fees to a prevailing plaintiff absent special circumstances weighing against such an award. Truesdell, 290 F.3d at 163 (citing County of Morris v. Nationalist Movement, 273 F.3d 527, 535 (3d Cir.

2001)).

III. Decision

As noted above, Defendant only objects to an award of attorney's fees related to the motion in limine and time spent in the first trial. Accordingly, the Court will limit its discussion to these contested matters.

The United States Supreme Court has provided a broad definition of "prevailing party." The Supreme Court has interpreted this term to mean a party who has success "'on any significant issue in litigation which achieves some of the benefit the part[y] sought in bringing suit.'" Hensley, 461 U.S. at 433 (quoting Nadeau v. Helgemoe, 581 F.2d 275, 278-79 (1st Cir. 1978)). However, when a judgment in favor of a plaintiff is reversed on the merits on appeal, the plaintiff is no longer a "prevailing party" under Section 1988, and therefore, is not entitled to an award of attorney's fees. Clark v. Township of Falls, 890 F.2d 625, 626-27 (3d Cir. 1989) (citations omitted).

The Third Circuit reversed the jury's verdict and remanded the case for a new trial due to its conclusion that the Court's admission of DNA evidence for the limited purpose of demonstrating Defendant's state of mind was prejudicial error.²

² Prior to the commencement of the second trial, Plaintiff advised the Defendant that she intended to offer the DNA test results on the issue of liability. The Court found that unlike the circumstances of the first trial, Defendant had adequate notice of the existence of Plaintiff's DNA evidence, and therefore, permitted Plaintiff to use the evidence to show Defendant's paternity and the reasonable inference of his sexual

Daniels, 2002 WL 31716422, *3. Based on the Third Circuit's decision concerning the first trial, the Court concludes that Plaintiff cannot be considered the "prevailing party" with respect to either the motion in limine or the first trial. See Clark, 890 F.2d at 626-27.

The Court is not persuaded by the cases cited by Plaintiff that the Third Circuit's remand should not affect the amount of fees awarded in this case. In Biggins v. Hazen Paper Co., 111 F.3d 205 (1st Cir. 1997), the First Circuit refused to further reduce the district court's award of attorney's fees despite the fact that one of the two claims brought by the plaintiff had been reversed on appeal. Id. at 213. The district court had reduced the fees it previously awarded by twenty percent, a reduction that the First Circuit agreed was reasonable due to the difficulty in separating claims involving a "commonality of issues." Id. In the instant case, the Third Circuit did not merely reverse one of Plaintiff's claims - indeed, Plaintiff only

contact with Plaintiff. In reaching this conclusion, the Court relied on the following holding in the Third Circuit opinion:

We close our discussion of the DNA evidence, however, with the following observation. We are not suggesting that if at the retrial [Plaintiff] lays a proper foundation for the evidence that the results of DNA testing will be inadmissible. After all, if, as appears to be the case, the DNA testing shows by well over a 99% probability that [Defendant] was the father of [Plaintiff's] child it is not immediately apparent to us why such proof, considering when the child was born and when [Plaintiff] was incarcerated, would not tend to show that he had sex with [Plaintiff] in the prison.

Daniels, 2002 WL 31716422, *3.

advanced one claim at trial - but instead reversed and remanded for a new trial on all issues.

Similarly, the Court finds Plaintiff's reliance on Gierlinger v. Gleason, 160 F.3d 858 (2nd Cir. 1998), to be unavailing. In Gierlinger, the district court denied attorney's fees to the plaintiff for time spent conducting a trial that resulted in a mistrial because the court determined that the plaintiff "bore significant responsibility for the mistrial." Id. at 878. The Second Circuit reversed, holding that the district court's rationale for denying an award of attorney's fees was inconsistent with the court's public statements for the reason it declared a mistrial. Id. at 878-79. The Court concludes that the holding in Gierlinger is inapplicable to the instant action because the Third Circuit's reversal and remand for a new trial is not inconsistent with the Court's present decision to reduce the fees for time expended by Plaintiff's attorneys in conducting the first trial and in litigating the motion in limine.

In sum, the Court will award Plaintiff attorney's fees and costs for all work done by Plaintiff's attorneys with the exception of: 1) the time spent at the first trial; and 2) time spent in preparation for the motion in limine. Plaintiff will be awarded attorney's fees and costs for all other fees and costs

incurred.³

CONCLUSION

For the reasons discussed, the Court will grant in part Plaintiff's Motion for Attorney's Fees and Costs. (D.I. 177.)

An appropriate Order will be entered.

³ Because the Court is unable to discern the amount of time Plaintiff's attorneys spent in preparing the motion in limine from the affidavits submitted by Plaintiff, the Court orders the parties to confer and submit to the Court a proposed order for fees and costs to be awarded consistent with this Memorandum Opinion.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VALERIE DANIELS, individually :
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Christopher Michael Daniels, :
and CHRISTOPHER MICHAEL :
DANIELS, :
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Plaintiffs, :
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v. : Civil Action No. 96-009 JJF
:
RUDOLF HAWKINS, :
:
Defendant. :

ORDER

At Wilmington, this 15th day of June, 2004, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

- 1) Plaintiff's Motion For Attorney's Fees And Costs, Pursuant To 42 U.S.C. § 1988 And Federal Rule Of Civil Procedure 54 (D.I. 177) is **GRANTED** with the exception of:
 - a) Time spent by Plaintiff's attorneys at the first trial in this action;
 - b) Time spent preparing the motion in limine.
- 2) The parties shall confer and submit to the Court, within twenty (20) days from the date of this Order, a proposed order for attorney's fees and costs to be

awarded consistent with this Memorandum Opinion.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE