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Want To Recover Your Fees For Meritless Civil Rights Litigation? The Supreme Court Explains How

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The U.S. Supreme Court ruled earlier this week that in civil rights cases where the plaintiff brings both frivolous and nonfrivolous claims, the defendant can recover those attorneys' fees it would not have incurred but for the frivolous claims.

In *Fox v. Vice*, the high court unanimously held that Section 1988 of the Civil Rights Attorney's Fees Awards Act of 1976 allows a defendant to recover reasonable attorneys' fees incurred because of a frivolous claim. While this ruling does not lighten the burden on successful defendants to show that such claims are "frivolous, unreasonable, or without foundation" in order to recoup their fees, it does open the way for defendants to recover at least some of their fees even where the plaintiff's suit also involved non-frivolous claims. Previously, the Sixth Circuit Court of Appeals had held that defendants could only recover their attorneys' fees where all of the plaintiff's claims were found meritless. By contrast, the Fifth Circuit Court of Appeals had ruled that defendants could recover all of their attorneys' fees even where only one of the plaintiff's claims lacked foundation.

In this case, the plaintiff, Fox, was a candidate for the position of police chief. He alleged that the incumbent, Vice, engaged in dirty tricks intended to drive him out of the race. After Fox was elected police chief and Vice was convicted of extortion in state court, Fox sued Vice and the town of Vinton in a Louisiana state court, alleging extortion, defamation, and intentional infliction of emotional distress, as well as violation of his federal constitutional rights. After Fox voluntarily dismissed his federal constitutional claim and the other claims were directed to state court, the federal court granted the defendants over \$54,000 in attorneys' fees and costs under Section 1988, reasoning they were entitled to recover for defending against Fox's "frivolous" federal claim. The district court did not separate out the amounts the defendants spent on the nonfrivolous state law claims but rather granted the defendants all their fees.

In a 2-1 decision, the Fifth Circuit affirmed that Fox's federal claim was "frivolous" and that the defendants could recover all their attorneys' fees from Fox "without segregating fees for the supposedly frivolous and non-frivolous claims." The Supreme Court rejected this more lax standard, as well as the more stringent Sixth Circuit position. Instead, it ruled that Section 1988 allows a defendant to recover reasonable attorneys' fees "incurred because of, but only because of, frivolous claims."

This new standard will allow compensation for attorneys' work relating to both frivolous and nonfrivolous claims in some instances, such as when only the frivolous allegation exposes the defendant to damages, or when the frivolous claim forces the case into a different judicial forum, or if the defendant can prove the frivolous claim forced him to hire more expensive counsel.

For additional insight into how this case can best be leveraged in current or threatened civil rights litigation, please contact your Baker Donelson attorney or any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.