C.F. v. Capistrano Unified School District, et al., Case No. SACV 07-1434 JVS (ANx)

Tentative Order re Motions for Attorneys' Fees and to Re-Tax Costs

Defendants Capistrano Unified School District ("the District") and Dr. James C. Corbett ("Corbett") (collectively, "School Defendants") move for an award of attorneys' fees pursuant to 42 U.S.C. § 1988, as do Intervenors California Teachers Association ("CTA") and Capistrano Unified Education Association ("CUEA") (collectively, "the Unions"). Plaintiff C.F., by and through his parents Bill Farnan and Teresa Farnan, ("C.F.") opposes both motions.

C.F. also moves to re-tax costs awarded to the School Defendants and the Unions by the Clerk of Court under Rule 54(d). The School Defendants and Unions oppose.

I. BACKGROUND

C.F. instituted this action in December 12, 2007, asserting a claim for relief for violation of his First Amendment rights by the School Defendants. C.F. asserted that his rights under the Establishment Clause were violated by a practice and policy hostile toward religion and favoring irreligion over religion. (First Amended Complaint ("FAC") ¶¶ 22, 25.) At the focus of the dispute are remarks made by Corbett in his Advanced Placement European History class. (Id. at ¶¶ 14-15.) On April 28, 2008, this Court granted a motion allowing the Unions to intervene as defendants in the action. (Docket No. 29.)

On May 1, 2009, this Court ruled on the parties' cross-motions for summary judgment. (Docket No. 87.) The Court granted C.F.'s motion for summary judgment against Corbett with respect to one statement (the "Peloza Statement"). (Id.) The Court granted the School Defendants' and the Unions' motions with respect to all other statements and with respect to the District's liability. (Id.) On July 27, 2009, the Court denied Farnan's request for injunctive and declaratory relief. (Docket No. 107.)

Only after the Court's May 1, 2009 Summary Judgment Order did the School Defendants move to file an amended answer to assert the affirmative

defense of qualified immunity. (Docket Nos. 92, 93.) After several hearings and supplemental briefing, the Court ultimately granted the School Defendants' motion for leave to amend and held that Corbett had qualified immunity. (Docket No. 120.) Judgment was entered in favor of the School Defendants and the Unions on September 24, 2009. (Docket No. 124.)

Contending that they were the "prevailing party" under 42 U.S.C. § 1988 and Rule 54(d), both the School Defendants and the Unions seek an award of attorneys' fees and costs. Both were awarded costs by the Clerk of Court. (Docket Nos. 153, 161.) Currently before the Court is the School Defendants' and Unions' motions for attorneys' fees and C.F.'s motions to re-tax costs.

II. LEGAL STANDARDS

A. Attorneys' Fees

Under 42 U.S.C. § 1988(b), the Court may, in its discretion, award attorneys' fees to the "prevailing party" in a § 1983 action. A § 1983 plaintiff should be awarded attorneys' fees "unless special circumstances would render such an award unjust." Thomas v. City of Tacoma, 410 F.3d 644, 647 (9th Cir. 2005) (quoting Hensley v. Eckerhart, 461 U.S. 424, 429 (1983)). A defendant, however, should only be awarded attorneys' fees "when the plaintiff's civil rights claim is 'frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so.'" Id. at 647-48 (quoting Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 422 (1978)).

B. Costs

Rule 54(d)(1) provides that "costs—other than attorney's fees—should be allowed to the prevailing party." Courts have discretion to award or deny costs. Berkla v. Corel Corp., 302 F.3d 909, 921 (9th Cir. 2002). However, Rule 54 creates a presumption in favor of awarding costs to the prevailing party. Ass'n of Mexican-American Educators v. State of Cal., 231 F.3d 572, 591 (9th Cir. 2000) (en banc). A court must therefore specify the reasons for denying costs. Id.

III. DISCUSSION

A. Prevailing Party

The first issue is whether the School Defendants and the Unions are prevailing parties within the meaning of § 1988(b) and Rule 54(d). A civil rights plaintiff is only considered the prevailing party if the plaintiff "obtain[s] an enforceable judgment against the defendant from whom fees are sought. Farrar v. Hobby, 506 U.S. 103, 111 (1992). The plaintiff must receive "actual relief on the merits of his claim [which] materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." Id. at 111-12. The defendant is the prevailing party where a plaintiff has not received relief on any causes of action. See id.

In this case it is unquestioned that C.F. received no actual relief on the merits. The Court's September 24, 2009 judgment stated that "Plaintiff [C.F.] shall take nothing by way of his complaint against [the School] Defendants . . . and [the] Union[s]." (Docket No. 124.) Only the Peloza Statement was found to violate the Establishment Clause and the Court held that Corbett was entitled to qualified immunity on that statement. (Docket No. 120.) The District was found not to have violated the Establishment Clause in any respect. (Docket No. 87.) While the Court found that Corbett did violate the Establishment Clause, ultimately C.F. was granted no relief.[1] Accordingly, the School Defendants and the Unions are prevailing parties for § 1988(b) and Rule 54(d) purposes.

B. Attorneys' Fees

Just because a § 1983 defendant prevailed on the merits does not entitle the defendant to attorneys' fees. Vernon v. City of Los Angeles, 27 F.3d 1385, 1402 (9th Cir. 1994). The plaintiff's claim must be "unreasonable, frivolous, meritless, or vexatious." Id. An action is frivolous where the result is obvious or the

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[1] While C.F. may claim a technical victory in the fact that the Court held that Corbett violated the Establishment Clause, such a technical victory does not make one a "prevailing party" for § 1988(b) purposes. See Kentucky v. Graham, 473 U.S. 159, 165 (1985) ("[W]here a defendant has not been prevailed against, either because of legal immunity or on the merits, § 1988 does not authorize a fee award against that defendant.").

[plaintiff's] arguments of error are wholly without merit. Id. The Court should avoid "post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation." Tutor-Saliba Corp. v. City of Hailey, 452 F.3d 1055, 1060 (9th Cir. 2006) (quoting Warren v. City of Carlsbad, 58 F.3d 439, 444 (9th Cir. 1995)). A defendant can recover if the plaintiff violates this standard at any point during the litigation, not just at its inception. Galen v. County of Los Angeles, 477 F.3d 652, 666 (9th Cir. 2007).

The Court finds that C.F.'s claims were not frivolous at any point in this action. Indeed, in the Court's May 1, 2009 Summary Judgment Order, Corbett was found to have violated C.F. First Amendment rights, albeit for a single statement. C.F. only pled a single cause of action, upon which he was granted summary judgment as to Corbett. (Docket Nos. 7, 87.) The fact that the rest of Corbett's statements were ultimately found not to violate the Establishment Clause does not render C.F.'s claim as a whole frivolous. As the Court recognized in its Summary Judgment Order, this case involved the delicate balance of the constitutional rights of a student against the desire for candor and critical thinking in a college-level classroom. (Docket No. 87 at 35-37.) This was simply not a baseless, vexatious claim.

Indeed, the Court finds it somewhat disturbing that the School Defendants label C.F.'s position frivolous given that it was only application of the doctrine of qualified immunity that spared Corbett from liability. The premise of that defense—which the Court accepted—was that there was no clearly established constitutional right on the facts of this case. (Docket 120 at 29.) C.F. set out to prove a constitutional violation, and he did. The vagaries of the law in this area, from which Corbett benefitted, do not undermine the substantive validity of C.F.'s Establishment Clause claim, nor do they render his position frivolous. Moreover, any suggestion that C.F. should have foreseen the applicability of qualified immunity, is belied by the School Defendants' belated tender of the issue.

The Court also finds that C.F.'s claim against the District was not frivolous. At the outset, C.F.'s theory against the District was that its continued employment of Corbett despite numerous complaints over the years conveyed an anti-religious message to students. (Docket No. 7 at ¶¶ 16-17, 23-24.) C.F. did not rely at any time on a respondeat superior theory for the District's liability—he was alleging a

direct violation. The fact that C.F. ultimately failed to provide sufficient evidence showing that the District had adequate notice and failed to act does not render his claim frivolous.

The School Defendants cite Galen in support of their proposition that maintaining a Monell action against a public entity is frivolous if the plaintiff cannot uncover evidence of a custom, policy, or practice during discovery. In Galen, the Ninth Circuit found that the district court had not abused its discretion in awarding attorneys' fees to a § 1983 defendant where the plaintiff had maintained a Monell claim despite having no evidence of a custom, policy or practice of unconstitutional activity. Galen, 477 F.3d at 667. In fact, the evidence in that case clearly showed that the defendant's policy was lawful. Id.

Galen is distinguishable from this case. Here, C.F. showed some, albeit meager, evidence that the District had received complaints about Corbett. The testimony of the Principal Tom Ressler showed that he knew of at least one complaint, although it was unclear whether the complaint had anything to do with religion. (Docket No. 87 at 32-33.) C.F. presented a declaration from a parent, Lynley Rosa, who has expressed concerns with Corbett's class to school officials. (Id. at 33.) In Galen, the plaintiff had no evidence to hold the defendant liable. Galen, 477 F.3d at 667. And unlike the situation here, the plaintiff in Galen had evidence which was directly contradictory to his position, thus rendering his continued litigation of the issue frivolous. Id. While the Court ultimately found C.F.'s evidence insufficient to hold the District liable, the Court never found that C.F. lacked any evidence or had directly contradictory evidence.[2]

The School Defendants and Unions also contend that C.F.'s pursuit of an injunction and declaratory relief against Corbett after the Summary Judgment Order was frivolous. The Court does not see how it is frivolous for a civil rights plaintiff, having won on the merits of at least one claim, to seek equitable relief on the basis of that win. It is beyond dispute that injunctive relief is an appropriate and available remedy. See 42 U.S.C. § 1983. Neither the School Defendants nor

[2] The School Defendants also contend, in a somewhat conclusory manner, that C.F. did not even attempt to take discovery on the issues necessary to hold the District liable. C.F. disputes this, noting that he took depositions and served written requests to explore the issue of the knowledge of Principal Tom Ressler and the District. (Opp'n Br. to Def's. Mot. 9.) The Court finds that C.F.'s discovery efforts demonstrate that the claim was not frivolous.

the Unions have cited any case where the defendants were awarded attorneys' fees—despite the plaintiff having won on the merits—because the plaintiff's requested relief was frivolous. The fact that the Court ultimately found C.F.'s proposed equitable relief to be overbroad and unworkable does not render C.F.'s proposal frivolous.

And lastly, the School Defendants argue that it was frivolous for C.F. to oppose their motion to modify the scheduling order, amend their answer, and assert the affirmative defense of qualified immunity. The Court finds that it was not frivolous for C.F. to do so. The issues of whether the School Defendants had waived the affirmative defense of qualified immunity by not pleading it in its original answer or whether the School Defendants had good cause to amend almost one year after the deadline for amended pleadings were not frivolous ones.

C. Costs

While attorneys' fees should rarely be awarded to a prevailing defendant in a civil rights case, "there is a strong presumption in favor of awarding costs to the prevailing party." Miles v. State of Cal., 320 F.3d 986, 988 (9th Cir. 2003). Thus, the Court must specify the reasons for denying costs. Id. The Ninth Circuit has laid out several factors to consider in deciding whether to deny costs to a prevailing party: "the losing party's limited financial resources, misconduct on the part of the prevailing party, . . . the importance and complexity of the issues, the merit of the plaintiff's case, even if the plaintiff loses, and the chilling effect on future civil rights litigants of imposing high costs." Save Our Valley v. Sound Transit, 335 F.3d 932, 945 (9th Cir. 2003).

The Court finds an award of costs to either the School Defendants or the Unions is not warranted because of the complexity and closeness of the issues, the merits of C.F.'s case, and the potential chill on future plaintiffs in this important but unclear area of civil rights law. As discussed above, C.F.'s claim, far from being frivolous or baseless, represented an extremely close question of First Amendment law. The law is unclear at best, as noted in the Court's qualified immunity decision, and the issue is of substantial importance, likely to affect the manner in which public educators discuss religion in classrooms. Where a plaintiff is asserting such a close and important claim, the Court may deny costs to the prevailing defendant. Mexican-American Educators, 231 F.3d at 593.

In addition, C.F.'s claim was not without merit—the Court found that Corbett violated the Establishment Clause with the Peloza Statement. While this does not make C.F. the "prevailing party," C.F.'s success on the issue does weigh in favor of denying costs to the defendants. See id.

Finally, the Court notes that the combined bill of costs of the School Defendants and the Unions, $12,631, is likely to have the effect of chilling future litigation in this unclear area of civil rights law.[3] A future plaintiff asserting a similar Establishment Clause claim will have unclear prospects for success given the state of the law, while potentially facing a not-insignificant award of costs should the plaintiff lose, or, as in this case, prevail on the merits only to lose on qualified immunity. Facing this choice, some potential plaintiffs may forego otherwise meritorious civil rights claims.

While the School Defendants correctly point out that denials of costs in some other cases involved greater sums, see Mexican-American Educators, 231 F.3d at 591 ($216,443.67); Stanley v. Univ. of Southern Cal., 178 F.3d 1069, 1080 (9th Cir. 1999) ($46,710.97); Bowoto v. Chevron Corp., No. C 99-02506 SI, 2009 WL 1081096, at *1 (N.D. Cal. 2009) ($485,159.49); Darensburg v. Metro. Transp. Comm'n, No. C-05-01597 EDL, 2009 WL 2392094, at *1 (N.D. Cal. Aug. 4, 2009) ($45,747.08), this does mean that $12,631 (or $8,482.55) is so insignificant that it is not a deterrent. Indeed, in the cited cases, the courts did not merely reduce the costs to manageable amounts, but rather denied costs altogether, belying the contention that the amount of the award is critical in determining deterrent effect. Plaintiffs in the situation here are facing unclear prospects in an important and developing area of law. A potential award of even a few thousand dollars is likely enough to deter many potential litigants.

Accordingly, the Court finds that costs should not be awarded against C.F.

D. The Significant Role of the Union

Finally, the Court finds that the Unions are not entitled to attorneys' fees or costs as intervenors because they did not play a significant role in the litigation.

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[3] Even disregarding the Unions' costs, the Court finds that the School Defendants' costs of $8,482.55 are enough to deter future litigants.

"Awards to intervenors should not be granted unless the intervenor plays a significant role in the litigation." Grove v. Mead School Dist. No. 354, 753 F.2d 1528, 1535 (9th Cir. 1985). The intervenor's contribution must be nonduplicative, Clajon Production Corp. v. Petera, 70 F.3d 1566, 1581 n.25 (10th Cir. 1995), and not de minimis. See Seattle School Dist. No. 1 v. State of Wash., 633 F.2d 1338, 1349 (9th Cir. 1980).

The Court finds that the Unions' role in this litigation was de minimis and, in most cases, duplicative of the School Defendants' efforts. The Unions joined many of the School Defendants' briefs and rarely presented any oral argument. The Unions presented few meritous arguments different from those presented by the School Defendants. That the Unions apparently went to substantial effort (as evidenced by their substantial legal bills) to make these often-duplicative, mostly de minimis contributions is irrelevant. Their contributions to the disposition of this case were simply not significant enough to warrant an award of attorneys' fees or costs.

IV. CONCLUSION

For the foregoing reasons, the Court DENIES the School Defendants' and the Unions' motions for attorneys' fees. The Court GRANTS C.F.'s motion to re-tax costs. Costs shall not be awarded against C.F.

IT IS SO ORDERED.