

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLERK, U.S. DISTRICT COURT
APR 14 1992
CENTRAL DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT
APR 15 1992
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOHN E. PELOZA,)
)
Plaintiff,)
)
v.)
)
CAPISTRANO UNIFIED SCHOOL)
DISTRICT, BOARD OF TRUSTEES)
OF THE CAPISTRANO UNIFIED)
SCHOOL DISTRICT, PAUL B.)
HASEMAN, CRYSTAL KOCHENDORFER,)
MARLENE M. DRAPER, ANNETTE B.)
GUDE, KATHRYN I. ITZEL, E. G.)
KOPP, A. EDWARD WESTBERG, JEROME)
R. THORNSLEY, WILLIAM D. ELLER,)
GERALDINE JAFFE, THOMAS R.)
ANTHONY, ROSS VELDERRAINE, JAMES)
CORBETT, PAUL PFLUEGER, RAY PANICI)
TIM DUNN, WILLIAM REDDING)
AND DOES 1 THROUGH 200,)
INCLUSIVE,)
)
Defendants.)

NO. CV 91-5268-DWW(Bx)

ORDER GRANTING ATTORNEYS'
FEES AND COSTS TO
PREVAILING PARTY

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77 (d).

John E. Peloza is a biology teacher in a public high school in the Capistrano Unified School District. He has brought an action for declaratory and injunctive relief in a civil rights action brought under the First, Fifth, and Fourteenth Amendments to the United States Constitution and also 42 U.S.C. § § 1983, 1985 and 1988. He has named

1 as defendants the Capistrano Unified School District, its Board of
2 Trustees and a number of individuals who are teaching colleagues of the
3 plaintiff. Pelosa contends in this action that he has the
4 constitutional right to teach his students pursuant to his belief in the
5 system of creationism as expounded in Genesis. The School District
6 contends that his biology classes should be taught pursuant to an
7 accepted theory of evolution which is defined within the framework of
8 the California Education Code. Pursuant to the code, the School
9 District is required to establish local curriculum for grades 7 through
10 12. This curriculum must include biology sciences as well as other
11 standard subjects. The curriculum sets forth the subjects that must be
12 covered in the high school biology class. The School District must
13 maintain uniformity so that all students are adequately prepared for
14 college entrance examination and higher education. In the biology
15 curriculum, evolution is one of the main themes to be covered. It is
16 taught throughout two years of science study in the district curriculum.
17 After a series of administrative hearings, the District has ordered
18 Pelosa to cease teaching creationism because it is a constitutionally
19 prohibited religious subject and to teach the theory of evolution as
20 approved by the district curriculum.

21 The School District brought a motion to dismiss the complaint under
22 Federal Rules of Civil Procedure 12(b)(6) and the plaintiff and
23 defendants have filed voluminous memoranda in support of and in
24 opposition to the motion. The matter came on for hearing and the Court
25 after giving all the parties a full opportunity to be heard, took the
26 matter under submission and thereafter and on January 16, 1992, issued
27 its Memorandum granting the motion. On February 21, 1992, the
28

1 defendants filed a motion to recover attorneys' fees and costs as the
2 prevailing parties in a civil rights action. Opposition thereto was
3 filed by the plaintiff and the cause came on to be heard on April 6,
4 1992. This Court has read and considered all of the memoranda in
5 support of and opposing motion and has taken the matter under submission
6 and now grants the defendants' motion, upholding defendants' claim that
7 plaintiff's complaint was frivolous and unreasonable and was filed
8 without adequately researching the subject.

9
10 INCLUSION OF INDIVIDUAL DEFENDANTS

11 As indicated before, the plaintiff has not only named as defendants
12 the School District and its Board of Trustees but has also named a
13 number of his fellow teachers accusing the latter of conspiring to
14 defame him as a teacher and to cause his dismissal. His principal
15 complaint against his fellow colleagues is that they became participants
16 in an on-going on-campus discussion that surrounded the insistence of
17 Pelosa that he has a right to depart from curriculum requirements and
18 teach his own religious contentions in the classroom under the pretense
19 that it is science. These defendants contend that the only thing they
20 are guilty of is disagreeing with the plaintiff and voicing their
21 opinions.

22 Under 42 U.S.C. § 1988 the Court may grant attorneys' fees to the
23 prevailing party in civil rights actions. Under Rule 11 of the Federal
24 Rules of Civil Procedure the Court may sanction a party if the claim
25 submitted is frivolous and unreasonable. The Court dismissed this case
26 on the basis that a teacher does not have the right to teach anything
27 he wants in the classroom based on his own personal views. As cited
28

1 in the Memorandum issued by the Court, there is vast authority holding
2 that a teacher may not teach according to his own personal views.
3

4 CASE OF FIRST IMPRESSION

5 Plaintiff seeks to avoid imposition of attorneys' fees by claiming
6 that the case presents issues of first impression. An appropriate
7 adventure into legal research would have shown him and his attorney that
8 there was little helpful legal precedent to their desires to destroy
9 declared curriculum policy. There is a lengthy list of cases holding
10 against plaintiff on precisely the identical issues he puts in front of
11 this Court. Webster v. New Lennox School Dist. No. 122, 917 F.2d 1004
12 (7th Cir. 1990) and Wright v. Houston Independent School Dist., 366
13 F.Supp. 1208 (S.D. Tex. 1972), aff'd 486 F.2d 137 (5th Cir. 1973) cert.
14 den. 417 U.S. 969 (1974) are both directly on point. In 1987 the United
15 States Supreme Court made a similar ruling in the case of Edwards v.
16 Aguillard, 482 U.S. 578, 96 L.Ed. 510 (1987). Plaintiff's attorney
17 conceded in argument that this was not a case challenging the framework
18 of the curriculum committee as set forth by the Department of Education.
19 Therefore, the only issue to be decided was whether this plaintiff may
20 depart from the set curriculum and teach what he thinks is appropriate.

21 The Supreme Court in Christiansburg Garment Company v. EEOC, 434
22 U.S. 412, 422 (1978) held that a successful defendant may be awarded
23 attorneys' fees where the action brought was frivolous, unreasonable and
24 without foundation, even though not brought in subjective bad faith.
25 A party may prevail in any of the various stages of the litigation
26 before final judgment. The party need not go through a full blown trial
27 in order to be the prevailing party entitled to attorneys' fees. Betts
28

1 v. Coltes, 449 F.Supp. 751 (D. Ha. 1978); Unemployed Workers Organizing
2 Committee v. Batterton, 477 F.Supp. 509 (D.Md. 1979). Courts allow
3 attorneys' fees by defendants when plaintiff brings civil rights action
4 which are contrived, baseless and unreasonable. Goldrich, Kest & Stern
5 v. City of San Fernando, 617 F.Supp 557 (C.D. Cal. 1985).

6 To determine whether the action at issue is frivolous, unreasonable
7 or groundless, the court looks at the following relevant factors: (1)
8 whether the issue is one of first impression requiring judicial
9 resolution; (2) whether the controversy is sufficiently based upon a
10 real threat of injury to the plaintiff; (3) whether the trial court made
11 a finding that the suit is frivolous under the Christiansburg guidelines
12 and whether the record would support such a finding. Reichenberger v.
13 Pritchard, 660 F.2d 280, 288 (7th Cir. 1981). The Court has already
14 addressed the ample legal precedent that could have been discovered by
15 plaintiff's attorney had he performed adequate legal research and
16 learned that this was not a case of first impression. Additionally, the
17 California Education Code sets forth the thinking that a teacher must
18 teach, and defines what a teacher may not teach in the classroom.

19 Plaintiff contends that the conspiracy claims made against his
20 fellow teachers are claims of first impression. However, plaintiff has
21 not adequately shown that any kind of conspiracy exists. Plaintiff's
22 paper merely proves that the individual defendants disagreed with
23 plaintiff's methods and have publicly voiced their disagreement. There
24 is no evidence in plaintiff's complaint of a conspiracy.

25 ///

26 ///

27 ///

28

1 Applying the standard discussed above, plaintiff's claims against
2 the individuals are found frivolous and without foundation. These
3 defendants have suffered from being named in this action. Plaintiff has
4 not presented to this Court any indication supporting a conspiracy on
5 their part to violate his constitutional rights. This Court finds that
6 these claims against the individual defendants were brought for
7 vexatious purposes and in bad faith. Plaintiff has asked for punitive
8 damages in the amount of one million dollars from these defendants.

9 Plaintiff further states that he and his attorney have suffered
10 adequate sanctions in the media. Both assert that their reputations
11 have suffered as a result of this action. It is the plaintiff and his
12 counsel who have sought out the media.¹

14 REASONABLE FEES

15 The fees set forth by the moving party must be reasonable and the
16 district court has wide discretion in setting attorneys fees. Keith v.
17 Volpe, 501 F. Supp. 403 (C.D. Cal. 1980) aff'd 858 F.2d 467 (9th Cir.
18 1988). The reasonableness in attorney's fees is set forth in Johnson
19 v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). The
20

21 ¹ Plaintiff's argument against being assessed fees because he
22 is only a salaried school teacher, omits reference to his having
23 paid fees for his own attorney and fails to disclose the fact that
24 he is a member of and being financially supported in his cause by
25 an organization called Christian Research Institute (CRI), an
26 Orange County ministry with large resources. Plaintiff is said to
27 be a star on its lecture circuit since the filing of this case.
28 After the granting of defendants' motion to dismiss, CRI has used
its long-range radio network to (1) urge its listeners to "jam"
this Court's telephone lines (which they did); (2) to write letters
of protests to this Court (we have received over 300 letters in one
week from numerous States); and (3) transported more than 50
persons from Orange County to picket the United States Courthouse
in Los Angeles on April 6, 1992, the date of the hearing of this
motion.

1 Ninth Circuit adopted these factors in Kerr v. Screen Extras Guild,
2 Inc., 526 F.2d 67 (9th Cir. 1975), cert. den., 425 U.S. 951 (1976).
3 Those factors are as follows: (1) time and labor required, (2) the
4 novelty and difficulty of the questions involved, (3) the skill
5 requisite to perform the legal service properly, (4) the preclusion of
6 other employment by the attorney due to the acceptance of the case,
7 (5) the customary fee, (6) whether the fee is fixed or contingent,
8 (7) time limitations imposed by the client or the circumstances, (8) the
9 amount involved and the results obtained, (9) the experience, reputation
10 and the ability of the attorneys, (10) the "undesirability" of the case,
11 (11) the nature and length of the professional relationship with the
12 client and (12) awards in similar cases.

13 The attorneys spent a total of 181.5 hours preparing and defending
14 this case and law clerks spent 47.6 hours researching and assisting the
15 attorneys. Defendant asserts that the individual claims were not novel
16 but needed to be individually and thoroughly researched and addressed.
17 The motion required the ability to understand constitutional issues and
18 to articulate the principles in the motion. The law firm would have
19 been able to devote to other clients whose rates may have been higher
20 than those the firm charge the district. The firm charged the district
21 \$140 per hour which is less than what is regularly paid in private
22 practice. If plaintiff had been successful the district would have lost
23 the ability to control the content of its own curriculum. This would
24 result in a serious problem of religion being taught in class.

25 The experience of the District's attorneys are 18 and 6 years.
26 They have represented the District for several years. Courts have
27 granted prevailing defendants in civil rights cases in amounts greater
28

1 than what defendants are asking for in this matter. In those cases the
2 court found that they concluded that the plaintiff's claims were without
3 merit, frivolous, unreasonable or without foundation. See Munson v.
4 Friske, 754 F.2d 683 (7th Cir. 1985); Tonti v. Petropoulous, 656 F.2d
5 212 (6th Cir. 1981); Goldrich, Kest & Stern v. City of Fernando, 617 F.
6 Supp. 557 (C.D. Cal. 1985); American Family Life Assurance Co. of
7 Columbus v. Teasdale, 564 F. Supp. 1571 (W.D. Mo. 1983), aff'd, 733 F.2d
8 559 (8th Cir. 1984).

9 The district court does not have to consider all of the Johnson
10 factors, only those which are relevant for the case at issue. Keith v.
11 Volpe, 501 F. Supp. 403, 410.

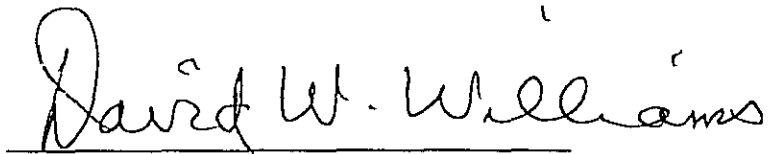
12 Attorneys' fees are allowed in the sum of \$30,884.00. Defendants
13 have also requested reimbursement of expenses in the amount of
14 \$1,719.49, and this is allowed. This includes photocopying, Lexis legal
15 research, etc. In International Woodworker of America v. Donovan, 792
16 F.2d 762 (9th Cir. 1986), the Ninth Circuit held that incidental and
17 necessary expenses incurred in furnishing effective and competent
18 representation may be included in the amount determined to be attorney's
19 fees.

20 21 CONCLUSION

22 While granting fees may have a chilling effect on civil rights
23 claims of this matter, not granting fees may give the appearance of
24 court tolerance of those claims which have not been thoroughly
25 researched and where established case law has already determined the
26 matters before the court.

1 The fees and costs are moderate and reasonable and are allowed as
2 requested.

3 DATED: April 14, 1992.

4 

5 DAVID W. WILLIAMS
6 Senior, U. S. District Judge

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28