

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

BOARD OF MANAGERS OF THE :
DELAWARE CRIMINAL JUSTICE :
INFORMATION SYSTEM, : C.A. No. 01C-01-039 WLW
an agency of the State of Delaware, :
RONALD J. TORGERSON, :
Executive Director of the Board, :
STATE BUREAU OF IDENTIFICATION, :
an agency of the State of Delaware, and :
CAPTAIN DAVID F. DEPUTY, :
Director of the State Bureau of Identification, :
:
Plaintiffs, :
:
v. :
:
GANNETT CO., t/a THE NEWS JOURNAL, :
:
Defendant. :

Oral Argument Heard: March 19, 2004
Issued: April 19, 2004

ORDER

Upon Defendant' s Motion for Attorney' s Fees.
Granted in part; denied in part.

W. Michael Tupman, Esquire, Deputy Attorney General, Department of Justice,
Dover, Delaware, for the State of Delaware.

Richard G. Elliott, Jr., Esquire, and Jennifer C. Jauffret, Esquire, of Richards, Layton
& Finger, Wilmington, Delaware, for the Gannett Co., t/a The News Journal.

WITHAM, J.

Introduction

Gannett Co. (“ News Journal”) has filed a motion to recover attorneys’ fees totaling \$67,674.50 and costs totaling \$5,431.66 pursuant to 29 Del. C. § 10005(d).¹ The State opposes the application in part, alleging that, because the News Journal was not successful on all issues raised on appeal, the full amount of attorneys’ fees and costs should not be awarded. Based on the following, the Court awards the News Journal attorneys’ fees totaling \$31,094.00 and costs totaling \$4,345.33.

Background

This case arises from the News Journal’ s attempt to obtain information from the Delaware Criminal Justice Information System (DELJIS) in order to study the state’ s criminal justice system. On February 1, 2001, DELJIS sought relief from this Court and filed an action for declaratory judgment. After conducting an evidentiary hearing, this Court concluded that the News Journal was not permitted to receive geographic information, non-conviction data and any information relating to the identity of police officers.²

The News Journal appealed this decision to the Supreme Court, which held

¹ It is important to note that Richards, Layton & Finger, the law firm representing the News Journal, has actually billed the News Journal only \$38,867.50 in fees because “ the Firm does not believe that the News Journal should absorb all of the burden of this time-consuming and costly litigation.” Affidavit of Richard G. Elliott, Jr., January 15, 2004, p.3.

² *Board of Managers of the Delaware Criminal Justice Information System v. Gannett Co.*, 808 A.2d 453, 454 (Del. Super. Ct. 2002).

DELJIS v. Gannett Co.
C.A. No. 01C-01-039 WLW
April 19, 2004

that this Court' s decision denying the release of non-conviction data fields and the geographic information fields was outside the jurisdiction of the Court. Thus this Court' s decision with respect to those fields was vacated.³ With respect to the police officer identification information, the Supreme Court reversed the decision of this Court, concluding that the Court had improperly applied the Delaware Freedom of Information Act (FOIA).⁴ The Supreme Court upheld the decision awarding partial attorneys' fees to the News Journal under title 29, section 10005(d) of the Delaware Code.⁵

In this motion, the News Journal is attempting to recover the attorneys' fees and costs associated with their successful appeal before the Supreme Court. The State argues that because the News Journal was not successful on all issues raised in the Supreme Court, the amount requested should be reduced by an appropriate amount.

Discussion

Title 29, section 10005(d) permits the award of attorneys' fees under FOIA⁶ to a successful plaintiff. The award of attorneys' fees and costs is within the

³ *Gannett Co., Inc. v. Board of Managers of the Delaware Criminal Justice Information System*, 840 A.2d 1232, 1234 (Del. 2003).

⁴ *Id.*

⁵ *Id.*

⁶ 29 Del. C. §§ 10001-10005 (2004).

discretion of the trial court.⁷ Because the award is discretionary, the court may take into consideration the circumstances of the case in determining an appropriate award.⁸

Previously this Court concluded that the News Journal is considered a “plaintiff” for purposes of the FOIA statute, because the News Journal asserted a counterclaim against DELJIS. In its appeal to the Supreme Court, the News Journal challenged this Court’s decision with respect to the geographic information, non-conviction data, and police officer identification information fields, as well as this Court’s partial award of attorneys’ fees. DELJIS cross-appealed, challenging the award of attorneys’ fees to the News Journal. The Supreme Court reversed this Court’s decision with respect to the police officer identification fields and vacated the decision with respect to the geographic information and non-conviction data, finding that these issues were not properly before the Court. Finally, the Supreme Court affirmed this Court’s decision with respect to the attorneys’ fees. Therefore, the News Journal was successful on three of the four issues raised before the Supreme Court, and would be considered a successful plaintiff for purposes of awarding attorneys’ fees and costs under FOIA.

This Court agrees with the State’s contention that, because the News Journal was not successful on all issues raised in its appeal, the requested attorneys’ fees

⁷ *Gannett Co., Inc.*, 840 A.2d at 1240.

⁸ *Turner v. City of Newark*, 1998 Del. Ch. LEXIS 89, *4-5.

DELJIS v. Gannett Co.
C.A. No. 01C-01-039 WLW
April 19, 2004

and costs should be reduced. The News Journal has indicated that the attorneys' fee issue raised before the Supreme Court, on which it was not successful, was minor and required little time on the part of the attorneys involved. At oral argument on this motion, Richard Elliott, counsel for the News Journal, opined that he had not spent any time on the attorneys' fee issue, but that one of his associates spent approximately one-third of her time on it. The billing statement does not indicate how much time was spent working on each issue raised in the appeal.

FOIA permits the granting of attorneys' fees and costs so that the high cost of litigation does not discourage potential plaintiffs from filing suit to access information under FOIA.⁹ In its previous decision regarding attorneys' fees in this case, this Court found that the News Journal has a private economic incentive to obtain the information from DELJIS in order to write stories which will increase newspaper sales.¹⁰ In the same decision this Court went on to state, "The incentive structure for Gannett is not the same as that of an individual plaintiff, so Gannett does not need to recover attorney' s fees and costs as an incentive to bring suit."¹¹ The News Journal was billed \$38,867.50 in attorneys' fees for the appeal.¹²

⁹ *Layfield v. Hastings*, 1995 Del. Ch. LEXIS 82, *8.

¹⁰ *Board of Managers of the Delaware Criminal Justice Information System v. Gannett, Co.*, 2003 Del. Super. LEXIS 27, *17.

¹¹ *Id.* at *15.

¹² The term "attorney' s fees" is defined in Black' s Law Dictionary as, "The charge to a client for services performed for the client, such as an hourly fee, a flat fee, or a contingent fee."

DELJIS v. Gannett Co.
C.A. No. 01C-01-039 WLW
April 19, 2004

Richards, Layton & Finger claims that they actually performed legal services on behalf of the News Journal totaling \$67,674.50, but chose to bill the News Journal for a reduced amount. The cost to the News Journal was only the amount of attorneys' fees and costs for which they were billed, not \$67,674.50.

Federal courts have permitted the award of attorney' s fees to a prevailing party when the party was not actually responsible for paying the fees.¹³ However, in these cases the prevailing party was either an individual or a non-profit public-interest group. In addition, in *Rodriguez* the prevailing party was represented by a legal aid attorney. It appears to this Court, because the News Journal is a for profit organization and the attorneys representing the News Journal are not legal aid attorneys, the maximum amount of attorney' s fees the News Journal may recover is \$38,867.50, the amount they were actually responsible for paying.

Conclusion

Based on the information presented, including the arguments of the parties and the copy of the billing statements, this Court in an exercise of its discretion finds that the News Journal is entitled to \$31,094.00 in attorneys' fees and \$4,345.33 in costs. This represents that portion of the costs and fees associated with

Black' s Law Dictionary 50 (Pocket Edition 1996).

¹³ See *Consumers Union of United States, Inc. v. Board of Governors of the Federal Reserve System*, 410 F.Supp. 63 (D.D.C. 1975) and *Rodriguez v. Taylor*, 569 F.2d 1231 (3d Cir. 1977).

DELJIS v. Gannett Co.
C.A. No. 01C-01-039 WLW
April 19, 2004

the issues on which the News Journal was successful in its appeal.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution
File