UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-60102
Summary Calendar

ROBERT PHARR, ET AL.,

Plaintiffs-Appellants,

versus

HARRISON COUNTY BOARD OF SUPERVISORS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi

(CA-S91-0429-G)

(December 21, 1994)

Before POLITZ, Chief Judge, KING and STEWART, Circuit Judges.

POLITZ, Chief Judge:[*]

Robert Pharr and his six co-complainants (hereinafter "Pharr"), appeal their denial of attorney's fees under 42 U.S.C. §§ 1973(e) and 1988. Concluding that appellants are prevailing parties we reverse and render on status and remand for setting of a reasonable fee.

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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

Following issuance of the 1990 census, the Harrison County, Mississippi, Board of Supervisors began preparing a redistricting plan for the election of county officials, including the Board of Supervisors. In recognition of the imperative for citizen input, the Board established a Citizens Advisory Committee but pending its appointment the Board created an "internal working committee" which prepared maps, plats and data for redistricting. The working committee prepared eleven proposed plans, three of which were submitted to the Advisory Committee.

When the Advisory Committee was formally appointed, Dr. Gilbert Mason, an African-American member thereof and a co-complainant herein, objected to the development of plans by the Board's internal committee without any input from the black community to whom none of the recommended alternatives were acceptable.

The Board held public hearings and work sessions to consider various redistricting alternatives including proposals containing majority/minority[1] districts. A plan was adopted and submitted to the Department of Justice for preclearance under section 5 of the Voting Rights Act.[2] Dr. Mason and others opposed the preclearance and their vigorous objections were underscored by the DOJ when it denied preclearance on September 9, 1991.

---

[1] A majority/minority district is one in which minority citizens compose the majority of the population.

[2] 42 U.S.C. § 1973c.

With elections scheduled for September 17, 1991, the Board decided to proceed using the existing district lines which were drawn using the 1980 census. The resolution announcing the elections noted the Board's resolve to develop an alternative plan for submission to the DOJ. No time schedule was included.

On September 11, 1991 the instant complaint was filed seeking: (1) a declaration that the existing lines violated the Voting Rights Act and the fourteenth and fifteenth amendments; (2) preliminary and permanent relief enjoining use of those districts for election; (3) an order implementing a constitutional plan; and (4) an order extending the qualifying dates for county elections until a constitutional plan could be implemented.

Serious negotiations followed and within two days a consent decree was presented to the court[3] declaring the existing district lines unconstitutional but allowing the election, then only four days off, to proceed. The decree ordered the Board to present a new redistricting plan to the DOJ within 60 days and provided that the officials elected in the impending election would hold office only until elections could be conducted under the new plan, which elections were to be held at the next scheduled legislative elections or the 1992 presidential election, whichever came first.

In December 1991, following additional work and public hearings, a new redistricting plan, including a majority/minority

[3] The consent decree was accompanied by a "Memorandum of Understanding" wherein the parties agreed to make good faith efforts to resolve the redistricting controversy and gave complainants access to the Board's redistricting data.

district for Board of Supervisors, was submitted to the DOJ and approved. Elections were held and an African-American was elected to the Board from the majority/minority district.

Thereafter, complainants moved for the assessment of attorney's fees and costs. The motion was denied on a finding that they were not prevailing parties under the cited statues. This appeal timely followed.

Analysis

Under 42 U.S.C. §§ 1973l(e) and 1988, attorney's fees are available to prevailing parties.[4] Because the term "prevailing parties" has been interpreted the same under both of these provisions, the case law applying one is equally applicable to the other.[5] We address the claims together.

The Supreme Court recently addressed the concept of "prevailing parties" in its decision in **Farrar v. Hobby**[6], stating:

> We reemphasize that "[t]he touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties." . . . Therefore, to qualify as a prevailing party, a civil rights plaintiff must obtain at least some relief on the merits of his claim. The plaintiff must obtain an enforceable judgment

---

[4] Section 1973l(e) provides,"the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs." 42 U.S.C. § 1973l(e) (1988). The attorney's fee provision of § 1988 uses identical language. See 42 U.S.C. § 1988(b) (Supp. III 1991).

[5] **Posada v. Lamb County**, 716 F.2d 1066, 1071 (5th Cir. 1983)("The phrase [in the provisions] carries the same general meaning under both acts.").

[6] 113 S.Ct. 566 (1992) (construing attorney's fee provision in § 1988).

> against the defendant from whom fees are sought or comparable relief through a consent decree or settlement. Whatever relief the plaintiff secures must directly benefit him at the time of the judgment or settlement. Otherwise, the judgment or settlement cannot be said to "affec[t] the behavior of the defendant toward the plaintiff."[7]

Farrar makes clear that the primary inquiry in determining whether plaintiffs are prevailing parties is an examination of the effect of the litigation on the relationship between the parties. For a material alteration in the legal relationship, a full adjudication on the merits is not necessary provided the plaintiff obtains substantial benefit or relief on any of the significant issues in the litigation.[8] The lawsuit must, however, have been the precipitating cause of the alteration in the relationship between the parties.[9] This causal connection "is established by evidence that the plaintiff's lawsuit was a 'substantial factor or a significant catalyst in motivating the defendants to end their unconstitutional behavior.'"[10] Causation is presumed when the relief or benefit is obtained through an order of the court.[11]

---

[7] Id. at 573 (citations omitted).

[8] **Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.**, 489 U.S. 782, 109 S.Ct 1486 (1989); **Maher v. Gagne**, 448 U.S. 122, 100 S.Ct. 2570 (1980).

[9] **Watkins v. Fordice**, 7 F.3d 453, 456 (5th Cir. 1993)("[P]laintiff must show (1) the goals of the lawsuit were achieved, and (2) the suit caused the defendants to remedy the discrimination.").

[10] **Posada**, 716 F.2d at 1072 (citing **Williams v. Leatherbury**, 672 F.2d 549, 551 (5th Cir. 1982)).

[11] See **Leroy v. City of Houston**, 831 F.2d 576 (5th Cir. 1987), cert. denied, 486 U.S. 1008 (1988).

Pharr contends that plaintiffs prevailed because the lawsuit sought a declaratory judgment that the existing district lines were unconstitutional and the consent decree recognized the same. For a declaratory judgment, standing alone, to entitle one to status as a prevailing party, the decree must affect the behavior of the defendant towards the plaintiff.[12] The district court ruled that Pharr could not be said to have prevailed on this issue because the unconstitutionality of the 1980 census-based districting lines was not seriously contested. We accept this observation but note that the dispositive inquiry is whether the lawsuit and resulting consent decree changed the behavior of the defendant towards the plaintiffs. In this case the declaratory relief, standing alone, may not have been the catalyst for the defendant's actions, but there was more in the judicial resolution of the litigation.

The consent decree not only was a recognition and declaration by the court that existing district lines violated the Constitution, it also set a firm deadline for the submission of a new plan to the DOJ, authorized the imminent elections to proceed subject to the marked limitation that those elected would have to step aside when elections were held under the new plan and established a specifically identified period during which the new elections were to take place (by the next Mississippi legislative elections or the 1992 presidential election, whichever came first). In addition, the memorandum which accompanied the consent decree

[12] **Rhodes v. Stewart**, 488 U.S. 1, 109 S.Ct. 202, 102 L.Ed.2d 1 (1988)(per curiam); **TK's Video, Inc. v. Denton County, Tex.**, 24 F.3d 705 (5th Cir. 1994).

obligated the defendant to give complainants full access to its redistricting data and obligated good faith mutual efforts to resolve the controversy. None of these features were either a specific or inherent part of the declaration that the existing districting lines were unconstitutional or violative of the Voting Rights Act.

We conclude that the consent decree required the Board to act in a timely manner in adopting a new plan and to conduct new elections, upon receipt of preclearance, thereby abridging the terms of those elected under the existing lines and vindicating complainants' rights to constitutional representation. That Pharr may not have received all of the relief sought does not mitigate against a finding of prevailing status; the degree of success is relevant only to the setting of a reasonable fee.[13]

The judgment denying prevailing party status is REVERSED and judgment declaring plaintiffs to be prevailing parties is RENDERED, and this matter is REMANDED in order that a judgment awarding appropriate attorney's fees and costs may be rendered.

---

[13] **Farrar**, 113 S.Ct. at 574 ("Once civil rights litigation materially alters the legal 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).")(citing **Garland**, 489 U.S. at 793.).