

No. _____

In The
Supreme Court of the United States

GERARD A. SHERIDAN,

Petitioner,

V.

MANUEL DE JESUS ORTEGA MELENDRES,
on behalf of himself and all other
similarly situated, et al.,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

APPENDIX

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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MANUEL DE JESUS ORTEGA
MELENDRES, on behalf of
themselves and all others
similarly situated, JESSICA
QUITUGUA RODRIGUEZ, on
behalf of themselves and all
others similarly situated,
DAVID RODRIGUEZ, on behalf
of themselves and all others
similarly situated, VELIA
MERAZ, on behalf of
themselves and all others
similarly situated, MANUEL
NIETO, JR., on behalf of
themselves and all others
similarly situated, and
SOMOS AMERICA,

Plaintiffs-Appellees,

UNITED STATES OF AMERICA,

No. 16-16663

D.C. No. 2:07-cv-
02513-GMS

ORDER

*Intervenor-Plaintiff-
Appellee,*

v.

MARICOPA COUNTY,

Defendant,

v.

GERARD A. SHERIDAN,

Movant-Appellant.

ORDER

Plaintiffs obtained an injunction against Defendant in an action under 42 U.S.C. § 1983. *Melendres v. Arpaio*, 784 F.3d 1254, 1267 (9th Cir. 2015). Sheridan, a now-retired employee of Defendant, appealed from the district court's finding that he committed civil contempt by disobeying the injunction. After Sheridan filed his opening brief, we granted Plaintiffs' motion to dismiss Sheridan's appeal for lack of standing. Plaintiffs now seek attorney's fees under 42 U.S.C. § 1988(b) for services performed in connection with the appeal. We grant the award in part.

Plaintiffs are “prevailing part[ies]” within the meaning of section 1988 in every sense. 42 U.S.C. § 1988(b). They succeeded in obtaining an injunction in the district court and succeeded in dismissing Sheridan’s appeal from its finding of contempt for violating the injunction. That we dismissed Sheridan’s appeal for lack of standing rather than on the merits does not, as Sheridan contends, divest Plaintiffs of prevailing party status. *See Sotomura v. Cty. of Hawaii*, 679 F.2d 152, 152 (9th Cir. 1982) (order) (holding plaintiffs were prevailing parties, “even though they prevailed by obtaining dismissal of the appeal as untimely rather than affirmance on the merits”); accord *Ford v. Bender*, 768 F.3d 15, 31 (1st Cir. 2014) (holding plaintiff was prevailing party, even though plaintiff obtained dismissal of the appeal as moot, because judgment was not moot when issued by the district court); *Murphy v. Fort Worth Indep. Sch. Dist.*, 334 F.3d 470, 471 (5th Cir. 2003) (same); *Young v. City of Chicago*, 202 F.3d 1000, 1000–01 (7th Cir. 2000) (same). Our dismissal contemplates no future proceedings involving the merits of the contempt finding that could change the favorable result obtained by Plaintiffs below. *Sotomura*, 679 F.2d at 153. Plaintiffs are prevailing parties under section 1988.

Sheridan further argues that *Kentucky v. Graham*, 473 U.S. 159 (1985), stands for the proposition that a nonparty may not be liable for a fee award under section 1988. We do not read *Graham* so broadly. *Graham* held that a government entity could not be vicariously liable for a fee award

when plaintiffs prevailed in a lawsuit against its employees in their personal capacities. *Id.* at 167–68. After the entity’s dismissal on Eleventh Amendment grounds, it was a non-party and did not actively participate in the litigation. *Id.* at 162. By contrast, Sheridan disobeyed the injunction entered in the underlying litigation. He actively inserted himself into the litigation by appealing the contempt finding in the hope of clearing his name. We and our sister circuits have held that non-party contemnors may be liable for attorney’s fees in other contexts. *Portland Feminist Women’s Health Ctr. v. Advocates for Life, Inc.*, 877 F.2d 787, 789–90 (9th Cir. 1989) (holding non-party contemnors liable for plaintiffs’ attorney’s fees incurred in bringing contempt proceeding as a remedial sanction); *see also Gen. Ins. Co. of Am. v. E. Consol. Utils., Inc.*, 126 F.3d 215, 220 (3d Cir. 1997) (affirming award of attorney’s fees from nonparty contemnor); *Waffenschmidt v. Mackay*, 763 F.2d 711, 726 (5th Cir. 1985) (affirming award of attorney’s fees from non-party contemnors because they aided and abetted the defendants in violating the court’s injunction). There is no reason to treat an award of fees under section 1988 any differently. Therefore, we grant Plaintiffs’ application for attorney’s fees and costs related to Sheridan’s dismissal.

Plaintiffs also seek fees for preparing an answering brief that they never filed, having instead prevailed in their motion to dismiss. We may award fees only for work “expended in pursuit of the ultimate result achieved.” *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983) (internal quotation marks and

citation omitted). Because Plaintiffs did not succeed in opposing Sheridan's appeal on the merits, we award them no fees for preparing the answering brief.

We refer this matter to the Appellate Commissioner to calculate the amount of reasonable attorney's fees and nontaxable costs to award Plaintiffs consistent with this order. Any such award is subject to reconsideration by this panel. *See* Ninth Cir. R. 39-1.9.

**REFERRED TO THE APPELLATE
COMMISSIONER**

APPENDIX B**UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

MANUEL DE JESUS ORTEGA
MELENDRES, on behalf of
themselves and all others
similarly situated, JESSICA
QUITUGUA RODRIGUEZ, on
behalf of themselves and all
others similarly situated,
DAVID RODRIGUEZ, on behalf
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MERAZ, on behalf of
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NIETO, JR., on behalf of
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SOMOS AMERICA,

Plaintiffs-Appellees,

UNITED STATES OF AMERICA,

*Intervenor-Plaintiff-
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No. 16-16663

D.C. No. 2:07-cv-
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ORDER

v.

MARICOPA COUNTY,

Defendant,

v.

GERARD A. SHERIDAN,

Movant-Appellant.

Before: WALLACE, GRABER, and BERZON, Circuit Judges.

Before the court are two motions to dismiss this appeal, one filed by the individual Plaintiff-Appellees and one by the government. We conclude that Sheridan's appeal is moot and therefore GRANT the motions to dismiss.

Sheridan, a non-party civil contemnor, has incurred no personal liability, financial or otherwise, as a result of the district court's judgment or finding of civil contempt. Although he originally was bound by the judgment insofar as it imposed obligations on the Maricopa County Sheriff's Office, where he was then employed, his subsequent retirement mooted that interest. Accordingly, he now lacks the necessary interest to maintain this appeal. *See*

Union of Prof'l Airmen v. Alaska Aeronautical Indus., Inc., 625 F.2d 881, 884 (9th Cir. 1980).

The asserted harm to Sheridan's reputation is insufficient to save his appeal from mootness. See *Jackson v. Cal. Dep't of Mental Health*, 399 F.3d 1069, 1075 (9th Cir. 2005). First, Sheridan has no standing to "seek appellate excision of the district court's ruling" that he committed civil contempt. *Nat. Res. Def. Council v. Gutierrez*, 457 F.3d 904, 906 (9th Cir. 2006) (order). Second, the district court's criminal contempt referral, standing alone, carries no legal consequences, and Sheridan has since been dismissed from the criminal contempt proceedings on the ground that the statute of limitations has run. Third, the Arizona Peace Officer Standards and Training Board investigation, which arose from the criminal contempt referral, is an independent investigation whose resolution "depends on the unfettered choices made by independent actors not before the courts." *Leu v. Int'l Boundary Comm'n*, 605 F.3d 693, 695 (9th Cir. 2010), quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992). Finally, to the extent Sheridan argues that the district court's actions interfere with his ability to procure future employment, he has not identified "even one such job for which [he] has in fact applied." *Sandidge v. Washington*, 813 F.2d 1025, 1026 (9th Cir. 1987).

Sheridan also lacks standing to seek recusal of the district judge and monitor since, for the reasons mentioned, he has no legally cognizable interest in the litigation at this point. Cf. *United States v.*

Sciarra, 851 F.2d 621, 636 (3d Cir. 1988) (holding that non-party witnesses lacked standing to move for recusal of judge where there was “no pending action before [the judge] in which the rights of the [witnesses] [were] at issue”).

Accordingly, Sheridan’s appeal is moot and must be dismissed.

IT IS SO ORDERED.

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MANUEL DE JESUS ORTEGA
MELENDRES, on behalf of
themselves and all others
similarly situated, JESSICA
QUITUGUA RODRIGUEZ, on
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Somos America,

Plaintiffs-Appellees,

UNITED STATES OF AMERICA,

*Intervenor-Plaintiff-
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No. 16-16663

D.C. No. 2:07-cv-
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ORDER

v.

MARICOPA COUNTY,

Defendant,

v.

GERARD A. SHERIDAN,

Movant-Appellant.

Before: WALLACE, GRABER, and BERZON, Circuit
Judges.

The panel has voted unanimously to deny
Sheridan's petition for panel rehearing. The petition
is therefore DENIED.

IT IS SO ORDERED.

APPENDIX D**42 U.S.C. § 1988****§ 1988. Proceedings in vindication of civil rights**

(b) Attorney's fees. In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C.A. § 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C.A. § 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C.A. § 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

APPENDIX E

DECLARATION OF GERARD SHERIDAN

Gerard Sheridan declares as follows:

1. I am over the age of 18 and declare under penalty of perjury that the foregoing is true and correct.
2. For approximately 38 years, I was employed by the Maricopa County Sheriff's Office ("MCSO").
3. On May 13, 2016, the district court in *Melendres et al., v. Arpaio et al.*, Case 2:07-cv-02513-GMS, found me in civil contempt of court.
4. I was later referred by that court for a criminal contempt charge.
5. I have since retired from MCSO.
6. To my knowledge, the district court forwarded a letter to the Arizona Peace Officer Standards and Training Board ("AZ POST") regarding my conduct as an employee of MCSO and/or the nature of the ongoing investigations resulting from the court finding me in civil contempt in May 2016.

7. To my knowledge, there are currently two active AZ POST investigations into my conduct as an employee of the MCSO.

8. To my knowledge, the AZ POST investigations regarding my conduct are a direct result of the district court's aforementioned letter.

9. I was a member of AZ POST for nine years.

10. I had an impeccable reputation amongst AZ POST employees and it was even suggested that I retire from the MCSO in order to act as the Director of AZ POST.

11. Beginning in 1999, I taught various Administration of Justice Studies courses as an adjunct faculty member at Scottsdale Community College ("SCC").

12. Upon retirement from the MCSO, I had planned on seeking a full-time teaching position at SCC.

13. Due to high demand, full-time teaching positions at SCC are difficult to obtain.

14. I was scheduled to teach an Ethics and Administration of Justice course for the spring 2017 semester at SCC. My name was listed as the instructor in the college course schedule and there was a full allotment of students assigned to the class.

I had already submitted the course syllabus and curriculum as required.

15. After SCC was informed that I was found in civil contempt of court and/or that the district court had forwarded a letter to AZ POST, I was subsequently notified one week prior to the start of class there no longer was a teaching assignment available for me in the spring 2017 semester due to the legal issues I was facing in the *Melendres* case. I was told by the AJS Department Chair "they don't want the controversy."

16. At the end of the spring 2017 semester, a full-time faculty member retired possibly opening a full-time position in the AJS Department.

17. Based on my communications with colleagues at SCC, I likely would have been promoted to full-time faculty, in light of the aforementioned vacancy, had I not been terminated.

18. In a recent conversation with a Glendale, AZ Council Member, in which both the details of the *Melendres* case and my extensive professional background was discussed, I inquired as to whether he would consider me for the position of Chief of Police of the Glendale Police Department, to which there was an opening at that time. He informed me that he would not consider me for the Chief of Police position.

19. It is my belief the actions of the district court in the *Melendres* case, specifically, finding me in civil contempt, precluded me from being considered for the Chief of Police of Glendale position by the aforementioned Glendale, AZ Council Member.

20. It is my belief that the detrimental effects of the district court finding me in civil contempt may have foreclosed my ability to ever obtain another position in law enforcement.

21. In 2000 I attended and graduated the Federal Bureau of Investigation National Academy (FBINA). The FBINA is known throughout the world as the premier executive level leadership management training for law enforcement. It is often preferred or a prerequisite for many police chief positions in addition to a graduate degree. An extensive background investigation is conducted by the FBI prior to acceptance into the Academy.

22. I have obtained a graduate degree, a Masters Degree in Organizational Management from Wayland Baptist University in 2003 with an undergraduate degree from Grand Canyon University, Bachelor of Arts in Public Safety Administration as well as an Associates of Arts Degree from Scottsdale Community College in the Administration of Justice.

23. Through the American Jail Association, I became a Certified Jail Manager.

24. For some time, I have belonged to, or participated in, many professional organizations including: the American Correctional Association, the American Jail Association, the American Sheriff's Association, the International Association of Chiefs of Police, and the Federal Bureau of Investigation National Academy Associates.

25. As the Chief of Custody in the MCSO, I oversaw the construction of two "Mega Jails", a state-of-the-art food factory and distribution center, and a Training Center. In addition, I was involved in establishing hiring standards for the Maricopa County Jails.

26. As the Chief of Custody in the MCSO, I was personally involved in managing inmate lawsuits and risk management measures.

27. In accordance with my experience in the MCSO, specifically, my experience as Chief of Custody and my extensive knowledge and experience in jail management, I had planned on opening a consulting business, which would require me to testify as an expert witness in related matters.

28. To my knowledge, I have been placed on a "Brady List" in the MCSO, which substantially affects my credibility as a testifying witness in criminal prosecutions.

29. Due to the district court finding me in civil contempt, as well as its findings that I testified

untruthfully and acted unethically in the *Melendres* case, I am no longer able to open a consulting business as my reputation for truthfulness and ethics has been tainted by the district court's findings.

DATED this 18th day of September, 2017.

/s/ Gerard Sheridan (with permission)