UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10738

ELIZABETH QUTB, Individually and as next friend of Sabrina Qutb, ET AL.,

Plaintiffs-Appellees,

versus

ANNETTE STRAUSS, Mayor of the City of Dallas, TX., ET AL.,

Defendants,

STEVE BARTLETT, Mayor of the City of Dallas, TX., ET AL.,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Texas
(3:91 CV 1310 R)

June 30, 1995

Before DAVIS and JONES, Circuit Judges, and COBB*, District Judge.

PER CURIAM:**

Even though they eventually lost their facial attack on the constitutionality of Dallas's youth curfew ordinance, the

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* District Judge of the Eastern District of Texas, sitting by designation.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

appellees persuaded the magistrate judge and district court that they are prevailing parties entitled to an award of attorneys fees from the city pursuant to 42 U.S.C. § 1988. The district court reasoned that their lawsuit provoked "massive" amendments that narrowed the curfew. Consequently, despite appellees' failure to obtain broad relief, the court awarded them over $86,000, 75% of the total fees incurred in the lawsuit.

The City of Dallas objects that appellees were not prevailing parties, but even if they were, the fee award is massively disproportionate to the results obtained. We agree with the City's latter contention: the magistrate judge and district court had no basis to conclude that the amendments to the curfew ordinance achieved three-fourths of the relief sought by the appellees.

The Supreme Court holds that "'The most critical factor' in determining the reasonableness of a fee award 'is the degree of success obtained.'" Farrar v. Hobby, ___ U.S. ___, 113 S.Ct. 566, 574 (1992), citing Hensley v. Eckerhart, 461 U.S. 424, 436, 103 S.Ct. 1933, 1941 (1983). In Farrar, the Court went on to compare the plaintiffs' claim for $17 million with the nominal $1 damage award they received. The decision disallowed any fee award because plaintiffs had been unable to prove any actual damages and a fee award would have been utterly disproportionate to the results they obtained. The Court repeated its admonition that § 1988 fee awards were never intended to produce windfalls to attorneys. Farrar, 115

S.Ct. 566, citing Riverside v. Rivera, 477 U.S. 561, 580, 106 S.Ct. 2686, 2697 (1986).

Mindful of these considerations, we cannot approve the equilibrium struck by the district court and magistrate judge between the fees incurred and the affirmative relief appellees obtained here. Their brief cites a table of modifications to the curfew ordinance that were spawned, at least in part, by their lawsuit.[1] Several of the modifications for which they claim credit are hardly noteworthy. The term "detour" was substituted for "most direct route," and "unnecessarily" was deleted as a modifier to "linger or stay." Arguably contrary to appellees' interests, the definition of "public place" was actually broadened by the amendments, and the enforcement power was altered to permit a fine after any single violation of the ordinance rather than only upon the third incident. While it was useful to add step-parents to the definition of parents, to permit travel to and from a youth's place of employment, and to expand the scope of recreational activities permitted by the curfew, to characterize these changes as "massive" is an extravagant overstatement. For despite such ameliorative changes, the fact remains that youth under 18 in Dallas may not go out in the late evening unless they comply with the curfew. The curfew remains broad and restrictive. The lower courts could not convert appellees' substantial defeat in attacking the ordinance into a substantial victory for fee purposes by the mere use of an

[1] For purposes of this appeal, we do not question the lower courts' evaluation of causal connection.

adjective. The district court clearly erred in finding that appellees' lawsuit occasioned "massive" changes, and it abused its discretion in awarding 75% of their entire attorneys' fee.

A reasonable fee, reflecting appellees' limited success in trimming around the edges of the curfew, is about 25% of their total fees, or $30,000. The judgment of the district court is therefore modified to reflect that amount plus an additional $5,000 on this appeal, for a total fee award of $35,000. The judgment of the district court, as modified, is affirmed.

AFFIRMED as MODIFIED.