

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 91-5087  
Summary Calendar

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RICHARD GLADDEN,

Plaintiff-Appellant,

versus

RANDY W. ROACH, ET AL.,

Defendants,

CITY OF DENTON, TEXAS,

Defendants-Appellees.

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Appeal from the United States District Court for the  
Eastern District of Texas  
S 84 220 CA

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( August 11, 1993 )

Before GARWOOD, DAVIS and EMILIO M. GARZA, Circuit Judges.\*

GARWOOD, Circuit Judge:

In this section 1983 action, plaintiff-appellant, Richard Gladden (Gladden), appeals the district court's denial of his request for legal fees entered after Gladden was awarded one dollar

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

of nominal damages on one of the seventy-five claims alleged in his complaint. We affirm.

#### **Facts and Proceedings Below**

From 1978 through 1984, while studying at North Texas State University, Gladden was arrested on four separate occasions (April 23, 1983, October 15, 1983, March 27, 1984, and September 15, 1984) for unrelated conduct. The arrest on September 15, 1984, was based on a charge of disorderly conduct. Soon after Gladden was booked at the City of Denton (Denton), Texas, jail, two of his friends came to jail with \$200 to bail him out. Gladden refused to accept his friends' offer, claiming that he wanted to see a magistrate. Gladden's father, who represented his son in the resulting criminal matters and in this action, was unable to locate a judge until September 18, 1984, at which time Gladden was released on a \$400 bond.

Because Gladden believed that his civil rights had been violated in connection with and/or following each of his arrests, Gladden filed one section 1983 action in which he raised seventy-five claims against twelve people and Denton based on his treatment on all four occasions. On one of these occasions, the April 1983 arrest, Gladden claimed that defendant Roach, a North Texas State University Police officer, deprived him of his civil rights because after Roach arrested Gladden, and while Gladden's hands were handcuffed behind his back, Roach for no valid reason beat Gladden in the face, knocked him down, and kicked him, for which Gladden sought actual and exemplary damages. Gladden also claimed, *inter alia*, that in connection with each of his arrests his rights were

violated because he was arrested for refusing to identify himself under Article 38.02 of the Texas Penal Code, which Gladden contended was unconstitutional. Gladden also claimed, among other things, that the September 15, 1984, arrest was without probable cause.

Prior to submitting the case to the jury, the district court held as a matter of law that Gladden's civil rights had been violated by Denton because following the September 1984 arrest he was unlawfully detained for eighty-seven hours without being brought before a magistrate. The case was submitted to the jury on the issues of liability and damages on all of Gladden's claims, except that with respect to the September 1984 unlawful detention claim the jury was asked only to determine the amount of damages suffered by Gladden that Gladden would have been unable to mitigate. The jury ruled in favor of the defendants on all claims and awarded Gladden \$0.00 on the September 1984 unlawful detention claim. The district court then entered judgment for Gladden on the September 1984 unlawful detention claim for one dollar. No declaratory or injunctive relief was awarded. On Gladden's appeal, the judgment was affirmed by this Court. *Gladden v. Roach*, 864 F.2d 1196 (5th Cir.), *cert. denied*, 109 S.Ct. 3192 (1989).

Gladden then filed the instant motion for attorney's fees, supported by an affidavit, claiming that he was entitled to \$215,348.79 of fees as a prevailing party under 42 U.S.C. § 1988 (West Supp. 1993) because he won one dollar on one claim. It is impossible to determine from the affidavit how much time was spent working on the one claim on which Gladden succeeded as opposed to

the time spent on the seventy-four losing claims. The total time claimed was 533.5 attorney hours and 382.9 paralegal hours. Defendants filed objections pointing out in great detail how the time records showed that much of the time claimed was clearly spent on unrelated claims, and none was specifically shown as relating to the one claim on which Gladden prevailed. Gladden has never, here or below, made any effective rebuttal to these objections.

On January 31, 1991, at the conclusion of a hearing on the attorney's fees issue, Gladden's attorney offered to provide the court with a supplemental affidavit with more detailed time records. However, counsel provided no such information to the court.

On June 6, the district court entered an order holding that Gladden was the prevailing party entitled to an award of attorney's fees and ordered Gladden's counsel to submit a supplemental brief and affidavit showing the amount of fees that relate to the part of the case in which Gladden was the prevailing party. Gladden's counsel filed a supplemental brief containing general argument but not containing any further information on the allocation of fees among the successful and unsuccessful claims or specific rebuttal to defendants' objections.

Then, on November 7, 1991, based on the intervening case of *Farrar v. Cain*, 941 F.2d 1311 (5th Cir. 1991), the district court withdrew its prior opinion and entered an order<sup>1</sup> denying Gladden's

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<sup>1</sup> This order was not accompanied by a judgment on a separate document as required by Federal Rule of Civil Procedure 58(b). We elect to treat this nonjurisdictional requirement as waived, the parties having failed to raise any question in that respect

application for attorney's fees on the primary ground that Gladden was not a prevailing party and, alternatively, that in any event Gladden had failed to present sufficient evidence of the amount of attorney's fees attributable to his successful claim. Gladden appeals.

### Discussion

42 U.S.C. § 1988(b) provides that "the court, *in its discretion*, may allow the prevailing party, [in a section 1983 action] . . . , a reasonable attorney's fee as part of the costs." (Emphasis added).

"[A] plaintiff who wins nominal damages *is* a prevailing party under § 1988." *Farrar v. Hobby*, 113 S.Ct. 566, 573 (1992), *affirming on other grounds, Farrar v. Cain*, 941 F.2d 1311 (5th Cir. 1991) (emphasis added).<sup>2</sup> Prevailing party status, however, does not automatically entitle a party to attorney's fees.

"Although the 'technical' nature of a nominal damages award or any other judgment does not affect the prevailing party inquiry, it does bear on the propriety of fees awarded under section 1988. Once civil rights litigation materially alters the legal

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on appeal. *Theriot v. ASW Well Service, Inc.*, 951 F.2d 84, 85-88 (5th Cir. 1992).

<sup>2</sup> Gladden's first argument that Denton was estopped from arguing that Gladden was not a prevailing party based on its cross-examination of Gladden during trial is mooted by this holding in *Farrar*. We observe that it is unlikely that the jury awarded no damages to Gladden on this claim because of its belief that Gladden would be able to collect thousands of dollars in legal fees. It is far more likely that no damages were awarded because Gladden failed to mitigate his damages by accepting the offer of release resulting from his friends' posting of bail on the day he was arrested, a matter that the charge expressly required the jury to consider.

relationship between the parties, 'the degree of the plaintiff's overall success goes to the reasonableness' of a fee award under *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)," which is the most important factor in determining whether a fee should be awarded. *Id.* at 574.

The district court correctly denied fees to Gladden for two reasons. First, Gladden prevailed on only one of seventy-five claims, earning one dollar in damages, and no declaratory or injunctive relief. A victory cannot get more nominal than that. "When a plaintiff recovers only nominal damages because of his failure to prove an essential element of his claim for monetary relief, . . . the only reasonable fee is usually no fee at all." *Id.* at 575. Gladden contends that he also prevailed by forcing Denton to change its policy on the time it holds pretrial detainees before bringing them before a magistrate. *See Pembroke v. Wood County, Tex.*, 981 F.2d 225, 230-31 n. 27 (5th Cir.), *cert. denied*, 61 U.S.L.W. 3834 (U.S. 1993). However, the district court did not clearly err in finding that this change in city policy resulted from a change in city attorneys and not from Gladden's lawsuit. This litigation did little to vindicate Gladden's legal rights. Gladden's victory was too technical to entitle him to attorney's fees.

Second, Gladden failed to sufficiently prove what fees were incurred relating to his successful claim. Under *Hensley v. Eckerhart*, 103 S.Ct. 1933, 1941 (1983), the applicant for attorney's fees "bears the burden of establishing entitlement to an award and *documenting the appropriate hours expended and hourly*

rates. *Id.* at 1941 (emphasis added). Part of that responsibility involves separately documenting the hours expended on claims on which the applicant prevailed, claims related thereto, and on unrelated unsuccessful claims. "Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee." *Id.* at 1943. Gladden's unlawful detention claim appears to be unrelated to any other claims he raised, yet he failed to submit an affidavit separately documenting the fees attributable to this claim. For example, Gladden's counsel's time sheet affidavit contains time entries with general statements like "Research on Brief," "Telephone calls with client," "Work on Pretrial Order," and "Work on appeal brief" without referring to which claims were being worked on for which amounts of time. In fact, in reading the time affidavit, no time entry refers specifically to the unlawful detention claim. Gladden argues that his affidavit only included time spent working on the successful claim or related claims, but as noted above, it is impossible to determine that from the time affidavit, and indeed it is obvious that that is not the case. For example, although the time sheet refers only generally to "Work on appeal brief," on appeal, Gladden raised and defended against several issues, only one of which was the unlawful detention claim. The fact that Gladden's affidavit contains the conclusory recital that "I have made a good faith effort to eliminate time which was expended on claims which were unsuccessful or unrelated to Plaintiff's prevailing claims" is insufficient proof. When a

matter involves numerous related and unrelated claims, time entries must be more specific and refer to the issues worked on in addition to the nature of the work done. Gladden has not offered sufficient evidence that his counsel's fee schedule even largely included time spent on the prevailing claim and claims related thereto. Moreover, Gladden's counsel failed to amend or supplement his time affidavit, despite the two extra opportunities given to him by the district court. Finally, we observe that section 1988 does not mandate that all prevailing parties receive attorney's fees, but gives the district court at least a limited discretion in special circumstances in determining whether to award fees even to a prevailing plaintiff. The district court cannot be put to the burden of itself sorting out from a vast amount of clearly noncompensable time, some small, hidden nuggets of compensable time, particularly when counsel fails to meaningfully pursue the matter after it has so forcefully and specifically been called to counsel's attention. The district court did not err in finding that Gladden did not prove his entitlement to legal fees.

#### **Conclusion**

We are unable to conclude that the district court erred in denying Gladden's claim for attorney's fees. Accordingly, the judgment appealed from is

AFFIRMED.