

Bacon v. Honda of Am. Mfg.

United States District Court for the Southern District of Ohio, Eastern Division
October 30, 2006, Decided ; October 30, 2006, Filed
Case No. 2:99-cv-803

Reporter: 2006 U.S. Dist. LEXIS 78967

Marc Bacon, et al., Plaintiffs, v. Honda of America Mfg., Inc., Defendant.

Prior History: Bacon v. Honda of Am. Mfg., Inc., 192 Fed. Appx. 337, 2006 U.S. App. LEXIS 18004 (6th Cir. Ohio, July 13, 2006)

Counsel: [*1] For Marc E Bacon, Plaintiff: John Spenceley Marshall, Bicentennial Plaza, Columbus, OH; Robert Alan Steinberg, Waite Schneider Bayless & Chelsey, Cincinnati, OH.

For Herbert L Winston, Plaintiff: John Spenceley Marshall, Bicentennial Plaza, Columbus, OH.

For Sherman Manuel, Plaintiff: John Spenceley Marshall, Columbus, OH.

For Honda of America, Defendant: Mary Ellen Fairfield, Vorys Sater Seymour & Pease - 2, Columbus, OH.

Judges: James L. Graham, United States District Judge.

Opinion by: James L. Graham

Opinion

OPINION AND ORDER

This matter is before the court on the objections of plaintiff Sherman Manuel to defendant's bill of costs in the amount of \$ 8,849.09. The Clerk has filed a memorandum on costs concluding that costs in the amount of \$ 8,470.14 are appropriate. Plaintiff does not contend that the costs claimed are not properly taxable as costs. Rather, plaintiff asks this court to exercise its discretion in favor of denying an award of costs.

Under Fed.R.Civ.P. 54(d)(1), "costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs[.]" Fed.R.Civ.P. 54(d)(1) [*2] ; Delta Air Lines, Inc. v. August, 450 U.S. 346, 352, 101 S. Ct. 1146, 67 L. Ed. 2d 287 (1981). Rule 54(d) creates a presumption in favor of awarding costs, but allows denial of costs at the discretion of the trial court. Knology, Inc. v. Insight Communs. Co., L.P., 460 F.3d 722, 726 (6th Cir. 2006); McDonald v. Petree, 409 F.3d 724, 732 (6th Cir. 2005). The

unsuccessful party must show circumstances sufficient to overcome the presumption.

Goostree v. Tennessee, 796 F.2d 854, 863 (6th Cir. 1986); White & White, Inc. v. American Hospital Supply Corp., 786 F.2d 728, 730 (6th Cir. 1986).

In White & White, 786 F.2d at 730-31, the court discussed several factors to consider in determining whether to award costs. Those factors include:

- a) Were the taxable expenditures unnecessary to the case or unreasonably large?
- b) Should the prevailing party be penalized for unnecessarily prolonging the trial or for injecting unmeritorious issues?
- c) Was the prevailing party's victory so insignificant that the judgment amounts to a victory for the opponent?
- d) Was the case close and difficult?
- e) Did the losing party act [*3] reasonably and in good faith in filing, prosecuting or defending the case?
- f) Did the losing party conduct the case with propriety?
- g) Have other courts denied costs to prevailing defendants in similar cases?
- h) Did the prevailing party benefit from the case?
- I) Did the public benefit from the case?
- j) Did the case result in a profound reformation of current practices by defendant?
- k) Does the award of costs have a chilling effect on other litigants?See Rosser v. Pipefitters Union Local 392, 885 F.Supp. 1068, 1071-72 (S.D.Ohio 1995).

Factors which are relevant but insufficient in themselves as a basis for denying costs include the good faith of the losing party in filing, prosecuting or defending the action, and the propriety with which the losing party conducts the litigation. White & White, 786 F.2d at 730. Factors which the district court must ignore when determining whether to

deny costs include the size of a successful litigant's recovery and the ability of the prevailing party to pay his own costs. *Id.* However, the court may consider the indigency of the losing party in determining whether to award [*4] costs. *Singleton v. Smith*, 241 F.3d 534, 539 (6th Cir. 2001).

Applying the above factors to the circumstances of this case, this court finds that the taxable expenditures were not unnecessary to the case or unreasonably large. Defendant is only claiming costs related to depositions which were actually used in its motion for summary judgment on the claims asserted by plaintiff Manuel.

Defendant, the prevailing party, did not prolong the proceedings or inject unmeritorious issues into the case. Defendant's victory in this case was not insignificant, and did not amount to a victory for the plaintiff.

In determining whether the case was close or difficult, the fact that the case was or was not frivolous is not the relevant standard. *Goostree*, 796 F.2d at 864. The Sixth Circuit has noted that the "closeness of a case is judged not by whether one party clearly prevails over another, but by the refinement of perception required to recognize, sift through and organize relevant evidence, and by the difficulty of discerning the law of the case." *White & White*, 786 F.2d at 732-33. "Although the fact that a case is 'close and difficult' [*5] may serve as grounds for denying a motion for costs, a district court does not abuse its discretion merely because it awards costs in a 'close and difficult' case." *McDonald*, 409 F.3d at 732 (citing *White & White*, 786 F.2d at 730; *United States Plywood Corp. v. Gen. Plywood Corp.*, 370 F.2d 500, 508 (6th Cir. 1966)).

Although this case was factually complex in the sense that several disparate treatment claims concerning a number of employment decisions were asserted by the plaintiff, the law in the employment discrimination area applicable to this case was clear and well established at the time of filing. The case was resolved at the summary judgment stage, and no trial was necessary. The evidence produced in the case plainly demonstrated that defendant was entitled to summary judgment on plaintiff's discrimination claims, and the judgment was affirmed on appeal. This case cannot be characterized as close or difficult.

The next factor is whether plaintiff acted reasonably and in good faith in filing, prosecuting or defending the case. The plaintiff may have acted in good faith from the standpoint that he subjectively believed that [*6] his case had merit. However, viewed objectively, plaintiff's claims were not reasonable and were not supported by the evidence. In addition, plaintiff continued to pursue his class claims long

after this court's denial of class certification in the production associates phase of the case. This denial of certification ruling should have made it apparent that the certification of a class of exempt employees was also not appropriate, yet, according to defendant, plaintiff continued to demand and receive thousands of documents in discovery even after that ruling before abandoning his class claims. In addition, despite the fact that plaintiff's individual case challenged a significant number of individual employment decisions, plaintiff failed to sustain his burden of showing a prima facie case of discrimination or refuting defendant's proffered nondiscriminatory reasons in regard to all of those decisions. Moreover, even assuming that plaintiff acted in good faith, this factor, in itself, is not sufficient to preclude an award of costs.

Even after this court's denial of certification of a class of production associates, plaintiff demanded extensive discovery in connection with his pursuit [*7] of his exempt employees class claims, which he subsequently abandoned, and pursued multiple individual discrimination claims which were found by this court and by the court of appeals to have no merit. This weighs against a finding that plaintiff conducted the case with propriety. However, even if this court were to find that plaintiff did conduct the case with propriety, this factor is not sufficient to preclude an award of costs.

The next factor is whether other courts have denied costs to prevailing defendants in similar cases. Plaintiff has cited a number of cases in which costs were denied. However, these cases are not similar to the instant case. This court notes that in *Jones v. Continental Corp.*, 789 F.2d 1225, 1233 (6th Cir. 1986), an employment discrimination case, the Sixth Circuit affirmed the decision of the district court taxing costs against the plaintiff.

The next factors concern whether the prevailing party and the public benefitted from the case. The defendant derived no benefit from the case other than the successful dismissal of the claims against it. The case resulted in no benefit to the public. There is no evidence that the case resulted in [*8] any reformation of current practices by the defendant, since none of defendant's practices were found to be invalid or discriminatory. Therefore, these factors do not weigh significantly in favor of or against an award of costs.

The last factor is whether an award of costs in this case would have a chilling effect on other litigants. This court finds no basis for such a finding in this case. The mere fact that this was a case involving claims of discrimination does not require that costs be denied. In *Jones*, 789 F.2d at 1233, the Sixth Circuit rejected the plaintiff's argument that an award of costs against a losing civil rights plaintiff

would conflict with the remedial purposes of Title VII. The amount of costs claimed in this case is not so high that it would discourage similarly situated plaintiffs from pursuing employment discrimination claims. Plaintiff does not maintain, nor has he presented any evidence, that he is financially incapable of paying costs. Plaintiff previously asserted his willingness to bear the costs of this action as a putative class representative.

Weighing the above factors, this court finds that an award of costs against the plaintiff [*9] and in favor of the

defendant is appropriate in this case. Plaintiff's objections to the defendant's bill of costs and his request to deny the award of costs to the defendant are denied. The court orders that costs in the amount of \$ 8,470.14 are hereby taxed against plaintiff Sherman Manuel.

Date: October 30, 2006

s James L. Graham

United States District Judge