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***Farrar v. Hobby*: When Moral Victories Will Not Feed the Attorney**

I. INTRODUCTION

In *Farrar v. Hobby*,¹ the Supreme Court granted "prevailing party" status, as required by 42 U.S.C. § 1988,² to those plaintiffs who are awarded only nominal damages.³ The Court rejected the Fifth Circuit's rationale that an award of nominal damages is a "technical" or "insignificant" victory and insufficient to allow prevailing party status.⁴

Although the Court unanimously found that a party who is awarded nominal damages is a prevailing party, the Court split five to four as to what reasonable attorney fees would be in this case.⁵ Writing for the Court, Justice Thomas compared the relief sought to the relief granted and determined that the only reasonable fee would be no fee at all.⁶ The dissenting opinion, written by Justice White, would withhold determining what reasonable attorney fees would be in this case because the petition for certiorari did not present the issue, nor did the Fifth Circuit Court of Appeals determine the issue.⁷

II. FACTUAL STATEMENT

Joseph Farrar and his son, Dale Farrar, owned and operated a school for delinquent teenagers, Artesia Hall. Following the death of a student at the school, a grand jury indicted Joseph Farrar for murder. After the indictment, William Hobby, then Lieutenant Governor of Texas, was openly critical of the Texas Department of Public Welfare and its licens-

1. 113 S. Ct. 566 (1992).

2. 42 U.S.C. § 1988 (1988). This section provides in relevant part: "In any action or proceeding to enforce a provision of sections . . . 1983, 1985 . . . of this title, . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs." *Id.*

3. 113 S. Ct. at 566. This case deals only with interpreting the prevailing party language with regard to plaintiffs. For a discussion of prevailing defendants, see *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978); *Hensley v. Eckerhart*, 461 U.S. 424, 429 n.2 (1983).

4. 113 S. Ct. at 574.

5. 113 S. Ct. at 573; *Id.* at 579 (White, J., concurring in part, dissenting in part).

6. 113 S. Ct. at 575.

7. *Id.* at 579 (White, J., concurring in part, dissenting in part). Justice White was joined by Justices Blackmun, Stevens, and Souter. *Id.*

ing procedures, and urged the director of the department to investigate Artesia Hall. Shortly afterwards the State of Texas obtained a temporary injunction, closing the school.⁸

The murder indictment was subsequently dismissed⁹ and Joseph Farrar filed suit against Hobby, Judge Cain, County Attorney Arthur Hartell III, and the director and two employees of the Texas Department of Public Welfare,¹⁰ seeking injunctive and monetary relief pursuant to 42 U.S.C. §§ 1983¹¹ and 1985.¹² In his complaint, Joseph Farrar alleged that the defendants deprived him of "liberty and property without due process by means of a conspiracy and malicious prosecution."¹³ Farrar amended his complaint, adding Dale Farrar as a plaintiff, dropping the request for injunctive relief, and increasing the amount of money damages to \$17 million. Following Joseph Farrar's death in 1983, Dale Farrar and Pat Smith, executors of Joseph Farrar's estate, were substituted as plaintiffs.¹⁴

Answering special interrogatories, the jury found that all defendants except Hobby had conspired against Joseph Farrar but the conspiracy was not the proximate cause of any injury suffered by him, and awarded no damages based on the conspiracy claim. The jury did find that Hobby, "committed an act or acts under color of state law that deprived Plaintiff Joseph Davis Farrar of a civil right."¹⁵ However, the jury found that this also was not the proximate cause of any injury suffered by Joseph Farrar and did not award any damages. The district court entered judgment based on the jury's verdict.¹⁶

Plaintiffs appealed, claiming the district court erred in denying nominal damages. The Fifth Circuit Court of Appeals affirmed as to the conspirators, but reversed as to Defendant Hobby.¹⁷ Relying on *Carey v.*

8. 113 S. Ct. at 570.

9. *Farrar v. Cain*, 941 F.2d 1311, 1312 (5th Cir. 1991).

10. 113 S. Ct. at 570.

11. 42 U.S.C. § 1983 (1988) (civil action for deprivation of rights). This section provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State . . . subjects or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . ." *Id.*

12. 42 U.S.C. § 1985(3) (1988). This section provides in relevant part: "If two or more persons . . . conspire . . . for the purpose of depriving . . . any person . . . of the equal protection of the laws, or of equal privileges and immunities under the laws . . . the party so injured or deprived may have an action for the recovery of damages occasioned by such injury . . ." *Id.*

13. 113 S. Ct. at 570.

14. *Id.* Dale Farrar also remained as plaintiff in an individual capacity. *Id.* at 571 n.1.

15. *Id.* at 570 (citing App. to Brief in Opposition A-3).

16. *Id.*

17. *Farrar v. Cain*, 756 F.2d 1148 (5th Cir. 1985).

Piphus,¹⁸ the court held that “[e]ven when a violation of a civil right causes no actual injury . . . [a] plaintiff is entitled to recover nominal damages.”¹⁹ The jury found that Hobby had deprived Joseph Farrar of a civil right but made no such finding as to the conspirators.²⁰

On remand, the district court entered a judgment against Hobby for one dollar. Plaintiffs then applied for attorney fees pursuant to 42 U.S.C. § 1988.²¹ The district court awarded attorney fees in an amount of \$280,000 in fees, \$27,932 in expenses, and \$9,730 in interest to all plaintiffs against Hobby.²²

Hobby appealed the award of attorney fees. The Fifth Circuit Court of Appeals reversed, holding that a recovery of only nominal damages is a technical victory and therefore plaintiffs are not prevailing parties as required by section 1988.²³ The Supreme Court granted certiorari to Dale Farrar and Pat Smith as executors of Joseph Farrar’s estate.²⁴

III. THE COURT’S DECISION

In affirming the Fifth Circuit’s denial of attorney fees, the Court first set out the test for determining whether a plaintiff is a prevailing party under 42 U.S.C. § 1988.²⁵ To be a prevailing plaintiff, a party must have obtained some relief on the merits, and the relief must modify the behavior of the defendant in a way that benefits the plaintiff.²⁶ The Court then concluded that a party who is awarded nominal damages is such a prevailing party.²⁷ The magnitude of relief obtained is not considered when determining prevailing party status.²⁸ Finally, the Court addressed the second requirement of section 1988, that the attorney fees be reasonable.²⁹ The majority held that the most critical factor when determining reasonableness is the degree of success the plaintiff had on the merits.³⁰ In this case plaintiff was seeking \$17 million in compensatory damages and received only \$1 in nominal damages. The majority felt that in this

18. 435 U.S. 247 (1978).

19. 756 F.2d at 1152.

20. *Id.*

21. 113 S. Ct. at 570.

22. *Id.*; 42 U.S.C. § 1988 (1988). *See supra* note 2.

23. *Estate of Farrar v. Cain*, 941 F.2d 1311, 1315 (1991).

24. 112 S. Ct. 1159 (1992). Dale Farrar as an individual plaintiff did not appeal the Fifth Circuit’s denial of attorney fees. 113 S. Ct. at 571 n.1.

25. 42 U.S.C. § 1988. *See supra* note 2.

26. 113 S. Ct. at 573.

27. *Id.*

28. *Id.* at 574.

29. *Id.*

30. *Id.*

case the only reasonable fee was no fee at all.³¹ In so finding the Court affirmed the Fifth Circuit Court of Appeals' denial of attorney fees, but for a different reason.

A. *Prevailing Party Test*

Title 42 U.S.C. § 1988(b)³² authorizes a court to award reasonable attorney fees to a prevailing party. The threshold requirement is that the party be "prevailing." In *Farrar* the Court formulated the test for determining whether a plaintiff is a prevailing party by synthesizing the holdings of four recent Supreme Court cases.

The first case to interpret the "prevailing party" language of section 1988 was *Hensley v. Eckerhart*.³³ In *Hensley* the Court announced a very liberal test for determining if a plaintiff is a prevailing party. "[P]laintiffs may be considered "prevailing parties" . . . if they succeed on any significant issue . . . which achieves some of the benefit sought . . ." ³⁴ As Justice Thomas noted in *Farrar*, this was a generous formulation of the term "prevailing party."³⁵

In *Hewitt v. Helms*,³⁶ the Court expanded the test to require that a "plaintiff receive at least some relief on the merits of his claim"³⁷ to be a prevailing party. Plaintiff, Helms, was denied relief on the merits when the district court granted summary judgment for defendants based on qualified immunity. The Third Circuit Court of Appeals had previously determined that Helms' constitutional rights had been violated and instructed the district court to enter summary judgment for Helms unless defendants could establish a defense of immunity.³⁸ The Supreme Court found that the most Helms achieved was an interlocutory ruling in his favor.³⁹ "That is not the stuff of which legal victories are made."⁴⁰ The Court distinguished the circuit court's interlocutory ruling by noting that "redress is sought through the courts, but from the defendant."⁴¹ A judicial pronouncement will be a resolution to the case when it "affects the

31. *Id.* at 575; *Id.* at 579 (O'Connor, J., concurring).

32. 42 U.S.C. § 1988 (1988). *See supra* note 2.

33. 461 U.S. 424 (1983).

34. *Id.* at 433 (quoting *Nadeau v. Helgemoe*, 581 F.2d 275, 278-79 (1st Cir. 1978)).

35. 113 S. Ct. at 572.

36. 482 U.S. 755 (1987).

37. *Id.* at 760.

38. *Id.* at 758.

39. *Id.* at 760.

40. *Id.*

41. *Id.* at 761.

behavior of the defendant towards the plaintiff."⁴² In *Helms* the defendants' behavior was not altered due to defendants' qualified immunity.

In *Rhodes v. Stewart*,⁴³ the Supreme Court made it clear that a plaintiff will be a prevailing party only when the behavior of the defendant is altered for the benefit of the plaintiff.⁴⁴ The district court had issued a declaratory judgment that stated that prison officials had violated plaintiffs constitutional rights by refusing permission for plaintiffs to subscribe to a magazine. However, when the district court issued its order, one plaintiff had died and the other had been released from prison.⁴⁵ Thus, the Supreme Court concluded that although plaintiffs obtained a judgment, they were not prevailing parties with regard to section 1988 (and therefore were not entitled to attorney fees) because plaintiffs did not benefit from the judgment.⁴⁶

The final case addressed by the Court in *Farrar* was *Texas State Teachers Ass'n v. Garland Independent School District*.⁴⁷ In *Garland* the Court reemphasized that a "plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant."⁴⁸ Plaintiffs obtained a judgment vindicating their First Amendment rights that materially altered defendant school district's policy of limiting communication between teachers about union activities.⁴⁹ The Supreme Court held that although the teachers did not prevail on all claims, they did prevail on a significant issue and were prevailing parties under section 1988.⁵⁰

Taking these cases together, the Court formulated the test for meeting the prevailing party requirement of section 1988. "[A] plaintiff 'prevails' when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff."⁵¹

B. *Whether an Award of Nominal Damages Meets this Test*

In analyzing whether a party who is awarded nominal damages meets the prevailing party test, the Court first discussed the purpose behind

42. *Id.*

43. 488 U.S. 1 (1988).

44. *Id.* at 4.

45. *Id.* at 2-3.

46. *Id.* at 4.

47. 489 U.S. 782 (1989).

48. *Id.* at 792.

49. *Id.* at 793.

50. *Id.*

51. 113 S. Ct. at 573.

both section 1983 claims in general and nominal damages in particular.⁵² “[T]he basic purpose of a [section] 1983 damages award should be to compensate persons for injuries caused by the deprivation of constitutional rights.”⁵³ Although compensatory damages require a showing of actual injury suffered, in *Carey v. Phipps*, the Supreme Court⁵⁴ recognized the importance of observing constitutional rights in an organized society. “[T]he denial of due process should be actionable for nominal damages without proof of injury.”⁵⁵

Having recognized that nominal damages represent relief on the merits of a section 1983 claim, the Court in *Farrar* held that a plaintiff who is awarded nominal damages is a prevailing party under section 1988.⁵⁶ The award of nominal damages alters the behavior of the defendant for the benefit of the plaintiff. “A plaintiff may demand payment for nominal damages no less than he may demand . . . compensatory damages.”⁵⁷ In other words, defendant is required to pay an amount he otherwise would not have paid.⁵⁸

The Court made clear that an award of nominal damages is not a technical or insignificant victory that is undeserving of prevailing party status.⁵⁹ The Court removed any doubt created by dicta in *Garland* by holding that the magnitude of relief obtained is not a factor when considering prevailing party status.⁶⁰

52. *Id.*

53. *Id.* (citing 435 U.S. at 254).

54. 435 U.S. 247 (1978).

55. 113 S. Ct. at 573 (citing 435 U.S. at 266).

56. *Id.* at 574.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* In *Garland* the Court contended a victory may be so insignificant “as to be insufficient to support prevailing party status.” 489 U.S. at 792. In that case, the district court found that a school policy requiring permission of the principal prior to using school premises during nonschool hours was unconstitutionally vague. However, the issue was of minor significance because there was no evidence that permission to use the school premises was ever denied. The Supreme Court stated that had this been plaintiffs only success, plaintiffs would not be prevailing parties under Section 1988. *Id.* “Where the plaintiffs success on a legal claim can be characterized as purely technical or de minimis, a district court would be justified in concluding that even the ‘generous formulation’ we adopt today has not been satisfied.” *Id.*

In *Farrar* the Court noted that under the prevailing party test, plaintiffs in the above example would not meet the requirement that defendants behavior be altered for plaintiffs benefit because permission had never been denied. 113 S. Ct. at 574.

C. Reasonable Fee Requirement

After a plaintiff has met the threshold requirement of being a prevailing party, a court must use its discretion in determining a reasonable attorney fee.⁶¹ When a plaintiff prevails on a limited or partial basis, calculation of reasonable fees by multiplying all hours worked by a reasonable rate may be an excessive amount.⁶² The most critical factor to be considered is the degree of success a plaintiff obtained.⁶³ A district court is required to first compare the relief sought with the relief granted when recovery of private damages is the purpose of the civil rights litigation.⁶⁴ After considering this relationship, a court may award low or no attorney fees without considering the other factors⁶⁵ set forth in *Johnson v. Georgia Highway Express, Inc.*⁶⁶

In *Farrar* the Court noted that a plaintiff who seeks compensatory damages and receives only nominal damages should likely receive no attorney fees under section 1988.⁶⁷ The very reason for awarding nominal damages is that the plaintiff has failed to prove an essential part of his claim, actual injury.⁶⁸ Although the court of appeals erred in finding that plaintiffs were not prevailing parties, the Supreme Court affirmed the judgment because the only reasonable fee was no fee at all.⁶⁹

IV. ANALYSIS

Congress enacted the Civil Rights Attorney's Fees Awards Act of 1976⁷⁰ in response to the Supreme Court affirming the rule that each party to a lawsuit bear their own attorney fees, absent a statutory provision otherwise.⁷¹ Section 1988 sets forth two requirements: first, the party seeking attorney fees must prevail; and second, that the attorney fees be reasonable.⁷² In *Farrar* the Court was effective in setting forth a concise test for determining whether a plaintiff was a prevailing party. However the ma-

61. See 42 U.S.C. § 1988 (1988).

62. 113 S. Ct. at 574.

63. *Id.*

64. *Id.* at 575.

65. *Id.*

66. 488 F.2d 714 (5th Cir. 1974). Congress referred to the factors set out in *Johnson* when attempting to define reasonable fees under Section 1988. 461 U.S. at 429-30. For a listing of the twelve factors, see 461 U.S. at 430 n.3 (citing 488 F.2d at 717-19).

67. 113 S. Ct. at 575.

68. *Id.*

69. *Id.*

70. 42 U.S.C. § 1988 (1988).

71. 461 U.S. at 429.

72. 42 U.S.C. § 1988. See *supra* note 2.

majority opinion gave very little guidance in how to determine reasonable fees.

Clarification of the prevailing party test was necessary following the Court's decision in *Garland*.⁷³ In *Garland* the Court suggested that a victory on the merits may be technical and "so insignificant . . . as to be insufficient to support prevailing party status."⁷⁴ Relying on *Garland*, the Fifth Circuit Court of Appeals found that plaintiffs' award of nominal damages only was de minimis in nature and would not support prevailing party status.⁷⁵ In reaching this conclusion, the circuit court compared the relief obtained with the relief sought.⁷⁶

In *Farrar* the Court cleared up any confusion by holding that "the prevailing party inquiry does not turn on the magnitude of the relief obtained."⁷⁷ The Court pointed out that the example used in *Garland* to illustrate a technical victory would not meet the test, announced in *Farrar*, for prevailing party status.⁷⁸

The technical or de minimis nature of a nominal damages award is a factor when determining the reasonableness of attorney fees.⁷⁹ While the majority is quick to point out that in this case the only reasonable fee is no fee at all, the opinion leaves little guidance for determining if or when an award of nominal damages would ever entitle a plaintiff to attorney fees. "When a plaintiff recovers only nominal damages because of his failure to prove an essential element of his claim for monetary relief . . . the only reasonable fee is usually no fee at all."⁸⁰ The opinion does not state under what circumstances attorney fees might be appropriate.

The main factor considered by the Court was the relationship of the relief sought and the relief obtained.⁸¹ This comparison provides little guidance because when nominal damages are awarded there will inevitably be a large discrepancy. Another factor considered was whether the litigation accomplished anything other than providing plaintiffs with "the moral satisfaction of knowing . . . [their] rights had been violated."⁸² Although the Court did not elaborate on this, an award of nominal damages coupled with some public goal might entitle a plaintiff to attorney fees under section 1988.

73. See *supra* note 60.

74. 489 U.S. at 792.

75. *Farrar*, 941 F.2d at 1315-17.

76. *Id.* at 1315.

77. 113 S. Ct. at 574.

78. *Id.* See *supra* note 60.

79. 113 S. Ct. at 574.

80. *Id.*, at 575.

81. *Id.* at 574.

82. *Id.* (quoting 482 U.S. at 762).

In a concurring opinion, Justice O'Connor noted that it was still appropriate for a district court to determine if a plaintiff's success is technical or de minimis.⁸³ Whether the attorney fees are denied because plaintiff was not a prevailing party, or because an award of attorney fees would be unreasonable, the result is the same.⁸⁴ Although most of her opinion is used to justify the distinction of a technical victory,⁸⁵ Justice O'Connor noted certain factors a district court should consider when determining if nominal damages justify reasonable attorney fees.⁸⁶

One factor is the significance of the legal issue plaintiff prevailed on.⁸⁷ Although in *Farrar* plaintiffs succeeded on the issue of liability, it was only with regard to one defendant. Another factor to consider is whether the plaintiff achieved some public purpose with the lawsuit.⁸⁸ Under the private attorney general theory, section 1988 makes attorney fees available to ensure the vindication of important rights, particularly when there is not a large sum of money involved.⁸⁹ In *Farrar* plaintiff did not achieve some public goal, rather it was a suit to recover personal damages.

Justice White wrote an opinion in which he concurred in part and dissented in part.⁹⁰ He concurred with the Court's prevailing party test and with the determination that a party who is awarded nominal damages is a prevailing party.⁹¹ However, because the court of appeals did not address the issue of a reasonable fee, White would withhold making such a determination.⁹² While he conceded that the district court may have abused its discretion in awarding all of the fees but without the views of the court of appeals or plaintiffs, he thought it inappropriate for the Court to determine what reasonable fees would be in this case.⁹³

V. CONCLUSION

The value of the Court's decision in *Farrar* will depend on whether a party is a civil rights plaintiff or defendant. For plaintiffs, the decision provides a clear cut test for determining prevailing party status. A plaintiff who achieves a judgment on the merits which alters the behavior of

83. *Id.* at 575-76 (O'Connor, J., concurring).

84. *Id.* at 576.

85. Perhaps one reason Justice O'Connor spends so much time justifying such a distinction is because she authored the opinion in *Garland*.

86. 113 S. Ct. at 578-79 (O'Connor, J., concurring).

87. *Id.* at 578.

88. *Id.*

89. *Id.*

90. *Id.* at 579-80 (White, J., concurring in part, dissenting in part).

91. *Id.* at 579.

92. *Id.*

93. *Id.*

the defendant in any way for the benefit of the plaintiff will use *Farrar* to establish prevailing party status as required by section 1988 for attorney fees.

A defendant who has been prevailed against, but only to the extent of nominal damages will use *Farrar* to show that the only reasonable fee is no fee at all. While this decision should end debates about when a plaintiff is a prevailing party, it will more likely stir new debates on what a plaintiff must achieve to obtain reasonable attorney fees.

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