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CLERK OF THE LYON COUNTY DISTRICT COURT
CASE NUMBER: 2022-CV-000007
PII COMPLIANT

Court:	Lyon County District Court
Case Number:	2022-CV-000007
Case Title:	Molly Ellis vs. Kim McNeese, et al.
Type:	ORD: Order Originated by Judge Memorandum Decision (Plaintiff's Claim for Attorney fees)

SO ORDERED,

/s/ Honorable W. Lee Fowler, District Court Judge

IN THE DISTRICT COURT OF LYON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

MOLLY ELLIS	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. LY-2022-CV-000007
	)	Division
KIM McNEESE, and	)	
FLINT HILLS TECHNICAL COLLEGE	)	
	)	
Defendants.	)	

MEMORANDUM DECISION

This case has been submitted to this Court for a decision on the Plaintiff's claim for attorney's fees after prevailing on her claims against the Defendants for violating the Kansas Preservation of Religious Freedom Act. K.S.A 60-5301 et. Seq. (KPRFA).

FACTS OF THE CASE

Molly Ellis enrolled as a student in Flint Hills' Practical Nursing program in August 2021. When Ellis was admitted, she told Flint Hills of her objections to receiving vaccinations on the grounds that they violated her personal religious beliefs. At that time, she asked Flint Hills to grant her a religious waiver for all vaccinations. As part of her coursework for the spring 2022 semester, Flint Hills assigned Ellis to complete a clinical rotation at Newman Regional Health. Ellis was scheduled to begin that rotation on February 7, 2022. On January 19, 2022, Newman implemented a policy requiring Flint Hills students like Ellis, among others, to be vaccinated against COVID-19. On January 25, 2022, McNeese informed Ellis and other nursing students of Newman's policy, telling them they must comply or they would be unable to successfully complete the clinical requirements for the nursing program. Flint Hills told its nursing students if they were not vaccinated, they had the option to withdraw from the program but offered no other

accommodation. Until this point, Ellis received exemptions for all necessary vaccinations in order to conduct her coursework at any facility. That same day, Ellis requested information to allow her to seek a religious exemption from Newman's policy. McNeese told her Newman was not accepting any exemptions from Flint Hills students. To complete her clinical coursework, Ellis asked to switch to another medical facility, which was accepting religious exemptions to the COVID-19 vaccination. McNeese told Ellis she could not switch because that facility could not provide an equivalent clinical experience. McNeese also told Ellis she would receive a zero for each day that she missed her clinical rotation at Newman. On February 2, 2022, Ellis sued Flint Hills and McNeese (Defendants) under KPRFA, alleging they substantially burdened the exercise of her religion. Ellis sought injunctive relief enjoining Defendants from enforcing Flint Hills' clinical partners' vaccination policies against Flint Hills' nursing students and requiring Defendants to make a suitable religious accommodation to Ellis that would allow her to satisfy Defendants' clinical component of the nursing coursework so that she could complete that coursework as scheduled. She also sought declaratory relief, actual damages, costs, and attorney fees. On February 25, 2022, this Court partially granted Ellis' motion for a preliminary injunction, ordering Defendants to revise Ellis' academic record at Flint Hills "to record 'incomplete' rather than failing grades for all past or future in person clinicals scheduled" for Ellis at Newman or another one of Flint Hills' clinical partners, Emporia Presbyterian Manor. On March 11, 2022, Newman notified Flint Hills that it had amended its COVID-19 vaccination policy. Newman would now accept unvaccinated students into its facility if Flint Hills provided those students with a religious or medical exemption from receiving the COVID-19 vaccine. Ellis began her clinical coursework at Newman on March 21, 2022, after Flint Hills provided

Ellis a religious exemption. Ellis graduated from Flint Hills in June 2022 with the rest of her class.

The relief provided by this Court in the form of the preliminary injunction allowed the Plaintiff to graduate on time, but it did not constitute a final ruling on whether there had been a violation of the KPRFA. That finding was necessary to resolve the attorney's fees claim at the trial court level. Initially, this Court granted summary judgment in favor of the Defendants based upon this Court's finding that the actions of Newman requiring the vaccination were not within the control of the Defendants. Subsequently, the Court of Appeals reversed this Court's summary judgment ruling and remanded this case for the court to determine whether the Defendants' actions substantially burdened Ellis' religious exercise. *Ellis v. McNeese, et.al.,* 559 P. 3d 1237.

Pursuant to the guidance provided by the appellate court, further proceedings were conducted in the district court which resulted in summary judgment being granted to the Plaintiff on her claim that the Defendants violated her rights under the KPRFA.

ANALYSIS OF THE CLAIM FOR ATTORNEY FEES

The KPRFA allows for a plaintiff to recover attorney fees when they prevail in such an action. Although granting of fees is not mandatory under the statute, it is appropriate because failure to consider such an award would result in plaintiff's being unable to take advantage of the rights given to them under this law.

The Plaintiff has filed a claim totaling $303,200.00. This amount includes the original application for fees plus a supplemental claim filed prior to the hearing held to present evidence on the reasonableness of the claim. That amount does not include the award of attorney's fees

assessed by the Court of Appeals. This Court has excluded those fees as a separate judgment and this Court has allowed the Plaintiff to institute collection proceedings to enforce that judgment.

The total claim by Plaintiff is based upon a claim of 379 hours of legal work performed at the rate of $800 per hour. The rate of $800 per hour is based upon Plaintiff's counsel's rate of $400 per hour with a lodestar adjustment multiplier of 2.0.

The steps for the analysis of an attorney's fee request were addressed in the appellate decision previously entered in this case, as set forth below (*Ellis v. McNeese, et. al. supra.*)

"Determining the reasonableness of a fee request generally starts with a two-part inquiry—assessing both the reasonableness of the attorney's hourly rate and the reasonableness of the time spent representing the client's interests. See *Hatfield v. Wal-Mart Stores, Inc.*, 14 Kan. App. 2d 193, 199, 786 P.2d 618 (1990). Courts have traditionally described this inquiry as a " 'lodestar calculation.' " *Doan Family Corp. v. Arnberger*, 62 Kan. App. 2d 769, 785, 522 P.3d 364 (2022); see also *Citizens Utility Ratepayer Bd. v. Kansas Corporation Comm'n*, 47 Kan. App. 2d 1112, 1125-27, 284 P.3d 348 (2012) (discussing and applying the lodestar method). The lodestar calculation may be adjusted upward or downward based on the factors set forth in KRPC 1.5(a), which include:

" '(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
" '(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
" '(3) the fee customarily charged in the locality for similar legal services;
" '(4) the amount involved and the results obtained;
" '(5) the time limitations imposed by the client or by the circumstances;
" '(6) the nature and length of the professional relationship with the client;
" '(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
" '(8) whether the fee is fixed or contingent.' " *Johnson*, 281 Kan. at 940-41.

First the Court must establish a reasonable hourly rate based upon the above factors. The Plaintiff's fee agreement with her counsel set forth the expectation of counsel that he will receive compensation at the rate of $400 per hour and further acknowledged that it was a contingency fee agreement. Plaintiff's counsel now claims he is entitled to a multiplier of 2.0 under the lodestar

analysis under both the appellate decision in this case and *Gilmore v. Beveridge*, No. 2:22-CV-02032-HLT, 2024 WL 1461813. However, neither of those cases applied a multiplier to the fees awarded. Both of those cases awarded fees at the rate of $400 per hour.

In addition, both the hourly rate and the time claimed were not challenged by the defendants in this case at the appellate level. The opinion clearly shows that the defendants challenged the right to fees prior to a final ruling on the merits and they chose not to challenge the rate or time spent on the case at that time. The defendants now challenge the fee claim at the district court level. The determination of allowable fees before the district court is a matter for this court to determine, subject only to a claim of abuse of discretion.

The defendants presented unrebutted evidence that the prevailing hourly rate for experienced attorneys in the Fifth Judicial District is $300 per hour for retained cases. However, that testimony was for retained cases and did not reflect the risk assumed by the contingency fee arrangement in this case.

This Court has one final observation to make regarding a reasonable hourly rate to be applied in this case. KPRFA is a legislative enactment designed to provide state law relief for individuals who claim their religious freedom rights under the First Amendment to the U.S. Constitution have been violated. That same legislature has consistently funded the Board of Indigent Defendants (BIDS) at a level which allows attorneys defending their client's rights under the Fourth, Fifth, and Sixth Amendments to the U.S. Constitution at the rate of $120 per hour. Those rights are no less important than rights guaranteed by the First Amendment.

Fortunately for the Plaintiff, the definition of a reasonable hourly rate is left to this Court and not the legislature.

Based upon the foregoing discussion, this Court finds that the appropriate hourly rate to be used to calculate the attorney fee award is $400 per hour.

The next step is to determine the reasonableness of the hours spent on the case and what adjustments should be made, if any.

Although this case is unique, it is not a complex case. In fact, the defendant Flint Hills Technical College had previously recognized the plaintiff's religious right by giving her a vaccine waiver prior to the covid vaccine requirement in this case. This litigation centered around the defendants' response to Newman's initial decision not to allow unvaccinated students on its campus.

The Plaintiff has filed a claim for attorney fees in the amount of $151,600.00 plus the 2.0 multiplier. That claim is based upon 331.3 hours in the original claim and 47.7 hours in the supplemental claim. The Defendants argue that those fees are excessive, inadequately documented, legally unsupported, and include time spent on unsuccessful and unrelated claims.

The Defendants presented the testimony of Paul Dean, an experienced attorney who regularly practices law in the Fifth Judicial District, and who operates as a solo practice. In addition to the testimony previously noted regarding the prevailing rate for attorney fees, Dean provided testimony regarding his analysis of the billing submissions of Plaintiff's counsel is this case. Dean identified areas for which charges are being claimed that are not appropriate because they were related to unsuccessful or unrelated claims, were addressing sanction issues, were vague, or administrative or clerical. This Court finds the testimony to be credible and relevant to the issue before this court.

Dean noted that Plaintiff's counsel is a solo practitioner with no support staff. He noted that absent an agreement with a client, activities of the support staff including scheduling, etc., are

normally assumed by the attorney as part of the agreed hourly rate. In this claim, Baker billed $400 per hour even for time spent setting up scheduling with court staff. His exhibit showed a claim for 2.9 hours for those tasks. In addition, Dean identified 36.1 hours spent on unsuccessful or unrelated claims and a journal entry dispute created by Baker. Dean also identified 22.3 hours claimed related to documents that are the subject of the sanctions request filed by the Defendants or the post judgment garnishment proceedings to collect the judgment entered by the appellate court.

Dean further noted a significant number of entries which he claimed to be vague so there was not enough information to correctly evaluate those entries.

Early on in this case, this court directed that a settlement conference take place. The evidence shows that Plaintiff refused to meaningfully engage in that process. Molly Ellis graduated with her class in June 2022. Since that time, for almost four years, this case has been about attorney fees. The Plaintiff is entitled to recover her reasonable attorney fees, but that should not be interpreted to mean unlimited or excessive fees.

The Court is deducting 61.3 hours from the claim pursuant to the concerns identified in the Dean testimony. At this point that leaves the total number of hours to be compensated at 317.7. But this court's analysis does not stop at this point. The Plaintiff has repeatedly cited the case of *Gilmore v. Beveridge, et. al., supra*, in support of his claim for fees. In that case the court held a reasonable fee should reflect the Plaintiff's success in the case, but it should not create an attorney windfall. Nor should it incentivize an overly complicated approach to straightforward litigation. The Court then applied a 15% reduction to the lodestar. That case involved a four-day jury trial. This case is even simpler; the only evidentiary hearings were the initial injunction hearing and the

evidentiary hearing on the fee claim. This Court finds the appropriate lodestar reduction shall be 20%. This finding reduces Plaintiff's attorney fee request to $101,640.00.

SANCTION ORDER

However, there remains the issue of sanctions requested by the Defendants for their claim that the Plaintiff's counsel filed pleadings with fabricated citations as set forth in their Motion for Sanctions filed on October 27, 2025. By Memorandum Order filed by this Court on November 12, 2025, that matter is now before the Court for determination.

On October 20, 2025, Plaintiff's counsel filed a document entitled Opposition to Defendants Motion to Alter Judgment. Within that pleading the Plaintiff's counsel falsely cited two cases, *State v. Baker,* 290 Kan. 842, 235 P.3d 424 (2010) and *Gannon v. State*, 298 Kan. 110 310 P.3d 1196 (2014) for propositions of legal authority that are inconsistent with the case cited. In addition, there were no fewer than six false citations to non-existent Kansas case law. When confronted by these misrepresentations and facing a Motion for Sanctions, Plaintiff's counsel did not deny the allegations or explain how he came up with the false citations, he simply responded that the legal propositions contained in his pleadings were accurate and that his "citation irregularities were technical and clerical...". Citations to non-existent cases can never be considered technical or clerical errors. They are not formatting or citation errors. They are unprofessional and sanctionable. This Court suspects that Plaintiff's counsel used a generative artificial intelligence program as an aid in drafting his pleading, but no such admission was forthcoming from counsel. Counsel's response to the claim for sanctions is simply the proposition of "no harm, no foul". In addition, this is not the only time Plaintiff's counsel has submitted false

citations to a district court. See *Anderson v. Aldrich*, Douglas County District Court Case No. DG-2025-CV-429, Memorandum Opinion dated March 13, 2026.

Kansas District Court judges must rely on the veracity of citations presented to the court by counsel. The timeline for making decisions at the district court level is measured in minutes, hours, or days. We do not have law clerks to review pleadings for citation errors or misrepresentations. We must rely on attorneys to act professionally in preparing and filing pleadings to be considered by the Court. Plaintiff's actions have failed in that regard. In addition, those actions appear to violate Rule 3.3 of the Code of Professional Responsibility. (The actual adjudication of such a violations a matter for determination by the Kansas Board for Discipline of Attorneys.)

In addition, this Court held a status or pretrial conference in this case on January 29, 2026, for the purpose of preparing for the trial of the attorney fees claim. Defense counsel prepared a proposed journal entry for that hearing which did include the recitation of orders made by the court on pending garnishment proceedings. On January 30, 2026, Plaintiff's counsel filed objections to the proposed journal entry and then proceeded to file a journal entry prepared by Plaintiff's counsel representing that it had been approved by defense counsel. Plaintiff's counsel did not have the consent to file said journal entry. The factual scenario is set forth in the Defendant's Motion for Relief from Order filed on January 30, 2026. It is incorporated herein by reference. Not only was the presentation of the proposed journal entry a violation of Rule 170 as it applies to the filing of journal entries, Plaintiff's counsel's action appears to be an additional violation of Rule 3.3 of the Code of Professional Responsibility by representing opposing counsel's approval when it had not been obtained. The Court vacated the offending journal entry by Memorandum Decision on

February 2, 2026. On March 12, 2026, the Court approved and filed the journal entry for said hearing.

District court judges need to rely on counsels' representations on approvals for journal entries submitted in the e-file system. Often that approval is designated by a /S/ symbol on the signature line. It is not unusual to receive 20 or 30 documents per day for review and approval. In fact, some dockets in this district can result in filings more than 100 on any given day. Many of these documents come in days after the hearing. Strict compliance with Rule 170 is mandatory and not an option.

The question now before the Court is what should be the appropriate sanction for the violations noted above. Plaintiff's counsel initially did a good job representing his client and got the relief she needed to finish school and graduate on time. Granted, the change in the Newman policy, which Plaintiff's counsel was not involved in, aided the process, but his client was on the precipice of being discharged from her educational program at the time of the injunction hearing. After that point, this case became all about attorneys' fees. This fact was even mentioned in the Court of Appeals decision. Certainly, the Defendant's vigorous defense added to the attorney fee claim.

As previously noted, this Court's calculation of the attorney fee award was initially set at $101,640.00. However, this Court is of the opinion that it is appropriate to strike 50% of that fee as a sanction for Plaintiff's falsifications of citations and misrepresentations noted above. The Plaintiff is awarded the sum of $50,820.00 for her attorney fees incurred herein. Judgment shall be entered in favor of Plaintiff for that amount.

Although this sanction may seem substantial to some, Plaintiff's counsel breached the bond of trust that the Court imposes on attorneys in their professional capacity as officers of the court.

The order entered in this case was done with great deliberation. Courts reviewing this order for abuse of discretion should keep in mind the nature of trial court proceedings and the reasons identified by this court on why the breach of trust for actions of Plaintiff's counsel are so serious.

In addition, the fees finally allowed are still approximately 20% greater than those paid by BIDS pursuant to funding provided by the legislature for defending individuals right under the Fourth, Fifth, and Sixth amendments to the U. S. Constitution.

The Court further finds that the Clerk of the District Court is directed to provide a copy of this Memorandum Order to the Kansas Board of Profession Responsibility for their consideration.

.IT IS SO ORDERED.

THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME SHOWN ON THE ELECTRONIC FILE-STAMP.

HONORABLE W. LEE FOWLER
DISTRICT JUDGE