

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 23 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EDWARD MACIEL, for and on behalf of
himself, other employees similarly situated
and the general public,

Plaintiff - Appellee,

v.

CITY OF LOS ANGELES,

Defendant - Appellant.

No. 08-55958

D.C. No. 2:06-cv-00249-RSWL-
CW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Argued and Submitted June 1, 2009
Las Vegas, Nevada

Before: GOULD and RAWLINSON, Circuit Judges, and GEORGE,** District
Judge.

After a bench trial, the district court entered judgment for the City of Los
Angeles (the “City”) on all claims in Edward Maciel’s (“Maciel”) action alleging

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36–3.

** The Honorable Lloyd D. George, United States District Judge for the
District of Nevada, sitting by designation.

violations under the Fair Labor Standards Act (“FLSA”). The district court determined that Maciel did not establish that he worked above the required number of hours to prove any violation of the FLSA. Notwithstanding the judgment entered in its favor, the City asks us to review the district court’s determinations that Maciel’s donning and doffing of his Kevlar vest and his Sam Browne belt is compensable work under the FLSA, and that the time spent completing these tasks is not de minimis. We conclude that we have no jurisdiction to give an advisory opinion on those determinations and that thus we cannot review the issues that are raised by the prevailing party. The district court’s conclusions on those challenged issues were not necessary to its judgment and will not create a collateral estoppel against the City in future cases. We dismiss the City’s appeal.

As a general rule: “A prevailing party usually may not appeal a decision in its favor.” *Ruvalcaba v. City of Los Angeles*, 167 F.3d 514, 520 (9th Cir. 1999). However, there is an exception where a prevailing party has standing to appeal a collateral adverse ruling “[i]f the adverse ruling can serve as the basis for collateral estoppel in subsequent litigation.” *Id.*; *United States v. Good Samaritan Church*, 29 F.3d 487, 489 (9th Cir. 1994). Invoking this exception, the City contends that the district court’s rulings regarding donning and doffing of police protective gear could have a collateral estoppel effect in future litigation, giving it standing to

appeal this otherwise favorable judgment. We disagree. Because we conclude that the district court's rulings were not "critical and necessary part[s] of the judgment," the rulings will have no preclusive effect on subsequent cases against the City. See *Littlejohn v. United States*, 321 F.3d 915, 923 (9th Cir. 2003); *Good Samaritan Church*, 29 F.3d at 489 (dismissing appeal because the district court's determination was immaterial to the judgment below and has no preclusive effect on subsequent litigation).

The appeal is **DISMISSED**.