UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: MID-DELTA HEALTH SYSTEMS, INC., MID-DELTA HOME HEALTH OF CHARLESTON, INC., MID-DELTA HOME HEALTH, INC., MEDICAL SERVICES, INC. — CASE NO. 98-25616

DELILAH HOLLIS — PLAINTIFF

VERSUS — ADV. PROC. NO. 01-1016

MID-DELTA HOME HEALTH, INC., AND CLARA T. REED — DEFENDANTS

OPINION

On consideration before the court is a motion for attorney's fees and expenses filed on behalf of the plaintiff, Delilah Hollis; a response thereto having been filed by Mid-Delta Home Health, Inc., and Clara T. Reed, individually, (both referred to collectively herein as "Mid-Delta"); and the court, having considered same, hereby finds as follows, to-wit:

I.

The court has jurisdiction of the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A) and (O).

II.

In this proceeding, the plaintiff, a former employee of Mid-Delta, as a part of her complaint, sought to recover unpaid overtime wages pursuant to the Fair Labor Standards Act (FLSA). After a two day trial, the court found that the plaintiff was an hourly employee, eligible for overtime compensation, for seventeen pay periods. As a consequence, the parties agreed that

the plaintiff was entitled to $2,500.00 in overtime wages. In a subsequent agreed order, an additional sum of $2,500.00 was awarded as interest. The court also concluded that liquidated damages and punitive damages were not warranted because Mid-Delta demonstrated that it possessed a good faith belief that it was acting in compliance with the FLSA in compensating the plaintiff as a salaried employee. As such, the sole issue now remaining before the court is whether attorney's fees and expenses should be awarded to the plaintiff.

III.

Mid-Delta does not deny that the plaintiff is entitled to reasonable attorney's fees and expenses. The FLSA, at 29 U.S.C. §216(b), provides that "[t]he court...shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

In their respective briefs, the parties agreed that the mechanism for determining reasonable attorney's fees is to first derive a "lodestar" amount, which is then modified either upward or downward by applying the "Johnson factors."

The lodestar method applies in cases arising under the FLSA. See, Heidtman v. County of El Paso, 171 F.3d 1038, 1043 (5th Cir. 1999). The lodestar is "calculated by multiplying the number of hours reasonably expended by an appropriate hourly rate in the community for such work." Id. To further refine the process, the Fifth Circuit Court of Appeals has held that the factors mentioned in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), should be applied to either increase or decrease the lodestar amount. See, Singer v. City of Waco, Texas, 324 F.3d 813, 829 (5th Cir. 2003) and Heidtman, 171 F.3d at 1043. Accordingly,

the court must engage in a two step process. First, the lodestar amount must be calculated, and then the Johnson factors must be applied.

IV.

As noted above, calculating the lodestar requires a multiplication of the number of hours "reasonably expended" by an appropriate hourly rate. The rate charged in this case by the plaintiff's attorney is $150.00 per hour. This hourly rate was supported by the affidavits of two attorneys, practicing in the same community, who affirmed that $150.00 per hour is the standard rate. In addition, Mid-Delta has not objected to this requested rate. Accordingly, the court finds that the $150.00 hourly rate requested is a reasonable rate to be applied in this proceeding.

In calculating the number of hours reasonably expended, the plaintiff conceded that 19.8 hours, spent exclusively on the claim of intentional interference with contract, filed against Clara Reed, individually, and 6.3 hours of "unspecified time" should be dropped from the fee request.

The fee application reveals that 37.7 hours, charged for time expended in traveling to hearings, depositions, etc., were billed at the attorney's full hourly rate. It is this court's practice to allow travel time to be compensated at one-half of the standard hourly rate unless the attorney can show that legal services were actually performed en route. Having been presented with no evidence that compensable work was performed during travel, the 37.7 hours of travel time must be reduced by one-half to 18.85 hours.

Because of the foregoing reductions, the original fee request of 293.4 hours shall be adjusted downward by 44.95 hours to a total of 248.45 hours. Multiplying 248.45 hours by the rate of $150.00 per hour yields a lodestar of $37,267.50.

V.

In applying the twelve Johnson factors to the lodestar amount, the court finds that only two of the factors significantly justify an adjustment to the lodestar amount.

Johnson factor Number 1 requires the court to consider the "time and labor required to represent the client." As to this factor, the Johnson opinion states as follows:

> It is appropriate to distinguish between legal work in the strict sense, and investigative, clerical work, compilation of facts and statistics and other work which can often be accomplished by non-lawyers but which a lawyer may do because he has no other help available. Such non-legal work may command a lesser rate. Its dollar value is not enhanced just because a lawyer does it.

Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717 (5th Cir. 1974).

On the time sheet submitted by the plaintiff's attorney, approximately eight entries involve a review of the time and route sheets provided by Mid-Delta through discovery requests. The descriptions for these time entries include "itemizing time and comparing to hourly quotes and computer printouts," as well as, "continued calculations of time as reported in defendant's records." This is the "compilation of facts and statistics" work contemplated in Johnson, which would command a lower hourly rate and, therefore, justify a downward adjustment to the lodestar amount. The court acknowledges that the downward adjustment would be slight considering that the time entries are not being disallowed, but are being allowed simply at a lower rate.

Johnson factor Number 8 requires the court to consider the nature of the cause of action and the results obtained. As stated earlier, the court found that the plaintiff was a non-exempt employee for seventeen pay periods during the course of her employment and awarded her the sum of $2,500.00 plus interest in an equal amount. The plaintiff was employed with Mid-Delta

from April 12, 1999 to September 23, 2000, which is a period of only seventeen months, or approximately thirty-four pay periods. Accordingly, the recovery of overtime wages attributable to seventeen pay periods represents a partial successful result for the plaintiff. In addition to her demand for punitive damages, the plaintiff also sought damages in the amount of $100,000.00 for mental and emotional suffering allegedly caused by Mid-Delta's unilateral reduction of her rate of pay. However, she was unsuccessful in these phases of her cause of action and, therefore, is not entitled the receive compensation for services which did not contribute to the FLSA recovery.

The weight to be given the degree of success obtained in the underlying action, when considering attorney's fees, was addressed by the Fifth Circuit Court of Appeals in Singer v. City of Waco, Texas, 324 F.3d 813 (5th Cir. 2003), as follows:

> The City essentially contends that the district court should have reduced the lodestar because the fire fighters received a much lower damage award than they sought. As the City apparently recognizes, we have stated that "[t]he most critical factor in determining a fee award is the 'degree of success obtained.'" Romaguera v. Gegenheimer, 162 F.3d 893, 896 (5th Cir. 1998) (quoting Hensley v. Eckerhart, 461 U.S. 424, 436, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)). In this case, because the fire fighters sought $5 million in damages, and collected only $180,000, their monetary success was limited. However, this fact did not require the district court to reduce the lodestar. We have made clear that "while a low damages award is one factor which a district court may consider in setting the amount of attorney's fees, this factor alone should not lead the district court to reduce a fee award." Hollowell v. Orleans Reg'l Hosp. LLC, 217 F.3d 379, 392 (5th Cir. 2000); see Spegon v. Catholic Bishop of Chicago, 175 F.3d 544, 558 (7th Cir. 1999) (observing, in a lawsuit initiated under the FLSA, that "an attorney's failure to obtain every dollar sought on behalf of his client does not automatically mean that the modified lodestar amount should be reduced").

Id. at 829-830.

As stated in the above quote, while the degree of success obtained is "the most critical factor" in determining a fee award, it alone should not lead the court to reduce a fee award.

The plaintiff contends that the degree of success should not be emphasized in a case where an obvious violation of the FLSA has occurred. She asserts that allowing the fees in full serves as a deterrent against future violations by the defendant. In response, the defendant states that the plaintiff was merely asserting a private claim, and that since the cause of action did not seek to right a "public wrong," the degree of success, or lack thereof, must be considered. The defendant cites the following language from the United States Supreme Court: "Where the recovery of private damages is the purpose of...civil rights litigation, a district court, in fixing fees is obligated to give primary consideration to the amount of damages awarded as compared to the amount sought." Farrar v. Hobby, 506 U.S. 103, 114, 113 S.Ct. 566, 112 L.Ed.2d 494 (1992) (quoting Rivera, 477 U.S. at 585, 106 S.Ct. 2686).

In reviewing the complaint, the court observes that it was filed on behalf of Delilah Hollis, individually, "and on behalf of all other similarly situated." However, the evidence presented and the amount awarded were limited exclusively to the individual plaintiff. Even if this cause of action were brought on behalf of multiple employees and could somehow be considered an attempt to correct a "public wrong," the court must be guided by its refusal to award liquidated damages and punitive damages to the plaintiff. This, of course, was premised on the finding that Mid-Delta was acting in good faith when it treated the plaintiff as if she were a salaried employee. As such, the court is compelled to consider the plaintiff's degree of success as a substantial factor in this particular proceeding.

VI.

Based on the foregoing analysis, the court finds that the lodestar amount of $37,267.50 should be reduced accordingly. The downward adjustment is based on the following reasons:

1) the limited degree of success, 2) the lack of necessity to deter Mid-Delta from future violations of the FLSA, 3) the billing for factual and statistical compilations at the attorney's full hourly rate, and 4) because numerous hours were obviously expended by the plaintiff's attorney for services not directly attributable to the FLSA cause of action recovery, i.e., the time spent on the unsuccessful tort claim seeking damages for mental and emotional suffering, as well as, the time spent on the claims for liquidated and punitive damages. The sum of $15,267.50 represents a fair and reasonable attorney's fee in this matter. The expenses claimed in the sum of $2,504.89 were not challenged by the plaintiff and will be allowed in full.

An order will be entered contemporaneously with this opinion.

This the 29th day of March, 2004.

/s/
DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE