IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-60073
Summary Calendar

JUAN and GLORIA NORIEGA, ET AL.,

Plaintiffs-Appellants,

versus

LA FERIA INDEPENDENT SCHOOL DISTRICT, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas
(CA B 83 372)

July 24, 1995

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:*

Plaintiffs in an underlying civil rights suit against the Texas Education Agency ("TEA"), its Commissioner and several South Texas school districts appeal a district court order denying their application for attorney's fees. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

BACKGROUND

The plaintiffs in the underlying suit are United States citizen children of non-resident alien parents. The defendant school districts denied the plaintiffs admission to school pursuant to section 21.031(d) of the Texas Education Code. That statute denied tuition-free status to children residing in a school district with someone other than a parent or legal guardian, unless the children could prove that they were not in the district for the primary purpose of attending school. Plaintiffs filed suit, pursuant to 42 U.S.C. § 1983, challenging the constitutionality of the statute as applied and seeking declaratory and injunctive relief against the defendants.

Before the plaintiffs' suit became moot, the district court granted preliminary injunctions and temporary restraining orders ("TROs") against the various defendant school districts and other persons "acting in concert" allowing the plaintiffs to gain admission to their respective school districts. The district court also granted class certification in the plaintiffs' suit. Then, the Texas Legislature amended section 21.031(d) to delete the language challenged by the plaintiffs. The district court dismissed plaintiffs' suit as moot.

On April 21, 1992, the plaintiffs filed an application for attorney's fees, pursuant to 42 U.S.C. § 1988, claiming "prevailing party" status. The defendant school districts all paid attorney's fees to the plaintiffs in accord with settlement agreements reached between the plaintiffs and the various school

districts. TEA, however, refused to settle the attorney's fees issue. On December 21, 1993, the district court issued an order denying an award of attorney's fees against TEA.

DISCUSSION

The plaintiffs argue that they achieved prevailing party status in the underlying civil rights suit, because they succeeded in obtaining class certification and preliminary injunctive relief. We agree with the district court that the plaintiffs did not achieve prevailing party status against TEA.

The district court's decision to certify a class did not provide a basis for an award of attorney's fees to plaintiffs. To achieve prevailing party status, a plaintiff must have obtained some relief "on the merits of his claims." Hanrahan v. Hampton, 100 S.Ct. 1987, 1989 (1980). The class certification was a procedural victory which could not give rise to prevailing party status. See id. at 1990.

Nor did plaintiffs achieve prevailing party status against TEA when the district court issued preliminary injunctions and TROs requiring the defendant school districts to allow plaintiffs to return to school. To be considered as having prevailed, the plaintiffs must "point to a resolution of the dispute which change[d] the legal relationship between [them] and the defendant." Texas State Teachers Ass'n v. Garland I.S.D., 109 S.Ct. 1486, 1493 (1989).

The injunctive relief, requiring admission of the plaintiffs into school, did not operate against TEA and thus did not change

the relationship between the plaintiffs and TEA. The district court's orders did not name TEA and did not order TEA to take any action or to halt any action. As the district court noted, "TEA does not enroll students; school districts do."

The district court orders did enjoin "persons acting in concert" with the school districts from denying plaintiffs admission into school. The plaintiffs argue that TEA acted in concert with the school districts by advising school districts that they should exclude students pursuant to section 21.031(d) and by enforcing the statute by denying full funding to schools that admitted students which should have been excluded under section 21.031(d). But, the district court did not order TEA to change its enforcement practices or the advice that it provided to school districts. The injunctions and TROs simply required that the plaintiffs be allowed to attend school whether or not TEA changed its policies. The plaintiffs fail to point out any change in TEA's legal responsibilities toward the plaintiffs.

AFFIRMED.