

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

CAROLYN MITCHELL,	)	
	)	
Plaintiff,	)	3:05-cv-273 JWS
	)	
vs.	)	ORDER AND OPINION
	)	
ANCHORAGE POLICE DEPARTMENT,	)	[Re: Motions at dockets
<i>et al.</i> ,	)	149, 150, and 153]
	)	
Defendants.	)	
_____	)	

**I. MOTIONS PRESENTED**

At docket 149, plaintiff Carolyn Mitchell (“Mitchell”) moves for an order declaring her the prevailing party in this litigation for purposes of recovering her costs. At docket 150, defendants move for an award of attorney’s fees. At docket 153, plaintiff moves for an award of attorney’s fees. All motions have been fully briefed. Oral argument would not assist the court.

**II. BACKGROUND**

In her Amended Complaint Mitchell pled state law claims of false arrest, defamation, intentional infliction of emotional distress, and a federal claim pursuant to 42 U.S.C. § 1983 for deprivation of civil rights.<sup>1</sup> Mitchell sought compensatory damages, punitive damages, and attorney’s fees in an amount exceeding \$100,000.<sup>2</sup>

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<sup>1</sup>Doc. 25.

<sup>2</sup>*Id.* at p. 10.

As a result of summary judgment motion practice, the court held that defendants Henikman and Voss had committed the state law tort of false arrest.<sup>3</sup> A determination of Mitchell's damages on that claim was left for trial. Following a four-day trial, the jury returned verdicts in favor of defendants on all claims submitted to them for determination on the merits. On the question of damages for the false arrest, the jury awarded Mitchell nominal damages of \$1.

### **III. DISCUSSION**

#### **A. Motion at Docket 149**

The motion at docket 149 asks the court to rule that Mitchell was the prevailing party for purposes of awarding costs pursuant to Federal Rule of Civil Procedure 54(d). Mitchell did not prevail on her only federal law claim, the § 1983 claim. The jury returned a verdict for defendants on that claim. Mitchell did not prevail on the merits of the two state law claims that were submitted to the jury; defendants did. On the false arrest claim, Mitchell was seeking many thousands of dollars in damages but recovered only nominal damages. In sum, defendants successfully defeated Mitchell's multi-pronged effort to recover compensatory and punitive damages exceeding \$100,000, while Mitchell recovered the sum of \$1. Defendants, not Mitchell, prevailed in this litigation for purposes of the application of Rule 54(d).

#### **B. Motion at Docket 153**

In her motion at docket 153, Mitchell asks for an award of attorney's fees under Alaska law on her state law claims. She offers two theories to support her position. First, she argues that she is the prevailing party for purposes of Alaska Rule of Civil Procedure 82 ("Rule 82"), which would entitle her to recover a portion of her attorney's fees. In the alternative, she argues that she is a public interest litigant entitled to recover her actual attorney's fees in the amount of \$156,237.

An award of attorney's fees under Alaska is generally governed by Rule 82. The Alaska Supreme Court has recently explained:

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<sup>3</sup>Order at docket 76, p. 5.

Civil Rule 82(a) provides that the “prevailing party in a civil case shall be awarded attorney’s fees calculated under this rule.” We have consistently noted that a “party does not have to prevail on all the issues in the case to be a ‘prevailing party [,]’ “but the party must be successful with regard to the main issues in the action” even if it does not prevail “on every subsidiary issue.”<sup>4</sup>

Here, defendants succeeded on two of the three state law claims and limited plaintiff’s damage recovery on the false arrest claim to the nominal amount of \$1. Put another way, while Mitchell sought relief in excess of \$100,000, she recovered \$1. Mitchell’s position that she is the prevailing party under Rule 82 is without merit. Defendants are the prevailing parties under Rule 82.

Mitchell contends that she is a “public interest” litigant under AS 09.60.010(c) and that as a prevailing public interest litigant she is entitled to recover her actual attorney’s fees based on that statute. The statute provides that with certain limitations courts shall award full reasonable attorney’s fees to civil litigants who prevail in asserting a right protected by the United States Constitution or the Constitution of the State of Alaska. Mitchell’s lawsuit included one constitutional claim, the § 1983 claim. She did not prevail on that claim, defendants did. She prevailed only on a state law tort claim for false arrest. Mitchell’s assertion that she is a prevailing party entitled to an award of actual attorney’s fees under AS 09.60.010(c) lacks merit.

### **C. Motion at Docket 150**

Defendants seek to recover attorney’s fees in the amount of \$113,266 pursuant to Rule 82. As the discussion in the preceding section of this order makes clear, defendants are the prevailing parties. The matter to be resolved is how much defendants should be awarded.

Rule 82 is intended to partially compensate a prevailing litigant for the expense incurred to employ counsel. Rule 82(b)(2) provides that when the litigant who prevails recovers no money judgment in a case that goes to trial, the court should award “30 percent of the prevailing party’s reasonable actual attorney’s fees which were actually

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<sup>4</sup>*Kelley v. Matanuska Electric Ass’n, Inc.*, \_\_\_ P.3d \_\_\_\_, 2008 WL 4367550 (Alaska September 24, 2008) (citations omitted).

and necessarily incurred.” The rule also lists a number of factors which may support an award which is either larger or smaller than 30 percent.<sup>5</sup>

Defendants’ claim their actual reasonable attorney’s fees were \$125,852. The claim is in defendant’s papers. In her opposition Mitchell does not contend that this figure is incorrect or that the amount is unreasonable. Given the supporting information provided by defendants, the absence of any contrary assertion by Mitchell, and the fact that Mitchell’s own fees exceeded \$156,000, the court concludes that defendants’ actual reasonable attorney’s fees incurred were \$125,852. Were the 30 percent standard to be applied with no adjustment, defendants would be entitled to recover \$37,755 from Mitchell.

Turning to the list of factors which may support a variance from the 30 percent standard, the court first considers the complexity of the litigation. In the court’s view this case was somewhere near the middle of the range. While more complex than many tort cases and contract disputes, the case at bar was less complex than most medical malpractice, products liability, and construction cases. An adjustment based on the complexity of the case is unwarranted.

The next factor is the length of trial. Trial in this case took four days. No adjustment is warranted based on the duration of the trial.

The court finds no basis for a variance in the attorneys’ hourly rates, number of hours expended, or number of attorneys used. The fact that defendants did not include the value of the time spent at trial by Municipal Attorney Reeves does warrant an upward adjustment, because it demonstrates a significant effort to minimize fees. Mr. Reeves put a lot of time into the trial. His performance at trial was outstanding. An upward adjustment of \$1,500 is appropriate.

Next to be considered is the reasonableness of the claims and defenses. Although the court found for Mitchell on the false arrest claim based on the parties’ summary judgment briefing, after seeing all of the evidence at trial, it became apparent to the court that Mitchell’s position was unreasonable. Mitchell sought to play the role of

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<sup>5</sup>Rule 82(b)(3).

the victim of outrageous official behavior warranting an award of punitive damages, when in fact she was simply a citizen caught up by chance in an effort to protect public safety and apprehend a bank robber. What happened to Mitchell did not warrant a lawsuit attempting to convert the unfortunate consequence that befell her into a picture of pervasive malfeasance by local authorities. An upward adjustment of \$5,000 is warranted for the unreasonableness of Mitchell's claims.

The court will not make a further upward adjustment for vexatious or bad faith conduct. Mitchell herself did not act vexatiously or in bad faith. She had a very frightening experience. She felt wronged. She sought help from her lawyer. Unfortunately, her lawyer did not help her understand that sometimes the price citizens must pay to protect society from dangerous criminals is exposure to frightening situations.

The next factor is the relationship between the amount of work performed and the significance of the matters at stake. Here, the defendants confronted an almost messianic attack by plaintiff's lawyer who was attempting to show that fundamental, carefully crafted, and necessary police procedures must be thrown. He was also asking for a lot of money. Thus, while a great deal of work was performed by defense counsel, the level of work was consistent with the significance of the matters at stake.

Next, the court must determine whether the burden of the fee award might deter others similarly situated to plaintiff from the voluntary use of the courts. The court's assessment is that an award in the size contemplated here will not deter persons with legitimate civil rights claims or state law tort claims from making use of the courts.

The court sees no evidence that the fees incurred by defendants were larger as a result of "considerations apart from the case at bar." No adjustment under this factor is appropriate. Finally, the court sees no other equitable factors that would support altering the award.

Having considered all of the "variance" factors, the court concludes that the fee award should be increased by \$6,500. When that figure is added to the \$37,755 established pursuant to Rule 82(b)(2), the total award becomes \$44,255.

#### **IV. CONCLUSION**

For the reasons above: The motion at docket 149 is **DENIED**; the motion at docket 150 is **GRANTED** such that defendants shall have a net judgment against Carolyn Mitchell in the net amount of \$44,254 (consisting of the attorney's fee award less \$1 in nominal damages); and the motion at docket 153 is **DENIED**.

DATED at Anchorage, Alaska, this 14th day of October 2008.

/s/ JOHN W. SEDWICK  
UNITED STATES DISTRICT JUDGE