



Vega v. Orlando Housing Authority et al

2015 | Cited 0 times | M.D. Florida | July 28, 2015

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

ORLANDO DIVISION CAROLINE VEGA, Plaintiff, v. Case No: 6:14-cv-1700-Orl-22GJK
ORLANDO HOUSING AUTHORITY and VIVIAN BRYANT, Defendants.

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

MOTION: LITIGATION COSTS (Doc. No. 29)

FILED: February 5, 2015

THEREON it is RECOMMENDED that the motion be GRANTED IN PART AND DENIED IN PART. I. BACKGROUND.

Doc. Nos. 1-2. In the Complaint, pursuant to 42 U.S.C. § 1983, Plaintiff alleges the Defendants

violated s due process rights under Fourteenth Amendment to the United States Constitution by notice or the opportunity for a hearing. Doc. No. 1 at 10-11.

The Complaint is twelve (12) pages in length and raises a single, straightforward claim for violation of due process rights. Doc. No. 1 at 1-12. Plaintiff alleges that she received Section 8 housing assistance for approximately 10 years from OHA, when she requested a transfer of her benefits from Defendant in order to move from Orange County, Florida to Seminole County, Florida. Doc. No. 1 at ¶¶ 2, 25. Plaintiff contends that OHA informed her by telephone that she was not entitled to a transfer voucher because Plaintiff s daughter had received a citation for a criminal charge, but Plaintiff could request a hearing about the decision. Doc. No. 1 at ¶ 26. On March 31, 2014, Plaintiff alleges that she received a final termination notice, due to Plaintiff s daughter s criminal citation, informing Plaintiff that her Section 8 rental subsidy was terminated effective April 30, 2014. Doc. No. 1 at ¶ 27. Plaintiff alleges that she was never offered and OHA expressly denied Plaintiff s written requests for a formal and/or informal hearing to contest and/or appeal OHA s decision to terminate Plaintiff s Section 8 housing benefits. Doc. No. 1 at ¶ 28-31. As a result of Defendants decision to terminate Plaintiff s housing assistance, Plaintiff alleges that she and her family became homeless.



Vega v. Orlando Housing Authority et al

2015 | Cited 0 times | M.D. Florida | July 28, 2015

Doc. No. 1 at ¶ 32.

In the Preliminary Injunction Motion, Plaintiff sought an injunction: directing the Defendants to immediately reinstate; directing the Defendants to conduct a timely review process; and prohibiting the housing benefits. Doc. No. 2. The Preliminary Injunction Motion is fifteen (15) pages in length, the first five (5) pages of which generally restate the factual allegations in the Complaint. Compare Doc. No. 1 with Doc. No. 2 at 1-5. The memorandum of legal authority in support of the Preliminary Injunction Motion is nine (9) pages in length. Doc. No. 2 at 7-15. In it, Plaintiff sets forth the necessary elements Plaintiff must establish to show entitlement to a preliminary injunction, i.e., (1) a substantial likelihood of success on the merits; (2) irreparable injury; (3) the threatened injury outweighs any damage the proposed injunction might cause the non-moving party; and (4) the injunction would not be adverse to the public interest. Doc. No. 2 at 7 (citing authority).

With respect to substantial likelihood of success, Plaintiff explains the three elements: (a) deprivation of a constitutionally protected liberty or property interest; (b) state action; and (c) constitutionally inadequate process. Doc. No. 2 at 7 (citing *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003)). Plaintiff primarily relies on six (6) cases, Plaintiff's affidavit (Doc. No. 2-1), and OHA's March 31, 2014 letter (Doc. No. 2-2) for the basic principle that Plaintiff had a constitutionally protected property interest in her Section 8 housing assistance, OHA is a state actor, and Plaintiff had a right to due process, i.e., a hearing, before her housing assistance could be terminated. Doc. No. 2 at 7-10 (citing *Grayden*, 345 F.3d at 1232; *Basco v. Machin*, 514 F.3d 1177, 1182 (11th Cir. 2008); *Johnson v. Fort Walton Beach Hous. Auth.*, 2012 WL 10688344, at *4 (N.D. Fla. Jan. 5, 2012); *Thomas v. Hernando Cnty. Hous. Auth.*, No. 8:07-cv-1902-T-33EAJ, 2008 WL 4844761, at *7 (M.D. Fla. Nov. 6, 2008); *Goldberg v. Kelly*, 397 U.S. 254, 266-67 (1970); *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)). With respect to the irreparable injury element, Plaintiff relies on her affidavit (Doc. No. 2-1) that she and her family are currently homeless without housing assistance and case law finding that the loss of housing assistance, which may result in homelessness, is an irreparable harm. Doc. No. 2 at 10-11 (citing *Roundtree v. U.S. Dep't of Hous. & Urban Dev.*, No. 5:09-cv-234-Oc-10GRJ, 2009 WL 7414663, at *7 (M.D. Fla. Aug. 28, 2009); *Basham v. Freda*, 805 F. Supp. 930, 932 (M.D. Fla. 1992) *aff'd*, 985 F.2d 579 (11th Cir. 1993)). Plaintiff argues that Defendants will suffer no or de minimis harm if an injunction is issued. Doc. No. 2 at 11-12. Finally, relying upon case law, Plaintiff argues that the public interest is served by insuring the correct administration of housing assistance programs. Doc. No. 2 at 13-14 (citing *Basham*, 805 F. Supp. at 932; *Johnson v. U.S. Dep't of Agric.*, 734 F.2d 774, 788 (11th Cir. 1984)). The balance of Preliminary Injunction Motion argues that the Court should waive the requirement in Rule 65(c), Federal Rules of Civil Procedure, that the Plaintiff post a bond. Doc. No. 2 at 14-15.

On November 21, 2014, Defendants filed a response to the Preliminary Injunction Motion, arguing that the motion should be denied because the parties had entered into a written settlement agreement, which resolves the sole count in the Complaint. Doc. No. 23 at 1-4. Defendants state that they agreed to immediately reinstate Plaintiff's housing assistance without an administrative



Vega v. Orlando Housing Authority et al

2015 | Cited 0 times | M.D. Florida | July 28, 2015

hearing, Plaintiff would be allowed to transfer her housing assistance benefit if she wished to move, and Defendants would promptly process the necessary paperwork. Doc. No. 23 at 2. On that same day, prior to the Court ruling on the Preliminary Injunction Motion, the parties filed In it, the parties assert that their settlement agreement

agree the Plaintiff is the prevailing party for the purposes of determining the amount of reasonable
-1 at 2-6. 1

Pursuant to the settlement agreement, Program assistance without a hearing and to pay Plaintiff damages in the amount of \$1,000.00.

Doc. No. 21-1 at 3-4. Based upon the Joint Motion, the Court entered an order denying the Preliminary Injunction Motion (Doc. No. 2) as moot, administratively closing the case, and

1 The terms of the settlement agreement are set forth in twelve (12) numbered paragraphs that span slightly more than two (2) pages. Doc. No. 21-1 at 3-6. to Plaintiff as the prevailing party. Doc. No. 24.
II. THE MOTION.

The amounts claimed in the Motion are summarized in the table below:

Attorney Hours

Expended

Hourly Rate Fees and Costs Andrea Costello 118.0 \$400.00 \$47,200.00 Natalie N. Maxwell 21.0 \$300.00
\$6,300.00 Caroline Ware 22.1 \$250.00 \$5,525.00 Total 161.1 \$59,025.00 Costs Filing Fee \$400.00 Total
\$59,425.00 Estimate of Additional Attorneys Fees after February 4, 2015

\$1,295.00

TOTAL \$60,720.00

Doc. No. 29 at 2-3. 2

costs. Id. In support of the Motion, Plaintiff attaches: affidavits, resumes, and times sheets from
Sleasman, Esq. Doc. Nos. 29-2 29-14. 3

2 The Motion was filed on February 5, 2015. Doc. No. 29. reparing and drafting the Motion. See Doc.
Nos. 29-14 at 14-15; 29-8 at 4-5; 29-11 at 8-9. Other than the administrative function of filing the



Vega v. Orlando Housing Authority et al

2015 | Cited 0 times | M.D. Florida | July 28, 2015

Motion, it is unclear what, if any, additional work counsel anticipates in order to arrive at an estimated additional \$1,295.00 in . 3 In his declaration, Mr. Tellechea charged to paying clients in the Middle District of Florida for similar lawyers in similar complex litigation given the -12 at ¶ 14. In his declaration, Mr. Sleasman opines that the total number of hours expended in drafting the Complaint, the Preliminary Injunction Motion, and in negotiating the settlement agreement are reasonable. Doc. No. 29-13 at ¶¶ 14, 17. III. THE RESPONSE.

On February 19, 2015, Defendants filed a Response In Opposition to the Motion (the In it, Defendants acknowledge that Plaintiff is the prevailing party Plaintiff is entitled to an award of \$400.00 in costs under 28 U.S.C. § 1920(1). Doc. No. 30 at 2

novel, particularly difficult, or required an unusually high degree of skill and that this case was not hourly rates

Andrea Costello, Esq. \$175 to \$225 per hour Natalie Maxwell, Esq. \$175 to \$225 per hour Caroline Ware, Esq. \$150 to \$190 per hour

Doc. No. 30 at 6-7. In support of these hourly rates, Defendants rely primarily on the affidavit of their fee expert, Robert E. Bonner, Esq. (Doc. No. 30-1 at 1-7), *Grayden v. City of Orlando*, No. 6:00-cv-888-Orl-22DAB, Doc. No. 293 at 19 (M.D. Fla. Mar. 22, 2005), adopted at Doc. No. 31 (M.D. Fla. May 22, 2005), wherein Ms. Costello was awarded \$150.00 per hour for similar work in this market, and *Lake Worth Global Justice, Inc. v. City of Miami*, No. 1:04-cv-20262-DLJ (S.D. Fla. Apr. 28, 2006), wherein Ms. Costello was awarded \$225.00 per hour for work in the Miami market. Doc. Nos. 30 at 6-7; 30-3; 30-4; 30-7. With respect to the number of hours requested, Defendants maintain that number of hours No. 30 at 7-11. For example, Defendants assert that Ms. Costello expended approximately 84.7 hours drafting the Complaint and Preliminary Injunct appears to be duplicative of the work performed by Ms. Costello and Ms. Maxwell. Doc. No. 30 at 10- of 25 to 35 hours of work. Doc. No. 30 at 11. Accordingly, Defendants maintain that the Court No. 30 at 11.

IV. ANALYSIS. It is undisputed that Plaintiff is entitled to an award of prevailing party in this case. In the Eleventh Circuit, reasonableness is generally determined

is to multiply the number Loranger v. Stierheim, 10 F.3d 776, 781 (11th Cir. 1994) (per curiam); see also *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The party moving for fees has the burden of establishing that the hourly rate and hours expended are reasonable. See *Norman v. Housing Auth. of the City of Montgomery*, 836 F.2d 1292, 1303 (11th Cir. 1988). In making such determinations, the Court is an expert on *Norman*, 836 F.2d at 1303; *Loranger v. Stierheim*, 10 F.3d 776, 782 (11th Cir. 1994).

A. Reasonable Hourly Rates. To meet the burden of establishing the reasonableness of the hourly rate(s) requested, the r similar services by lawyers of



Vega v. Orlando Housing Authority et al

2015 | Cited 0 times | M.D. Florida | July 28, 2015

Norman, 836 F.2d at 1299. At a Id. In this case, Plaintiff requests that the Court award her counsel the following reasonable hourly rates: Ms. Costello - \$400.00 per hour; Ms. Maxwell - \$300.00 per hour; and Ms. Ware - \$250.00 per hour. See supra p. 5.

The undersigned finds that the hourly rates requested are unreasonably high and not in line with the prevailing market rate in Orlando for similar serves by lawyers of similar skills, experience and reputation. First, this case was not complex, but a straightforward procedural due process case under 42 U.S.C. § 1983. See Basco v. Machin, 514 F.3d 1177, 1180-81 (11th Cir. 2008) (Section 8 housing recipients have right to termination hearing prior to having housing the extent that the hourly rates requested are within the ranges charged by paying clients for complex litigation, this is not such a case. See Doc. No. 29-12 at ¶ 14.

hourly rate of \$150.00 for similar work in this market. See Doc. Nos. 30-3 at 19; 30-4 at 1-2

(attaching Graysen, No. 6:00-cv-888-Orl-22DAB, Doc. No. 293 at 18-19 (M.D. Fla. Mar. 22, 2005)). Thus, while Ms. Costello has 16 years of experience handling civil rights cases (Doc. No. 29-2 at 4), the undersigned finds that \$400.00 per hour is out of line for similar work within Orlando market. The undersigned recognizes that Graysen was decided approximately ten (10) years ago. Therefore, an award of \$150.00 per hour for Ms. Costello would also be inappropriate. 4

Similarly, while Ms. Maxwell has been practicing public interest civil rights litigation for 10 years and Ms. Ware has been a practicing attorney for 8 years, the undersigned

4 In Lake Worth Global Justice, Inc., No. 1:04-cv-20262-DLJ (S.D. Fla. Apr. 28, 2006), Ms. Costello was awarded \$225.00 per hour nine (9) years ago in the Miami, Florida market. Id. However, the Court finds that case to be of little value because Miami market rates are substantially greater to those in the Orlando market. finds that \$300.00 per hour and \$250.00 per hour are, respectively, out of line for similar work by lawyers of comparable skill within the Orlando market. Doc. Nos. 29-6 at 2; 29-9 at 3.

Accordingly, bas -1), the straight-forward due process issue presented in this case, and reasonable hourly rates charged in similar cases by lawyers of comparable skill, it is

RECOMMENDED Ms. Costello - \$250.00; Ms. Maxwell - \$200.00; and Ms. Ware - \$200.00.

B. Reasonable Number of Hours. Hensley, 461 U.S. at 434. This requires the moving party to exclude hours that are

Id. The court will excise redundant, excessive or unnecessary hours when a party fails to. See Am. Civil Liberties Union of Ga. v. Barnes maintained records to show the time spent on the different claims, and the general subject matter



Vega v. Orlando Housing Authority et al

2015 | Cited 0 times | M.D. Florida | July 28, 2015

of the time expenditures ought to be set out with sufficient particularity so [the court] can assess Norman, 836 F.2d at 1303. A party opposing a fee concerning those hours that should be excluded. Barnes failure to explain with specificity the particular hours he views as unnecessary or duplicative is

generally fatal. Gray v. Lockheed Aeronautical Systems Co., 125 F.3d 1387 (11th Cir. 1997).

There are only four substantive matters that occurred in this case: (1) the Complaint; (2) the Preliminary Injunction Motion; (3) the settlement negotiations; and (4) the Motion. Researching, drafting and conferring about the Complaint and the Preliminary Injunction Motion combine for the bulk of the 161.1 hours billed. See Doc. Nos. 29-4 at 2-15 (Ms. Costello s timesheet); 29-8 at 2-5 (Ms. Maxwell s timesheet); 29-11 (Ms. Ware s timesheet). The total number of hours requested is plainly excessive. For example, Ms. Costello, who has approximately 16 years experience in handling civil rights cases, expended approximately 87 hours preparing, researching, conferring, and drafting the Complaint and Preliminary Injunction Motion. Doc. No. 29-4 at 2-6. 5

Similarly, Ms. Maxwell and Ms. Ware each expended approximately 8.1 and 9.1 hours, respectively, researching, conferring, drafting, and reviewing the Complaint and Preliminary Injunction Motion. Doc. Nos. 29-8 at 2; 29-11 at 2- have a combined 34 years of legal experience, expended approximately 104.2 hours preparing a

straightforward complaint for the violation of well-established due process rights and a supporting motion for preliminary injunction, which is excessive.

reasonably high, the court has two choices: it may conduct an hour-by-hour analysis or it may reduce the requested hours with an across-the-board-cut Bivins v. Wrap it Up, Inc., 548 F.3d 1348, 1350 (11th Cir. 2008) (emphasis added). Thus, a Court has to of hours claimed if it concludes that the number of hours claimed is excessive. Galdames v. N&D

Inv. Corp. Bivins, 548 F.3d at 1350). Here, the undersigned has carefully reviewed each billing entry and finds that they are excessive and largely duplicative with respect to nearly every task performed in this case. It is xperience to devote so much time in

5 It is difficult to distinguish between time Ms. Costello spent working on the Complaint versus time spent working on the Preliminary Injunction Motion because a majority of the entries constitute block billing. Doc. No. 29-4 at 2- 6. For example, on October 15, 2014, one entry states that Ms. Costello expended 5.1 hours doing the following tasks: Continue drafting and editing motion for preliminary injunction and memo and complaint. Id. at 5. Therefore, it is impossible for the undersigned to determine how much of the 5.1 hours was spent drafting the Complaint and how much was expended drafting the Preliminary Injunction Motion. preparing a straightforward complaint and motion for preliminary injunction. Furthermore, much of the work performed by Ms.



Vega v. Orlando Housing Authority et al

2015 | Cited 0 times | M.D. Florida | July 28, 2015

Maxwell and Ms. Ware appears redundant of work already performed by Ms. Costello. Thus, the undersigned finds that an across-the-board-cut in the amount of 75% of the requested number of hours is necessary. While 75% reduction in the total number of hours is a heavy reduction, it is necessary to make the hours requested reasonable. For example, applying the reduction to work performed in preparing the Complaint and Preliminary Injunction Motion takes it from the excessively high 104.2 hours to 26.05 hours, which given the fact it constitutes more than three full workdays is surely adequate for experienced counsel to prepare a single twelve (12) page complaint and a straightforward motion for preliminary injunction like those filed in this action. 6

Accordingly, it is RECOMMENDED that the Court find that the hours expended are excessive and duplicative, and impose an across-the-board-cut in the total number of hours claimed by 75%.

C. In the Motion, Plaintiff's counsel estimate that they will incur an additional \$1,295.00 in ruary 4, 2015. Doc. No. 29 at 3. Currently, there is no support in the

RECOMMENDED that the Court DENY es in the amount of \$1,295.00.

6 The undersigned examined whether it would be appropriate to limit the 75% across-the-board reduction to work performed on the Complaint and the Preliminary Injunction Motion. However, when the undersigned carefully reviewed counsels time records concerning the settlement discussions and counsels calculation and demand for attorneys fees, i.e., work that was performed from October 30, 2014 through November 21, 2014, the undersigned discovered that counsels time entries during those phases of the case are also excessive and duplicative. See Doc. Nos. 29-4 at 9-12 (Ms. Costello); 29-8 at 3-4 (Ms. Maxwell); 29-11 at 6-8 (Ms. Ware). Accordingly, the undersigned cannot recommend that the across-the-board cut be limited to any particular segment of work performed in this case.

D. Costs. It is undisputed that Plaintiff is entitled to \$400.00 in costs pursuant to 28 U.S.C. § 1920(1). Doc. No. 30 at n.2. Accordingly, it is RECOMMENDED that the Court award Plaintiff \$400.00 in costs. V. CONCLUSION.

The chart below reflects the above-stated recommendations: Attorney Hours

Expended (with 75% reduction)

Hourly Rate (as

reduced)

Fees and Costs



Vega v. Orlando Housing Authority et al

2015 | Cited 0 times | M.D. Florida | July 28, 2015

Andrea Costello 29.5 \$250.00 \$7,375.00 Natalie N. Maxwell 5.25 \$200.00 \$1,050.00 Caroline Ware 5.52 \$200.00 \$1,104.00 Total 40.27 \$9,529.00 Costs Filing Fee \$400.00 TOTAL \$9,929.00

Accordingly, it is RECOMMENDED that the Court GRANT in part and DENY in part the Motion (Doc. No. 29) as follows:

1. Award Plaintiff a
2. Otherwise, DENY the Motion (Doc. No. 29) A party failing to file written objections recommendations within ten (10) calendar days of issuance of the Report and Recommendation, -to factual and legal conclusions.

Recommended in Orlando, Florida on July 28, 2015.

Copies furnished to: Presiding District Judge Counsel of Record Unrepresented Party Courtroom Deputy

