Shearer v. Estep Construction, Inc. et al

2015 | Cited 0 times | M.D. Florida | April 1, 2015

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

ORLANDO DIVISION WILLIAM SHEARER, Plaintiff, v. Case No: 6:14-cv-1658-Orl-41GJK ESTEP CONSTRUCTION, INC., JEFFREY ESTEP, Defendants.

REPORT AND RECOMMENDATION This cause came on for consideration without oral argument on the following motion filed herein:

MOTION: JOINT MOTION TO APPROVE SETTLEMENT AND TO

DISMISS WITH PREJUDICE (Doc. No. 22) FILED: February 11, 2015

THEREON it is RECOMMENDED that the motion be GRANTED. I. BACKGROUND.

On October 14, 2014, William Shearer against ESTEP Construction, Inc. and Jeffrey Estep (collectively, s alleging

violations of the overtime provisions of the Fair Labor Standards Act (t and a state law unjust enrichment claim. Doc. No. 1. Plaintiff is a former employee of Defendants, whose prior duties included working as truck driver from August 2013 through January 2014. Doc. No. 1 at 1. Plaintiff alleges that Defendants failed to pay Plaintiff for time spent driving a dump truck from deducted thirty (30) minutes per day for a lunch break when Plaintiff did not regularly take a meal

break. Doc. No. 1 at 3.

On February 11, 2015, the parties filed a Joint Motion to Approve Settlement and to Dismiss With Prejudice , requesting the Court approve their General Release and Settlement Agreement (Doc. No. 22-1) and dismiss the case with prejudice. Doc. No. 22 at 3. II. LAW.

In , 679 F.2d 1350 (11th Cir. 1982), the Eleventh Circuit addressed the only means by which an FLSA settlement may become final and enforceable:

[t]here are only two ways in which back wage claims arising under the FLSA can be settled or

compromised by employees. First, under section 216(c), the Secretary of Labor is authorized to supervise payment to employees of unpaid wages owed to them.... The only other route for compromise of FLSA claims is provided in the context of suits brought directly by employees against their employer under section 216(b) to recover back wages for FLSA violations. When employees bring a private action for back wages under the FLSA, and present to the district court a proposed settlement, the district court may enter a stipulated judgment after scrutinizing the settlement for fairness. Id. at 1352-53. Thus, unless the parties have the Secretary of Labor supervise the payment of agreement is unenforceable. Id.; see also Sammons v. Sonic-North Cadillac, Inc., Case No. 6:07-

cv-277-Orl-19DAB, 2007 WL 2298032 at *5 (M.D. Fla. Aug. 7, 2007) (noting that settlement of FLSA claim in arbitration proceeding is not enforceable under because it lacked Court approval or supervision by Secretary of Labor); Nall v. Mal-Motel, Inc., 723 F.3d 1304, 1306-07 (11th Cir. 2013) (the framework for applies to settlement agreements between former employers and employees). Before approving an FLSA settlement, the Court must solution of a bona fide dispute over FLSA provisions of coverage and liability. , 679 F.2d at 1354-55. f a settlement in an employee FLSA suit does reflect a reasonable compromise over issues, such as FLSA coverage or computation of back wages, that are actually in dispute; [the Eleventh Circuit allows] the district court to approve the settlement in order to promote the policy of encouraging settlement of Id. at 1354.

In determining whether the settlement is fair and reasonable, the Court should consider the following factors:

(1) the existence of collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; success on the merits; (5) the range of possible recovery; and (6) the opinions of counsel. See Leverso v. South Trust Bank of Ala. Nat. Assoc., 18 F.3d 1527, 1531 n.6 (11th Cir. 1994); Hamilton v. Frito-Lay, Inc., Case No. 6:05-cv-1592-Orl-22JGG, 2007 WL 328792 at *2 (M.D. Fla. Jan. 8, 2007). The Court should be mindful of the strong presumption in favor of finding a settlement fair. See Cotton v. Hinton, 559 F.2d 1326, 1331 (5th Cir. 1977). 1

In FLSA cases, the Eleventh Circuit has questioned the validity of contingency fee agreements. Silva v. Miller, 349, 351 (11th Cir. 2009) (citing Skidmore v. John J. Casale, Inc.,

1 In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981. the contingent fee agreement; for it m Silva, the Eleventh Circuit held:

That Silva and Zidell entered into a contingency contract to establish little moment in the context of FLSA. FLSA requires judicial review ure both that counsel is compensated adequately and that no conflict of interest taints the amount the wronged employee recovers under a settlement provisions.

See , To turn a blind eye to an agreed upon contingency fee in an amount

greater than the amount determined to be reasonable after judicial wronged employee. See United Slate, Tile & Composition Roofers v. G & M Roofing & Sheet Metal Co., 732 F.2d 495, 504 (6th Cir. ble fee is to be conducted by the district court regardless of any contract between plaintiff and see also Zegers v. Countrywide Mortg. Ventures, LLC, 569 F.Supp.2d 1259 (M.D. Fla. 2008). Id. at 351-52. 2

In order for the Court to determine whether the proposed settlement is reasonable, counsel for the claimant(s) must first disclose the extent to which the FLSA claim has or will be nt to a contract between the plaintiff and his or her counsel, or otherwise. Id. When a plaintiff receives less than a full recovery, any payment (whether or not agreed to by a defendant) above a reasonable fee covery. 3

Thus, a potential conflict can arise between 4

2 In the Eleventh Circuit, unpublished cases are not binding, but are persuasive authority. 11th Cir. R. 36-2. 3 From a purely economic standpoint, a defendant is largely indifferent as to how its settlement proceeds are divided as between a plaintiff and his or her counsel. Where a plaintiff is receiving less than full compensation, payment of 4 This potential conflict is exacerbated in cases where the defendant makes a lump sum offer which is less than full reasonable. See Silva, at 351-52. In doing so, the Court uses the lodestar method for guidance. See Comstock v. Florida Metal Recycling, LLC, Case No. 08-81190-CIV, 2009 WL 1586604 at *2 (S.D. Fla. June 5, 2009). As the Court interprets the and Silva cases, where there is a compromise of the amount due to the plaintiff, the Court should decide the lodestar method as a guide. In suc

justified by the lodestar method is unreasonable unless exceptional circumstances would justify such an award.

An alternate means of demonstrating the reasonableness of attorney fees and costs was set forth in Bonetti v. Embarq Management Co., Case No. 6:07-cv-1335-Orl-31GJK, 2009 WL 2371407 (M.D. Fla. Aug. 4, 2009). In Bonetti, the Honorable Gregory A. Presnell held:

In sum, if the parties submit a proposed FLSA settlement that, (1) constitutes adequate disclosure of the terms of settlement, including the factors and reasons considered in reaching same and justifying the represents that the p regard to the amount paid to the plaintiff, then, unless the settlement does not appear reasonable on its face or there is reason to believe ed by the amount of fees paid to his attorney, the Court will approve the settlement without separately considering the reasonableness of the fee to be

Bonetti, 2009 WL 2371407, at *5 (emphasis added). Judge Presnell maintained that if the matter

Id. The undersigned finds this reasoning persuasive.

comp III. ANALYSIS.

This case involves disputed issues of liability, the amount damages, and entitlement to liquidated damages under the FLSA, which constitutes a bona fide dispute. Doc. Nos. 1, 9, 22. , 679 F.2d at 1354. The parties are represented by independent counsel, who are obligated to vigorously represent their clients. See Doc. Nos. 1, 9, 22.

The Agreement provides:

The parties agree that if any provision of this Agreement or any part of any provision of this Agreement, other than the waiver and [general] release provision in paragraph IV, is found to be invalid by a court of competent jurisdiction, such finding shall not affect the validity of any other provision or part of this Agreement. Doc. No. 22-1 at 6 ¶ VI. Thus, -severable, and they warrant further discussion. Id. The Agreement contains mutual general releases in which the parties release each other any and all claims or demands of any kind or nature that [they] -1 at 4-5.

In Moreno v. Regions Bank, 729 F. Supp. 2d 1346 (M.D. Fla. 2010), the Honorable Steven D. Merryday h Id. at 1352. In Bright et. al. v. Mental Health Res. Ctr., Inc., Case No.

3:10-cv-427-J-37TEM, 2012 WL 868804 (M.D. Fla. Mar. 14, 2012), the Honorable Roy B. Dalton Moreno. Id Id. Judges following the reasoning of Moreno and Bright will not approve an FLSA settlement agreement containing a pervasive general release. Thus, due to the non-severability of the general release clause, if the Court were to find it unenforceable, the Court must deny the Motion.

However, Courts have approved settlement agreements that contain mutual or reciprocal general releases. See Bacorn v. Palmer Auto Body & Glass, LLC, No. 6:11-cv-1683-Orl-28KRS, 2012 WL 6803586 (M.D. Fla. Dec. 19, 2012) (report and recommendation adopted, 2013 WL 85066 (M.D. Fla. Jan. 8, 2013) (approving settlement agreement where employee signed a general release in exchange for a mutual release from employer); Vergara v. Delicias Bakery & Rest., Inc., No. 6:12-cv-150-Orl-36KRS, 2012 WL 2191299, at *2-3 (M.D. Fla. May 31, 2012), report and recommendation adopted, 2012 WL 219492 (M.D. Fla. Jun. 14, 2012) (approving settlement where general release by employee was exchanged for a mutual release by employer). In this case, because the terms of the releases are essentially identical (see Doc. No. 22-1 at 4-5), the parties are no longer in an employment relationship, they are also settling a state law claim, and they are represented by counsel, the undersigned is persuaded that the inclusion of the reciprocal releases in this case does not negatively a See generally Nall, 723 F.3d at 1307 (where the parties are no longer engaged in an employment relationship the concern set forth in about the relative inequalities between the parties is not as great a concern).

With respect to the amount of the settlement, the parties reached a settlement before See Doc. Nos. 11, 18, 22. In the Agreement, Plaintiff will -1 at 2. In the Motion, Plaintiff states

that he agreed to compromise his claim for liquidated damages after concluding that Defendants did not willfully violate the FLSA and after considering Defendants affirmative defenses. Doc. No. 22 at 2. Based on the review of the available record and the Agreement, it appears the compensation Plaintiff will receive under the Agreement is fair and reasonable. counsel will receive $4,000.00 See Doc. No. 22-1 at 2. In the Motion, th negotiated settlement amount

. Given the record in this case, there is no reason to believe Pl counsel. See Bonetti, No. 6:07-cv-1335, 2009 WL 2371407, at *5.

Based on the forgoing, it is RECOMMENDED that the Court find that the Agreement reflects a fair and reasonable compromise under the FLSA. IV. CONCLUSION.

Accordingly, it is RECOMMENDED that: 1. The Motion (Doc. No. 22) be GRANTED and the Court approve the

as fair and reasonable; 2. The Court enter an order dismissing the case with prejudice and direct the Clerk to

close the case. Failure to file written objections to the proposed findings and recommendations contained in this report within fourteen (14) days from the date of its filing shall bar an aggrieved party from attacking the factual findings on appeal. In order to expedite a final disposition of this matter, if the parties have no objection to this Report and Recommendation they may promptly file a joint notice of no objection.

Recommended in Orlando, Florida on April 1, 2015. Copies furnished to: Presiding District Judge Counsel of Record Unrepresented Party Courtroom Deputy