

RECORD IMPOUNDED

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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5241-14T3

A.V.,

Plaintiff-Appellant/
Cross-Respondent,

v.

VICTOR ASHRAFI, J.A.D.,
MICHAEL A. GUADAGNO, J.A.D.,
MARIANNE ESPINOSA, J.A.D.,
RICHARD J. GUSS, PETER E.
DOYNE, A.J.S.C.,

Defendants-Respondents,

and

RICHARD A. GRODECK,

Defendant-Respondent/
Cross-Appellant.

Submitted September 22, 2016 - Remanded October 26, 2016
Resubmitted February 16, 2017 - Decided April 3, 2017

Before Judges Hoffman and O'Connor.

On appeal from Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No.
C-0058-15.

Joseph Oettinger, Jr., attorney for
appellant/cross-respondent.

Christopher S. Porrino, Attorney General,
attorney for respondents Victor Ashrafi,
J.A.D., Michael A. Guadagno, J.A.D.,
Marianne Espinosa, J.A.D. and Peter E.
Doyle, A.J.S.C. (Lisa A. Puglisi, Assistant
Attorney General, of counsel; Ione K. Curva,
Deputy Attorney General, on the brief).

DiFrancesco, Bateman, Kunzman, Davis, Lehrer
& Flaum, P.C., attorneys for respondent
Richard J. Guss (Mr. Guss, of counsel and on
the brief).

Richard A. Grodeck, respondent/cross-
appellant pro se.

PER CURIAM

This matter returns to us after our remand to the trial court so it could render a decision on defendant Richard A. Grodeck's request for counsel fees. See A.V. v. Ashrafi, No. A-5241-14 (App. Div. Oct. 26, 2016) (slip op. at 18). The trial court has determined Grodeck is ineligible for fees, finding that, as a pro se attorney, he was not entitled to fees under N.J.S.A. 10:6-2(f) of the New Jersey Civil Rights Act (Act), N.J.S.A. 10:6-1 to -2. In the alternative, the court determined that, because Grodeck was a party defending himself against as opposed to prosecuting an action brought under the Act, he could not be a prevailing party.

We affirm on the ground Grodeck is not entitled to fees because he is a pro se attorney; thus, we need not reach the trial court's alternative finding to dispose of this appeal.

The facts and contentions on appeal are set forth in our opinion and need not be repeated here. A.V., supra, slip op. at 2-11. Suffice to say we affirmed the trial court's dismissal of plaintiff's complaint against all defendants, including Grodeck. In his complaint, plaintiff alleged defendants violated his civil rights under N.J.S.A. 10:6-2(c). Grodeck represented himself during the proceeding. In his motion seeking the dismissal of plaintiff's complaint, Grodeck requested counsel fees in the event the court ruled in his favor.

We are persuaded a pro se attorney who prevails in an action brought under the Act may not recover counsel fees. Although there is no precedent on point in New Jersey, the United States Supreme Court has ruled on this issue. See Kay v. Ehrler, 499 U.S. 432, 438, 111 S. Ct. 1435, 1438, 113 L. Ed. 2d 486, 493 (1991). In Kay, the Court denied counsel fees to a pro se attorney who prevailed in an action under 42 U.S.C.A. § 1988 of the federal Civil Rights Act. The Court noted, "The statutory policy of furthering the successful prosecution of meritorious claims is better served by a rule that creates an incentive to retain counsel in every such case." Kay, supra, 499 U.S. at 438, 111 S. Ct. at 1438, 113 L. Ed. 2d at 493.

New Jersey's Supreme Court has recognized that New Jersey's Civil Rights Act, including its fee-shifting provision, is

patterned after the federal Civil Rights Act. See Tumpson v. Farina, 218 N.J. 450, 479 (2014); 42 U.S.C.A. § 1988(b); 42 U.S.C.A. §§ 1981 to 2000(h). Therefore, "[t]he interpretation given to parallel provisions of [42 U.S.C.A. § 1983] may provide guidance in construing our Civil Rights Act[,]" concerning when "[t]he 'prevailing party' in a Section 1983 action may be awarded 'a reasonable attorney's fee' as well as costs." Tumpson, supra, 218 N.J. at 474-75 (quoting 42 U.S.C.A. § 1988(b)).

Moreover, New Jersey's Supreme Court has approved the holding in Kay. See Segal v. Lynch, 211 N.J. 230, 264 (2012). In Segal, the Court explained:

The conflicting decisions found in our trial and appellate courts express a variety of policy considerations in support of or in opposition to permitting attorneys to be awarded counsel fees for representing themselves. In our analysis of which represents the better rule, we note that the question is one that the United States Supreme Court has also addressed. That Court, in construing the provisions of 42 U.S.C. § 1988, has concluded that an attorney representing himself or herself cannot claim the benefit of that statute's attorney's fees provision. Kay v. Erhler, 499 U.S. 432, 437-38, 111 S. Ct. 1435, 1437, 113 L. Ed. 2d 486, 492-93 (1991). . . .

Most of the Court's reasons for prohibiting an award of attorney's fees to an attorney who represents himself or herself in an action reveal the Court's preference for encouraging all litigants to engage the

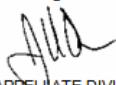
services of independent counsel. As such, the Court commented on the need for even a pro se attorney to have counsel capable of "framing the theory of the case, evaluating alternative methods of presenting the evidence, cross-examining hostile witnesses, formulating legal arguments, and . . . making sure that reason, rather than emotion, dictates the proper tactical response to unforeseen developments in the courtroom." Id. at 437, 111 S. Ct. at 1438, 113 L. Ed. 2d at 493. Thus, the Court concluded that allowing pro se attorney litigants to secure an award of attorney's fees would create an unwanted disincentive for attorneys to hire counsel. Id. at 438, 111 S. Ct. at 1438, 113 L. Ed. 2d at 493.

[Segal, supra, 211 N.J. at 263-64.]

In light of the holdings in Kay and Segal, we concur with the trial court that due to Grodeck's status as a party who is an attorney representing himself in an action brought under the Act, he may not recover counsel fees.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION