

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1833

Summary Calendar

SAN JACINTO SAVINGS AND LOAN, ET AL.,
Plaintiffs,

versus

KATHY KACAL,
Defendant-Third Party
Plaintiff-Appellant,

versus

OFFICER TOMMY HALE and
CITY OF WAXAHACHIE, TEXAS,
Third Party Defendants-
Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:89 CV 1229 AH)

(October 27, 1993)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

I

*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

San Jacinto Savings and Loan filed this action against Kathy Kacal for breach of a lease. Kacal owned and operated an arcade and soda fountain. After San Jacinto filed suit, she sued the City of Waxahachie and Police Officer Tommy Hale as third party defendants for violation of her civil rights. Kacal alleged that official comments about drug activity at her establishment caused her business to decline, which, in turn, caused her to breach the lease.

After a successful jury trial, Kacal moved for prejudgment interest, attorneys fees, and costs. The district court denied her motion for prejudgment interest, awarded \$40,820 in attorneys fees, and denied her motion for costs. The court, however, stated that she could refile for costs under 18 U.S.C. § 1920. Not satisfied, Kacal filed a supplemental motion for attorneys fees and costs. The district court denied the motion. Kacal appealed. We affirm.

II

We review a district court's award of attorneys fees for abuse of discretion. Von Clark v. Butler, 916 F.2d 255, 258 (5th Cir. 1990). The district court or magistrate-judge should explain with a reasonable degree of specificity how it applied the factors in Johnson v. Georgia Highway Express, 488 F.2d 714 (5th Cir. 1974). We find no abuse of discretion.

The district court found that Kacal's attorney did not keep contemporaneous time records of the hours worked and the services performed. In addition, the court found that Kacal's attorney charged an excessive hourly rate that did not reflect community

standards or his skills, experience, and reputation. Moreover, the district court saw no need to adjust its calculation of the number of compensable hours times the reasonable hourly rate.

III

Kacal's motion for costs included a number of items not recoverable under 28 U.S.C. § 1920, including private investigator fees, long distance telephone charges, non-court-appointed expert costs, and mediation fees. Kacal also sought fees for depositions that she did not take, and an entry entitled "postage and copying costs" gave no indication of which expenses went for postage and which went for copying. The motion failed to state how Kacal used the copies in this case.

Based on these concerns, the district court denied the motion, but suggested that Kacal file a verified bill of costs recoverable under 28 U.S.C. § 1920. Kacal ignored this suggestion and filed an amended motion for attorneys fees and costs with no additional information about the expenses. The district court did not abuse its discretion by refusing to award costs not listed in Section 1920.

IV

Kacal received damages on the 42 U.S.C. § 1983 claim and pendent state law claims, and punitive damages for violations of state law. The partial agreed judgment, which formed the basis for the final judgment, did not allocate an amount for any specific claim. The district court appropriately denied the motion for

prejudgment interest because it could not determine the extent to which Kacal could recover prejudgment interest on any given claim.

Federal law governs the availability of prejudgment interest in a claim arising under federal law. Parson v. Kaiser Aluminum & Chemical Corp., 727 F.2d 473 (5th Cir. 1984). The district court has sound discretion to award prejudgment interest in such cases. Id. It does not have to award prejudgment interest on Section 1983 claims. Hale v. Fish, 899 F.2d 390, 404 (5th Cir. 1990).

Kacal failed to demonstrate what portion of the partial agreed judgment concerned the Section 1983 claims, or why prejudgment interest would be appropriate in this case. See Blackburn v. Snow, 771 F.2d 556, 573 (1st Cir. 1985) (prejudgment interest might be inappropriate in civil rights cases involving intangible losses). In addition, Kacal did not show that the judgment did not include damages for future harm. See William v. Reading & Bates Drilling Co., 750 F.2d 487, 491 (5th Cir. 1985) (prejudgment interest may not be awarded for future damages).

Similarly, Kacal did not demonstrate the amount of damages from the state law claims or the amount of punitive damages. See Vail v. Texas Farm Bureau Mut. Ins. Co., 754 S.W.2d 129, 137 (Tex. 1990) (prejudgment interest may not be assessed for exemplary damages). In addition, Kacal did not provide the date of the settlement offer, how long it remained open, or the amount of the settlement offer. Tex. Civ. Stat. Ann. art. 5069-1.05(6)(b) and (c) (prejudgment interest does not accrue on amounts included in a

settlement offer during the period in which the offer may be accepted).

AFFIRMED.