

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT ASHLAND

APRIL MILLER, *et al.*,

Plaintiffs,

v.

KIM DAVIS, *et al.*,

Defendants.

Case No. 0:15-cv-00044-DLB

Electronically filed

**PLAINTIFFS' OBJECTIONS TO MAGISTRATE'S RECOMMENDED DISPOSITION
AND ORDER**

Pursuant to Federal Rule of Civil Procedure 72, Plaintiffs submit their objections to the Magistrate Judge's recommended disposition and order (R&R) filed March 6, 2017. [RE #199.] Respectfully, the Magistrate Judge erred in recommending that the Court deny Plaintiffs' motion for an award of attorneys' fees and costs [RE #183], by misapplying the "contextual and case specific" inquiry set forth in *McQueary v. Conway*, 614 F.3d 591 (6th Cir. 2010). Accordingly, for the reasons detailed below, the Court should decline to adopt that portion of the R&R related to Plaintiffs' fees motion and, instead, grant Plaintiffs' motion in full.¹

¹ Plaintiffs do not object to that portion of the R&R denying Rowan County's Motion to Strike Plaintiffs' Reply, Or Alternatively, Leave to File Sur-Reply. [RE #195.]

ARGUMENT

I. THE MAGISTRATE JUDGE MISAPPLIED *McQUEARY*'S CONTEXTUAL AND CASE-SPECIFIC INQUIRY.

In the R&R, the Magistrate Judge properly cited the relevant legal standards for awarding prevailing party status, including the contextual and case-specific inquiry reserved for claims based on the attainment of a merits-based preliminary injunction that is rendered moot before final judgment. [RE #199: R&R, 4-5 (citing *McQueary v. Conway*, 614 F.3d 591 (6th Cir. 2010)).] However, the Magistrate Judge misapplied the *McQueary* standard by adopting a construction of it that, if accepted, would effectively preclude preliminary injunction winners from attaining prevailing party status — a result considered (and rejected) in *McQueary*.

Specifically, the R&R's analysis focused on the "relief both sought and ultimately obtained by the Plaintiffs" as a measure of Plaintiffs' overall success in the litigation. [RE #199: R&R, 5-6.] In doing so, the Magistrate Judge concluded that because Plaintiffs asked for, but did not obtain, additional relief sought in their Complaint — class certification, declaratory relief, permanent injunctive relief, and damages — they did not sufficiently succeed in the litigation to attain prevailing party status. [*Id.* at 6 ("Clearly, the Court never granted the full and final relief they sought.")] But this application of *McQueary*'s contextual and case-specific standard is flawed in two key respects: It fails to adequately address the central inquiry for prevailing party status, *i.e.*, whether the merits-based preliminary injunction materially altered the parties' legal relationship; and it adopts a construction of the contextual and case-specific inquiry that effectively conflicts with *McQueary*'s rejection of the notion that preliminary injunction winners are never prevailing parties.

First, though citing the relevant standards, the R&R did not address the "touchstone" inquiry for prevailing party status, *i.e.*, whether the merits-based preliminary injunction

materially altered the parties' legal relationship in a way that directly benefitted the plaintiffs. *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792-93 (1989) (internal quotation marks and citation omitted); *Sole v. Wyner*, 551 U.S. 74, 86 (2007) (court-ordered change in legal relationship must be enduring and irrevocable); *Buckhannon Bd. & Care Home Inc. v. West Virginia Dep't of Health & Human Servs.*, 532 U.S. 598, 605 (2001). Here, it is evident that the preliminary injunction did, in fact, materially alter the parties' legal relationship in a way that conferred a direct and irrevocable benefit to Plaintiffs. Not only did the preliminary injunction bar Davis, in her official capacity, from enforcing her "no marriage licenses" policy, it enabled two of the Plaintiff couples to obtain the marriage licenses to which they were legally entitled (but had been denied) and, as a result, to wed.² As Plaintiffs noted in their initial fees motion, the relief they obtained is therefore at least as direct and irrevocable as injunctive relief enabling individuals to engage in a specific protest activity. *See Young v. City of Chicago*, 202 F.3d 1000 (7th Cir. 2000) (preliminary injunction allowing protesters to engage in specific protest activity proper basis for fee award). Moreover, the Plaintiffs successfully moved for the preliminary injunction to bar Davis' enforcement of the "no marriage licenses" policy against *any* couples, not just the named Plaintiffs. Thus, the relief they achieved by virtue of the preliminary injunction benefitted non-parties to the litigation and further contributed to Plaintiffs' overall court-ordered success. *See McQueary*, 614 F.3d at 603 ("When a plaintiff obtains the *greater* victory (striking a statute in all of its applications, *i.e.*, on its face) rather than the more narrow victory (striking a statute as applied only to his communications), he does not become *less* eligible for fees." (alterations and emphasis in original)).

² Plaintiffs Miller and Roberts obtained their marriage license on September 4, 2015 and were married on September 10, 2015. [RE #183-2.] And Plaintiffs Skaggs and Spartman obtained their marriage license on September 4, 2015 and were married on September 9, 2015. [RE #183-3.]

The record also establishes, of course, that Plaintiffs' victory was not the result of Davis' voluntary conduct in abandoning her "no marriage licenses" policy. Rather, Plaintiffs attained the benefit only after: 1) Davis unsuccessfully exhausted her attempts to stay the preliminary injunction ruling, and 2) this Court held Davis in civil contempt for refusing to comply (or allowing her subordinates to comply) with it once after her attempts to secure a stay were unsuccessful. Thus, the preliminary injunction did not merely have a "catalytic effect" in bringing about a change in Kentucky marriage licensing law; it forced Davis' office to abandon enforcement of the "no marriage licenses" policy even though Davis opted to be jailed for civil contempt rather than comply. *See McQueary*, 614 F.3d at 599.

Notwithstanding that the preliminary injunction in this case satisfies all of the relevant legal requirements to support prevailing party status, the Magistrate Judge recommended denying Plaintiffs' fees motion because Plaintiffs sought additional relief in their Complaint that was not awarded in the preliminary injunction or otherwise achieved by way of a final judgment. [RE #199 at 5-6.] But this application of the contextual and case-specific inquiry, if accepted, would conflict with *McQueary's* central holding that merits-based preliminary injunction winners can attain prevailing party status.

Specifically, the Magistrate Judge's recommendation focused largely on the relief Plaintiffs requested (but did not attain) to purportedly support the conclusion that Plaintiffs did not succeed enough to be prevailing parties. [RE #199, 6.] To be sure, *McQueary* counsels that consideration of the relief requested versus the relief obtained may be an appropriate consideration, but it is usually in determining whether a plaintiff has directly benefitted from the preliminary injunction ruling. 614 F.3d at 600 ("In considering whether a claimant directly benefitted from litigation, we usually measure the plaintiff's gain based on the relief requested in

his complaint . . .”). But degree of success is not central to the prevailing party inquiry because plaintiffs need not prevail on every claim to attain prevailing party status. “A plaintiff crosses the threshold to ‘prevailing party’ status by succeeding on a single claim, even if he loses on several others and even if that limited success does not grant him the ‘primary relief’ he sought.” *McQueary*, 614 F.3d at 591 (quoting *Texas State Teachers Ass'n*, 489 U.S. at 790-91). Moreover, a close examination of the “unachieved” relief Plaintiffs requested does not support the Magistrate’s recommendation.

First, the Magistrate Judge pointed to Plaintiffs’ requests for class certification and class-wide injunctive relief as unachieved relief that support the recommended fee denial. [RE #199, at 6.] Though it is technically correct that Plaintiffs did not obtain an order certifying the putative class, they nonetheless requested (and obtained) a ruling that the preliminary injunction barring enforcement of Davis’ “no marriage licenses” apply not just to the named plaintiffs but to *all* qualified marriage license applicants. [RE #78.] Given that Plaintiffs achieved the functional equivalent of class-wide relief *via* the merits based preliminary injunction, the Magistrate Judge’s reliance on Plaintiffs’ “unachieved” class claims must be confined to the fact that the preliminary injunction relative to non-parties did not result in a final judgment. But, as *McQueary* holds, the fact that a merits-based preliminary injunction is rendered moot before final judgment is not a bar to Plaintiffs becoming prevailing parties, nor does the fact that Plaintiffs achieved a greater result render them less likely to be prevailing parties. *McQueary*, 614 F.3d at 603.

The Magistrate Judge also pointed to the fact that Plaintiffs requested, but did not obtain, permanent injunctive relief as well as a declaratory judgment. [RE #199, at 6.] But if that fact were dispositive or even particularly helpful, *McQueary* would have been decided differently.

Every case that is rendered moot before final judgment will necessarily fail to result in either a permanent injunction or a declaratory judgment. Yet, *McQueary* nonetheless held that preliminary injunction winners whose cases are rendered moot before final judgment may be prevailing parties. 614 F.3d at 591-92.³

Thus, the Magistrate Judge's recommendation, if accepted, would have the effect of precluding *any* preliminary injunction winners from attaining prevailing party status because there can be no clearer example of a court-ordered change in the parties' legal relationship that resulted in a direct and irrevocable benefit to the plaintiff than what was achieved in this case. Plaintiffs sought to block enforcement of an unconstitutional policy of refusing to issue marriage licenses to qualified applicants, and they obtained a merits-based preliminary injunction for themselves (as well as all qualified non-parties to the litigation) that did so. Despite Davis' exhaustive efforts to stay enforcement of the preliminary injunction ruling, she failed. And once she failed, she persisted in refusing to comply with that ruling which resulted in her being held in civil contempt on Plaintiffs' motion. Only then were two Plaintiff couples able to obtain the marriage licenses to which they were legally entitled and solemnize their marriages. To conclude that Plaintiffs are not prevailing parties in this case would render *McQueary's* contextual and case specific inquiry beyond the reach of any preliminary injunction winners and thereby conflict with *McQueary* itself.

³ The Magistrate Judge also pointed to Plaintiffs' damages claims and jury trial demand as indicative of their insufficient success to support prevailing party status. [RE #199, at 6.] But, as noted above, Plaintiffs need not prevail on every claim to be prevailing parties. *Texas State Teachers Ass'n*, 489 U.S. at 790-91. And though Plaintiffs' success need not be on the "primary relief" sought, even a cursory review of the record in this case reveals that Plaintiffs' official-capacity claims and request for prospective injunctive relief, not their damages claims, comprised the primary relief Plaintiffs sought.

CONCLUSION

The Magistrate Judge's recommendation to deny Plaintiffs' motion for reasonable attorneys' fees is based on a flawed analysis of prevailing party status, and it applies *McQueary's* contextual and case-specific inquiry in such a way as to conflict with the central holding of that case by precluding merits-based preliminary injunction winners from attaining prevailing party status. Plaintiffs respectfully request that the R&R be rejected, and that Plaintiffs' motion for attorneys' fees and costs be granted in full.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 20, 2017, I filed this motion and accompanying proposed order with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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