

DEC 29 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DOUGLAS LEE HORN,

Plaintiff - Appellant,

v.

LARRY CARTER; et al.,

Defendants - Appellees.

No. 08-15432

D.C. No. 04-CV-02014-SMM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Stephen M. McNamee, District Judge, Presiding

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

Douglas Lee Horn, an Arizona state prisoner, appeals pro se from the district court's judgment awarding \$33,311.56 in attorney's fees and costs to Defendant Levine pursuant to 42 U.S.C. § 1988. We have jurisdiction under 28 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1291. We review for an abuse of discretion. *Miller v. L.A. County Bd. of Educ.*, 827 F.2d 617, 619 (9th Cir. 1987). We vacate and remand for further proceedings.

We vacate the judgment awarding attorney's fees and costs because there is no indication in the record that the district court considered Horn's pro se status and financial resources. *See id.* at 620, 621 (requiring district courts to consider a plaintiff's pro se status in determining whether to award attorney's fees to a defendant under 42 U.S.C. § 1988, and to consider the plaintiff's financial resources in determining the amount of the award).

The parties shall bear their own costs on appeal.

VACATED and REMANDED.