1989 WL 64675
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United States District Court, N.D. Illinois, Eastern Division.

Geraldine G. CANNON, Plaintiff,
v.
LOYOLA UNIVERSITY OF CHICAGO, Northwestern University, Rush Presbyterian-St. Lukes Medical Center, Southern Illinois University, University of Health Sciences Chicago Medical School, the University of Chicago, and the Board of Trustees of the University of Illinois, Defendants.

Nos. 84 C 8063, 87 C 4829.
|
June 7, 1989.

MEMORANDUM OF OPINION AND ORDER

ASPEN, District Judge.

***1** On December 2, 1987, we held the plaintiff Geraldine G. Cannon and her husband-attorney John M. Cannon in contempt for failing to comply with citations to discover assets in the case 84 C 8063 ('the 1984 case') and for filing a 1987 state lawsuit ('the 1987 case'), in direct violation of our January 22, 1987 injunction. Cannon v. Loyola University of Chicago, 676 F.Supp. 823 (N.D. Ill. 1987). As one of the sanctions for contempt, we ordered the Cannons, jointly and severally, to pay the attorneys' fees and costs that the defendants incurred in bringing their petitions to show cause and in responding to the 1987 case. Currently before the Court are the fee petitions of four of the defendants, Northwestern University ('Northwestern'), Southern Illinois University ('Southern'), the University of Illinois ('Illinois') and the University of Chicago ('Chicago'). The Cannons previously objected to certain fees requested by Southern and Chicago, and those schools, which are represented by the same law firm, subsequently deleted the contested fees.

Geraldine Cannon does not now object to the reasonableness of the fees requested by any of the schools, but John Cannon made new objections to Southern's and Chicago's fee requests. Specifically, he argues that certain of the fees, especially those incurred before August 25, 1987, did not relate to the petitions to show cause. We are not sure what significance Mr. Cannon attaches to August 25, but, at any rate, he seems to have misunderstood our previous order. Our award was not only for fees incurred for the petitions to show cause; it was also for fees incurred in responding to the 1987 state case, and almost all of the fees incured before August 25, 1987 were for that purpose.

Still, John Cannon is at least partially correct. The 1987 case was filed in state court on April 21, 1987, and the petitions to show cause were filed later, in May and September. Counsel for Southern and Chicago, however, have asked for fees for services rendered before April 21. These services could not have been incurred for either the petitions to show cause or in responding to the 1987 case.[1] Accordingly, we will disallow fees for services rendered before April 21, 1987, and for certain follow-up services rendered shortly after that date, totaling three hours for Southern and four hours for Chicago. Multiplying their law firm's average billing rate in this matter, $97.58,[2] we will reduce Southern's request by $292.74 and Chicago's request by $390.32.

The Cannons also claim, however, that because of poverty, they are unable to pay the requested fees. The Cannons have not cited, and we have not found, any contempt cases in which the Court considered the contemner's ability to pay as a factor in setting the award. However, the Seventh Circuit, among others, has identified ability to pay as one of the factors that a district court may consider when imposing sanctions under Rule 11, see Brown v. Federation of State Medical Boards of the United States, 830 F.2d 1429, 1439 (7th Cir. 1987); Oliveri v. Thompson, 803 F.2d 1265, 1281 (2d Cir. 1986), cert. denied sub nom. County of Suffolk v. Graseck, 480 U.S. 918, 107 S.Ct. 1373 (1987); In re Yagman, 796 F.2d 1165, 1185 (9th Cir. 1986), and we believe the factor should also be considered in civil contempt cases. As we observed in our opinion finding the Cannons in contempt, 'The primary purpose of sanctions for civil contempt is to coerce the contemner into future compliance with the Court's order and to compensate for losses sustained for past non-compliance.' Cannon, 676 F.Supp. at 828 (citing

Local 28 of Sheet Metal Workers v. EEOC, 478 U.S. 421, 443, 106 S.Ct. 3019, 3033 (1986)). Likewise, compensation and deterrence are two of the goals under Rule 11. See Federation of State Medical Boards, 830 F.2d at 1437–38. Given their similar objectives, the same rules should apply in both Rule 11 and civil contempt cases, and we therefore will consider the Cannons' ability to pay as one of the factors in setting the amount of fees.

***2** As evidence of her inability to pay, Geraldine Cannon submits a copy of her affidavit in support of her motion to appeal in forma pauperis. No evidence is presented as to John Cannon's ability to pay, even though he is jointly and severally liable for the award of costs and fees and even though he has argued that ability to pay should be taken into account. We need not concern ourselves with this omission, however, because Geraldine Cannon's affidavit does not show an inability to pay. She indicates that she makes around $30,000 a year, although around a third of her net income is being paid on garnishment. She also has a joint interest, presumably with John Cannon, in her home and a vacant lot. This property is worth $200,000, but is mortgaged for about $165,000 and has liens filed against it. Geraldine Cannon claims no other substantial assets. In light of her financial situation, the approximately $6,800 in fees is a significant amount, but not an impossible one, and not so large as to justify a reduction.

This is especially true, given the nature of the Cannons' contempt. Although financial resources may be considered in awarding sanctions for civil contempt, they are not the only factor, and the history of Geraldine Cannon's litigation justifies the fees that the defendants have requested. As we described in our opinion holding the Cannons in contempt,

> Plaintiff's litigation has passed the point of being a legitimate attempt to redress any alleged wrong. She has made a mockery of the privilege under our system of government to free access to the courts. She has caused seven institutions of learning needless expenditures of time, energy and money. She has deprived other litigants of the resources this Court has devoted to her duplicative and often frivolous claims.

Cannon, 676 F.Supp. at 825.

Accordingly, we award Northwestern University $3,075.00 in attorneys' fees; Southern Illinois University $1,029.51 in fees and $39.58 in costs; the University of Chicago $1,166.18 in fees and $197.19 in costs; and the University of Illinois $1,220.00 in fees and $24.26 in costs, for a total award of $6,751.72. It is so ordered.

All Citations

Not Reported in F.Supp., 1989 WL 64675

Footnotes

1 These fees are for preparing the citations to discover assets. In some sense, these fees are related to one of the petitions to show cause, since the Cannons' failure to comply with the citations led to the petition. However, our December 2, 1987 opinion awarded fees only for the petitions to show cause themselves. We will give the Cannons the benefit of the doubt here, even though, given their litigation history, they probably do not deserve it.

2 We use the average since the actual rates charged by the various attorneys are not given.