IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

THE ESTATE OF STEPHEN CREAMER, by and through its Personal Representative, Lucia M. Just, a.k.a. Lucia M. Creamer,	)	C.A. No. K08C-10-060 JTV
Plaintiff,	)	
v.	)	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	)	
Defendant.	)	

Submitted: March 6, 2013
Decided: June 25, 2013

William D. Fletcher, Jr., Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Plaintiff.

Jeffrey A. Young, Esq., Young & McNelis, Dover, Delaware. Attorney for Defendant.

Upon Consideration of Defendant's
Motion For Costs
DENIED

VAUGHN, President Judge

Creamer v. State Farm
C.A. No. K08C-10-060 JTV
June 25, 2013

ORDER

Upon consideration of the defendant's Motion for Costs, the plaintiff's opposition, and the record of the case, it appears that:

1. This is an uninsured motorist ("UIM") coverage case. On November 2, 2005, plaintiff Stephen Creamer ("Creamer") was a passenger in a vehicle owned and operated by Larret Kellam ("Kellam"). The plaintiff was injured when Kellam's vehicle was struck in a hit and run accident by an unknown driver. Kellam's UIM insurer paid its policy limits to Creamer. Creamer then asserted a claim against his own UIM insurer, State Farm Mutual Automobile Insurance Co. ("State Farm"). When State Farm denied the plaintiff's claim, he filed this lawsuit against State Farm.[1] Before trial, the parties agreed that to be successful, Creamer must obtain a jury verdict in an amount which was larger than the policy limits already received from Kellam's insurer. On February 13, 2013, the jury returned a verdict for a significantly lesser amount. Thus, a judgment for the defendant was entered.

2. State Farm has now moved for court costs against the plaintiff pursuant to Superior Court Civil Rule 54(d). Specifically, the defendant seeks reimbursement for $370.75 in stenographer's costs associated with the June 21, 2011 trial deposition of Dr. Susan Keith.

3. The plaintiff opposes State Farm's motion for two reasons. First, the plaintiff contends that because the defendant voluntarily decided to offer only "five

[1] The plaintiff passed away during the pendency of this action and his estate was substituted as the party of record.

or six pages" of Dr. Keith's fifty-six page deposition at trial, State Farm is not entitled to the full transcription cost. The plaintiff argues that the billing rate per page appears to be $3.23, and that six pages at that rate is such a *de minimis* amount that the defendant's motion should be denied. Second, the plaintiff contends that subsection (f) of Rule 54 provides that court reporter fees for the Court's copy of a deposition transcript are only taxable when the transcript is entered into evidence; that the fees for other copies of the deposition transcript are not taxable as costs; that the bill submitted by State Farm is a total bill for an original *and* one copy; that therefore, the amount on the invoice is not limited to the Court's copy only; that the Court's copy can only be one-half of the amount sought; and for this reason, the Court should reduce the requested award by 50%.

4. Generally, the prevailing party in a civil action is entitled to be awarded costs against the adverse party.[2] Determining when costs are appropriately awarded is a matter of judicial discretion.[3] Superior Court Civil Rule 54(f) pertains directly to the award of transcript fees. It provides:

> **(f) Court reporter fees.** The fees paid court reporters for the Court's copy of transcripts of depositions shall not be taxable costs unless introduced into evidence. Fees for other copies of such transcripts shall not be taxable costs.[4]

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[2] 10 *Del. C.* § 5101; Super. Ct. Civ. R. 54(d).

[3] *Graham v. Keene Corp.*, 616 A.2d 827, 829 (Del. 1992); *Donovan v. Del. Water & Air Res. Comm'n*, 358 A.2d 717, 722-23 (Del. 1976); *Foley v. Elkton Plaza Assocs., LLC*, 2007 WL 959521, at *1 (Del. Super. Mar. 30, 2007).

[4] Super. Ct. Civ. R. 54(f).

5. This Court has previously held that no court reporter costs should be awarded to the prevailing party for a trial deposition transcript that is not introduced in its entirety.[5] Here, only selected portions of Dr. Keith's deposition were read into the record. For this reason, State Farm's Motion for Costs is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

cc: Prothonotary
cc Order Distribution
File

[5] *Midcap v. Sears, Roebuck & Co.*, 2004 WL 1588343, at *5 (Del. Super. May 26, 2004) (holding that court reporter deposition transcription costs were not recoverable because only excerpts of the depositions were introduced at trial); *Foley*, 2007 WL 959521, at *3 n.21 (discussing court reporter fees in dicta, the court noted that if only portions of a deposition were read into evidence the prevailing party was not entitled to costs associated with the deposition, including the cost of the transcription); *Chaplake Holdings, Ltd. v. Chrysler Corp.*, 2002 WL 148088, at *47 (Del. Super. Jan. 10, 2002) ("[T]hese deposition costs are not taxable because they were not introduced in their entirety during the plaintiffs' case."), *aff'd in part, rev'd in part on other grounds sub nom. Chrysler Corp. (Delaware) v. Chaplake Holdings, Ltd.*, 822 A.2d 1024 (Del. 2003).