

IN THE SUPREME COURT OF IOWA

No. 16-1534
Polk Co. No. CVCV 051252

THERESA SEEBERGER,
Petitioner-Appellee Cross-Appellant

vs.

DAVENPORT CIVIL RIGHTS COMMISSION,
Respondent-Appellant/Cross-Appellee,

and

MICHELLE SCHRUERS,
Intervenor-Appellant/Cross Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE MICHAEL D. HUPPERT

**FINAL BRIEF FOR APPELLANT INTERVENOR MICHELLE
SCHREURS**

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CERTIFICATE OF FILING

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STATEMENT OF ISSUES

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B. Whether the District Court erred by refusing to award fees under the Fair Housing Act.

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State v. Keding, 553 N.W.2d 305, 307 (Iowa 1996)

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C. Whether the District Court abused its discretion by refusing to award any fees for work on the administrative appeal/judicial review.

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Vicorp Restaurants, Inc. v. Bader,
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Cleveland v. Ibrahim, 121 Fed. Appx. 88, 90 (6th Cir.2005)(unpublished)

Baker v. City of Iowa City,
867 N.W.2d 44, 58 (Iowa 2015), *reh'g denied* (June 12, 2015),
cert. denied sub nom. Baker v. City of Iowa City, Iowa, 136 S. Ct.
487 (2015).

Jaimes v. Toledo Metro. Hous. Auth.,
715 F. Supp. 843, 845 (N.D. Ohio 1989)

STATEMENT OF THE CASE

This is an appeal from the District Court's Orders of July 7, 2016 and August 17, 2016 denying Ms. Schreurs attorney fees as the prevailing party in this housing discrimination case. Ms. Schreurs asserts that she is entitled to attorney fees from her former landlord Theresa Seeberger. The Davenport Civil Rights Commission awarded fees and costs, adopting the recommended findings of the administrative law judge. *App. P. 151, 152*. The District Court affirmed the finding of discrimination and remanded the case for reconsideration of damages and the civil penalty. The District Court reversed the fee award on judicial review, ruling that the Davenport Ordinance does not authorize a fee award. *App. P. 360*. The District Court also denied Ms. Schreurs' fee application for fees generated during the judicial review. *App. P. 366*. This Court should reverse the District Court on the attorney fee rulings.

A. NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION IN THE TRIAL COURT.

1. INTRODUCTION

This is an appeal from the district court's orders on judicial review of an agency action. *App. P. 339*. The agency is the Davenport Civil Rights Commission, which following a public hearing, awarded mental anguish damages, a civil penalty and attorney fees to the victim of housing

discrimination, Michelle Schreurs. *App. pp 152-153*. The District Court ruled that the Davenport Civil Rights Commission's Ordinance did not allow for the award of fees for work on the public hearing below. *App. pp. 356, 360, 365, 366*. The District Court also denied Ms. Schreurs' attorney fees for work done on the judicial review. *Id.*

2. PROCEEDINGS

Ms. Schreurs is the original complainant on this housing discrimination case brought against her former landlord Theresa Seeberger. *App. pp. 50-51*. She filed with the Davenport Civil Rights Commission and her complaint was cross-filed with the Department of Housing and Urban Development (HUD). *Id.* The case went to Public Hearing on November 4, 2015 in front of Administrative Law Judge Heather Palmer. *November 4, 2015 Video Recording*. Judge Palmer issued a decision the following month recommending that the Davenport Civil Rights Commission finding Ms. Seeberger had discriminated against Ms. Seeberger by making familial basis discriminatory statements to Ms. Schreurs and her daughter. *App. P. 147*. Judge Palmer recommended that \$35,000 in damages for mental anguish be awarded to Ms. Schreurs. *Id.* In another decision, dated December 31, 2015, Judge Palmer recommended that the Commission award Ms. Scheurs' attorney fees and costs of \$23,881.80. *App. P. 151*. The administrative law judge also

recommended a \$10,000 civil penalty be paid to the Davenport Civil Rights Commission.

On January 7, 2016 the Davenport Civil Rights Commission adopted/affirmed Judge Palmer's decision on liability and attorney fees but reduced the amount of damages for mental anguish to \$17,500. The Commission adopted the Administrative Law Judge's recommendation and levied a \$10,000 civil penalty against Ms. Seeberger. *App. P. 153.*

Ms. Seeberger timely appealed the commission's decision to the Iowa district court for Polk County. On July 7, 2016 the District Court ultimately affirmed the ruling that Ms. Seeberger had made discriminatory statements to Ms. Schreurs and her daughter in violation of the Davenport Civil Rights Ordinance. The district court remanded the case to the Commission for reconsideration of damages and the civil penalty, ruling that the decision was not clear that the damage award and civil penalty was based on the discriminatory statements only. *Id.* The district court ruled that the Commission did not have the authority to award attorney fees to Ms. Schreurs' attorney and vacated that award. *Id.* Following the parties' motions and motions to award fees to Ms. Seeberger's attorneys and Ms. Schreurs' attorney, the Court affirmed its decision on liability and denied both applications for fees. *App. pp. 360, 366.*

Ms. Schreurs appeals the District Court's decision to vacate her fee award and deny her application for fees generated in the judicial review.

3. FACTS RELEVANT TO ISSUES ON APPEAL ¹

Theresa Seeberger had rent-paying tenants at her Ripley Street property from 2012 until at least May 2015. *Audio-Video Transcript Seeberger Testimony, Disk 1 at minute 34:00. App. pp. 14 @ pp. 6-7 and 33@ P. 83.* Ms. Schreurs and her 16-year old daughter Trinity Crews lived there from September 2013 to mid-October 2014, paying various levels of rent depending on how many other tenants occupied the house. *App. P. 19 @ P. 28.* They shared the house for part of their tenancy with Peter King, Ms. Schreurs' then boyfriend and with another tenant. *App. P. 15 @ P. 10.* About 8 weeks after the Schreurs' tenancy ended, another rent-paying tenant moved into the property. *App. P. 35 @ P. 92.* Ms. Seeberger, who is a magistrate in Cedar County, lived at various other residences during the entire period, although she retained the right to enter the home to care for her pet cats. *Video Transcript Disk 1 @ minute 26:10, Cert. Record. Comm. Ex. G, P. 3.* When Ms. Seeberger was busy, Ms. Schreurs fed and watered the animals. *App. P. 22 @ P. 38.*

On or about September 15, 2014, Ms. Seeberger took a picture of Trinity

¹ These facts are based on the testimony and exhibits at the November 4, 2015 public hearing. The record is a video-audio tape, which is part of the Administrative Record on appeal. Unfortunately, there are no page references.

Crews' prenatal vitamins on the kitchen counter during a visit to the property. She texted the picture to Michelle Schreurs asking, "Is there anything I should know about?" Ms. Seeberger testified that she was entitled to know whether there was a pregnancy. *App. P. 27 @ pp. 60-61.*

The following day Ms. Seeberger went to Ripley Street where she confronted Ms. Schreurs in an angry, curt and disapproving manner. *Video-Audio Tape of Judicial Hearing, Schreur's Testimony, Disk 2 at Minute 36:46; App. P. 18 @ pp. 23-24; App. P. 51.* Trinity overheard this conversation. *App. P. 6 @ P. 23.* Ms. Schreurs testified that Ms. Seeberger pointed to Trinity, asking, is she pregnant. *App. P. 6 @ pp. 24-25.* The next words out of Ms. Seeberger's mouth were, "You guys have 30 days to get out. You don't pay the rent on time the way it is and now you're bringing a third person into the world." *App. P. 6 @ P. 24.* Ms. Seeberger also noted that obviously "you are keeping the baby." *App. P. 73 @ # 26,* Ms. Seeberger expressed her opinion that Ms. Schreurs had not been not responsible by failing to prevent her daughter's pregnancy. *Video-Audio Tape of Judicial Hearing, Seeberger Testimony, Disk 3 at minute 9:08.* According to Ms. Seeberger, the pregnancy of a 16 year old in high school was not a good plan. *App. pp. 25-26 @ pp. 53-54.* According to Ms. Seeberger's own testimony, the pregnancy was part of

the reason she terminated tenancy. *App. P. 29 @ P. 66, . Video-Audio Tape of Judicial Hearing, Seeberger Testimony, Disk 3 at minute 8:56.*

Ms. Seeberger went on to opine on Trinity's pregnancy, "If they had pulled up in a Cadillac, I would have reacted the same way." *Video-Audio Tape of Judicial Hearing, Seeberger Testimony, Disk 2 at minute 4:48, 5:39, 5:53.* There was no Cadillac. *Id. at Minute 6:38.* The only thing that happened was that Ms. Seeberger found out Trinity was pregnant. *Id.*

This incident devastated Ms. Schreurs and Trinity. Ms. Schreurs realized they would pay more rent with another person but Ms. Seeberger never gave her a chance to talk about it. *App. P. 91, Video-Audio Tape of Judicial Hearing, Schreurs Testimony Disk 2 at minute 41.56.* Michelle Schreurs and Trinity Crews had nowhere to go. *App. P. 91, 140.* They moved in with Ms. Schreurs' parents. She increased depression meds and started anxiety meds. Other health issues included psoriasis, Crohn's colitis, gastritis. *Video-Audio Tape of Judicial Hearing, Schreurs Testimony, Disk 2 at minute 41.30.*

Ms. Seeberger's discriminatory statements did not stop after she terminated the tenancy in mid-September. *App. P 75.* On October 1, Ms. Seeberger texted Ms. Schreurs asking if Peter King (Ms. Schreurs' former boyfriend) was the father of Trinity's baby. *App, P. 75.* Upset, Ms. Schreurs spoke with Peter King and learned that Ms. Seeberger had announced her

intention to sell Mr. King's property on ebay. *App. P. 15 @ P. 13.* Ms. Schreurs and a friend, Jason Alton, went to police station to ask for advice. *App. pp. 91-92; Video-Audio Tape of Judicial Hearing, Alton Testimony, Disk 1 at Minute 14.29.* Following the advice of the police, Ms. Schreurs and Mr. Alton went to the Ripley Street house to get belongings and then go elsewhere in an attempt to diffuse the situation. *App. pp. 91-92.*

Ms. Seeberger met them at the door, demanding to know who Jason was and reasserting her allegations that Peter King was the father of Trinity's baby and that Michelle is a bad mother because Trinity was pregnant.² *App. P. 75.* Mr. Alton described the comments as abusive and vindictive that denigrated Michelle's raising of Trinity. *Video-Audio Tape of Judicial Hearing, Alton Testimony, Disk 1 at Minute 18:30, App. P. 87.* Ms. Schreurs was so upset that she was crying and unable to recall the details of Ms. Seeberger's allegations. *Video-Audio Tape of Judicial Hearing, Schreurs' Testimony, Disk 2 at Minute 40:36, 40:49; Alton Testimony, Disk 1 at minute 19:31.*

Ms. Seeberger dealt with the situation by calling the police herself and claiming there was an unknown intruder in her house, even though Ms.

² Ms. Seeberger posed these provocative questions about the baby's paternity even though she had no evidence of sexual contact between Mr. King and Ms. Crews. Nor did she alert the police or DHS of her suspicions. Instead, Ms. Seeberger's questions/allegations were based on her conversations with a nosy neighbor whose knowledge was based on an observation that Mr. King gave Trinity a ride in his car. *Video Transcript Disk 2 at 9:00 minutes.*

Schreurs had identified Mr. Alton as her guest. *App. P. 75 @ # 47. Video-Audio Tape of Judicial Hearing, Seeberger Testimony, Disk 2 at Minute 3:23.* The Administrative Law judge found that Ms. Seeberger was not credible in two areas: her assertion that she had moved back into the house before terminating the tenancy and statements about how she loves to have babies and children visit. *App. P. 103, 139-140.* See generally, the video tape of the public hearing and the District Court's recitation of the facts in July 7, 2016 Order and the Administrative Law Judge's recitation of the facts in the December 11, 2015 Order. *App. pp. 137-141.*

ARGUMENT

1. The District Court erred in its ruling that the Davenport Civil Rights Ordinance does not allow an award of attorney fees.

Standard of Review: The standard of review is for errors at law. *Renda v. Iowa Civ. Rights Commn.*, 784 N.W.2d 8, 14–15 (Iowa 2010)

There are two provisions of the Davenport Civil Rights Ordinance under which the Court could have and should have affirmed the award of attorney fees. First, the Court should have affirmed the attorney fees award under the general remedial provisions of Division II of the ordinance, entitled “Unfair Practices.” Division II lists discriminatory practices including employment, accommodation, retaliation, education. In addition, the Division II of the

Davenport Ordinance contains a general relief provision, *2.58.175.8 Remedial Relief, App. P. 123*. This section provides for general relief including relief that could only pertain to housing discrimination. Davenport Ordinance *2.58.175.8, App. P. 123. Remedial Relief* states that the commission may award reasonable attorney fees as part of damages caused by a discriminatory practice. These relief provisions apply generally to all “discriminatory practices.” Enumerated in the items of relief are “sale, exchange, rental or sublease of real property...” *Davenport Ordinance 2.58.175.8 A (4), App. P. 123*. The relief section contains no language that limits relief to any particular discriminatory practice. Thus, contrary to the Court’s conclusion, the ordinance provides authority for a fee award for attorney fees in housing discrimination cases at the public hearing and commission level.

The second provision that allows for attorney fees is contained in *Division III—Housing Discrimination. 2.58.340(G). App. P. 134*. That section states:

G. “Attorney fees.” The administrative law judge or the court may at its discretion allow the prevailing party, other than the commission, reasonable attorney fees and costs resulting from any administrative proceeding brought under this section, any court proceeding arising therefrom, or any civil action.

The vindication of civil rights is so significant that an award of fees may not be arbitrarily or prematurely denied. *Dutcher v. Randall Foods*, 546 N.W.2d

889, 897 (Iowa 1996)(reversing the trial court for refusal to award fees to a prevailing discrimination plaintiff.) A successful plaintiff under the ICRA and Title VII is entitled to reasonable attorney fees. *Boyle v. Alum-Line, Inc.*, 773 N.W.2d 829, 832 (Iowa 2009).

Here, Ms. Schreurs was clearly the prevailing party at the administrative level and at the judicial review where she prevailed on the underlying discrimination claim. The administrative law judge awarded fees in a carefully drawn decision dated December 31, 2015. The district court's refusal to allow fees to Ms. Schreurs runs contrary to the underlying legislative purpose of fee shifting in discrimination cases, the vindication of civil rights. To deny fees in such a case will undoubtedly deter attorneys from representing discrimination victims such as Ms. Schreurs and runs counter to the requirements of the law. This Court should reverse the District's Court's denial of fees to Ms. Schreurs.

2. *Ms. Schreurs is entitled to attorney fees under the Fair Housing Act.*

Standard of Review: The standard of review is for errors at law. *Renda v. Iowa Civ. Rights Commn.*, 784 N.W.2d 8, 14–15 (Iowa 2010).

In its August 7, 2016 ruling the district court also refused to award fees under the Fair Housing Act even though the case was cross-filed with HUD and brought under the Davenport ordinance and the federal statute.

The *Fair Housing Act*, provides in part:

“In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under this section, the administrative law judge or the court, as the case may be, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs.” 42 U.S.C.A. § 3612 (p).

The administrative record shows that the action was cross-filed with the Department of Housing and Urban Development. *Cert. Record, Comm'n C, P. 1; DDD, P. 1; App. P. 53, 99.* Also see, *State v. Keding*, 553 N.W.2d 305, 307 (Iowa 1996)(affirming judgment as a matter of law under the *Iowa Civil Rights Act* and the federal *Fair Housing Act*.) This case was brought under the federal *Fair Housing Act*, which clearly provides for attorney fees.

In its August 7, 2016 ruling, the District Court based its refusal to award fees on its belief that the Davenport Commission does not have the authority to award relief authorized by the federal statute. This ignores the longstanding file sharing agreements by these administrative agencies and the importance of protecting the rights of discrimination victims. This decision also ignores the longstanding principle that the Courts interpret Iowa and federal law similarly in fee award decisions because of the importance of vindicating the rights of discrimination victims. *Dutcher v. Randall Foods*, 546 N.W.2d 889, 897 (Iowa 1996).

Ms. Schreurs asserts that the district court erred in removing her fees awarded under the Davenport Ordinance. But even if the Court finds that Davenport ordinance lacks clarity on the fee issue, this Court should reinstate the fee award under the *Federal Fair Housing Act, 42 USCA §3612 (p)*.

The district court commented that the appropriate procedure for Ms. Schreurs to seek fees would be filing a civil claim in the United States District Court. This ignores the practical reality of generating ever more fees and expenses and burden it would place on Ms. Schreurs. This comment also ignores that the dim chances of collecting damages or fees in this case essentially deny justice to Ms. Schreurs through delay. This district court made multiple rulings that prevented Ms. Schreurs from obtaining security for the judgment she will ultimately hold against Ms. Seeberger. *See, April 14, 2016 Order, pp. 3-4; May 13, 2016 Order, P. 1* (Denying Motion to Enforce Judgment and denying motion to transfer to Scott County where Ms. Seeberger owned real estate until the Spring of 2016.) Requiring Ms. Schreurs to file a federal lawsuit to obtain a fee order would unnecessarily add another burden and barrier to the process when the administrative law judge and commission have already considered the matter and issued rulings.

Thus, this Court should rule that Ms. Schreurs is entitled to the fee award recommended by the administrative law judge and affirmed by the Davenport Civil Rights Commission.

3. The District Court abused its discretion by refusing to award fees to Ms. Schreurs in the judicial review proceeding.

Standard of Review: The standard of review is abuse of discretion.

“...fee provisions using the word ‘may’ place the decision about whether to award *any* attorney fees within the sound discretion of the district court.” *Lee v. State*, 874 N.W.2d 631, 644 (Iowa 2016).

A prevailing plaintiff “should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.” *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983)(internal quotation marks omitted.) Even if Ms. Schreurs had only partially prevailed on her underlying theories, she would still be eligible for consideration of fees for obtaining substantial relief. *Id.* That Ms. Scheurs prevailed on liability determines eligibility for fees, regardless of the outcome on damages. *Vicorp Restaurants, Inc. v. Bader*, 590 N.W.2d 518, 523 (Iowa 1999). Refusing to award any fee to a prevailing plaintiff is an abuse of discretion. *Wikol ex rel. Wikol v. Birmingham Pub. Schools Bd. of Educ.*, 360 F.3d 604, 611 (6th Cir. 2004). *Also,*

We have previously stated that where there are no special circumstances, the district court does not merely have the right to award attorney's fees, but in fact *must* award attorney's fees. *Wikol*, 360 F.3d at 611 (citing *Berger v. City of Mayfield Heights*, 265 F.3d 399, 406 (6th Cir.2001)). Thus, while the district court generally has discretion in determining whether to award attorney's fees, once it is determined that no “special circumstances” exist, this discretion is strictly cabined in civil rights cases. *See, e.g., N.J. Coalition of Rooming and Boarding House Owners v. Mayor and Council of City of Asbury Park*, 152 F.3d 217, 225 (3d Cir.1998). *Cleveland v. Ibrahim*, 121 Fed. Appx. 88, 90 (6th Cir. 2005)(unpublished)

The district court denied Ms. Schreurs’ application for fees in its August 17, 2016 order, finding that she was not the prevailing party because the judicial review did not result in a change in the legal relationship of the parties. *August 17, 2016 Order, pp. 4-5*. Ms. Schreurs submits that the Court erred when it framed the issue as limited to the judicial review, instead of considering the bigger picture. Looking at the case as a whole, Ms. Schreurs is the prevailing party. She brought the case with a single theory alleging that Ms. Seeberger violated the fair housing laws by making discriminatory statements on the basis of familial status. Every decision maker in the case has concluded that Ms. Schreurs proved her case. This includes the administrative law judge, the Davenport Civil Rights Commission and the district court. *App. pp. 147, 152-153, 360*. That the case was remanded for reconsideration of the damages does not eliminate the fact that Ms. Schreurs prevailed. The district court got it wrong when it decided Ms. Schreurs did not prevail by focusing only on the

fact that she does not yet have a judgment. *Baker v. City of Iowa City*, 867 N.W.2d 44, 58 (Iowa 2015), *reh'g denied* (June 12, 2015), *cert. denied sub nom. Baker v. City of Iowa City, Iowa*, 136 S. Ct. 487 (2015).

Moreover, Ms. Schreurs is a prevailing party. The term “prevailing party” for purposes of attorney's fees means that the plaintiff succeeded on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit.’ *Jaimes v. Toledo Metro. Hous. Auth.*, 715 F. Supp. 843, 845 (N.D. Ohio 1989)(Awarding fees in a housing discrimination case.) Further, denying fees in such cases fails to recognize the purpose of the fee-shifting provision is to make it easier for a plaintiff of limited means to bring a meritorious suit, by offering some incentive for attorneys to take such cases. *Jaimes v. Toledo Metro. Hous. Auth.*, 715 F. Supp. 843, 845 (N.D. Ohio 1989)(citing *N.Y. Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 63, 100 S.Ct. 2024, 64 L.Ed.2d 723 (1980); *Hensley*, 461 U.S. at 444, 103 S.Ct. 1933 (Brennan, J., concurring in part).

The law is clear that a plaintiff who wins only part of her case is entitled to some fees. *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983)(Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced.) At most, the district court could have reduced Ms. Schreurs’ fee application to reflect that she did not obtain a clear

affirmance on the damages award. But it was an abuse of discretion to deny fees on the grounds that Ms. Schreurs was not a prevailing party, when in fact she proved her case of discriminatory statements.

Wherefore, Ms. Scheurs prays this Court for its order reversing the District Court's order vacating the attorney fee award of the Davenport Civil Rights Commission and for its order allowing a fee award for work performed on the judicial review.

ROUTING STATEMENT

This case should be decided by the Iowa Court of Appeals.

MS. SCHREURS DOES NOT REQUEST ORAL ARGUMENT

Appellant Intervenor contends that oral argument is not necessary in this case.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND
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1. This brief complies with type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 4,664 words.
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