Opinion Analysis: Williams v. Chino Valley Independent Fire District

The California Supreme Court has overturned what many had thought was a well-settled rule, and determined that prevailing defendants in cases under the Fair Employment and Housing Act ("FEHA") are *not* automatically entitled to their costs of suit. Now, defendants must satisfy the *Christiansburg* standard, established by the U.S. Supreme Court in *Christiansburg Garment Co. v.* EEOC, for recovery of attorney's fees by prevailing defendants. That standard requires a showing that the action was objectively without foundation when brought, or that the plaintiff continued to litigate after it clearly became so. This has long been the accepted standard for an award of attorney fees under the FEHA (*see, e.g.*, *Chavez v. City of Los Angeles*).

This standard has not been used by most California courts in awarding *costs* to prevailing FEHA defendants, however. The first court of appeal case to consider the issue held that the *Christiansburg* standard applied, and reversed the trial court's award of costs to a prevailing defendant. *Cummings v. Benco Building Services*. But, subsequent published decisions did not follow *Cummings*; rather, subsequent cases relied on section 1032(b) of the California Code of Civil Procedure, which provides: "Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding."

Last week, SCOCA ruled in *Williams v. Chino Valley Independent Fire District* that the state's FEHA attorney fee provision "otherwise expressly provided" that prevailing defendants could only recover costs under the *Christiansburg* standard. The court reasoned that the adoption of that standard for costs furthers the legislative policy of not discouraging potentially meritorious claims by plaintiffs with limited financial resources.

Inconsistency with Federal Law

Although the U.S. Supreme Court has not decided whether the *Christiansburg* standard applies to cost awards, the Ninth Circuit Court of Appeals has ruled that a

prevailing Title VII defendant is automatically entitled to costs. *National Information Services, Inc. v. TRW, Inc.* The Ninth Circuit *does* apply the *Christiansburg* standard to Americans with Disabilities Act cases. Because California's disability provisions are included in the FEHA, the same standard will apply to disability cases regardless of whether the plaintiff asserts a federal or a state claim. For discrimination based on other characteristics, prevailing defendants will automatically recover their costs under federal law, but will have to establish that the claim was objectively without merit under state law.

Practice Issues

SCOCA did not address two procedural questions that may arise as a consequence of its decision:

(1) *May prevailing FEHA defendants still claim costs by filing a memorandum of costs?* An award of attorney fees under the FEHA requires a noticed motion. However, ordinary costs of suit are claimed by filing a memorandum of costs.

(2) *Who has the burden of proof?* When a prevailing defendant seeks attorney fees under the FEHA, it has the burden of establishing entitlement to the fees. By contrast, a verified memorandum of costs is prima facie evidence of the propriety of the costs claimed, and the burden is on the party seeking to tax costs to show they were not reasonable or necessary.

Going forward, it would make sense for a prevailing FEHA defendant to initiate a claim for costs by filing a memorandum of costs. The burden would then be on the losing plaintiff to challenge the entitlement to costs by filing a motion to tax, as provided in section 3.1700(b) of the California Rules of Court. When the motion to tax is heard, the burden would be on the prevailing defendant to establish that the *Christiansburg* standard is satisfied.

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Calvin House is an experienced California lawyer, with 24 civil jury trials and over 100 appellate matters. He has argued three cases in the California Supreme Court (County of Los Angeles v. Superior Court, 21 Cal.4th 292, 981 P.2d 68 (1999); City of Barstow v. Mojave Water Agency, 23 Cal.4th 1224, 5 P.3d 853 (2000) and County of Los Angeles v. Los Angeles County Emp. Relations Com., 56 Cal. 4th 905, 301 P.3d 1102 (2013).

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