

2001 WL 1854317
United States District Court, S.D. Ohio, Eastern
Division.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, Plaintiff,
v.
INTERNATIONAL ASSOCIATION OF FIRE
FIGHTERS, Local 109, Defendant.

No. C2-98-339. | Oct. 4, 2001.

Opinion

ORDER

GRAHAM, District J.

*1 This is an action alleging a sexually hostile working environment filed by the Equal Employment Opportunity Commission on behalf of Anita Stickle, an officer of the Newark, Ohio Fire Department, pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-2(c)(1) and (3). On August 18, 2000, this court rendered a decision granting the motion for summary judgment of defendant International Association of Fire Fighters, Local 109, and judgment was entered in the defendant's favor. An appeal was filed from this judgment but the appeal was subsequently voluntarily dismissed by the plaintiff on March 21, 2001. This matter is now before the court on the defendant's motion of April 4, 2001 for attorneys' fees. This motion was filed with the court along with the defendant's submission of a bill of costs.

The provisions of Title VII permit the trial court, at its discretion, to grant an award of attorneys' fees to a prevailing party "as part of the costs [.]". 42 U.S.C. § 2000e-5(k). However, the plaintiff opposes an award of attorneys' fees in this case on two grounds.

First, the plaintiff argues that the motion for attorneys' fees is not timely under Fed.R.Civ.P. 54. That rule provides, in relevant part: "Unless otherwise provided by statute or order of the court, the motion [for an award of attorneys' fees] must be filed and served no later than 14 days after entry of judgment[.]" Fed.R.Civ.P. 54(d)(2)(B). A late filing is permitted only upon a showing of excusable neglect under Fed.R.Civ.P. 6(b)(2). *Allen v. Murph*, 194 F.3d 722, 723 (6th Cir.1999). Here, the motion for attorneys' fees was filed over seven months after the entry of judgment.

The defendant argues that the time limits of Rule 54 do not apply because Section 2000e-5(k) provides for an award of attorneys' fees "as part of the costs," and therefore, attorneys' fees fall within the "[u]nless otherwise provided by statute or order of the court" language. The defendant contends that the request for attorneys' fees was properly submitted to the court along with the bill of costs.

Rule 54 in general bears the title "Judgments; Costs." Subsection (d)(1) includes the heading "Costs Other than Attorneys' Fees," and Subsection (d)(2) is headed "Attorneys' Fees." The Advisory Committee Notes to the 1993 amendments to Rule 54 state: "This new paragraph establishes a procedure for presenting claims for attorneys' fees, whether or not denominated as 'costs.'" This comment and the headings to the rule indicate that the procedures in Rule 54(d)(2) were intended to govern motions for attorneys' fees even where the statute authorizing such fees refers to attorneys' fees as costs, as opposed to characterizing attorneys' fees as claim for damages to be determined and awarded by the jury.

The "unless" clause refers to situations where a statute or court order expressly provides for a time limit for filing a motion for fees which is different from that stated in Rule 54(d). Thus, this clause has been held to be applicable where the time limit for filing the motion for fees has been amplified by a local rule of court. *See Walker v. City of Bogalusa*, 168 F.3d 237, 239 (5th Cir.1999). Section 2000e-5(k) does not establish time limits for the filing of a motion for any type of costs, including attorneys' fees, in Title VII cases, and therefore the "unless" clause is not applicable here.

*2 In this case, there is no local rule which extends the time for filing a motion for attorneys' fees. Local Rule 54.1 of the Southern District of Ohio governs the filing of a bill of costs. This rule does not specifically refer to the filing of a motion for attorneys' fees. It states that "Guidelines" for the taxation of costs are available from the clerk. These "Guidelines," included as Exhibit A to the plaintiff's memorandum contra, refer to Rule 54(d)'s provisions on the award of costs, but not to the attorneys' fee provisions of that rule. They state, as to attorneys' fees, that "[w]ith the exception of the docket fee, the statutory definition of the term costs does not include Attorney Fees except as expressly stated by statute. Attorney fees are determined by the Court." Exhibit A, p. 7. Section 2000e-5(k) does not expressly provide that attorneys' fees under Title VII are to be treated as "costs other than attorneys' fees" under Fed.R.Civ.P. 54(d)(1). The lack of a specific time limit in § 2000e-5(k) for filing a motion for attorneys' fees or costs is an indication that Congress intended that the standard provisions of Rule

54(d) be applied to Title VII cases. Even if the "Guidelines" could be read as including Title VII attorneys' fees within the definition of costs since they are awarded "as part of the costs" in a Title VII action, Local Rule 54.1 provides that while the "Guidelines" may be consulted for information on the practices customarily followed by the clerk, they "are not to be considered controlling law." Local Rule 54.1(b), S.D. Ohio.

The Advisory Committee Notes indicate that the time limits of Rule 54(d) were designed to assure that the opposing party is informed of the claim for attorneys' fees before the time for appeal has elapsed. The time limits also permit the trial court to consider attorneys' fee issues immediately after rendering its judgment on the merits of the case so that the court may resolve fee disputes while the services performed are freshly in mind, and assure that any appeal on attorneys' fee issues may be consolidated with any appeal on the merits of the case. These are valid purposes in Title VII and other civil rights cases, and there is no reason, absent an express mandate from Congress, to exclude Title VII parties from the requirements of Rule 54(d)(2)(B).

This court notes that the Sixth Circuit has held that a motion for attorneys' fees filed pursuant to 42 U.S.C. § 1988(b) must comply with the time limits of Rule 54(d)(2)(B). See *Horne v. City of Hamilton, Ohio*, 181 F.3d 101 (Table), 1999 WL 313902 (6th Cir.1999). Section 1988, which governs the award of attorneys' fees in civil rights cases and is analogous to § 2000e-5(k), also provides for the award of attorneys' fees by the court "as part of the costs."

The defendant has offered no grounds for a finding of excusable neglect which would permit consideration of the untimely motion. This court concludes that the defendant's motion for attorneys' fees is untimely under Rule 54(d)(2)(B) and must be denied on that ground.

*3 The plaintiff also opposes the defendant's motion for attorneys' fees on the basis that such an award is unwarranted under the applicable standard for an award of fees. Although Title VII permits an award of attorneys' fees to a prevailing defendant, the court must first find that the plaintiff's action was frivolous, unreasonable, or without foundation. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978). An award of attorneys' fees against the losing plaintiff in a civil rights action "is an extreme sanction, and must be limited to truly egregious cases of misconduct." *Jones v. Continental Corp.*, 789 F.2d 1225, 1232 (6th Cir.1986). See also *Ridder v. City of Springfield*, 109 F.3d 288, 299 (6th Cir.1997). The court must look at whether the allegation of discrimination was completely unjustified and whether the position presented by the plaintiff is plausible. *Jones*, 789 F.2d at 1233.

The Supreme Court cautioned in *Christiansburg* that "it is important that a district court resist the understandable temptation to engage in post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation." 434 U.S. at 421. The Supreme Court has also held that the fact that a plaintiff's allegations are found legally insufficient to state a claim or to require a trial is not, in itself, sufficient to render the plaintiff's case "groundless" or "without foundation." *Hughes v. Rowe*, 449 U.S. 5, 15-16 (1980).

The Sixth Circuit recently addressed the *Christiansburg* criteria in the analogous context of a case under 42 U.S.C. § 1983 in *Riddle v. Egensperger*, 266 F.3d 542, 2001 WL 1117072 (6th Cir.2001), and overturned the trial court's award of attorneys' fees to the defendants. The court stated that the fact that a plaintiff continues to litigate claims on summary judgment after discovery has concluded and the trial judge thereafter rules that the claims are without merit does not necessarily support the conclusion that the plaintiffs' claims were frivolous, unreasonable or groundless, especially if there are viable claims intertwined with the meritless claims. *Id.* at *6. The court also noted that if the plaintiffs' claims were frivolous, the defendants could have filed a motion to dismiss under Fed.R.Civ.P. 12(b)(6) to narrow the focus of the case rather than proceeding to extensive discovery. *Id.* The court concluded that a grant of summary judgment in favor of the defendant does not necessarily mean that the plaintiff has no basis for filing a complaint, and commented:

A potential plaintiff's fear of an increased risk of being assessed attorney fees after extensive discovery has taken place and who continues to proceed to a ruling on a summary judgment motion, would create a disincentive to the enforcement of civil rights laws and would have a chilling effect on a plaintiff who seeks to enforce his/her civil rights, especially against a government official.

*4 *Id.* The court went on to note that the claims which were dismissed on summary judgment were interrelated to a viable claim of one of the plaintiffs, and that, although the plaintiffs ultimately did not prevail on summary judgment after extensive discovery, there was sufficient evidence on the record to support some of the claims. *Id.* at *7-8.

The plaintiff in this case pursued sexual discrimination claims on behalf of Anita Stickle. No motion to dismiss was filed by the defendant, and the case progressed

through discovery and the filing of motions for summary judgment. In its order of August 18, 2000, this court denied summary judgment on the issue of limitations on monetary damages and failure to exhaust contract grievance procedures. Order of August 18, 2000, pp. 3–8. The court also held that the evidence was sufficient to raise a genuine issue of material fact as to whether Ms. Stickle had been subjected to harassment and denied union membership because of her gender. Order, pp. 8–11, 28. The court agreed with the defendant's position that more than passive acquiescence by the union in the face of discrimination by an employer is required for Title VII liability, but noted that the authorities were conflicting on that point. Order, pp. 11–18. This court also granted summary judgment on the basis of the defendant's limitations defense of the failure to timely exhaust administrative remedies. After a detailed analysis of the extensive evidence presented, this court rejected the plaintiff's arguments that a continuing violation had been shown and that the union was aware of acts of harassment within the limitations period. Order, pp. 18–56.

Under these circumstances, it cannot be said that the plaintiff's case was frivolous, unreasonable, or without foundation, or that this case presents an example of egregious misconduct. The plaintiff prevailed on some of its legal arguments, and the court found that there was sufficient evidence to defeat summary judgment on the issue of whether Ms. Stickle had been subjected to sexual

harassment. Thus, the plaintiff presented a viable claim of harassment on behalf of Ms. Stickle which was ultimately defeated primarily by a limitations/failure to exhaust administrative remedies defense. The complex legal issues raised concerning the nature of the union's liability and the continuing violations doctrine were questions upon which reasonable judicial decisionmakers could and do differ, and their resolution required a careful analysis of the evidence gleaned from discovery. The fact that the defendant ultimately prevailed as a result of the court's ruling on these legal issues would not, in itself, support a finding that the plaintiff's action was frivolous, unreasonable or without foundation.

The court finds that even if the defendant's motion for attorneys' fees is timely, the circumstances of this case do not satisfy the *Christiansburg* standards for an award of fees to a prevailing Title VII defendant, and for this additional reason, the motion is not well taken. Accordingly, the defendant's motion for attorneys' fees is denied.

Parallel Citations

88 Fair Empl.Prac.Cas. (BNA) 917, 82 Empl. Prac. Dec. P 40,944