

SUPREME COURT OF ARKANSAS

No. 11-793

LAKETHA BROWN FLUKER; BETTYE HENDRIX; ESSIE JONES; DICK HENDRIX; ELIZABETH RENEE VALLEY; TOMMY HUNT; OLLIE RAYFORD; OTIS W. HOWE; DARLENE MAYWEATHER; JARED ZEISER; MONTY WIGGINS; EUGENE JOHNSON; WESLEY N. FREEMYER; ALICE VALLEY; ALAN J. LEVINE; DOROTHY FRANKLIN; EDDIE SCHIEFFLER; ELIJAH VALLEY; BARBARA KING; LEOLA JAMERSON; VANCE ST. COLUMBIA; LORENZO VALLEY; JOE ST. COLUMBIA; LATOYA BRYANT; JOHNNY MCKENZIE; MARK FITZPATRICK; LARRY CRUMBY; CONSTANCE JARRETT; REV. ROCKEY STARNES; MAXINE BALL; ROBERT LEE; LINDA WHITFIELD; BILLY RAY; LEWIS O'NEAL; LAYMON PIERCY; FANNIE M. O'NEAL; LARRY JOHNSTON; DERRICK FLUKER; CATHY CUNNINGHAM; JACQUELINE BOLES; MINDY MAUPIN; KATHEENYA MILLS; SHARON GREENE; EDDIE CALHOUN; UNDRAYE WILSON; PAM HALL; RAMON BURGESS; BETTY HILL; SHALA BURGESS; WATSON LIGHT; REV. LARRY EDWARDS; LAURIE LIGHT; WALTER ANN NELSON; KIMBERLY LIGHT; ROTONDRA ROSS; WANDA CROCKETT; RUBY HARDINSON; AND EVELYN LEWIS, INDIVIDUALLY AND FOR AND ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED
APPELLANTS

Opinion Delivered September 13, 2012

APPEAL FROM THE PHILLIPS
COUNTY CIRCUIT COURT
[NO. CV-05-162]

HON. BENTLEY E. STORY, JUDGE

V.

HELENA - WEST HELENA PUBLIC SCHOOL DISTRICT; LIONELL MOSS, RAYNE GORDON, RAYMOND SIMES, JESSE SMITH, BOBBY JONES, C.R. WALKER, AND LARRY WILSON, AS MEMBERS OF ITS BOARD OF DIRECTORS; LINDA FAYE WHITE, IN HER CAPACITY AS COUNTY CLERK; THE PHILLIPS COUNTY ELECTION COMMISSION; AND JOANN SMITH, AS CHAIR OF THE PHILLIPS COUNTY ELECTION COMMISSION

APPELLEES

AFFIRMED.

PAUL E. DANIELSON, Associate Justice

Appellants Laketha Brown Fluker, Bettye Hendrix, Essie Jones, Dick Hendrix, Elizabeth Renee Valley, Tommy Hunt, Ollie Rayford, Otis W. Howe, Darlene Mayweather, Jared Zeiser, Monty Wiggins, Eugene Johnson, Wesley N. Freemyer, Alice Valley, Alan J. Levine, Dorothy Franklin, Eddie Schieffler, Elijah Valley, Barbara King, Leola Jamerson, Vance St. Columbia, Lorenzo Valley, Joe St. Columbia, Latoya Bryant, Johnny McKenzie, Mark Fitzpatrick, Larry Crumby, Constance Jarrett, Rev. Rockey Starnes, Maxine Ball, Robert Lee, Linda Whitfield, Billy Ray, Lewis O’Neal, Laymon Piercy, Fannie M. O’Neal, Larry Johnston, Derrick Fluker, Cathy Cunningham, Jacqueline Boles, Mindy Maupin, Katheenya Mills, Sharon Greene, Eddie Calhoun, Undraye Wilson, Pam Hall, Ramon Burgess, Betty Hill, Shala Burgess, Watson Light, Rev. Larry Edwards, Laurie Light, Walter Ann Nelson, Kimberly Light, Rotondra Ross, Wanda Crockett, Ruby Hardinson, and Evelyn Lewis, individually and for and on behalf of themselves and others similarly situated (hereinafter collectively “Fluker”), appeal from an order of the Phillips County Circuit Court denying their request for attorneys’ fees, arguing that the circuit court erred in that

determination. Appellees Helena–West Helena Public School District; Lionell Moss, Rayne Gordon, Raymond Simes, Jesse Smith, Bobby Jones, C.R. Walker, and Larry Wilson, as members of its board of directors; Linda Faye White, in her capacity as County Clerk; Phillips County Election Commission; and, Joann Smith, as chair of the Phillips County Election Commission, (hereinafter collectively “the District”) aver that the circuit court was correct when it found that Arkansas law did not allow for attorneys’ fees in this case. We find no error and affirm the order of the circuit court.

On May 27, 2005, Fluker filed a complaint against the District alleging that subsequent to the Federal Decennial Census, the District was required to adopt new district lines and that the District had failed to do so in violation of Ark. Code Ann. § 6-13-631 (Repl. 1999). Additionally, Fluker contended that, pursuant to section 6-13-631, the voters were entitled to a new school board. On August 5, 2005, the circuit court found in favor of Fluker and found that the District had the duty to redraw the boundaries of the school zones in accordance with Ark. Code Ann. § 6-13-631(g)(3)(A), which had not been accomplished. The circuit court also found that a map submitted by Phillips County would be adopted; the county clerk had the duty of using her best efforts to move the affected voters according to said map and to implement the discussed zoning plan; and the electors of the school district were entitled by law to elect a new school board. Finally, the circuit court ordered that the then-existing board members were required to stand for reelection in the September 2005 school election.

On August 19, 2005, Fluker filed a motion for payment of prevailing-party attorneys’ fees, which was denied on February 8, 2011, leading to the instant appeal. We now turn to the merits of Fluker’s appeal.

Fluker argues that the circuit court’s findings were equivalent to a finding that there

had been a violation of the Arkansas Civil Rights Act and that, because the circuit court could have awarded attorneys' fees pursuant to the Act, this court should remand for a determination by the circuit court as to whether attorneys' fees are due pursuant to the Arkansas Civil Rights Act. The District argues that the circuit court clearly did not make a finding that a violation of the Arkansas Civil Rights Act had occurred and, therefore, correctly found that Fluker prevailed on the claim brought pursuant to section 6-13-631, which does not provide for attorneys' fees for the prevailing party.

Attorneys' fees are not allowed except where expressly provided for by statute. *See Harris v. City of Fort Smith*, 366 Ark. 277, 234 S.W.3d 875 (2006). A decision to grant or deny a motion for attorneys' fees will not be set aside absent an abuse of discretion by the circuit court. *See id.*

While the complaint in the instant case alleged violations of both the Arkansas Civil Rights Act and the Equal Protection Clause in addition to Ark. Code Ann. § 6-13-631, the judgment issued very clearly awarded relief solely pursuant to section 6-13-631. Indeed, in paragraph 3 of the judgment, the circuit court specifically struck language in a proposed finding regarding the Civil Rights Act in its order:

3. The failure of the district to comply affects the voting rights of individuals in the district. ~~and is in violation of the Arkansas Civil Rights Act of 1993, codified at Ark.Code Ann. 16-123-101, et seq.~~

Furthermore, the very judge that issued the order was also the judge that denied the motion for attorneys' fees and found that "Arkansas Code Annotated § 6-13-631 does not provide for attorneys' fees." It is clear that the court did not find any other law on which to consider and make a determination regarding attorneys' fees.

The judgment here also did not find any violations of, nor make mention of, any other acts, rules, or constitutions. Therefore, Fluker did not prevail on anything other than the claim

made pursuant to section 6-13-631. Because that statute does not provide for an award of attorneys' fees, the circuit court did not abuse its discretion in denying the same.

While not directly on point with reference to section 6-13-631, this court has rejected a claim to attorneys' fees under the Arkansas Civil Rights Act and the federal Voting Rights Act, when the circuit court's judgment made no finding that either act was violated. *See St. Francis County v. Joshaway*, 346 Ark. 496, 58 S.W.3d 361 (2001). In *Joshaway*, the appellees had obtained relief pursuant to Ark. Code Ann. §§ 7-1-101 et seq. in what was, essentially, an election contest. *See id.* Appellants in *Joshaway* argued that the circuit court erred in awarding attorneys' fees to appellees because the statutes governing elections in Arkansas did not provide for the award of attorneys' fees to the prevailing party. *See id.* Appellees argued that they were entitled to attorneys' fees under the United States and Arkansas Constitutions, the Arkansas Civil Rights Act, Ark. Code Ann. § 16-123-105 (Supp. 2001), and the federal Voting Rights Act, 42 U.S.C. § 1971 et seq. *See id.* However, this court rejected that argument as the appellees had not obtained relief pursuant to laws other than the statute governing elections. *See id.* Because they had not prevailed under those Acts, they were not entitled to attorneys' fees thereunder. *See id.*

The same holds true here. Fluker prevailed only under Ark. Code Ann. § 6-13-631. No other violations were found by the circuit court. Therefore, the court did not abuse its discretion in denying the motion for attorneys' fees, and we accordingly affirm.

Affirmed.

J.F. Valley, Esq., P.A., by: *James F. Valley*, for appellants.

Lawrence W. Jackson, PLLC, by: *Lawrence W. Jackson; Vandell Bland, Sr.*, for appellee Helena-West Helena Public School District.