

## **10-114 FOX V. VICE**

DECISION BELOW: 594 F.3d 423

LOWER COURT CASE NUMBER: 08-31135

### **QUESTION PRESENTED:**

42 U.S.C. § 1988 authorizes courts to award reasonable attorney's fees to prevailing parties in civil rights litigation. This Court has recognized that the purpose of this statute is to ensure effective access to the judicial process for civil rights plaintiffs, and that fees may not be awarded to a prevailing defendant except where the plaintiff's action was frivolous, unreasonable, or without foundation. Petitioner Ricky D. Fox filed a lawsuit alleging various common law torts, as well as a civil rights claim arising from the same facts. He voluntarily withdrew his civil rights claim, leaving his state tort claims in place. The District Court ordered him to pay attorney's fees to defendants under 42 U.S.C. § 1988.

1. Can defendants be awarded attorneys' fees under Section 1988 in an action based on a dismissal of a claim, where the plaintiff has asserted other interrelated and non-frivolous claims?

2. Is it improper to award defendants all of the attorney's fees they incurred in an action under Section 1988, where the fees were spent defending non-frivolous claims that were intertwined with the frivolous claim?

### **ORDER ON 3/4/2011:**

The parties are directed to file letter briefs addressing the effect on this proceeding of the death of respondent Billy Ray Vice, and the failure to substitute an authorized representative of Vice as a party, under this Court's Rule 35.1. To the extent there are claims against Vice in his official capacity, the parties are further directed to address the effect of Rule 35.3 on this proceeding. The briefs, limited to 12 pages, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, March 11, 2011.

CERT. GRANTED 11/1/2010