Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles P. Kocoras	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	94 C 1471	DATE	JAN 12 2005
CASE TITLE	Marie O vs. Blagojevich		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Plaintiffs' motion (Doc 193-1 & 193-2) for an award of attorneys' fees is denied.

(11) ■ [For further detail see order on the reverse side of the original minute order.]

	No notices required, advised in open court.
	No notices required.
	Notices mailed by judge's staff.
	Notified counsel by telephone.
✓	Docketing to mail notices.
	Mail AO 450 form.
	Copy to judge/magistrate judge.

SCT courtroom deputy's initials

Date/time received in central Clerk's Office

number of notices

JAN 13 2005 date docketed

docketing deputy initials

date mailed notice

mailing deputy initials

Document Number

197

(Reserved for use by the Court)

ORDER

This matter comes before the court on the motion of Plaintiffs, a class of infants and toddlers with developmental delays, for an award of attorneys' fees pursuant to 42 U.S.C. § 1988. For the reasons set forth below, the motion is denied.

Plaintiffs' request finds its footing in 42 U.S.C. § 1988, which gives a court discretion to award reasonable attorneys' fees to a prevailing party as part of an award of costs. Defendants oppose the request, contesting Plaintiffs' claimed status as a prevailing party. With respect to the original injunction, which issued in 1996, and some ensuing matters up until May 2001, Plaintiffs undoubtedly are prevailing parties (and have received fees from Defendants). With respect to the current request, though, Plaintiffs hang their hats on a single event–an order from this court in February 2002 requiring the parties to engage in a face-to-face discussion of the issues they wanted to present to a magistrate.

Based on the controlling case law, we do not agree that Plaintiffs achieved a "court-ordered change in the legal relationship between the plaintiff and the defendant" in our February 2002 order such that they can be considered prevailing parties with respect to the events that have transpired since May 2001. Buckhannon Bd. and Care Home, Inc. v. West Virginia Dep't. of Health and Human Servs., 532 U.S. 598, 604, 121 S. Ct. 1835, 1840 (2001). Plaintiffs vigorously and creatively argue that the structure of the 1996 injunction supplies the "judicial imprimatur" required for prevailing party status under Buckhannon and its progeny. However, the connection between the monitoring and judicial oversight of Defendants' compliance contemplated in the injunction and the minor involvement in a preliminary to a discussion that could permissibly have borne no fruit whatsoever is simply too tenuous to support an award of three years' worth of attorneys' fees. See Petersen v. Gibson, 372 F.3d 862, 865 (7th Cir. 2004) (emphasizing that the relief achieved must be "real," i.e., have practical impact on the overall aims of the lawsuit before a party can be considered to have prevailed). Far from forcing the parties to alter their legal relationship, the order at best effected a change in their respective schedules. The changes that resulted thereafter in Defendants' programs are most appropriately categorized as the result of a voluntary change in conduct, of the kind that will not support attorneys' fees. See Buckhannon, 532 U.S. at 600, 121 S. Ct. at 1838; Southworth v. Bd. of Regents of the Univ. of Wisconsin, 376 F.3d 757, 771 (7th Cir. 2004). This court's marginal participation in the ultimate result is not tantamount to an imprimatur. See T.D. v. LaGrange Sch. Dist. No. 102, 349 F.3d 469, 479 (7th Cir. 2003).

Because Plaintiffs are not prevailing parties within the meaning ascribed to that term by Buckhannon in any of the matters arising since May 2001 in this case, they are not entitled to the requested attorneys' fees. Accordingly, the instant motion is denied.

Dated: JAN 12 2005

Charles P. Kocoras

CHARLES P. KOCORAS
Chief Judge
United States District Court