[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 14-14800
Non-Argument Calendar

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D.C. Docket No. 2:07-cv-01527-LSC

BLACK WARRIOR RIVERKEEPER, INC.,
FRIENDS OF LOCUST FORK RIVER, INC.,

Plaintiffs-Appellees,

versus

METRO RECYCLING INC.,

Defendant-Appellant.

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Appeal from the United States District Court
for the Northern District of Alabama

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(June 3, 2015)

Before ED CARNES, Chief Judge, TJOFLAT and SENTELLE,[*] Circuit Judges.

PER CURIAM:

The parties and the district court are well aware of the facts and procedural history leading to this appeal by Metro Recycling of the award of attorney's fees to Black Warrior Riverkeeper, so we will get right to the issues and our resolution of them.

First, Metro contends that Riverkeeper is not a "prevailing or substantially prevailing party" within the meaning of 33 U.S.C. § 1365(d). Yes it is. The definition of that term is one who "prevailed in what the lawsuit originally sought to accomplish," or more generally "advanced the goals of the [Clean Water] Act." Friends of the Everglades v. S. Fla. Water Mgmt. Dist., 678 F.3d 1199, 1201–02 (11th Cir. 2012) (quotation marks omitted). Riverkeeper did that, and it also prevailed in the actions that it took after the first consent decree was entered. Its aim, which promoted the goals of the Act, was not just to shut down the tire recycling landfill but to prevent the shutdown landfill from continuing to pollute the Black Warrior River.

The work done after the first consent decree was entered that led to the second consent decree is the work at issue in this appeal. And that work was necessary to accomplish what the lawsuit had sought and to further the goals of the

[*] Honorable David Sentelle, United States Circuit Judge for the District of Columbia Circuit, sitting by designation.

Act. Riverkeeper was as much a "prevailing or substantially prevailing party" as to the second consent decree as it had been for the first one, and Metro agreed to pay Riverkeeper attorney's fees for its work on the first one. The second consent decree specifies that: "Metro has agreed to undertake certain additional measures upon closure of the landfill that are not contrary to or inconsistent with the Modified Closure Plan, but which constitute additional responsibilities agreed to by Metro to settle this action." That language, to which Metro consented, refutes its argument that all Riverkeeper got was the closure of the landfill, something Metro asserts it would have done anyway. Metro was forced to do more in the second consent decree in order to settle Riverkeeper's second motion to enforce. That was a victory for Riverkeeper and one that furthered the goals of the Clean Water Act.

Second, Metro contends that the district court based its award at least in part on the catalyst theory even though the Supreme Court has banned the use of that theory. See Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 U.S. 598, 604, 610, 121 S. Ct. 1835, 1840, 1843 (2001). But Buckhannon was a Fair Housing Amendments Act and Americans with Disabilities Act case. See id. at 601, 121 S. Ct. at 1830. Since that decision, we have held that the catalyst theory is still viable in Clean Water Act cases. See Friends of the Everglades, 678 F.3d at 1202 ("[T]here is unambiguous evidence

(4 of 5)

that Congress intended the 'whenever . . . appropriate' fee provisions of the Clean Water Act to allow fee awards to plaintiffs who do not obtain court-ordered relief but whose suit has a positive catalytic effect.") (quoting 33 U.S.C. § 1365(d)) (alteration and quotation marks omitted). So the district court did not err in using it in this case.

Third, Metro contends that the district court abused its discretion in considering the affidavit of Riverkeeper Nelson Brooke. This contention fails for two independently adequate alternative reasons. There is no indication in the district court's order that it considered the affidavit and, even if it did, any error in doing so was harmless because there was abundant other evidence of the facts attested to in that affidavit.

For these reasons, the district court's order awarding attorney's fees to Riverkeeper is **AFFIRMED**.[1]

[1] This case was originally scheduled for oral argument but was decided on the briefs alone by unanimous consent of the panel under 11th Cir. R. 34-3(f).

(5 of 5)

**UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
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Atlanta, Georgia 30303

Douglas J. Mincher
Clerk of Court

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June 03, 2015

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 14-14800-CC
Case Style: Black Warrior Riverkeeper Inc., et al v. Metro Recycling Inc.
District Court Docket No: 2:07-cv-01527-LSC

**This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.** Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the CRIMINAL JUSTICE ACT must file a CJA voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for a writ of certiorari (whichever is later).

Pursuant to Fed.R.App.P. 39, costs taxed against the appellant.

The Bill of Costs form is available on the internet at www.ca11.uscourts.gov

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Joe Caruso, CC at (404) 335-6177.

Sincerely,

DOUGLAS J. MINCHER, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1A Issuance of Opinion With Costs