

CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA

SCOTT MOORE, an individual,

Plaintiff,

v.

MASON CLASSICAL ACADEMY, INC., a Florida
not for profit corporation,

Defendant.

CIVIL ACTION

Case No. 20-CA-1471

Judge: Elizabeth Krier

**PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS ON PLAINTIFF'S
MOTION FOR TEMPORARY REINSTATEMENT UNDER F.S. §112.3187(9)(f)**

NOW COMES the Plaintiff, SCOTT MOORE ("Plaintiff" or "Moore"), by and through undersigned counsel, and files this Motion for Attorney's Fees and Costs on Plaintiff's Motion for Temporary Reinstatement Under F.S. §3186(9)(f) (PWA), and states as follows:

1. "Any proceedings on the underlying whistle-blower's complaint will be separate and distinct from the reinstatement case and will be conducted in the manner provided by section 112.31895(3) and (4), Florida Statutes." *State, Dep't of Transp. v. Fla. Comm'n on Human Relations*, 842 So. 2d 253, 255 (Fla. 1st DCA 2003); *see also Competelli v. City of Belleair Bluffs*, 113 So. 3d 92, 94 (Fla. Dist. Ct. App. 2d Dist. 2013). Simply put, this means that where temporary reinstatement is sought under §(9)(f), there is to be a case within a case and thus an award of temporary reinstatement under §(9)(f) is "separate and distinct" from the other proceedings within the PWA case. Nowhere in the PWA is there even any remote suggestion that the results of a trial bear any relationship to a pre-trial award of temporary reinstatement under §(9)(f). *See Lee Cty. v. Ward*, 197 So. 3d 48 (Fla. Dist. Ct. App. 2016)(affirming Krier, J.).

2. Under (9)(d) of the PWA, a losing defendant must pay reasonable costs, including attorney's fees, to a substantially prevailing employee. Here, Mr. Moore is the prevailing employee as the Court granted his Motion for Temporary Reinstatement over the vociferous objection of the Defendant following a two-day, full-blown evidentiary hearing. Because Mr. Moore is the prevailing employee on his Motion that was a "case within a case," an award of fees and costs is appropriate under (9)(d) and this Motion should be granted.

3. The attorney's fees and costs sought herein are well within the ranges established by case law and are supported by the applicable factors. Plaintiff's counsel prosecuted this matter on a wholly contingent basis, expending 83.0 hours in uncompensated time and accruing \$373.45 in out-of-pocket expenses over this hard-fought Motion for Temporary Reinstatement. Counsel made these extraordinary investments of time and money knowing that there would be no remuneration absent a victory. And Plaintiff's counsel's willingness to invest whatever time and money was necessary to prevail on Plaintiff's Motion for Temporary Reinstatement was unquestionably a major factor in the Plaintiff's ability to reach the outstanding result.

4. All the factors of *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985) are met. Florida courts use the federal lodestar approach which requires a determination of the number of hours reasonably expended multiplied by a reasonable hourly rate. *See Rowe*, 472 So. 2d at 1150-51. Here, Plaintiff's counsel reasonably expended 83.0 hours on Plaintiff's successful Motion for Temporary Reinstatement and this significant investment of time restricted work on other cases. As a Board Certified Expert in labor and employment law with more than a decade of experience who has an excellent reputation in the local legal community, his appropriate hourly rate is \$350.00 per hour. As confirmed by expert testimony, this is a reasonable hourly rate and the time expended was all necessary for the successful prosecution of the Plaintiff's Motion

for Temporary Reinstatement, which was completely successful and which involved novel and complex areas of labor and employment law.

5. Once the lodestar amount is determined, the trial court may add or subtract from that amount based upon a "contingency risk" factor and the "results obtained." *Id.* at 1151; *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828, 831 (Fla. 1990). "[I]n contingent fee cases, the lodestar figure calculated by the court is entitled to enhancement by an appropriate contingency risk multiplier in the range from 1.5 to 3." *Rowe* at 1151.

6. In determining whether a contingent fee multiplier is necessary, the trial court should consider:

whether the relevant market requires a contingency fee multiplier to obtain competent counsel, whether the attorney was able to mitigate the risk of nonpayment in any way[,] and . . . whether any of the factors set forth in *Rowe* are applicable, especially, the amount involved, the results obtained, and the type of fee arrangement between the attorney and his client.

Quanstrom, 555 So. 2d at 834. "Evidence of these factors must be presented to justify the utilization of a multiplier." *Id.*; see also *Bell v. U.S.B. Acquisition Co., Inc.*, 734 So. 2d 403, 410 (Fla. 1999) (recognizing that courts may consider applying multiplier "if evidence in the record supports the need for one"). The contingent fee multiplier is not limited to rare and exceptional circumstances and that it should be considered whenever the requirements for its application are met. *Joyce v. Federated National Insurance Co.*, 228 So. 3d 1122, 1131-32 (Fla. 2017).

7. Here, all factors support a contingent fee multiplier. First, there are very few labor and employment attorneys in Southwest Florida that represent employees, and less than a handful of them are Board Certified Experts in the field. Second, most of the attorneys would not have agreed to prosecute what can be difficult, complex and risky employment law cases on a strictly contingency basis. Third, there is no way for Plaintiff's counsel to have mitigated against the risk

of loss. Had the Plaintiff lost, Plaintiff's counsel would have been compensated nothing for the 80.0 hours he expended. Fourth, prosecuting this matter on a contingency basis was required because no unemployed person could reasonably afford \$29,000 in fees on just one motion alone. Fifth, the result obtained by Plaintiff's counsel was an unqualified, complete success. This case is a textbook example of one in which a multiplier is warranted, and these factors firmly support a multiplier of 2.0 being added. *Pazmino v. Gonzalez*, 273 So. 3d 1056, 1059 (Fla. Dist. Ct. App. 2019)(2.0 contingency risk multiplier appropriate analyzing similar factors).

8. The PWA also provides for the recovery of costs. Here, that consists of costs associated with having a court reporter present and the ordering of a partial transcript. These costs were necessary and reasonable, and they total \$373.45.

WHEREFORE the Plaintiff respectfully requests the Court GRANT the Plaintiff's Motion for Attorney's Fees and Costs, award an amount consistent with the evidence, and award all other relief deemed just.

Respectfully submitted,

Dated: September 14, 2020

s/ Benjamin H. Yormak
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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2020, I e-filed the foregoing document using the Portal, which caused delivery by Electronic Mail to all counsel of record.

s/ Benjamin H. Yormak

Benjamin H. Yormak