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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GEORGE CHACHAS,

Plaintiff,

v.

CITY OF ELY, NEVADA, et al.,

Defendants.

3:07-CV-0158-LRH-VPC

ORDER

Presently before the court is defendants' motion for attorney's fees filed April 14, 2009.

Doc. #44¹. Plaintiff George Chachas ("Chachas") filed an opposition on April 29, 2009. Doc. #48.

Thereafter, defendants filed a reply on May 18, 2009. Doc. #53.

I. Facts and Procedural History

On March 30, 2007, Chachas filed a civil rights complaint against the city of Ely and members of the Ely City Council. Doc. #1. Defendants moved for summary judgment. Doc. #30. The court granted defendants' motion and the case was dismissed. Doc. #42. Thereafter, defendants moved for attorney's fees pursuant to 42 U.S.C. § 1988. Doc. #44.

II. Discussion

The court, in its discretion, may award reasonable attorney's fees to a prevailing party in a

¹ Refers to the court's docket entry number.

1 civil rights action. 42 U.S.C. § 1988. However, an award of attorney's fees to a defendant is
2 limited. *Maag v. Wessler*, 993 F.2d 718, 719 (9th Cir. 1993) (citing *Jensen v. Stangel*, 762 F.2d
3 815, 817 (9th Cir. 1985). "A court may grant attorney's fees to a defendant under section 1988 *only*
4 under the limited circumstances where the action is frivolous, unreasonable, or without
5 foundations." *Id.* (emphasis added).

6 An action is frivolous when the plaintiff's arguments are wholly without merit or when the
7 plaintiff "pursues the litigation with an improper purpose, such as to annoy or embarrass the
8 defendant." *Douglas v. Pfingston*, 284 F.3d 999, 1006 (9th Cir. 2002). Here, the court finds that
9 Chachas' complaint was based on an incorrect, but reasonable interpretation of the laws he was
10 challenging, and therefore, his complaint had a sufficient legal foundation. Accordingly, his
11 complaint was not frivolous and defendants are not entitled to attorney's fees.

12
13 IT IS THEREFORE ORDERED that defendants' motion for attorney's fees (Doc. #44) is
14 DENIED.

15 IT IS SO ORDERED.

16 DATED this 21st day of September, 2009.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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