119 LRP 25157

LaRhonda BURTON; Amiya BURTON, Plaintiffs-Appellants, v. CLEVELAND HEIGHTS UNIVERSITY HEIGHTS BOARD OF EDUCATION, Defendant-Appellee

U.S. Court of Appeals, Sixth Circuit

18-3595

June 27, 2019

Related Index Numbers

30.015 Availability under IDEA

35.033 In General

390.003 Attorney's Fees

35.035 Prevailing Party

Judge / Administrative Officer

CLAY

Judge / Administrative Officer

McKEAGUE

Judge / Administrative Officer

KETHLEDGE

On Appeal from the U.S. District Court, Northern District of Ohio

UNPUBLISHED

AFFIRMING a decision reported at 72 IDELR 98

See related decisions at 116 LRP 23975, 116 LRP 26518, and 71 IDELR 66

See decision in related case at 117 LRP 49986

Ruling

In an unpublished decision, the 6th U.S. Circuit Court of Appeals upheld the U.S. District Court, Northern District of Ohio's decision at 72 IDELR 98, denying a parent's motion for attorney's fees. It affirmed the District Court's finding that the parent had not established that her daughter with depression was a "child with a disability" under the IDEA and, thus, could not recover attorney's fees.

Meaning

Under the IDEA, a court may award reasonable attorney's fees to the prevailing parent of a child with a disability. A district can fend off having to pay attorney's fees by showing that the child in question is not a child with a disability under the IDEA. Because the parent here could not establish that her daughter required special education and related services as a result of her depression, the district did not have to pay attorney's fees. *Editor's note: Per court order, this decision has not been released for publication in official or permanent law reports.*

Case Summary

Finding that the parent of a student with depression was not a prevailing party under the IDEA, the 6th U.S. Circuit Court of Appeals determined that she could not recover attorney's fees from her daughter's Ohio district. It affirmed the U.S. District Court, Northern District of Ohio's decision at 72 IDELR 98, denying the parent's motion for attorney's fees. The IDEA provides that the court, in its discretion, may award attorney's fees as part of the costs to a prevailing party who is the parent of a child with a disability. The 6th Circuit explained that there are two key terms in that provision. The first is that the child at issue is "a child with a disability," who needs special education and related services because of that disability. The second key term, the court explained, is whether the party seeking fees is a "prevailing party," which case law defines as "one who succeed[s] on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." Here, the parent argued that she was a prevailing party because she proved that her daughter was a child with a disability - depression. However, the District Court held that the parent did not establish that the student needed special education or related services as a result of her depression, and, thus, failed to meet the second prong. The 6th Circuit looked to the decisions of its sister Circuit Courts, including the 9th, 5th, and 3d Circuits, which have uniformly held that "a parent's success on some issue in the administrative proceedings does not entitle them to attorney's fees when they did not prove that they were the 'parent of a child with a disability' under the statute." Because this parent did not establish that

her daughter was a "child with a disability under the IDEA," the 6th Circuit held that she could not establish that she was a "prevailing party who is the parent of a child with a disability," under the statute. The 6th Circuit affirmed the District Court's determination that the parent was not eligible for attorney's fees under the IDEA.

Full Text

APPEARANCES:

Larhonda Burton, Amiya Burton, Plaintiffs-Appellants: Jason D. Wallace, Rocky River, OH.

For Cleveland Heights University Heights Board of Education, Defendant-Appellee: Sara Ravas Cooper, Maria Pearlmutter, Walter Haverfield, Kathryn I. Perrico, Cleveland, OH.

Opinion

Order

LaRhonda and Amiya Burton, Ohio litigants represented by counsel, appeal the district court's order denying their motion for attorneys' fees. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. See Fed. R. App. P. 34(a).

LaRhonda Burton sued the Cleveland Heights University Heights Board of Education on behalf of her daughter, Amiya, a former student in the Cleveland Heights-University Heights School District, alleging that the School District violated her rights to a free and appropriate public education. Their complaint, filed after exhausting state-level remedies, alleged claims under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., and related statutes. One of the Burtons' claims, Count VII, was for attorneys' fees under the IDEA, 20 U.S.C. § 1415(i)(3)(B)(i)(I). After litigating their federal suit for a year, the Burtons filed a stipulation of voluntary dismissal without prejudice, see Fed. R. Civ. P. 41(a)(1)(A)(ii), and the district court issued an order based on that stipulation.

The Burtons then moved for attorneys' fees under Federal Rule of Civil Procedure 54(d) and the IDEA, asserting that they were a prevailing party in the state-level proceedings leading up to their federal lawsuit. The district court denied the motion. *Burton v. Cleveland Heights-Univ. Heights, Sch. Dist. Bd. of Educ.*, No. 1:17 CV 134, 2018 WL 2364924 (N.D. Ohio May 24, 2018). The court held that it lacked jurisdiction to consider its merits given the Burtons' stipulated dismissal of their complaint. *Id*. And even if it had jurisdiction, the district court held that the Burtons were not a "prevailing party" in the administrative proceedings, as that term is defined in the IDEA. *Id.* The Burtons challenge both rulings on appeal.

We review the district court's jurisdictional ruling first, *see, e.g., United States v. Reid*, 888 F.3d 256, 257 (6th Cir. 2018), *petition for cert. filed* (U.S. Mar. 18, 2019) (No. 18-6319), and we review it de novo, *United States v. Satterwhite*, 893 F.3d 352, 355 (6th Cir. 2018).

The district court erred in holding that it lacked jurisdiction to resolve the Burtons' motion for attorneys' fees. The voluntary dismissal of a complaint under Rule 41(a)(1) does not divest the district court of jurisdiction to resolve a motion for attorneys' fees. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396 (1990); *Brown v. Local 58, Int'l Bhd. of Elec. Workers*, 76 F.3d 762, 766 (6th Cir. 1996). Indeed, we have held that a motion for attorneys' fees under the IDEA is "collateral to the merits of an action and may be considered even after an action is terminated." *Phelan v. Bell*, 8 F.3d 369, 372 n.4 (6th Cir. 1993). Thus, the district court had jurisdiction to decide the Burtons' motion.

Moving to the district court's alternative holding on the merits, we review the denial of a motion for attorneys' fees for an abuse of discretion. *See Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 850 (6th Cir. 2004). But we give no deference to conclusions of law. *Id*. The district court held that the Burtons did not qualify for attorneys' fees under the IDEA. That is a legal conclusion, and thus we review it de novo.

The IDEA provides that "[i]n any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs ... to a prevailing party who is the parent of a child with a disability." 20 U.S.C. § 1415(i)(3)(B)(i)(I). There are two key terms in that provision. The first is, "a child with a disability," which the statute defines as a child, "(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance ..., orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services." 20 U.S.C. § 1401(3)(A). The second key term is, "a prevailing party," which caselaw defines as "one who 'succeed[s] on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.'" *Tompkins ex rel. A.T. v. Troy Sch. Dist.*, 199 F. App'x 463, 465 (6th Cir. 2006) (alteration in original) *(quoting Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). "The 'touchstone' of this inquiry is 'the material alteration of the legal relationship of the parties.'" *Berger v. Medina City Sch. Dist.*, 348 F.3d 513, 526 (6th Cir. 2003) *(quoting Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792-93 (1989)).

LaRhonda Burton argues here, as she did below, that she is "a prevailing party" because she proved that her daughter Amiya was "a child with a disability." And the district court "acknowledge[d] that the IHO [(state-level independent hearing officer)] stated that '[t]he testimony of [Amiya's therapist] established that the Student is a child with a disability.'" *Burton*, 2018 WL 2364924. Yet the district court held that the Burtons did not also meet the second, conjunctive prong of the definition of "a child with a disability" because "[t]he IHO went on to say, however, that '[the therapist's] testimony did not ... establish whether the Student needs special education or related services.'" *Id*. Because "both prongs are needed to meet the statutory definition of a 'child with a disability,'" and because the Burtons "fail[ed] to meet the second prong," the district court held that "they are not entitled to attorneys' fees under this section of the statute." *Id.*

The Burtons argue that LaRhonda was a prevailing party in two ways. The IHO found that they had proved that the School District had denied Amiya a free and appropriate public education by refusing to evaluate her as a child with a suspected disability. And the IHO then ordered the School District to so evaluate Amiya and to develop a corrective action plan to address its failure.

The Board argues that this could not establish prevailing-party status under § 1415(i)(3)(B)(i)(I). The Board asserts that the IDEA permits fee shifting only "to a prevailing party who is the parent of a child with a disability," and, because the Burtons did not establish that Amiya was "a child with a disability" under the statute, they do not qualify.

The Board cites our decision in *Edwards, by Edwards v. Cleveland Heights-Univ. Heights Bd. of Educ.*, No. 90-4017, 1991 WL 270811 (6th Cir. Dec. 19, 1991) (per curiam), which the district court also cited. There, we held that the district court lacked jurisdiction to resolve the plaintiffs' claims under an earlier version of the IDEA because they had not exhausted their administrative remedies. The plaintiffs had moved for attorneys' fees because they had obtained a "stay-put order" under the statute in their administrative proceedings. We upheld the denial of their fee motion because "the question whether [the student] has a learning disability had not yet been reached in the administrative proceedings. Moreover, plaintiffs were not prevailing parties." *Id.* The Board and the district court also relied on decisions from our sister circuits, which have uniformly held that plaintiffs' success on some issue in the administrative proceedings does not entitle them to attorneys' fees when they did not prove that they were "parent[s] of a child with a disability" under § 1415(i)(3)(B)(i)(I). *See Meridian Joint Sch. Dist. No. 2 v. D.A.*, 792 F.3d 1054 (9th Cir. 2015);

T.B. ex rel. Debbra B. v. Bryan Indep. Sch. Dist., 628 F.3d 240 (5th Cir. 2010); *D.S. v. Neptune Twp. Bd. of Educ.*, 264 F. App'x 186 (3d Cir. 2008).

Because the Burtons did not establish that Amiya was a "child with a disability" under §§ 1415(i)(3)(B)(i)(I) and 1401(3)(A), they did not establish that LaRhonda was a "prevailing party who is the parent of a child with a disability" under the statute. Thus, the district court correctly ruled that they were not eligible for attorneys' fees under the IDEA.

Accordingly, we AFFIRM the district court's order.

Statutes Cited

20 USC 1415(i)(3)(B)(i)(l)
20 USC 1401(3)(A)

Cases Cited

1:17 CV 13472 IDELR 98 -- Same or Connected Case
888 F.3d 256 -- Interpreted
893 F.3d 352 -- Interpreted
199 F. App'x 46346 IDELR 183 -- Interpreted
348 F.3d 51340 IDELR 31 -- Interpreted
90-401718 IDELR 507 -- Followed
792 F.3d 105465 IDELR 253 -- Followed
628 F.3d 24055 IDELR 244 -- Followed
264 F. App'x 18649 IDELR 181 -- Followed

