

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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|----------------------------------|---|----------------------|
| SCOTT AND LAURA BELL, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | 1:07-cv-0936-JDT-WTL |
| |) | |
| |) | |
| ANDERSON COMMUNITY SCHOOLS and) |) | |
| ANDERSON COMMUNITY SCHOOLS) |) | |
| BOARD OF TRUSTEES, |) | |
| |) | |
| Defendants. |) | |

ENTRY ON DEFENDANTS’ MOTION FOR ATTORNEYS’ FEES (Doc. No. 42)¹

This matter comes before the court on the Verified Motion for Attorneys’ Fees of the Defendants Anderson Community Schools and the Anderson Community Schools Board of Trustees. Plaintiffs, Scott and Laura Bell, proceeding pro se, sued Defendants, challenging their uniform dress code for the 2007-08 school year. As clarified at a status conference held on July 20, 2007, Plaintiffs asserted two claims under federal law. One claim alleged that the dress code violates Plaintiffs’ and/or their children’s rights secured by the First and Fourteenth Amendments to the United States Constitution. The other claim was that the dress code violates the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.* These two federal claims were brought pursuant to 42 U.S.C. § 1983. Plaintiffs also asserted two claims under Indiana law.

¹ This Entry is a matter of public record and will be made available on the court’s web site. However, the discussion contained herein is not sufficiently novel to justify commercial publication.

The Plaintiffs' § 1983 claims brought on their own behalf were frivolous. Summary judgment was granted the Defendants on those claims. The other claims were dismissed or remanded. In keeping with their unresponsiveness throughout this litigation, the Plaintiffs have not responded to the fee motion. The time for doing so has long passed.

A brief review of significant portions of the history of this case is necessary. At the July 20 status conference, the court set a hearing on the Plaintiffs' request for preliminary and permanent injunction for August 6, 2007, and consolidated the trial on the merits with that hearing. At the July 20 conference, the Plaintiffs acknowledged that they could be assessed the costs of this action if they did not prevail.

The court's Entry Reviewing Potential Issues Presented in this Case of July 25, 2007, which was issued in anticipation of the August 6 hearing and any dispositive motion that might be filed, attempted to focus the parties on the appropriate issues. The Entry indicated "that the Plaintiffs are attempting to climb some rather steep and treacherous legal mountains." (Entry Reviewing Potential Issues Presented in this Case 10.) Once again, Plaintiffs were reminded that the costs of the action may be assessed against the non-prevailing party. The court further advised Plaintiffs that pursuant to 42 U.S.C. § 1988(b), the losing party may also be subject to payment of the prevailing party's attorneys' fees.

The Bells' failure to comply with discovery led the court, on Defendants' motion, to bar the production of any evidence at trial that had not yet been disclosed or provided

Defendants. The result was that any evidentiary presentation by the Bells would have been minimal.

Thereafter, the court, upon finding no potential for Plaintiffs to show any likelihood of success on the merits on any of their claims, vacated the previously scheduled evidentiary hearing. The court then issued its Entry on Defendants' Motion for Summary Judgment, granting summary judgment for the Defendants and against the Plaintiffs on the Plaintiffs' federal claims brought on their own behalf, which were the only claims that the court could reach on the merits. In doing so, the court liberally read and construed the Plaintiffs' complaint. The court concluded that the dress code did not specifically address speech, but instead focused on students' conduct. The court followed several cases which upheld First Amendment challenges to school dress codes. The court also concluded that the Bells' fundamental rights protected by the Fourteenth Amendment did not encompass the right to object to a public school uniform policy. And, finding that the Plaintiffs offered no evidence to demonstrate a genuine issue of material fact on the exhaustion issue, the court granted Defendants summary judgment on Plaintiffs' IDEA claim.

Final judgment was entered in favor of the Defendants and against the Plaintiffs on the Plaintiffs' own federal law claims. The court dismissed without prejudice all claims brought on behalf of Plaintiffs' children. (Plaintiffs, as non-lawyers, could not represent their children.) The court declined to exercise its supplemental jurisdiction over the state law claims and remanded them to state court. Because no relief was

granted the Plaintiffs on any claim, the court denied the request for a preliminary injunction. Costs were awarded to Defendants on Plaintiffs' federal claims.

Now for the law and application to this case: 42 U.S.C. § 1988 allows the court to award to the prevailing party in a § 1983 action a reasonable attorneys' fee as part of its costs. See, e.g., *Gautreaux v. Chi. Hous. Auth.*, 491 F.3d 649, 655 (7th Cir. 2007). When the prevailing party is the defendant, fees may be awarded only if the plaintiff's action was frivolous, unreasonable, or groundless. *Hughes v. Rowe*, 449 U.S. 5, 15 (1980) (quoting *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978)); *Roger Whitmore's Auto. Servs., Inc. v. Lake County, Ill.*, 424 F.3d 659, 675 (7th Cir. 2005) (affirming fee award where plaintiff brought claim lacking any reasonable legal basis). A prevailing party need not show either subjective or objective bad faith on the loser's part to be entitled to a fee award under § 1988. *Munson v. Milwaukee Bd. of Sch. Directors*, 969 F.2d 266, 269 (7th Cir. 1992). An action is considered frivolous "if it has no reasonable basis, whether in fact or in law." *Id.* (quoting *Tarkowski v. County of Lake*, 775 F.2d 173, 176 (7th Cir. 1985)).

Simply put, Plaintiffs' § 1983 claims brought on their own behalf lacked any reasonable basis in fact or law. Therefore, those claims were frivolous. Plaintiffs did not respond to Defendants' discovery requests, which prompted the Defendants to move to bar certain evidence. The court granted that motion. Plaintiffs offered no timely response to the Defendants' summary judgment motion, even though the court allowed them as pro se parties every latitude to pursue their claims, and encouraged them to obtain the assistance of counsel. The court even gave them guidance on how

to focus on the proper issues before the court. Plaintiffs were advised on more than one occasion that the losing party in this case may be required to pay the other side's costs, and even attorneys' fees. The Defendants worked to meet the deadlines set by the court and the expedited schedule necessitated by the Plaintiffs' request for injunctive relief. The court accordingly finds that a fee under § 1988 should be awarded to the Defendants. Plaintiffs have not attempted to persuade the court otherwise.

That brings the court to the matter of what constitutes a reasonable fee award. In determining a reasonable attorneys' fee, the court uses the lodestar amount, which is the reasonable number of hours worked multiplied by the market rate. *See Gautreaux*, 491 F.3d at 659. The party seeking the fee award bears the burden of proving the market rate. *Id.* Defendants' verified motion discharges their burden of proving the market rate and that the hours expended were reasonable and necessary. Nothing in the record suggests that a departure from the lodestar amount would be warranted. The court therefore finds that the Defendants should be awarded \$40,931.50 in attorneys' fees to be paid by the Plaintiffs, Scott and Laura Bell.

The Verified Motion for Attorneys' Fees (Doc. No. 42) is therefore **GRANTED**. An appropriate order will follow.

ALL OF WHICH IS ENTERED this 13th day of December 2007.



John Daniel Tinder, Judge
United States District Court

Copies to:

Magistrate Judge William T. Lawrence

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