

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

THE ESTATE OF JAMES DYLAN)
GONZALES, by and through Personal)
Representative Dolly Gonzales, and)
DOLLY GONZALES, individually,)
))
Plaintiffs,)
))
v.)
))
PAT LEADING FOX, et al.,)
))
Defendants.)

Case No. 12-CV-495-JED-PJC

OPINION AND ORDER

Defendant, Pat Leading Fox’s *Motion for Costs and Fees for Plaintiff’s Failure to Comply with the Court’s Settlement Conference Order*, [Dkt. 121], and Defendant Calvin Brown’s *Motion for Costs and Fees for Plaintiff’s Failure to Comply with Court’s Settlement Conference Order*, [Dkt. 125], are before the court for decision. Defendants seek costs and fees because Plaintiff did not make a demand in her Settlement Conference Statement and because Plaintiff was two hours late for the Settlement Conference. Plaintiff responds that she did not make a demand because she does not want to settle and that she was late to the conference because her memory failed. [Dkt. 130, 131].

While it was certainly frustrating and a waste of time for the Defendants and their representatives to have to wait for Plaintiff to arrive at the conference, the court is not convinced that Plaintiff was late on purpose. When Plaintiff arrived at the conference she participated appropriately. Under the circumstances an award of costs and fees would be unjust. Fed. R. Civ. P. 16(f)(2).

Accordingly, Pat Leading Fox's *Motion for Costs and Fees for Plaintiff's Failure to Comply with the Court's Settlement Conference Order*, [Dkt. 121], and Defendant Calvin Brown's *Motion for Costs and Fees for Plaintiff's Failure to Comply with Court's Settlement Conference Order*, [Dkt. 125], are DENIED.

SO ORDERED this 29th day of August, 2016.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE