

October 22, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-51165
Summary Calendar

RUTH NUNEZ,

Plaintiff-Appellant,

versus

PATRICIA SIMMS; GLENNA ARCHER,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-01-CV-336-DB

Before SMITH, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Ruth Nunez appeals the district court's award of attorneys' fees to the appellees, the prevailing parties in Nunez's 42 U.S.C. § 1983 civil rights lawsuit. Nunez's suit stemmed from the termination of her employment contract as a teacher with the El Paso Independent School District. Following the assertion of qualified immunity by the defendants, the district court dismissed the suit on the basis that Nunez had not alleged the violation of a clearly established constitutional right as she

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

had no property interest in her continued employment as a teacher. This court affirmed the dismissal. See Nunez v. Simms, 341 F.3d 385, 386 (5th Cir. 2003). While the appeal on the merits was pending, the district court granted the defendants' motion for attorneys' fees under 42 U.S.C. § 1988 and FED. R. Civ. P. 54(d), finding that Nunez's lawsuit was frivolous.

Although Nunez's lawsuit and her appeal on the merits were unsuccessful, her case was not so lacking in merit that it was groundless. See Nunez, 341 F.3d at 387-92; United States v. Mississippi, 921 F.2d 604, 609 (5th Cir. 1991). Accordingly, the district court clearly erred in finding that the lawsuit was frivolous, and abused its discretion in awarding attorneys' fees to the defendants. See Mississippi, 921 F.2d at 609.

REVERSED.