PA Superior Court

Case: *Logan v. Marks*, 704 A.2d 671 (Pa.Super.1997)

Judge: Johnson*, Tamilia, Brosky **Date:** Dec. 31, 1997

Tags: Attorney fees, Civil Rights Act, lodestar, nominal damages, proportionality, level of success

Facts: Prevailing plaintiff in an assault and battery case against police was awarded $275 in compensatory damages and $1 in punitive damages by jury. His lawyer filed a petition for attorney fees under § 1988. Trial court denied petition.

Gravamen/Question(s) at issue: Was it proper for a trial court to deny attorney fees to a prevailing plaintiff in a civil rights case?

Holdings: Trial court should have done the lodestar thing. Reversed & remanded.

Rationale: "Clearly, the trial court does not have the discretion to deny attorney's fees merely because the recovery is disproportionate to the fee claimed." (673)

Dicta/Discussion:

- "a comparison of the size of the award to the objectives of the litigation is highly relevant to determining the degree of success obtained, the critical inquiry in determining the reasonableness of a requested fee." (673)
- Re. *Farrar* (with nominal damages, "the only reasonable fee is no fee at all"): "Federal courts interpreting *Farrar* have concluded that the failure to prove that an established constitutional violation *caused harm* to the plaintiff is the controlling factor in denying an attorney's fee to an otherwise prevailing plaintiff." (673)
    - However, in this case the damages were not nominal. (Nominal would be like $1 only.)
    - "Therefore, it was error for the trial court to conclude that Logan's attorney secured only a technical victory for purposes of applying *Farrar*." (674)
- Trial court still has to come up with appropriate amount (which might be related to the modest scope of the relief).
- Advises trial court to do the lodestar thing, then "adjust it in light of the level of success achieved." (674) ("Indeed, we reiterate that the degree of success is the critical consideration in determining an appropriate fee award.")
- But the court should not lower award in order to match proportionally the size of the verdict.

Appeals to Statute & Precedent:

- **Civil Rights Act of 1871: 42 U.S.C. § 1983 (1994):** civil rights act controlling actions of law enforcement officers
- **Civil Rights Attorney Fee Award Act: 42 U.S.C. § 1988:** "In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985 and 1986 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."
- ***Blanchard v. Bergeron*, 489 U.S. 87, 89 n. 1, 109 S.Ct. 939, 942 n. 1, 103 L.Ed.2d 67, 72 n. 1 (1989):** Ordinarily, prevailing party should get attorney fee (unless this is unjust).
- ***City of Riverside v. Rivera* (US 1986):** can't deny attorney's fees on the basis of proportionality.
- ***Farrar v. Hobby*, 506 U.S. 103, 114, 113 S.Ct. 566, 574, 121 L.Ed.2d 494, 505 (1992):** Question of who is "prevailing party" for § 1988: The party who obtains a judgment even of nominal damages is the prevailing party, but nominal damages means party failed to prevail very much. So "the only reasonable fee is no fee at all" (*Farrar* at 115/575/506).
- ***O'Connor v. Huard*, 117 F.ed 12, 17-18 (1st Cir. 1997):** suit achieved nonpecuniary advantages for the public interest, so fee award was appropriate.

Commentary:

- Note that a civil rights case (§ 1983) began with an administrative oversight board and was appealed to a Court of Common Pleas. This means that the CCP dealt with the § 1988 question.