

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4848
Summary Calendar

LARRY PEMBROKE, et al.,

Plaintiffs-Appellants,

VERSUS

WOOD COUNTY, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(85-CV-475)

(February 10, 1994)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

The plaintiffs challenge, as inadequate, the district court's award of attorney's fees under 42 U.S.C. § 1988. Agreeing that reconsideration is required, we vacate and remand.

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

A.

In December 1985, two Wood County jail prisoners instituted the instant suit pursuant to 42 U.S.C. § 1983, alleging that the conditions at the jail violated their constitutional rights and seeking individual damages and injunctive and class relief on behalf of all present and future inmates. See *Pembroke v. Wood County, Tex.*, 981 F.2d 225, 226 (5th Cir.), cert. denied, 113 S. Ct. 2965 (1993). By February 1988, when the case went to trial, most of the conditions had been remedied; the county hired (nearly two years after commencement of the suit) a new prison administrator who instituted a total reform of the facility and had begun construction of a new jail. Id. at 227.

Although all claims were tried simultaneously, only the individual claims were submitted to the jury, which returned a verdict in favor of the defendants. Id. The district court decided the class claims in favor of the defendants, which the plaintiffs appealed. Id.

We vacated and remanded for entry of findings of fact and conclusions of law. Id. On remand, the district court again denied relief, dismissed the case with prejudice, ordered the decertification of the class, and denied the plaintiffs' request for prevailing party status. Id. at 228.

Following the plaintiffs' appeal, we affirmed the determination that the case was moot (because the complained-of conditions did not exist at the time the case went to trial) and the denial of

declaratory relief (because the district court found that the defendants had good attitudes and no danger of the recurrence of the poor conditions existed). Id. We concluded, however, that the improved conditions were the direct result of the plaintiffs' filing suit¹ and that they were entitled to receive reasonable costs and attorneys' fees as prevailing parties under § 1988. Id. at 230.

B.

Plaintiffs' counsel moved the district court for an award of attorneys' fees in the amount of \$123,216.66 (based on 626 hours, 5 minutes at the rate of \$200 per hour) and costs of \$4,940.74 and submitted in support thereof, inter alia, their affidavits and detailed time sheets and affidavits of two other attorneys engaged in federal civil rights practice in the Eastern District of Texas; these affidavits established that \$200 per hour is a "minimum reasonable fee" for attorneys of plaintiffs' counsel's ability in a case of similar complexity. The defendants opposed the fee application but did not submit any affidavits or other evidence.

¹ We specifically rejected the defendants' argument that prevailing party status was unwarranted:

The defendants would have us believe that the plaintiff class sought merely to have the court declare that their rights had been violated. We reject this argument. The prison conditions for persons confined in Wood County, Texas now pass constitutional muster. The goal of the suit has been accomplished It is undisputed that unacceptable conditions in the old Wood County Jail were drastically improved immediately following the filing of this suit. The record supports the inescapable conclusion that these improvements were caused by the plaintiffs' filing suit. We are unwilling to characterize these improvements as mere coincidence.

Id. at 230-31.

The district court determined, based upon its review of the detailed time records submitted, that the "time recorded [was] reasonable for the nature and extent of this case." It attributed its reduction of the hourly rate from \$200 to \$150 to the fact that the plaintiffs were indigent inmates and that counsel's fee was contingent upon a determination that plaintiffs were prevailing parties.

Then the district court further reduced the award by one-third for limited success. Other factors established by Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974), the district court determined, did not require further adjustment of the award; specifically, the court found that (1) the suit was neither novel nor difficult, (2) counsel was not precluded from other employment, (3) counsel enjoys "an excellent reputation for accepting and litigating cases to enforce civil rights" in federal courts, (4) awards in other civil rights cases range from \$100 to \$300 per hour,² and (5) such an hourly rate was "within the range of statutory attorney fees awarded in this jurisdiction and elsewhere."

II.

Pursuant to § 1988, a district court, in its discretion, may award reasonable attorneys' fees to prevailing parties. To

² The district court supported its determination that \$150 per hour was a reasonable hourly rate by reviewing the rates awarded in Ruiz v. Estelle, 553 F. Supp. 567 (S.D. Tex. 1982) (\$300 per hour), which it characterized as a difficult case, and Nicholson v. Bates, 544 F. Supp. 256 (E.D. Tex. 1982) (\$100 per hour).

determine the award amount, the court is first required to calculate the "lodestar," the product of the number of compensable hours reasonably spent and a reasonable hourly billing rate based upon prevailing community standards for attorneys of similar experience in similar cases. Shipes v. Trinity Industries, 987 F.2d 311, 319 (5th Cir.), cert. denied, 114 S. Ct. 548 (1993).

In Johnson, this court established the following factors in the determination of a reasonable fee: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. The district court must consider the Johnson factors in the determination of the reasonableness of the hours expended and the hourly rate requested. Watkins v. Fordice, 7 F.3d 453, 457 (5th Cir. 1993). "Once determined, the lodestar may be adjusted upward or downward if the Johnson factors, not included in the reasonable fee analysis, warrant the adjustment." Id. A strong presumption exists that the lodestar represents a reasonable fee that should be modified only in exceptional cases. City of

Burlington v. Dague, 112 S. Ct. 2638, 2641 (1992); see also Watkins, 7 F.3d at 457.

III.

A.

Plaintiffs argue that the district court clearly erred when it reduced the hourly rate requested and established by the plaintiffs by uncontroverted evidence. We review a district court's factual findings made in the context of an award of attorneys' fees under § 1988, including the determination of a reasonable hourly rate for purposes of calculation of the lodestar, under the "clearly erroneous" standard. Islamic Center v. City of Starkville, Miss., 876 F.2d 465, 468 (5th Cir. 1989).

A court is required to set a reasonable hourly rate according to the prevailing market rates in the relevant community. Blum v. Stenson, 465 U.S. 886, 895 (1984). To inform and assist the court, a fee applicant is required to adduct evidence that the "requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Id. at 896 n.11.

If an attorney's customary billing rate is the requested rate and is within the range of prevailing market rates, it is prima facie reasonable. Islamic Center, 876 F.2d at 469. If the opposing party urges that the hourly rate should be reduced below the rate requested by the prevailing parties and prove to be within the prevailing market rate range, "that party should at least

adduce some evidence to support its position that, under the circumstances, the requested rate is not reasonable." Id. If the district court selects a rate other than the attorney's customary billing rate, it must give specific reasons for its departure. Id.

In their fee application, plaintiffs' counsel established, by affidavit, that their customary billing rate and the prevailing market rate for this type of case were at least \$200 per hour. The defendants submitted no evidence disputing the rate. The district court justified its reduction of the rate on the grounds that (1) the plaintiffs were indigent and (2) the fee was similar to rates awarded in two 1982 cases from the Eastern District of Texas. Neither the financial condition of the plaintiffs nor the nature of the fee is a factor listed in Johnson, and the rates awarded in 1982 are not evidence of current rates prevailing in the community for similar services of lawyers of comparable skill and reputation. Accordingly, because nothing in the record suggests that \$200 per hour was (1) not counsel's customary fee or (2) outside the range of prevailing market rates, and given the specific finding that the time expended by plaintiffs' counsel was supported by detailed time records and was reasonable for the nature and extent of the case, the court clearly erred in failing to award the \$200 hourly rate. See Curtis v. Bill Hanna Ford, Inc., 822 F.2d 549, 552 (5th Cir. 1987) (holding that district court committed clear error by not awarding customary rate determined to be within the market value of services rendered when record does not suggest that excessive amount of time was spent).

B.

Plaintiffs also assert that the district court erred when it reduced the lodestar on account of "limited success" because the plaintiffs obtained the relief sought by voluntary changes in the defendants' conduct following commencement of the lawsuit, thereby mooted the need for formal court-ordered relief. We review the ultimate amount of the fee under _____ for abuse of discretion. See City of Riverside v. Rivera, 477 U.S. 561, 572-73 (1986) (plurality opinion).

The district court may adjust the lodestar upward or downward in light of other considerations where a plaintiff is deemed a prevailing party even though he was not successful on all claims. Hensley v. Eckerhart, 461 U.S. 424, 434 (1983). If the case cannot be characterized as a series of discrete claims, however, Hensley instructs district courts to "focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." Id. at 435; see Hewitt v. Helms, 482 U.S. 755, 761-64 (1987) (holding that in civil litigation, the judicial decree is not the relief obtained, but only the means to such relief: the action or cessation of action by defendant; if defendant, under pressure of the lawsuit, alters conduct that was the basis for the suit, plaintiff will have prevailed and achieved the relief sought). "Where a plaintiff has obtained excellent results, his attorney should recover a fully

compensatory fee."³ Hensley, 461 U.S. at 435. The discretion to determine the award must be exercised in a manner consonant with the considerations identified in Hensley. Id. at 437.

The district court reduced the instant lodestar by one-third for limited success, reasoning that "the defendant has violated the constitutional rights of the Plaintiff class in the past, but [the district court] entered no remedial or prospective order in favor of the Plaintiff" Though technically true, the district court's analysis ignores our determinations that (1) "the goal of the suit has been accomplished," (2) "[i]t is undisputed that the unacceptable conditions in the old Wood County Jail were drastically improved immediately following the filing of this suit," (3) "[t]he record supports the inescapable conclusion that these improvements were caused by the plaintiffs' filing suit," (4) remedial relief was unnecessary because the complained-of conditions did not exist at the time the case went to trial, and (5) declaratory relief was unnecessary because no danger of recurrence of the poor conditions existed.

The district court's reasoning similarly failed to explain its refusal to acknowledge the fact that the plaintiffs' suit challenged a broad spectrum of unconstitutional practices and condi-

³ The Court further explained that application of a results-oriented approach is particularly important in civil rights cases that challenge institutional practices or conditions, because "although the plaintiff may often succeed in identifying some unlawful practices or conditions, the range of possible success is vast," Hensley, 461 U.S. at 436, and a prevailing party determination is not necessarily probative respecting the question whether counsel's time is reasonable in light of the success achieved. Id.

tions⁴ and succeeded in correcting most, if not all, of them. The court's failure to exercise its discretion in accordance with the guidelines set forth in Hensley and Hewitt and to determine the award in accordance with the mandate of this court, constitutes an abuse of discretion. See Cobb v. Miller, 818 F.2d 1227, 1234-35 (5th Cir. 1987).

Without suggesting what amount of attorney's fees ultimately should be awarded, we VACATE the award and REMAND for reconsideration in light of this opinion.

⁴ In addition to the improper classification of prisoners, punitive isolation without due process, improper restriction of reading materials, inadequate medical care, and denial of access to the courts, we determined that

[t]hese were not the only problems at the jail. The facility was in a general state of disarray. Administration of the facility had been delegated to untrained staff members; repeated state standards violations were never recorded or addressed; medical attention was erratic; and the plumbing was in a constant state of disrepair resulting in raw sewage overflowing the showers and toilets for months at a time. The jail was always in semi-darkness in violation of state lighting standards. Visitation privileges were arbitrarily restricted. The prisoners were sometimes sprayed with mace as a form of punishment.