United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
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Lyle W. Cayce
Clerk

No. 19-30477

ANA CHRISTINE SHELTON, IN HER CAPACITY AS BOTH THE NATURAL TUTRIX OF THE MINOR CHILDREN S.A. AND T.A. AND THE INDEPENDENT ADMINISTRATRIX OF THE SUCCESSION OF NELSON ARCE, DECEASED,

Plaintiff — Appellant Cross-Appellee,

versus

LOUISIANA STATE; JOSEPH LOPINTO, IN HIS OFFICIAL CAPACITY AS THE SHERIFF OF JEFFERSON PARISH,

Defendants — Appellees Cross-Appellants,

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS,

Defendant — Appellee.

Appeals from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:16-CV-14003

Before SMITH, HO, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

This is the second time Ana Shelton, the administratrix of Nelson Arce's estate, has come to this court about attorneys' fees. This time, we affirm the district court's fee award.

I.

Arce sued the State of Louisiana and the Sheriff of Jefferson Parish, Sheriff Lopinto. Arce died while the case was pending. His suit, however, continued and a jury determined that the defendants violated Arce's rights under the ADA. But the jury also concluded that Arce had suffered no compensable injury. So Arce's estate received nominal damages of $1 from Louisiana and from Sheriff Lopinto.

The district court initially denied Shelton's request for fees. On appeal, this court (1) affirmed that *Farrar v. Hobby*, 506 U.S. 103 (1992), provided the proper legal framework for determining fees, and (2) remanded for the district court to determine if Shelton achieved "a compensable public goal justifying a fee award." *Shelton v. Louisiana*, 919 F.3d 325, 328–29, 331 (5th Cir. 2019).

On remand, the district court separately analyzed Shelton's request for "fees incurred prior to her appeal"—*i.e.*, at trial—"and her request for fees incurred as a result of and following her appeal." *Arce v. Louisiana*, 2019 WL 2359204, at *6 (E.D. La. June 4, 2019).

Applying *Shelton*, the district court concluded that the litigation served a compensable purpose only as to Louisiana because a state official "admitted that Arce's lawsuit prompted a change in its protocols and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

training." *See id.* at *5. But the district court also noted the disparity between Shelton's two settlement demands of $4 million and $2 million and the amount she received ($2). *Id.* at *7. The district court thus awarded Shelton $40,945.02 in fees—about 10% of her request—saying that fairly reflected her "limited success at trial while still accounting for her counsel's effort and the effect of the lawsuit on the State of Louisiana, as well as the significance of civil rights litigation." *Id.* at *8.[1]

Next, the district court used the lodestar method to evaluate Shelton's request for attorneys' fees for work relating to her appeal and the subsequent fee litigation on remand. *Id.* at *8. To calculate the lodestar, the district court used local rates—thus rejecting Shelton's request to use New York rates—and reduced the calculated amount by 15% to reflect a lack of billing judgment. *Id.* at *11–*12. The resulting lodestar was $46,762.11. *Id.* at *12.

The district court then adjusted the lodestar using the factors described in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974). *See Arce*, 2019 WL 2359204, at *12. The district court first concluded that Shelton achieved only a limited degree of success, pointing out that:

1. She failed to show that the litigation "achieved a compensable public goal" as to Sheriff Lopinto.
2. The *Shelton* panel did not award attorneys' fees but instead remanded the case.
3. The *Shelton* panel affirmed the district court's decision that *Farrar* applied.
4. The *Shelton* panel affirmed the district court's conclusion that Shelton's goal in the litigation was to receive money damages.

Id. at *12–*13.

The district court then concluded "that almost all of the *Johnson* factors are subsumed within the Court's calculation of the lodestar and the

[1] The district court said it would reach the same result using the traditional lodestar analysis. *Arce*, 2019 WL 2359204, at *8 n.34.

Court's consideration of the 'degree-of-success' factor" and reduced the lodestar by $10,000. *Id.* at *13 & n.60. Finally, the district court added $2,092.80 in travel expenses, resulting in a $38,854.91 fee award, with liability for the amount split between Louisiana and Sheriff Lopinto. *Id.* at *13, *15.

Every party then appealed some aspect of the district court's fee award.

II.

As to Shelton's pre-appeal fees, this case is indistinguishable from *Farrar*. There, as here, "[the] plaintiff [sought] compensatory damages but receive[d] no more than nominal damages." *Farrar*, 506 U.S. at 115. In such a case, "the only reasonable fee is usually no fee at all." *Id.* The district court's award of about 10% of Shelton's requested trial fees was thus generous,[2] and Shelton's contrary arguments are unpersuasive. *See Shelton*, 919 F.3d at 331.

That includes Shelton's claim that Federal Rule of Civil Procedure 68 or Federal Rule of Evidence 408 bars the district court's consideration of the parties' settlement negotiations. First, Shelton failed to raise her evidentiary

[2] We do not express an opinion on if it was overly generous. While "a plaintiff who wins nominal damages is a prevailing party," *Farrar*, 506 U.S. at 112, *Farrar*'s presumption against fees in such cases, *see id.* at 115, plus the Supreme Court's rejection of the catalyst theory as conveying prevailing party status, *see Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598, 610 (2001), arguably suggest that awarding fees based solely on a defendant's change in behavior is inappropriate. *But see Shelton*, 919 F.3d at 331 ("*Buckhannon* only addressed the manner in which a district court determines the prevailing party.") (quoting *Romain v. Walters*, 856 F.3d 402, 407 (5th Cir. 2017)). Louisiana's cross-appeal claims only that the record does not support the district court's conclusion that the State changed its policies. However, as the district court noted, *see Arce*, 2019 WL 2359204, at *5, a state official testified that the State had "*already started* implementing new policies and new training" in response to the lawsuit. So the district court's factual finding was not clearly erroneous. *See Riley v. City of Jackson*, 99 F.3d 757, 759 (5th Cir. 1996).

objection in district court and thus did not preserve that claim of error. *See* FED. R. EVID. 103(a)(1).

Second, any error was harmless. Shelton brought this suit for money damages. *Shelton*, 919 F.3d at 329. So her failure to achieve anything but nominal relief meant that, "[f]rom a practical standpoint it was as if [she] had lost, in which event . . . [s]he could not obtain any award of fees." *Hyde v. Small*, 123 F.3d 583, 584–85 (7th Cir. 1997). That is enough to justify the district court's decision to "award low fees or no fees without" going through the multi-factor reasonableness analysis or calculating the lodestar. *Farrar*, 506 U.S. at 115.[3]

There is thus no need to determine whether Rule 68 prevents district courts from considering settlement negotiations in setting fees. *See Lohman v. Duryea Borough*, 574 F.3d 163, 168–69, 168 n.4 (3d Cir. 2009) (discussing the issue and canvassing analyses). We simply conclude that the district court's award was not unreasonable even absent the evidence the settlement negotiations provided.

III.

Finally, after reviewing the district court's careful opinion, the arguments of the parties, and the relevant law, we conclude that the district court committed no reversible error in its post-appeal fee award.

* * *

We affirm the district court's fee award.

[3] Moreover, the district court said it would have awarded Shelton the same fees under a typical lodestar analysis. *See Arce*, 2019 WL 2359204, at *8 n.34. That conclusion is not so unreasonable as to be an abuse of discretion.