

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE,
AT CHATTANOOGA

FILED

2010 SEP 17 P 3:24

U.S. DISTRICT COURT
EASTERN DIST. TENN.

ROY L. DENTON,
Plaintiff

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Case No. 1:07-cv-211

Chief Judge Curtis L. Collier

BY _____ DEPT. CLERK

v.

STEVE RIEVLEY,
in his individual capacity
Defendant

JURY DEMAND

**PLAINTIFF ROY L. DENTON'S RESPONSE AND OBJECTION
FOR ATTORNEY FEES**

Comes now the Plaintiff Roy L. Denton, *pro se*, and **OBJECTS** to the Petition For Costs as filed by the defendant. *See Court Doc. No. 147*. As support for this response and objection to attorney fees, the plaintiff incorporates and relies upon his previous filing where plaintiff responded to the defendant's pleading entitled "Petition for Costs". *See Court Doc. No. 150*

The defendant appears to place great weight upon what defense counsel refers to as "countless motions", the "necessity for filing an appeal to the Sixth Circuit", "voluminous filings" and "two trials". For the sake of clarity, the plaintiff indeed filed motions to this court, but they are not "*countless*" in fact, after over three years of litigation, there are roughly only around 150 entries filed by the clerk. Such is hardly "*countless*". The argument can be made that the defendant has probably filed just as many motions.

One certainty however, is the defendant's filing of a pleading entitled "Petition for Costs" [*Doc. 145*] resulting in the plaintiff having to once again spend massive amounts of time for legal research and work to respond and object to the petition, although the petition defendant filed

seemingly wasn't even properly filed using the required form, along with affidavits, etc..

Moreover, defendant fails to recognize that of all those motions filed by the plaintiff he as a pro se non-lawyer "prevailed" on many of them. As for the defendant's filing of an appeal, they also neglect to inform this court that "they lost their appeal", and Chief Judge Colliers ruling for the plaintiff [*Doc. 51*] was **AFFIRMED**. As for the two trials, a *pro se* litigant successfully argued against trained attorneys and managed to obtain a "hung jury". And as for the second trial that ended in a "jury verdict", there are post trial motions authorized. In any event, even using the defendant's description of this case proves that the vindication of the plaintiff's constitutional rights were not frivolous, unreasonable, or without foundation. Now, with all that said to "clear" the air of the defendant's mischaracterization of all the "work" they claim to have performed on this case, simply put, the defendant isn't entitled to an award of attorney fees.

The Civil Rights Attorney's Fees Award Act of 1976, 90 Stat. 2641, as amended, 42 U.S.C. § 1988 provides in relevant part: "In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 . . . , or title VI of the Civil Rights Act of 1964 . . . , the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

"Congress intended to permit the . . . award of counsel fees only when a party has prevailed on the merits." *Hanrahan v. Hampton*, 446 U.S. 754, 758 (1980) (per curiam). **Therefore, in order to qualify for attorney's fees under § 1988, a plaintiff must be a "prevailing party."** (*emphasis added*)

"In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985 and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a

reasonable attorney's fee as part of the costs.” However, in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978), the Supreme Court articulated the criteria that govern the award of attorney's fees to a prevailing defendant in a civil rights action. The Court stated: “***a district court may in its discretion award attorney's fees to a prevailing defendant in a Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith.*** *Id.* at 421.” (emphasis added)

In other language the Supreme Court stated: “a plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so. *Id.* at 422. The application of this standard for an award of attorney's fees to defendants pursuant to section 1988 was adopted by this Court in *Tarter v. Raybuck*, 742 F.2d 977 (6th Cir.1984), cert. denied 470 U.S. 1051 (1985).”

Therefore, the plaintiff respectfully moves this court to deny the defendant's motion for attorney fees as it must fail and be denied as a matter of law.

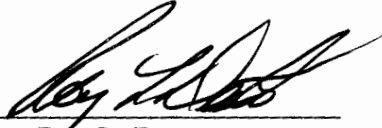
Respectfully submitted this 17th day of SEPTEMBER, 2010.

BY: 

Roy L. Denton
120 6th Ave.
Dayton, TN 37321
423-285-5581

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of this document has been served upon all parties of interest in this cause by placing an exact copy of same in the U.S. Mail addressed to such parties, with sufficient postage thereon to carry same to it's destination, on this ~~16th~~^{17th} day of ~~September~~, 2010.



Roy L. Denton

Copy mailed to:

Ronald D. Wells, BPR# 011185
Suite 700 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450 ~~~ Phone:423-756-5051

In addition, Ronald D. Wells, attorney for Officer Steve Rievley, would show that he has spent 146.50 hours in the defense of this case and that Elizabeth Roderick, associate attorney, has spend 135.40 hours in the defense of this case, the exact details of which can be provided upon affidavit or upon further hearing, if the Court so requires.

Accordingly, Officer Steve Rievley, through his attorneys, requests an order from the Court taxing fees against the Plaintiff, Roy Denton, taking into account the hours set forth above, based on hourly rates determined by the Court to be reasonable within the community, based on affidavit or based on further hearing, whichever the Court requires.

Respectfully submitted,

ROBINSON, SMITH & WELLS

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By: s / B. Elizabeth Roderick
Ronald D. Wells, BPR# 011185
B. Elizabeth Roderick, BPR# 022762
Attorneys for Defendant, Steve Rievley

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of September, 2010, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

This the 3rd day of September, 2010.

Robinson, Smith & Wells

By: s / B. Elizabeth Roderick

cc: Mr. Roy L. Denton
120 6th Avenue
Dayton, TN 37321

dlw/090210/RDW/daytondenton.petitionforcosts

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