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United States District Court, S.D. New York.

James GILES, Plaintiff,
v.
Thomas COUGHLIN 3d, Commissioner of New York State Correctional Services, et al., Defendants.

No. 95 CIV. 3033 JFK. | Dec. 21, 1999.

Opinion

OPINION and ORDER

KEENAN, District J.

***1** Before the Court is Plaintiff's application for attorney's fees and costs, pursuant to 42 U.S.C. § 1988. Specifically, Plaintiff seeks $212,863.25 in attorney's fees and $4,985.09 in costs. Plaintiff also seeks prejudgment interest from December 17, 1998, the date the Court placed Plaintiff's application on the suspense docket, until the entry of judgment. For the reasons discussed below, Plaintiff's motion is denied in its entirety.

Background

The background of this case is set forth in several previous opinions of this Court, *see Giles v. Coughlin,* 1997 WL 433437 (S .D.N.Y. Aug. 1, 1997); *Giles v. Coughlin,* 1997 WL 466542 (S.D.N.Y. Aug. 13, 1997); *Giles v. Coughlin,* 1997 WL 770391 (S.D.N.Y. Dec. 11, 1997). As a result, the Court will review only the facts specifically relevant to the present motion.

In 1991, in response to the rise of tuberculosis ("TB") in state prisons, the New York State Department of Correctional Services ("DOCS") instituted a mandatory screening policy for latent TB using a screening test known as a purified protein derivative test ("PPD test"). Due to Plaintiff's refusal to take a PPD test, Defendants placed Plaintiff in medical keeplock on December 12, 1991. On April 12, 1995, Plaintiff filed the instant lawsuit, claiming, among other things, that the conditions of his medical keeplock confinement violated his Eighth Amendment rights. On October 5, 1995, Gibson, Dunn & Crutcher ("GD & C") filed a notice of appearance on behalf of Plaintiff. On March 6, 1996, the parties entered into a consent decree, approved by this Court, in which the parties agreed that "Plaintiff [would] not be placed in medical keeplock or have his status otherwise changed for the remainder of his sentence due to his refusal to take a PPD ... test." As a result of that stipulation, Defendants released Plaintiff from medical keeplock and placed him in the general population.

On April 24, 1997, Defendants made an emergency application to the Court for a modification of the March 6, 1996 consent decree to permit Plaintiff to be placed in a form of confinement known as tuberculin hold ("TB hold"), because Plaintiff had been exposed to a prisoner with active TB and would likely refuse a PPD test. After hearing testimony from Dr. Lester Wright, associate commissioner and chief medical officer of DOCS, the Court modified the consent decree to allow Plaintiff to be placed in TB hold, if he refused to take the PPD test, until further order of the Court. The parties then conducted discovery and submitted papers on Defendants' application to modify the consent decree. The Court continued the April 24 hearing from July 21 to July 23, 1997.

The Court then issued an opinion, dated August 1, 1997, finding that Defendants were entitled to a modification of the March 6, 1996 consent decree under the Prison Litigation Reform Act ("PLRA"). Congress enacted the PLRA on April 26, 1996, approximately two months after the parties entered into the consent order. 18 U.S.C. § 3626(b)(2)-(3) provides,

> ***2** (2) Immediate termination of prospective relief.—In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right and is the least intrusive means necessary to correct the violation of the Federal right.
>
> (3) Limitation.—Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

These provisions apply retroactively to consent decrees entered prior to the PLRA's enactment.

The Court found that the March 6 consent decree in this case was subject to § 3626(b). It went on to find that

termination was mandated under § 3626(b)(2) and that, under § 3626(b)(3), the prospective relief granted under the March 6 consent decree was no longer necessary to correct a current or continuing violation of a federal right because the 1991 medical keeplock policy was no longer in effect and the conditions of the TB hold did not violate the Eighth Amendment. Thus, the Court held that Defendants were permitted to confine Plaintiff to TB hold.

In an August 13, 1997 Opinion, the Court denied Plaintiff's motion to reconsider and Plaintiff's application for a stay of the August 1 Order pending an appeal. Plaintiff appealed. The Court of Appeals for the Second Circuit issued an Order, dated August 26, 1997, denying Plaintiff's motion for a stay pending appeal.

Plaintiff then made another motion to reconsider in light of the Second Circuit's decision in *Benjamin v. Jacobson,* 124 F.3d 162 (2d Cir.1997) ("*Benjamin I* "), decided subsequent to the Court's August 1 and August 13 Opinions. In *Benjamin I,* the Second Circuit held that the PLRA did not call for termination of consent decrees not meeting the requirements of the PLRA, but merely limited the power of federal courts to enforce those decrees and left the decrees enforceable in state courts.[1] This Court therefore granted Plaintiff's motion to reconsider "to the extent that the Court stated that because the prospective relief afforded under the March 6, 1996 consent decree was terminated, 'Defendants may confine Plaintiff to TB hold pursuant to the May 20, 1996 TB policy." ' 1997 WL 770391, *1. The Court concluded that, pursuant to the Second Circuit's decision in *Benjamin,* "[t]ermination of prospective relief under the PLRA means that this Court no longer has jurisdiction to prospectively enforce the consent decree. If Defendants violate the terms of the March 6, 1996 consent decree, Plaintiff must seek enforcement of the decree in state court." 1997 WL 770391, *2.

***3** On February 9, 1998, Plaintiff then submitted a motion for attorneys' fees and costs for legal services rendered by GD & C stemming from the Defendants' motion to modify the March 6, 1996 consent decree. In its motion, Plaintiff claimed that the fee provisions of the PLRA did not apply to this case. Defendants, however, asserted that the PLRA governed Plaintiff's motion for attorneys' fees and costs. The U.S. Supreme Court granted certiorari on November 16, 1998 in *Johnson v. Hadix*[2] to determine whether the PLRA's fee limitation applied to cases pending on its enactment date. As a result, the Court placed Plaintiff's motion on the suspense docket pending the Supreme Court's decision. The Supreme Court issued a decision on June 21, 1999. This Court thereafter removed Plaintiff's motion from the suspense docket and directed both parties to submit supplemental briefs in light of the U.S. Supreme Court's decision.

Plaintiff again now seeks attorneys' fees and costs in the total amount of $217,848.34 for the legal services GD & C provided in relation to Defendants' motion to modify the March 6, 1996 consent decree.

Discussion

The Court must first determine whether the fee provisions of the PLRA apply to this application for attorneys' fees and costs.

A. Whether Plaintiff's application for attorneys' fees and costs is governed by the Prison Litigation Reform Act

Section 803(d)(3) of the PLRA, 42 U.S.C. § 1997e(d)(3), places limits on the fees that may be awarded to attorneys who litigate prisoner lawsuits. Section 803(d) provides in relevant part that

> (1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under [42 U.S.C. § 1988], such fees shall not be awarded, except to the extent that
>
> > (A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988 of this title; and
> >
> > (B)(I) the amount of the fee is proportionately related to the court ordered relief for the violation; or
> >
> > (ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.
>
> (3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than the 150 percent of the hourly rate established under section 3006A of Title 18, for payment of court-appointed counsel.

In *Martin v. Hadix,* 119 S.Ct. 1998 (1999), the Supreme Court examined the claim of plaintiffs' counsel for fees for post-consent judgment monitoring services.[3] In *Hadix,* the plaintiff prisoners had brought suit in 1980, under 42 U.S.C. § 1983, claiming that the conditions of their confinement violated the First, Eighth, and Fourteenth Amendments of the U.S. Constitution. In 1985, the plaintiffs entered into a consent decree with defendant prison officials to "assure the constitutionality" of the conditions of their confinement at the State Prison of Southern Michigan. Subsequently, the district court

awarded attorneys' fees to plaintiffs for post-judgment monitoring of the defendants' compliance with the consent decree. The parties established a system for awarding those fees on a semiannual basis. After passage of the PLRA, plaintiffs' counsel filed fee requests for services performed both before and after the effective date of the PLRA.

***4** The Supreme Court found that § 803(d)(3) limits attorney's fees with respect to post-judgment monitoring services performed after the PLRA's effective date of April 26, 1996, but does not limit fees for post-judgment monitoring services performed before the effective date. The Supreme Court concluded that imposing the new standards for work performed after the effective date of the PLRA did not present a retroactivity problem. The *Hadix* Court reasoned that

> [a]fter April 26, 1996, any expectation of compensation at the pre-PLRA rates was unreasonable. There is no manifest injustice in telling an attorney performing post-judgment monitoring services that, going forward, she will earn a lower hourly rate than she had earned in the past. If the attorney does not wish to perform services at this new, lower, pay rate, she can choose not to work.

119 S.Ct. at 2007; *see also Madrid v. Gomez,* 190 F.3d 990 (9th Cir.1999) (finding that under *Martin v. Hadix,* the PLRA fee provisions applied to services performed after the enactment of the PLRA in case pending when the PLRA became effective).

Plaintiff now argues that the PLRA does not apply to the present application for attorneys' fees. Plaintiff maintains that the U.S. Supreme Court's holding in *Hadix* is limited to the facts of that case. Plaintiff claims that the present case is distinguishable from *Hadix* because, in this case, GD & C "had no real choice in whether to represent plaintiff in opposing defendants' motion to modify the consent decree and to immediately place Mr. Giles back in medical keeplock. Plaintiff was given only one-day's notice of defendants' motion and faced immediate, irreparable harm." GD & C therefore contends that it could not withdraw as counsel based on the PLRA's lower pay rate "without breaching its ethical and legal obligations to its client." GD & C additionally contends that, unlike the plaintiff's counsel in *Hadix,* "GD & C was not simply performing routine post-judgment monitoring services from which it could have readily withdrawn as counsel." The Court disagrees with Plaintiff's arguments.

The services at issue here, as in *Hadix,* relate to monitoring and enforcement of a prior consent order. The parties in this case entered into a consent decree on March 6, 1996. Plaintiff's counsel was on notice of the new standards for compensation under the PLRA as of April 26, 1996. A year passed between the effective date of the PLRA and Defendants' April 1997 motion to modify the consent order. Plaintiff's counsel could have attempted to withdraw from representing Plaintiff upon notice of the terms of the PLRA or at some point during the following year. Although GD & C argues that it could not withdraw as counsel without breaching its ethical and legal obligations to its client, the Supreme Court rejected a similar argument made by plaintiffs in *Hadix:* "[t]hey allude to ethical constraints on an attorney's ability to withdraw from a case midstream ... but they do not seriously contend that the attorneys here were prohibited from withdrawing from the case during the post-judgment monitoring stage." 119 S.Ct. at 2007. The Court finds Plaintiff's argument here similarly unpersuasive.

***5** In addition, Plaintiff attempts to distinguish this case from *Hadix* by arguing that the legal services GD & C provided Plaintiff were unlike the "routine" post-judgment monitoring services performed by the plaintiffs' counsel in *Hadix.* However, there is no indication in *Hadix* that the Court's analysis depended on the type of post-judgment monitoring services performed. Indeed, there is no discussion regarding what ongoing services plaintiffs' counsel performed in *Hadix.* The Court additionally notes that the Ninth Circuit did not distinguish between the type of service performed in *Madrid* in holding that, under *Hadix,* the PLRA's attorneys' fees limitations covered services rendered after the PLRA's effective date. *See Madrid,* 190 F.3d at 994–95.

For the reasons discussed above, the Court concludes that the PLRA governs Plaintiff's motion for attorneys' fees and costs.

B. Whether Plaintiff is entitled to fees under the PLRA

The Court must next determine whether Plaintiff may recover attorneys' fees and costs under § 803(d) of the PLRA. As set out above, § 803(d)(1) provides that fees shall not be awarded except to the extent that "the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988 of this title ...." Defendants argue that Plaintiff cannot recover fees here because the fees at issue in this application were not directly incurred in proving an actual violation of the plaintiff's rights under 42 U.S.C. § 1983, that is, a deprivation of constitutional rights under color of state law. Defendants note that every ruling made by this Court regarding Defendants' motion to modify the March 6 consent decree, found that no constitutional violation

was at issue on the motion. The Court must agree.

This Court's August 1, 1997 Opinion found that the March 6, 1996 consent decree was terminated under the PLRA and that the prospective relief granted under the consent decree was no longer necessary to correct a current or continuing violation of a federal right because the medical keeplock policy was no longer in effect and the conditions of the TB hold did not violate Plaintiff's Eighth Amendment rights. *See Giles v. Coughlin,* 1997 WL 433437 (S.D.N.Y. Aug. 1, 1997). The Opinion of August 13, 1997, then denied Plaintiff's motion to reconsider. Even the December 11, 1997 Opinion of this Court, which granted Plaintiff's motion to reconsider based on *Benjamin I,* did not find that Plaintiff's Eighth Amendment rights had been violated. Rather, the Court found that, according to *Benjamin I,* it no longer had jurisdiction to enforce the consent decree upon finding that the PLRA called for termination of the prospective relief granted by the consent decree. As a result, the Court now finds that the fees and costs at issue in this application were not "directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988 of this title." Under PLRA § 803(d)(1), the Court must therefore deny Plaintiff's application for attorneys' fees and costs for legal services rendered by GD & C stemming from the Defendants' motion to modify the March 6, 1996 consent decree. As a result, the Court must also deny Plaintiff's motion for prejudgment interest.

Conclusion

***6** For the reasons discussed above, the Court denies Plaintiff's application for attorneys' fees and costs in its entirety.

SO ORDERED.

Footnotes

1 The Court of Appeals reversed itself on this point in *Benjamin v. Jacobson,* 172 F.3d 144 (2d Cir.1999) ("*Benjamin II* "). In *Benjamin II,* the Court of Appeals held an en banc reconsideration of *Benjamin I,* and found that the PLRA does require termination of consent decrees that fail to meet the criteria established by the PLRA.

2 *Hadix v. Johnson,* 144 F.3d 925 (6th Cir.1998), *rev'd sub nom., Martin v. Hadix,* 119 S.Ct. 1998 (1999).

3 There were two cases consolidated on appeal in *Hadix.* The appeal from *Hadix v. Johnson,* 144 F.3d 925, 930 (6th Cir.1998), involved a consent decree entered into between the parties in 1985.