

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

CANDISE SMITH WHEAT,)
)
 Plaintiff,)
)
 v.) Case No. 1:08-cv-01171-JDB-egb
)
 BENTON COUNTY,)
 TENNESSEE, BENTON)
 COUNTY SHERIFF'S)
 DEPARTMENT, TONY KING,)
 and CHRIS ROGERS,)
)
 Defendants.)

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES AND EXPENSES**

Plaintiff has filed a Motion In Support Of Award of Attorneys' Fees and Expenses (D.E. 54) seeking attorneys' fees in the amount of \$60,130.00 and expenses of \$8,017.72 as the prevailing party in her claims under Title VII and the Tennessee Human Rights Act ("THRA"). Defendant has responded, and while agreeing that Plaintiff is entitled to an award of reasonable fees and expenses, opposes the amount Plaintiff requests (D.E. 58). The motion was referred to the Magistrate Judge for determination. For the reasons that follow, the Magistrate Judge awards Plaintiff attorneys' fees in the amount of \$19,614 for Mr. Donahoe and \$10,494 for Ms. White, and expenses in the amount of \$8,017.72.

RELEVANT FACTS

On July 15, 2008, Plaintiff Candise Smith Wheat (“Plaintiff”) filed this lawsuit against Benton County, Tennessee, Benton County Sheriff’s Department, Sheriff Tony King, individually and as Sheriff of Benton County, and Chris Rogers, individually and as Chief Deputy of Benton County Sheriff’s Department (“Defendants”). Plaintiff, a former deputy with the Benton County, Tennessee Sheriff’s Department, sought compensatory damages in an amount not to exceed \$1,000,000.00 and punitive damages not to exceed \$5,000,000.00 in her sexual harassment case brought under Title VII, 42 U.S.C. § 2000 (e), et seq.; 42 U.S.C. §1983; and the Tennessee Human Rights Act (“THRA”), Tenn. Code Ann. § 4-21-101 et seq.; as well as common law claims for negligent supervision/retention and outrageous conduct.

The factual history of this case is summarized in Judge Breen’s Order Granting In Part and Denying In Part Defendants’ Motion for Summary Judgment (Doc. 13), and need not be repeated in this Order. The case was tried before a jury on December 28, 29 and 30, 2009. The jury found the Defendant Benton County, Tennessee liable to the Plaintiff for the remaining claims, a hostile work environment in violation of Title VII of the Civil Rights Act of 1964 and/or the Tennessee Human Rights Act and awarded her \$2,500.00 in compensatory damages (Doc. 52).

ANALYSIS OF ATTORNEYS FEES AND EXPENSES

Plaintiff asserts she is the prevailing party and entitled to attorneys’ fees and expenses pursuant to Title VII, 42 U. S. C. §2000 (e) and the Tennessee Human Rights Act, Tenn Code Ann. § 4-21-306 (7). The Defendant concedes Plaintiff is entitled to an award of reasonable fees and expenses. (Doc. 58). A court may award a reasonable

attorneys' fee to the prevailing party in a Title VII action. FN1 42 U.S.C. § 2000e-5(k). A "prevailing party" is a party that succeeds on any significant issue in litigation and attains some of the benefit sought in bringing suit. *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). The amount of attorneys' fees compensable under § 2000e-5(k) is determined by the "lodestar" method, in which fees are "calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate." *Blanchard v. Bergeron*, 489 U.S. 87, 94, 109 S.Ct. 939, 103 L.Ed.2d 67 (1989) (quoting *Blum v. Stenson*, 465 U.S. 886, 888, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984)). The court may then adjust this lodestar calculation in light of other factors. *Blanchard*, 489 U.S. at 94.

The party seeking attorney's fees has the burden of proof on the numbers of hours expended and the hourly rates claimed. *Hensley*, 461 U.S. at 433. The district court has discretion in determining the amount of the fee award. *Id.* at 437. One important factor the court must consider in determining whether a fee award is reasonable, or whether the award should be adjusted upward or downward, is the result obtained in the litigation. *Id.* at 434. Other factors courts have considered include: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship

with the client; and (12) awards in similar cases. *Hensley*, 461 U.S. at 430 n. 3 (*citing Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir.1974)).

Lodestar Adjustment

Defendant objects to the amount of attorneys' fees sought by Plaintiff based upon the degree of the success achieved by Plaintiff, considering the number of claims won and the amount of the money judgment awarded. Defendant asserts that Plaintiff unsuccessfully pursued claims of constructive discharge, retaliation and disparate treatment, as well as failed in her claims against Defendants Sheriff Tony King and Chief Deputy Chris Rogers individually. While there were some common facts among the Plaintiff's various claims, the District Court clearly distinguished these claims in the thorough analysis made in dismissing on summary judgment all but the hostile work environment and THRA claims. Plaintiff sought compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00. Even with the customary pleading of a higher than expected dollar demand in the ad damnum clause, the jury's compensatory judgment of only \$2,500.00 would not be considered a success.

Defendant further objects to the number of hours expended and the billing rates of Plaintiff's attorneys. Defendant states the Court should not permit recovery of fees and expenses associated with: (1) Plaintiff's claims which the Court dismissed upon Defendants' Motion for Summary Judgment and (2) the time Defendant's attorney enumerates as excessive or duplicative in research, preparation, discovery and trial.

When awarding attorneys fees to a prevailing party who did not succeed on every claim “a district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success.” *Hensley*, 461 U.S. at 434, cited in *Wooldridge v. Marlene Indus. Corp.*, 898 F.2d 1169, 1175 (6th Cir.1990). “The most critical factor in determining the reasonableness of a fee award is the degree of success obtained.” *Farrar v. Hobby*, 506 U.S. 103, 111, 113 S.Ct. 566, 121 L.Ed.2d 494 (quoting *Hensley*, 461 U.S. at 436)).

In *Kadri v. Johnson*, the defendant argued that the lodestar amount should be adjusted to reflect the plaintiff's “very limited success.” *Kadri*, 2005 WL 3454330 (W.D. Tenn.). In that case, the defendant argued that while the plaintiff alleged and sought to prove emotional and physical damages, the jury awarded no damages for pain and suffering and only awarded \$8,000.00 for medical expenses. The court noted that “[t]here is a ‘strong presumption that the lodestar represents the reasonable fee.’” *Id.* at *7 quoting *City of Burlington v. Dague*, 505 U.S. 557, 562, 112 S.Ct. 2638, 120 L.Ed.2d 449 (1992). However, the *Kadri* court explained that when a plaintiff achieves only limited success “the lodestar calculation may reflect an excessive award, ‘even where the plaintiff's claims were interrelated, nonfrivolous, and raised in good faith.’” *Id.* quoting *Hensley*, 461 U.S. at 436. Because the plaintiff's success could only be described as “limited” the *Kadri* court reduced the lodestar amount by 25%. See also *Allen v. Allied Plaintiff Maintenance Co.*, 881 F.2d 291, 299 (6th Cir.1989)(affirming lower court's reduction of lodestar amount by 35% to account for plaintiff's limited success where original complaint included ten defendants, five causes of action, and a request for punitive

damages, but plaintiff ultimately recovered against only two defendants and one cause of action and was not awarded punitive damages); *Marshal & Swift v. BS & A Software*, 871 F.Supp. 952, 964-65 (W.D.Mich.1994) (reducing overall fee award by one third to account for limited success where plaintiff recovered “only approximately one-tenth of the damages” requested).

In the present case, the Court finds that some adjustments are necessary to the lodestar calculation of hours worked and billed by Plaintiff’s attorneys. Their hourly rate of \$325 per hour appears to be in excess of the usual or prevailing rates in the broader legal community of the Jackson, Tennessee area. However, the Court appreciates the affidavit of Plaintiff’s counsel Mark Donahoe and other area employment law attorneys informing the Court, seemingly of their more difficult and sophisticated field of practice (and the resulting higher hourly rates), as opposed to the general, day to day practice of law. Of course, the increased sophistication and experience (which commands a higher billable rate) should necessarily equate with fewer hours spent on research and drafting than a generalist. The Court agrees with Defendant’s evaluation of the hours billed as being somewhat excessive for work done in the matters of the preparation of the Complaint, written discovery, depositions, and the Summary Judgment. Further, the Court finds some unnecessary duplication of Plaintiff’s two attorneys at various times during proceedings.

The Court finds that Plaintiff’s Attorneys are entitled to be reimbursed at their reasonable hourly rates claimed for employment law cases, Mr. Donahoe at \$325 and Ms. White at \$200. However, the Court, in line with Defendant’s analysis of excessive hours

expended, will reduce the number of billed hours which are reasonable herein, from 99.30 hours to 93.40 hours for Attorney Donahoe and reduce from 139.6 hours to 87.45 hours which are reasonable herein for Attorney White. Using the lodestar calculation of reasonable hours multiplied times reasonable hourly rate, the Attorneys' fees for Mr. Donahoe are \$32,690.00 and \$17,490.00 for Ms. White to this point of the lodestar adjustment by the Court.

Plaintiff did prevail on her claims, but only with extremely limited success. Thus, the lodestar amount should be reduced further because the amount of compensatory damages the jury awarded was substantially lower than what Plaintiff sought (less than 1%), there were no punitive damages awarded and Plaintiff recovered judgment on few of the claims she presented and then, against only one Defendant. Accordingly, because of this minimal success, Plaintiff's Attorneys' fee award is reduced by 40% for a total amount of Attorneys' fees of \$19,614 for Mr. Donahoe and \$10,494 for Ms. White, which together is an amount more than 10 times the recovery of the Plaintiff. The Court finds this fee award to be fair and reasonable.

Expenses

Plaintiff requests a total of \$8,017.72 in costs and expenses, and Defendant submits that the Plaintiff should be awarded the appropriate expenses of no more than \$7,546.10. The Court finds the questioned expenditures reasonable and sufficiently detailed. The Court will not deduct these expenses and will approve reimbursement of \$8,017.72 in costs and expenses to the Plaintiff.

CONCLUSION

For all the reasons set forth above, the Court GRANTS Plaintiff's request for attorneys' fees in the amount of \$19,614 to Mr. Donahoe and \$10,494 to Ms. White, and expenses in the amount of \$8,017.72.

So ORDERED this 10th day of February, 2010.

s/Edward G. Bryant
EDWARD G. BRYANT
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.