

United States Court of Appeals For the First Circuit

Nos. 19-1262
19-1767

ROSIE D., By her parents John and Debra D.; TYRIEK H., by his mother Christine H.; JOSHUA D., by his mother Emelie D.; SHEENA M., by her mother Deborah D.; DEVIN E., by his grandmother Barbara E.; ANTON B., by his mother Lisa A.; SHAUN E., by his grandmother Jacquelyn E.; JERRY N., by his mother Susan P. on behalf of themselves and all others similarly situated,

Plaintiffs - Appellees,

NATHAN F., by his mother Tracey F.; SAMUEL L.; JOSE M.; TERRENCE M.; MARC ST. L.; NATISHA M.; SARAH B.; FORREST W.; JASON S.; SHENTELLE G.; CHRISTINE Q.; KRISTIN P.; CHRIS T.; CHELSEA T.; RALPH B.; TEVIN W.; DANIELLE H.; JANICE B.; KRISTIN H.,

Plaintiffs,

v.

CHARLES D. BAKER, Governor of Massachusetts; MARYLOU SUDDERS, Secretary of the Executive Office of Health and Human Services; MICHAEL HEFFERNAN, Secretary of the Executive Office of Administration and Finance; DANIEL TSAI, Assistant Secretary for MassHealth,

Defendants - Appellants.

Before

Howard, Chief Judge,
Lynch and Lipez, Circuit Judges.

ORDER OF COURT

Entered: November 3, 2020

This matter is before the court on an opposed motion for attorneys' fees and costs by Plaintiffs-Appellees ("Plaintiffs").

This appeal stemmed from long-running litigation and was focused primarily on a recent district court ruling denying a motion by the appellants (collectively, the "Commonwealth") to discontinue certain monitoring and reporting requirements. The court ruled in favor of the Commonwealth earlier this year. See Rosie D. by John D. v. Baker, 958 F.3d 51 (1st Cir. 2020). Plaintiffs nonetheless contend that they were the "prevailing party" in the original litigation and are entitled to recover fees and costs for work expended on this appeal, which Plaintiffs say was meant to defend the original judgment in their favor. The Commonwealth contends that Plaintiffs should not be permitted to recover fees and costs at all.

There appears to be no real dispute that Plaintiffs originally were the "prevailing party" in this litigation. Based on the specific facts presented, we conclude that Plaintiffs are *eligible* for an award of fees and costs, under 42 U.S.C. § 1988, for work performed in conjunction with this appeal. See De Jesus Nazario v. Morris Rodriguez, 554 F.3d 196, 199 (1st Cir. 2009) (general principles; court's discretion). We find unavailing the Commonwealth's arguments that the law in this Circuit or the facts of this case wholly preclude Plaintiffs from recovering § 1988 fees and costs for work done on the instant appeal. See Brewster v. Dukakis, 786 F.2d 16, 19 (1st Cir. 1986) (recognizing availability of fees for post-judgment work that is "useful" and "ordinarily necessary" (quoting Webb v. Board of Education of Dyer County, 471 U.S. 234 (1985)), or for services "necessary for reasonable monitoring . . ." (quoting Garrity v. Sununu, 752 F.2d 727, 738 (1st Cir. 1984)).

Having determined eligibility, we will remand the remainder of the motion to the district court. In assessing the reasonableness of requested fees and costs, the district court may, and should, weigh the absence of success by Plaintiffs on appeal. See Joyce v. Town of Dennis, 720 F.3d 12, 31 (1st Cir. 2013) (describing the "well established principle that a fees award should reflect the plaintiff's level of success"); see also Boston's Children First v. City of Bos., 395 F.3d 10, 14 (1st Cir. 2005) (stating that "a court may properly deny a prevailing party's motion for attorney's fees if circumstances of the case would make a fee award unjust").

To reiterate, we determine only that Plaintiffs are eligible for an award of costs and fees under § 1988. We express no view at this time as to the appropriate size of any award. We **REMAND** to the district court the remainder of the request for attorneys' fees and costs for determination consistent with this order. See Local Rule 39.1(b).

By the Court:

Maria R. Hamilton, Clerk

cc:

Hon. Michael A. Ponsor

Robert Farrell, Clerk, United States District Court for the District of Massachusetts

Cathy E. Costanzo

Daniel W. Halston
Steven J. Schwartz
Frank J. Laski
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Ronald F. Kehoe
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Matthew Quinnan Berge
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