United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-7016 **September Term, 2019**

FILED ON: MARCH 10, 2020

MATTHEW AUGUST LEFANDE,
APPELLANT

v.

CAROLYN ANNE MISCHE-HOEGES,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:10-cv-01857)

Before: WILKINS and RAO, *Circuit Judges*, and RANDOLPH, *Senior Circuit Judge*.

J U D G M E N T

This case was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). The Court has afforded the issues full consideration and has determined they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). For the reasons stated below, it is

ORDERED and ADJUDGED that the decision of the District Court be **AFFIRMED**.

Matthew LeFande appeals the January 29, 2019 Memorandum Opinion and Order of the District Court, which awarded Carolyn Mische-Hoeges attorney's fees and costs under 42 U.S.C. § 1988 and Rule 11 of the Federal Rules of Civil Procedure for having to defend against what the District Court found to be LeFande's frivolous and baseless 42 U.S.C. § 1983 claims. *See* Memorandum Opinion and Order, *LeFande v. Mische-Hoeges*, No. 1:10-cv-1857 (D.D.C. Jan. 29, 2019), ECF No. 54.

In 2010, Mische-Hoeges, an officer of the District of Columbia Metropolitan Police Department, reported LeFande, an attorney specializing in civil rights with whom she had been in a relationship, for stalking. He was ultimately arrested but not prosecuted. In November 2010, LeFande sued Mische-Hoeges in District Court, bringing claims under 42 U.S.C. § 1983 and state law alleging that she abused her state authority to procure his arrest. In October 2011, the District

Court granted Mische-Hoeges's Rule 12(b)(6) motion to dismiss LeFande's section 1983 claims, stating in an oral ruling that LeFande failed to plausibly allege that Mische-Hoeges acted under color of state law and not in a personal capacity. Transcript of Proceedings at 6, *LeFande v. Mische-Hoeges*, No. 1:10-cv-1857 (D.D.C. Oct. 20, 2011), ECF No. 27. Several years later in 2016, the District Court entered an order dismissing LeFande's section 1983 claims and declining to exercise supplemental jurisdiction over his state-law claims. Order, *LeFande v. Mische-Hoeges*, No. 1:10-cv-1857 (D.D.C. Oct. 20, 2016), ECF No. 34. Later, the District Court denied Mische-Hoeges's request for attorney's fees and sanctions, in large part because it "didn't reach the merits" and so could not decide "[w]hether or not the claims have merit" for the purpose of awarding fees or sanctions. Transcript of Proceedings at 6, *LeFande v. Mische-Hoeges*, No. 1:10-cv-1857 (D.D.C. Dec. 6, 2016), ECF No. 37. The District Court also stated that it "did not address the merits of [LeFande's] state-law claims," as they were "inextricably intertwined with his federal claims." Order at 3, *LeFande v. Mische-Hoeges*, No. 1:10-cv-1857 (D.D.C. Dec. 9, 2016), ECF No. 38.

In an unpublished *per curiam* judgment, this Court affirmed the dismissal of LeFande's section 1983 claims, finding he "failed to plausibly allege" that Mische-Hoeges acted under color of state law. *LeFande v. Mische-Hoeges*, 712 F. App'x 9, 10 (D.C. Cir. 2018). However, the judgment reversed and remanded the denial of fees and sanctions, explaining that the District Court erred when it "assum[ed] that it was unable to award fees because it had not addressed the merits of LeFande's section 1983 claims in granting the motion to dismiss." *Id.* at 11. On remand, the District Court granted Mische-Hoeges's motion for attorney's fees and costs under section 1988 for defending against LeFande's section 1983 claims. Memorandum Opinion & Order at 5, *LeFande v. Mische-Hoeges*, No. 1:10-cv-1857 (D.D.C. Oct. 22, 2018), ECF No. 46. The District Court found LeFande's federal claims, which were dismissed well before the start of discovery, met the "frivolous, unreasonable, or groundless" standard, *id.* at 4 (citing *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978)), that he failed to establish a *prima facie* case that Mische-Hoeges's actions were committed "under color of state law," *id.* at 5 (quoting *West v. Atkins,* 487 U.S. 42, 48 (1988)), and that especially given LeFande's assertions that he is a civil rights attorney, "'[he] either knew or reasonably should have known' that his claims were frivolous," *id.* at 7 (quoting *Animal Welfare Inst. v. Feld Entm't, Inc.*, 944 F. Supp. 2d 1, 16 (D.D.C. 2013)). The District Court denied Mische-Hoeges's request for fees that were incurred only to defend against LeFande's state-law claims, and reserved judgment on the amount of the award and on whether relief under Rule 11 or 28 U.S.C. § 1927 was warranted. *Id.* at 8. Mische-Hoeges was directed to submit supplemental briefing segregating the amount of fees connected to the section 1983 claims from the state law claims, itemizing the fees she incurred, and on potential sanctions under Rule 11. *Id.*

The calculations were referred to a magistrate judge, who issued a Report and Recommendation after briefing from both parties. Report and Recommendation, *LeFande v. Mische-Hoeges*, No. 1:10-cv-1857 (D.D.C. Dec. 10, 2018), ECF No. 50. After applying the familiar "lodestar approach," the magistrate recommended Mische-Hoeges be awarded $101,455.23 – some $100,140.63 in attorney's fees and $1,314.60 in costs – characterized as both an award under section 1988 and as a sanction under Rule 11. *Id.* at 14, 26. Over LeFande's

objection, on January 29, 2019, the District Court adopted the magistrate's Report and Recommendation, awarding Mische-Hoeges $101,455.23 in attorney's fees and costs. Memorandum Opinion and Order, *LeFande v. Mische-Hoeges,* C.A. No. 1:10-cv-1857 (D.D.C. Jan. 29, 2019), ECF No. 54. LeFande filed a timely notice of appeal of the District Court's Memorandum Opinion and Order on February 26, 2019.

We review attorney's fee awards for abuse of discretion, *see Pope v. R.R. Ret. Bd.*, 744 F.2d 868, 870 n.3 (D.C. Cir. 1984), and a trial court "enjoys substantial discretion in making reasonable fee determinations," *Swedish Hosp. Corp. v. Shalala,* 1 F.3d 1261, 1271 (D.C. Cir. 1993) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)). Under 42 U.S.C. § 1988(b), a court, "in its discretion," may award "a reasonable attorney's fee" to the "prevailing party . . . [i]n any action or proceeding to enforce a provision of section . . . 1983." *See Fox v. Vice*, 563 U.S. 826, 832-33 (2011). A district court may award fees to a prevailing defendant if a claim was "frivolous, unreasonable, or groundless, or . . . the plaintiff continued to litigate after it clearly became so." *Christiansburg*, 434 U.S. at 422. In finding LeFande's section 1983 claims frivolous, the District Court emphasized LeFande failed to meet the required legal showing that "the alleged deprivation [of a right] was committed by a person acting under color of state law." J.A. 272 (quoting *West,* 487 U.S. at 48). Despite LeFande's apparent desire to relitigate the merits of his section 1983 claim, this Court has already affirmed the District Court's 2011 finding that LeFande failed to allege a *prima facie* case by failing to allege any facts that suggested Mische-Hoeges acted under color of state law instead of "in the ambit of [her] personal pursuits" when she reported his alleged stalking. *LeFande*, 712 F. App'x at 10 (citing *Screws v. United States*, 325 U.S. 91, 111 (1945)). As such, after considering the *Christiansburg* factors and finding LeFande's claims met the "frivolous, unreasonable, or groundless" standard, it seems the District Court was correct in finding that Mische-Hoeges had satisfied her "'burden of establishing entitlement to an award' [under section 1988] for the fees incurred to defend against LeFande's [section] 1983 claims." J.A. 273 (quoting *Fox,* 563 U.S. at 838).

In addition to attempting to relitigate his merits arguments, LeFande objects to the amount of the award granted. Curiously, LeFande does not object to the magistrate's precise calculations, any figures provided by Mische-Hoeges's counsel, or the use of the "lodestar approach" to calculate the amount of fees owed. LeFande does argue that Mische-Hoeges fails to demonstrate that she is a prevailing party for the purposes of section 1988. Appell.'s Op. Br. at 20-21, 23-24. However, this argument fails as this Court has already affirmed the District Court's dismissal of LeFande's section 1983 claims with prejudice, a dismissal "on the merits." *LeFande*, 712 F. App'x at 11 (quoting *Agudas Chasidei Chabad of United States v. Russian Fed'n*, 528 F.3d 934, 956 n.3 (D.C. Cir. 2008)). In that judgment, this Court also stated that in any event, a "'defendant can recover fees expended in frivolous, unreasonable, or groundless litigation when the case is resolved in the defendant's favor, whether on the merits or not.'" *Id.* (quoting *CRST Van Expedited, Inc. v. EEOC*, 136 S. Ct. 1642, 1652 (2016) (alterations adopted)). As such, we find Mische-Hoeges is a prevailing party for the purposes of seeking attorney's fees and costs under section 1988.

LeFande further claims that Mische-Hoeges's "fee demand is not reasonable," Appell.'s Op. Br. at 41, but does not challenge any specific time entries of Mische-Hoeges's counsel as

constituting excessive time or overbilling or any other particulars of the demand. His objection is simply that "[t]he fees demanded are not reasonable for the amount of work actually performed," *id.* at 44, based on what he views as the poor quality of her attorneys' briefing and motions practice as compared with his own submissions, *id.* at 41-42. However, as the District Court pointed out, LeFande cites no authority indicating that the amount of a fee award to which a prevailing party is entitled should be based on an evaluation of the difference in quality between the parties' submissions. *See* J.A. 326-27.

LeFande raises no objections to the District Court's adoption of the magistrate's particular calculations or its decision to apply the lodestar approach to calculate the fees awarded. Here, the District Court adopted the magistrate's Report and Recommendation which employed the lodestar methodology – the familiar and recognized approach for federal fee-shifting cases. *See Blanchard v. Bergeron*, 489 U.S. 87, 94-95 (1989). Under this method, courts calculate a reasonable fee award by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Hensley,* 461 U.S. at 433. LeFande does not identify how the District Court abused its discretion in this calculation and does not challenge the Rule 11 finding particularly. Given the magistrate's use of a recognized method to calculate the fee award and the lack of objections to any particular figures or other aspects of the fee demand, we find the District Court did not abuse its discretion in adopting the magistrate's Report and Recommendation and that the Memorandum Opinion and Order of the District Court should be affirmed.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(b).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk