

Quillen admitted to tape-recording his ex-wife's telephone conversations with her mother without either's permission. The plaintiffs claim that they are entitled to an award of attorney's fees because they "proved" that the defendant had violated the federal wiretap statute, even though the jury determined that the violation was de minimus. (Pls.' Mot. for Att'y's Fees at 2.) The defendant claims that he should be awarded attorney's fees and the plaintiffs should not because he prevailed on the only contested issue at trial, damages, and the suit was motivated solely by the plaintiffs' ill will toward him. (Def.'s Mot. for Att'y's Fees at 1.)

I deny the plaintiffs' motion for attorney's fees because they did not prevail on the only issue at trial. It is well understood that only a prevailing party is eligible for an award of attorney's fees. *See, e.g., Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604 (2001) (prevailing on an issue requires a "material alteration of the legal relationship of the parties" [and is] necessary to permit an award of attorney's fees") (internal citation omitted); *S-1 & S-2 v. State Bd. of Educ.*, 21 F.3d 49, 51 (4th Cir. 1994) (rejecting the "catalyst theory" as a basis for prevailing party status). In this case, the defendant admitted liability long ago, so it was not an issue at trial, and the plaintiffs did not, as they claim, prove it. The only disputed issue at trial was damages, and the defendant prevailed on that issue because the jury did not award the plaintiffs any damages.

I also deny the defendant's motion because the wiretap statute only allows attorney's fees to be awarded to the plaintiff, and not to the defendant as the prevailing party. *See* 18 U.S.C.A. § 2520(a)-(b)(3) (West 2000). The wiretap statute provides that "any person whose wire, oral, or electronic communication is intercepted" has the right to recover in a civil action "such relief as may be appropriate," including reasonable attorney's fees and costs. *Id.* The plain language of the statute affords the right to recover attorney's fees to the party who claims that her communication was intercepted, and not to the party accused of the illegal interception.

I also find that bad faith was not evident in the plaintiffs' case. *See, e.g., F.D. Rich Co., Inc. v. United States For the Use of Indus. Lumber Co., Inc.*, 417 U.S. 116, 129 (1974) ("We have long recognized that attorneys' fees may be awarded to a successful party when his opponent has acted in bad faith, vexatiously, wantonly, or for oppressive reasons."). The defendant did, after all, violate the law. The jury simply did not believe that the violation entitled the plaintiffs to damages.

For these reasons, it is **ORDERED** that the plaintiffs' motion for attorney's fees [Doc. No. 37] and the defendant's motion for attorney's fees [Doc. No. 34] are denied.

ENTER: December 15, 2003

United States District Judge