UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

FRANKLIN BRAGG,

Plaintiff

v. CIVIL ACTION NO. 2:05-0355

JOYCE VESSEY SWANSON
in her official capacity as
principal of Hurricane High School,

Defendant

MEMORANDUM OPINION AND ORDER

Pending is plaintiff's motion for an award of attorney fees and costs filed June 13, 2005.

I.

Plaintiff was a student at Hurricane High School. He was disciplined for wearing a T-shirt that displayed the Confederate flag, in violation of the school's dress code. On April 28, 2005, plaintiff instituted this action. His one-count pleading alleged that defendant Swanson's actions violated his rights under the First Amendment. He sought the following redress in his complaint:

> [1] permanent injunctive relief; [2] a declaration that . . . [defendants'] actions . . . were and are unconstitutional, illegal, and void, and . . . in

> contravention of Plaintiff's constitutional rights; . . . [3] expungement . . . of any reference to the disciplinary action relating to his . . . [flag clothing]. . . [;] [4] . . . reimburse[ment] . . . for his reasonable attorneys' fees, expenses, and costs . . . and all such further relief as the Court may deem just and proper.

(Compl. prayer for rel.)

On May 3, 2005, plaintiff moved for a preliminary injunction. In consultation with the parties, and pursuant to Rule 65(a)(2), the court ordered the trial advanced and consolidated with the hearing on plaintiff's motion. On May 9, 2005, the court conducted a bench trial. On May 31, 2005, the court entered its findings of fact and conclusions of law and entered judgment in plaintiff's favor against Principal Swanson in her official capacity. See Bragg v. Swanson, 371 F. Supp.2d 814 (S.D. W. Va. 2005). The court does not recite here anew those findings and conclusions. The analysis of the Johnson factors infra is, however, made with those findings and conclusions in mind.

On June 13, 2005, plaintiff moved for attorney fees and costs for his two lawyers pursuant to 42 U.S.C. § 1988. Attorney Roger D. Forman has been a practicing attorney for over thirty years. He has maintained an active litigation practice in both state and federal courts, prosecuting a substantial number of

civil rights actions during that time. He seeks $5,587.50 for 22.35 hours expended on the case. Mr. Forman's co-counsel, attorney Terri S. Baur, has been a staff lawyer for the ACLU of West Virginia Foundation for seventeen (17) months. She practiced previously in California, having attained membership in that state bar in 1997. Ms. Baur seeks $2,190.00 for 14.6 hours she expended during this action. The respective hourly rates sought by counsel are $250.00 and $150.00. Principal Swanson does not contest either the hours expended or the requested hourly rate.

II.

A. The Governing Standards

Title 42 U.S.C. § 1988(b) provides pertinently as follows:

> In any action or proceeding to enforce a provision of section[] . . . 1983 . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs . . . .

42 U.S.C. § 1988(b). In making its fee determination, the court may award the full fee requested, some part of it, or no fee at all. Our court of appeals has discussed the applicable factors

designed to guide the district court's discretion in making the award:

> In determining a "reasonable" attorney's fee under section 1988, this Court has long held that a district court's discretion must be guided strictly by the factors enumerated by the Fifth Circuit in Johnson v. Georgia Highway Express, 488 F.2d 714 (5th Cir. 1974). See Daly v. Hill, 790 F.2d 1071, 1077 (4th Cir. 1986). The twelve Johnson factors are: (1) the time and labor required to litigate the suit; (2) the novelty and difficulty of the questions presented by the lawsuit; (3) the skill required properly to perform the legal service; (4) the preclusion of other employment opportunities for the attorney due to the attorney's acceptance of the case; (5) the customary fee for such services; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount in controversy involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the "undesirability" of the case; (11) the nature and length of the attorney's professional relationship with the client; and (12) awards in similar cases. Daly, 790 F.2d at 1075 n. 2 (noting that the Johnson approach has been approved by Congress and by the Supreme Court in Hensley v. Eckerhart, 461 U.S. 424, 434 n. 9, 103 S.Ct. 1933, 1940 n. 9, 76 L.Ed.2d 40 (1983)).

Trimper v. City of Norfolk, Va., 58 F.3d 68, 73 (4th Cir. 1995).

The court applies these factors in its initial calculation of the reasonable hourly rate and number of hours reasonably expended by counsel. Id. at 73. The resulting "lodestar" fee, which is based on the reasonable rate and hours calculation, is "presumed to be fully compensatory without producing a windfall." Id. at 73-74 (quoted authority omitted).

B. Application of the Johnson Factors

Mr. Forman and Ms. Baur expended a total of 36.95 hours on this litigation. These hours represent a decidedly spartan time request, in view of what they represent. The request includes time spent (1) consulting with plaintiff, (2) performing legal research, (3) transmitting correspondence, (4) drafting the complaint and associated briefing, (5) meeting with the court and opposing counsel at a prehearing conference, (6) reviewing documents and preparing testimony, (7) preparing for trial, and (8) trying the case. In the court's estimation, the requested hours certainly do not exceed what one would expect in bringing a case of this type to final judgment.

The questions presented were both challenging and somewhat difficult of resolution. First, counsel had a very limited, recent body of case law to help illuminate the issues. Second, the proper reach and interpretation of Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), and its progeny have bedeviled those courts of appeal that have confronted cases of this type. Third, this action spawned a thirty-five page published opinion. These

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