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Attorney's Fees: Where Plaintiff Obtains Substantially All Relief Sought, It Is "Prevailing Party" Entitled to Attorney's Fees

Rodolfo Sanchez v. City of Austin, No. 13-50916 (5th Cir. Dec. 18, 2014).

The Fifth Circuit has reversed a lower court's denial of attorney's fees, holding that success in obtaining injunctive relief constitutes grounds for such an award. In 2011 Occupy Wall Street protests broke out in Austin, Texas. Authorities issued criminal-trespass notices to those on City Hall property. Rodolfo Sanchez and Kristopher Sleeman received oral criminal-trespass notices banning them from City Hall property for one year. Austin later formalized its criminal-trespass notice policy, adding provisions that individuals should be warned before receiving a notice and that review of each criminal-trespass notice would be available after receiving it.

Rodolfo and Sleeman sued under 42 U.S.C. § 1983 challenging the policy, both as applied and facially, as a violation of the First Amendment and the Due Process Clause. They sought declaratory and injunctive relief, attorney's fees, expenses, costs, a TRO, and damages. The District Court expedited the case. After a bench trial, and before that court rendered its decision, Austin began to enforce two new policies that effectively quashed the protests. The District Court ultimately held the city's criminal-trespass-notice policy to be unconstitutional on its face and enjoined their issuance. It ordered a permanent injunction and awarded costs to plaintiffs, but denied other relief sought, including attorney's fees under 42 U.S.C. § 1988, despite holding that plaintiffs were the prevailing party. Rodolfo and Sanchez appealed.

HELD: The Fifth Circuit reversed, holding that attorney's fees should have been awarded to the plaintiffs.

DISCUSSION: The court confirmed that Rodolfo and Sanchez were the prevailing party because the "actual relief on the merits of [the plaintiff's] claim materially alter[ed] the legal

relationship between the parties by modifying the defendant's behavior in a way that directly benefit[ed] the plaintiff." In short, the plaintiffs obtained declaratory and injunctive relief, and thus prevailed.

The Court of Appeals found that the District Court erred in holding that "special circumstances" rendered fees unjust in this case. The lower court held the limited nature and scope of the injunctive relief and the limited injury to the plaintiff's rights constituted "special circumstances." The Circuit Court disagreed. The "special circumstances" exception to the general rule that prevailing parties receive attorney's fees is a very narrow one.

The court held that the two justifications for denying attorney's fees identified by the lower court were relevant to the *reasonableness* of an award, not to *whether the fees were awarded* at all. The city argued that though the plaintiffs obtained two of the remedies they sought – injunctive and declaratory relief – these were *de minimis* and thus, under *Farrar v. Hobby*, 506 U.S. 103 (1992), justified a denial of fees. The Circuit Court rejected this argument, finding that *Farrar* did not control. *Farrar* involved plaintiffs who had sought compensatory damages but had not succeeded, obtaining only nominal damages. In contrast, Rodolfo and Sanchez sought declaratory and injunctive relief and only nominal damages and received all but the latter.

The appellate court also took issue with the underlying factual holdings of the lower court. The District Court found that the policy at issue in the case was no longer in effect at the time the court ruled. The Circuit Court agreed that Austin may have stopped issuing new criminal-trespass notices, but that the record was devoid of any evidence showing that the criminal-trespass notice *policy was no longer in effect*. Critically, the city attorney refused to concede at oral argument that the criminal-trespass-notice policy was repealed or amended as a result of the two new policies. Thus the District Court's ruling was clearly erroneous; the Fifth Circuit remanded with instructions to allow attorneys' fees, including funds used to successfully prosecute the appeal.

http://www.ca5.uscourts.gov/opinions/pub/13/13-50916-CV0.pdf (last accessed Jan. 15, 2015).