IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Glenn S. Horen,

Plaintiff

v.

Board of Education of the City of Toledo Public School District, et al.,

Defendants

Case No. 3:12CV187

ORDER

This is one in a series of suits filed on behalf of a disabled former pupil in the defendant Board of Education of the City of Toledo Public School District (the Board). Following plaintiff's unsuccessful appeal of an order granting summary judgment for the Board, I entered an order finding that plaintiff had violated Fed. R. Civ. P. 11 and awarding sanctions to the Board. (Doc. 58).

In response to that order, the Board filed a statement of its reimbursable attorneys' fees and costs in the amount of $32,792, (Doc. 61), to which plaintiff has responded, (Doc. 64), and defendant has replied. (Docs. 65, 66).[1]

For the reasons that follow, I grant the motion for sanctions as requested.

Discussion

[1] Also pending is plaintiff's motion for extension of time for his response. (Doc. 62). That motion is moot, as plaintiff has filed his opposition.

The child's parents have sued the Board numerous times, almost always without any success whatsoever. In a series of decisions I have found their claims barred by the doctrine of *res judicata*. *Horen v. Bd. of Educ. Of City of Toledo Pub. Sch.*, 2013 WL 6191334 (N.D. Ohio); *Horen v. Bd. of Educ. Of City of Toledo Pub. Sch.*, 950 F. Supp. 2d 946 (N.D. Ohio 2013); *Horen v. Bd. of Educ. Of City of Toledo Pub. Sch.*, 948 F.Supp.2d 793 (N.D. Ohio 2013);

In the past, I have either warned the parents about the risk of sanctions, *Horen v. Bd. of Educ. Of City of Toledo Pub. Sch.*, 2012 WL 3808902 (N.D. Ohio); *Horen v. Bd. of Educ. Of City of Toledo Pub. Sch.*, 594 F.Supp.2d 833 (N.D. Ohio 2009), or imposed sanctions. *DH ex rel. Horen v. Bd. of Educ. of Toledo City Sch. Dist.*, 2008 WL 4457897 (N.D. Ohio).

The parents, nonetheless, continue to ignore their obligation to refrain from fruitless litigation. As a result, the Board must waste scarce public funds in defending meritless cases.

To see that it need not do so in the future, I award, on consideration of the plaintiff's objections as discussed below, the fees and expenses the Board properly seeks.

To the extent that plaintiff's opposition argues against imposition of any sanction and its type and extent, I decline to reconsider my order awarding sanctions. The only issue properly before me is the amount of such award.

Rule 11(c)(4) of the Federal Rules of Civil Procedure limits sanctions "to what suffices to deter repetition of the conduct" and expressly permits an award "of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation." The standard for determining the amount of a fee award is the "amount[] necessary to deter as well as compensate." *Gilreath v. Clemens & Co.*, 212 F. App'x 451, 466 (6th Cir. 2007) (unpublished disposition) (citing *Jackson v. Law Firm of O'Hara*, 875 F.2d 1224, 1229 (6th Cir. 1989)). I am also to consider the

promptness of the movant's efforts at avoiding unnecessary expenses and the opponent's ability to pay the requested amount. *Jackson, supra*, 875 F.2d at 1230.

The Board fulfilled its duty to try to avoid fees and costs by immediately filing a partial motion for dismissal. In addition, the Board sent plaintiff a Rule 11 warning letter. The Board fulfilled its obligation to avoid unnecessary fees and expenses.[2]

In response, plaintiff filed an amended complaint with new claims. The Board filed another motion to dismiss and its motion for sanctions. Following discovery (limited so as to avoid unnecessary expense), the Board filed the motion for summary judgment that I granted. The Board successfully defended plaintiff's appeal – which was no more meritorious than his complaints.

On review of the Board's fee petition and exhibits, I find that the amount it had to spend – $32,792 – as a result of plaintiff's wrongful institution and prolongation of this litigation was eminently reasonable. Indeed, that amount is less, and, actually, substantially less than successful defendants entitled to fee-shifting usually expend to obtain summary judgment and affirmance on appeal.

Contrary to plaintiff's contention, he is not entitled to review the contract between the Board and its attorneys. What matters is whether what those attorneys charged for what they did was

[2] Plaintiff's claim that the Board failed to mitigate its expenses are without merit. The fact that one or more attorneys did not talk with him is immaterial. Given his response to the Rule 11 warnings, any contact and conversation would, in all likelihood, have been entirely pointless. The only result would have been an expenditure of more money to pay the Board's lawyers. The same is true with regard to the Board's putative failure to offer to settle a case that did no more than seek to relitigate claims barred by *res judicata*.

reasonable, both in terms of time expended and hourly rate charged. On review, I find that both hours and rates were entirely reasonable.[3]

The only remaining issue is plaintiff's ability to pay. Plaintiff submitted an affidavit stating that the parents jointly had only $55,439 during the past three years.

Ability to pay certainly is a factor. But not just as to the requested sanctions. In determining the amount to be reimbursed, I can also consider the fact that the parents have repeatedly found the wherewithal to pay filing fees in the court and for their appeals. *E.g. Proctor v. Educ. Credit Mgmt. Corp.*, 2010 WL 4919670, *26 (S.D. Ohio) (citing *Balcar v. Bell & Assocs., LLC*, 295 F. Supp. 2d 635, 641 (N.D. W.V. 2003)). One purpose of sanctions is to persuade a litigious plaintiff to refrain from repeating the same conduct.

One way to accomplish that purpose is to make him pay in full for the losses he caused by his wrongful institution and maintenance of this lawsuit. As the Sixth Circuit stated in *Rentz v. Dynasty Apparel Indus.*, 556 F.3d 389, 400 (6th Cir. 2009), "[A]though it is clear that Rule 11 is not intended to be a compensatory mechanism in the first instance, it is equally clear that effective deterrence sometimes requires compensating the victim for attorney fees arising from abusive

[3] Plaintiff objects to awarding fees for time spent reviewing the 5,500 pages of documentation he submitted with his opposition to the Board's motion for summary judgment. If he did not want the Board and its attorneys to conduct that exhaustive (and expensive) review, he should have exercised better judgment in selecting what to submit. He cannot avoid the consequences of his failure to do so by claiming that his opponent's review of his document dump was not necessary. I find nothing unreasonable about the fact of the review or, to the extent needed, that the lawyers found it necessary to go back through certain documents.

I likewise agree that review of the parents' social media was foreseeable and reasonable, and did not generate unnecessary costs.

Despite plaintiff's argument to the contrary, there is absolutely nothing improper about awarding fees for an attorney who did not enter an appearance.

litigation." Difficulty in paying a judgment is a factor: it is not an impenetrable shield behind which a litigant can hide safely and with impunity.

What matters in this instance is that plaintiff will have judgment entered against him for his deliberate filing and continuing an utterly meritless lawsuit, and ignoring warnings that not just the Board, but also that I gave him about the consequences of his willful and wrongful conduct.

Plaintiff notes he has not filed suit against the Board since the Sixth Circuit's affirmance in this case. Exercise of restraint – even if it lasts (which is far from certain) – is not a basis for ensuring that he will not misbehave in the future.

I find as a matter of fact that the only potentially effective way to deter future utterly meritless litigation is to make plaintiff legally responsible for reimbursing the Board in full for the expenditures that it reasonably incurred in this case.

Conclusion

From its outset, plaintiff's suit was, on the basis of clear, and clearly established legal principles, doomed to failure. He knew, or, in the exercise of forethought before filing suit should have known that that was so. Moreover, he was warned at the outset and during the course of the litigation about the consequences of his actions.

Despite all that, he persisted. Not just in this court, but on appeal as well.

Plaintiff deserves the sanctions I impose, just as the taxpayers deserve recompense for the waste of their money he has caused. Nothing else can give the taxpayers, the Board, or this court assurance that the future will not bring yet more futile, unnecessary, and unjustified litigation – and expense.

It is, accordingly, hereby

ORDERED THAT:

1. Plaintiff's motion for extension of time overruled as moot; and

2. Defendant's petition for an award of fees and expenses in the amount of $32,792 be, and the same hereby is granted

The Clerk shall enter judgment in favor of the defendant and against the plaintiff accordingly.

So ordered.

/s/ James G. Carr
Sr. U.S. District Judge