

357 F.Supp.3d 224
United States District Court, E.D. New York.

Larry THOMPSON, Plaintiff,

v.

Police Officer Pagiel CLARK; Police Officer Paul Montefusco; Police
Officer Gerard Bouwmans; Police Officer Phillip Romano, Defendants.

14-CV-7349

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Signed February 12, 2019

Synopsis

Background: Arrestee brought action against police officers alleging unlawful entry, false arrest, excessive force, malicious prosecution, denial of right to a fair trial, failure to intervene, and denial of medical treatment, arising out of arrestee's refusal to allow officers to enter his apartment without a warrant to investigate a report of child abuse. Arrestee and officers filed motions for summary judgment. The District Court, [2018 WL 3128975](#), denied arrestee's motion and granted officers' motion in part. A trial was held and the District Court entered judgment on jury verdict in favor of officers. Officers sought fees and costs.

The District Court, [Jack B. Weinstein](#), Senior District Judge, held that police officers were not entitled to an award of fees or costs.

Costs and fees denied.

Attorneys and Law Firms

***225** Cary London, New York, NY, [David A. Zelman](#), Brooklyn, NY, for Plaintiff

[Kavin Suresh Thadani](#), [Matthew Bridge](#), New York City Law Department, Blair Ziff-Wasserman, Corporation Counsel of the City of New York, [Lamar DeVaughn Winslow](#), [Philip R. DePaul](#), New York City Law Department, New York, NY, for Defendants

AMENDED ORDER

[JACK B. WEINSTEIN](#), Senior United States District Judge

At 10 p.m. one evening in Brooklyn, plaintiff, with his wife and new-born baby, were preparing for sleep. He was confronted at his front door by four armed uniformed police officers without a warrant seeking to enter his home. They had been directed to investigate a report of possible child abuse. He blocked their entry and, according to the officers' testimony, pushed one of the officers. They pushed him to the floor, handcuffed him, and, according to his testimony, beat him. The child was fine—the report of abuse came from a distraught relative.

The jury faced a question repeatedly posed in today's society: what should the “good citizen,” and the “good police officer,” do in such a situation?

The jury found in favor of the defendants. Fee and cost assessments are now before the court.

“The fact that a plaintiff may ultimately lose his case is not in itself a sufficient justification for the assessment of fees.” *Hughes v. Rowe*, 449 U.S. 5, 14, 101 S.Ct. 173, 66 L.Ed.2d 163 (1980). The court has a wide discretion. The plaintiff's claims were brought in good faith and they were neither “frivolous, unreasonable, [nor] groundless.” *See id.* at 15, 101 S.Ct. 173 (quoting *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978)); *see also* 42 U.S.C. § 1988 (“In any action or proceeding to enforce a provision of section[] ... 1983 ..., the court, in its discretion, may allow the prevailing party ... a reasonable attorney's fee as part of the costs”). No fees are awarded.

*226 Nor are any costs awarded. “It is well-settled that under Fed.R.Civ.P. 54(d), the awarding of costs is discretionary with the trial judge.” *McDonnell v. Am. Leduc Petroleum, Ltd.*, 456 F.2d 1170, 1188 (2d Cir. 1972). In view of plaintiff's good faith in bringing this action to enforce his constitutional rights, the close, difficult, and protracted nature of the litigation, and plaintiff's reduced financial resources, costs should not be imposed against him. *See Whitfield v. Scully*, 241 F.3d 264, 270 (2d Cir. 2001), abrogated on other grounds by *Bruce v. Samuels*, — U.S. —, 136 S.Ct. 627, 193 L.Ed.2d 496 (2016) (“[C]osts may be denied because of... the public importance of the case, the difficulty of the issues, or the losing party's limited financial resources.”); *Remington Prod., Inc. v. N. Am. Philips, Corp.*, 763 F.Supp. 683, 687 (D. Conn. 1991) (finding that a case being “close, complex[,] and protracted” are valid reasons to deny costs); *Bucalo v. E. Hampton Union Free Sch. Dist.*, 238 F.R.D. 126, 129 (E.D.N.Y. 2006) (finding that courts may consider “factors such as the plaintiff's financial hardship and good faith in bringing the action” when determining whether to assess costs); Trial Tr. 198, Jan. 23, 2019 (“My client [Larry Thompson] works for the USPS and he is not in a position to pay for ... transcripts.”).

Prevailing party costs have been requested pursuant to Federal Rule of Civil Procedure 68. *See* ECF No. 140, Feb. 11, 2019. Defendants argue that they are entitled to such costs because plaintiff had declined their Rule 68 Offer of Judgment for \$ 10,001 plus reasonable attorneys' fees, expenses, and costs. *See id.*; Fed. R. Civ. P. 68(d) (“If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.”). Based on the facts of this case, the defendants' Offer of Judgment is not considered to be a reasonable offer. Had the jury returned a verdict in favor of the plaintiff, it would have far exceeded the amount of the unaccepted offer.

Costs and fees are denied.

SO ORDERED.

All Citations

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