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Attorney's Fees: City Must Pay Prevailing Plaintiff's Legal Fees Despite Jury Award of Less than City's Settlement Offer

Hescott v. City of Saginaw, Nos. 13-2103/2153 (6th Cir. July 2, 2014)

The Sixth Circuit has reversed a lower court which had denied the grant of attorney's fees to a prevailing § 1983 plaintiff whose home had been demolished by the City in his absence and without notice, disagreeing that there were "special circumstances" which would justify overriding the general rule that provides for such an award.

John Hescott is a US Army helicopter pilot frequently deployed away from his property in Saginaw, Michigan. During 2007 and 2008 his home was vacant for a year and a half, during which time it fell into disrepair. In 2009 Hescott returned to the property and arranged for contractors to begin remodeling. Before contractors began work, however, City police were told children were playing around the house, which prompted visits from the building inspector and fire marshal. They determined it was unsafe and short-listed it for demolition. The City demolished the home without ever contacting Hescott and without conducting an inventory the property. Hescott returned from his Army base in Alabama in the summer of 2009 to find his home gone.

He sued the City under § 1983, alleging seven claims. The district court summarily dismissed five of them, but a claim under the Fourth Amendment for unlawful seizure for the aluminum siding survived, as did a state claim for inverse condemnation. Prior to trial on these two claims the city proposed a $15,000 settlement, which Hescott rejected, instead opting for a jury award. The jury did find in Hescott's favor, but only awarded him $5,000.

Both parties moved for attorney fees. The district court acknowledged that denial of attorney fees to a prevailing civil rights party was "unusual" but nevertheless denied Hescott's request, due to "special circumstances," including the fact that Hescott had only won a "modest jury award," the Constitutional violation he suffered was "of little effect," and because the suit

involved only the loss of a "modest residence" in "poor condition." The district court initially granted the City $25,000 in fees and costs as a sanction under FRCP 68 because the jury award fell below the City's pre-trial settlement offer, but then reversed itself on Hescott's motion for reconsideration. Both parties appealed.

HELD: The Sixth Circuit found the district court abused its discretion in denying Hescott's attorneys' fees but upheld the denial of the City's request for attorneys' fees.

DISCUSSION: Under 42 U.S.C. § 1988, a district court has discretion to award reasonable attorneys' fees to a prevailing party (other than the United States) in a § 1983 action. However the Supreme Court has held that such an award is mandatory if the plaintiff prevails and there are no "special circumstances;" the losing defendant bears the burden of proving such circumstances. Here, the district court had raised special circumstances *sua sponte.* The Sixth Circuit found this to be an abuse of discretion: the district court had "drawn the wrong lesson[s] from [two Supreme Court] cases," misconstruing *Hensley v. Eckerhart*, 461 U.S. 424 (1983) (which did not involve special circumstances) and *Farrar v. Hobby*, 506 U.S. 103 (1992) (wherein the plaintiff had won on technical grounds and the special circumstances had not invalidated the entire award).

The Sixth Circuit rejected the district court's reliance on the modest value of Hescott's property, finding his "constitutional right to be secure in that residence, or in what remained of it following an otherwise lawful demolition, remained no less inviolate, and no less worthy of vindication . . . ." As to the City's claim that it acted in good faith in demolishing the house because it was a "dangerous nuisance," the Circuit Court looked to its own precedent for the rule that good faith is not a "special circumstance." And to the extent that the district court found that "special circumstances" existed because Hescott had not won a punitive damages award, the Sixth Circuit found this interpretation "wrong twice over."

On the other hand, the Circuit Court found the district court properly denied the City's motion for attorneys' fees. The City argued that it made a pre-trial settlement offer which Hescott rejected; because the jury award was less than that offer, the City should have been reimbursed for any costs it incurred after the offer. It argued that attorneys' fees were to be included in such costs under FRCP 68. Though this was an issue of first impression in the Sixth Circuit, it agreed with all but one other circuit and held that FRCP 68 "cannot force a prevailing civil-rights plaintiff to pay a defendant's post-offer attorneys' fees."

http://www.ca6.uscourts.gov/opinions.pdf/14a0138p-06.pdf (last accessed July 16, 2014).

Elections: Seventh Circuit Upholds Redistricting Which Deviates Up to 8.7 Percent from Population Average and Undermines "Independent" Aldermen

League of Women Voters v. City of Chicago, No. 13–2977 (7th Cir. July 9, 2014)

The Seventh Circuit has upheld the dismissal of an action brought against the City of Chicago by the League of Women Voters which alleged redistricting improprieties, finding that a maximum deviation of 8.7 percent from average ward populations did not raise constitutional