

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ALESHIA SUMMERHILL,)
MARY POWELL, and)
WILLIE LEE, JR.,)
)
Plaintiffs,)
) C.A. No. 07C-11-071 PLA
v.)
)
JOHN IANNARELLA,)
DONALD HONEYCUTT, and)
BARBARA HONEYCUTT,)
)
Defendants.)

Submitted: March 31, 2009

Decided: April 1, 2009

UPON DEFENDANT IANNARELLA'S MOTION FOR COSTS
DENIED IN PART, GRANTED IN PART

On this 1st day of April, 2009, upon consideration of Defendant John Iannarella's ("Iannarella") Motion for Costs, the Court finds that:

1. This case arises from a November 2005 automobile accident in which a vehicle driven by Iannarella rear-ended Plaintiff Mary Powell's ("Powell") vehicle. On February 18, 2009, Iannarella made an offer of judgment to Powell in the amount of \$15,001.00. Powell rejected the offer.

Following a one-day jury trial on March 23, 2009, judgment was entered in favor of Plaintiff in the amount of \$10.00.

2. Iannarella now moves for costs pursuant to Superior Court Civil Rules 68 and 54(d). Specifically, Iannarella seeks reimbursement for the following expenses incurred after his offer of judgment was filed: (1) \$2,750.00 for the trial deposition testimony of Dr. Ali Kalamchi; (2) \$330.85 for the transcript of Dr. Kalamchi's trial deposition; (3) \$415.00 for videotaping of Dr. Kalamchi's trial deposition; and (4) \$278.50 for the transcript of Dr. Damon Cary's trial deposition testimony.

3. Superior Court Civil Rule 68 requires the Court to impose costs against a party that has rejected an offer of judgment if the final judgment was not more favorable to the offeree than the offer.¹ The party seeking costs must show that an offer of judgment was filed at least ten days prior to trial and that the costs sought were incurred after the filing of the offer.²

4. Here, all of the prerequisites for recovery of post-offer costs pursuant to Rule 68 have been met. Iannarella extended an offer of judgment more than a month before trial, the requested costs were incurred

¹ See *Bond v. Yi*, 2006 WL 2329364, at *1 (Del. Super. Aug. 10, 2006).

² *Id.*

after the offer of judgment was made, and the verdict at trial was lower than the offer amount.

5. Because Rule 68 does not define what constitutes a recoverable cost, the Court analyzes whether amounts requested pursuant to Rule 68 are recoverable costs under Rule 54 and applicable statutes, including 10 *Del. C.* § 8906.³ Rule 54(h) permits the recovery of expert witness deposition expenses if the deposition is entered into evidence at trial.⁴ Under Rule 54(f), expenses associated with the transcription of depositions are recoverable only if the transcribed deposition is entered into evidence. The amount to be awarded for an expert's testimony is a matter of the trial court's discretion under 10 *Del. C.* § 8906.⁵

6. In assessing the reasonableness of medical experts' fees, this Court has frequently relied upon rates set forth in a 1995 study conducted by the Medical Society of Delaware's Medico-Legal Affairs Committee, as adjusted to reflect increases in the consumer price index for medical care.⁶

³ See, e.g., *Beaudet v. Thomas*, 797 A.2d 678, 2002 WL 416387, at *2 (Del. 2002) (TABLE); *Cunningham v. Outten*, 2001 WL 879999, at *2 (Del. Super. June 28, 2001).

⁴ See, e.g., *Spencer v. Wal-Mart Stores East, LP*, 2007 WL 4577579, at *1 (Del. Super. Dec. 5, 2007).

⁵ See, e.g., *Dunkle v. Prettyman*, 2002 WL 833375, at *3 (Del. Super. May 1, 2002).

⁶ See *Bond v. Yi*, 2006 WL 2329364, at *3 (Del. Super. Aug. 10, 2006) (collecting cases); *Gates v. Texaco, Inc.*, 2008 WL 1952164, at *1 (Del. Super. Mar. 20, 2008); *Fellenbaum v. Ciamaricone*, 2002 WL 31357917, at *6 (Del. Super. Oct. 16, 2002).

The Medico-Legal Study reported that fees for a two-hour deposition ranged from \$500.00 to \$900.00.⁷ Here, the Court finds that there has been an increase of 50.6% in the consumer price index for medical care from the beginning of 1996 to February 2009.⁸ Therefore, reasonable fees for a two-hour deposition would range from \$753.00 to \$1,355.40.

7. Powell does not dispute Iannarella's entitlement to recover costs under Rule 68, but contends that the amount requested for Dr. Kalamchi's fee is excessive. The Court agrees that Dr. Kalamchi's fee must be reduced. Powell indicates that Dr. Kalamchi's videotaped deposition was thirty-six minutes long and was filmed at his office, eliminating travel and waiting time. Because Iannarella has not presented evidence to the contrary, the Court will accept Powell's time calculation.⁹ Therefore, using the Medico-Legal Study figures for guidance, the Court will reduce Dr. Kalamchi's trial deposition fee to \$400.00.

8. Although the issue was not raised by Plaintiff, the Court notes that the fee for transcription of Dr. Kalamchi's deposition is duplicative,

⁷ *Fellenbaum*, 2002 WL 31357917, at *6.

⁸ Consumer price index figures for March 2009 have not been released as of the date of this order. See Bureau of Labor Statistics, U.S. Dep't of Labor, *Archived News Releases for Consumer Price Index*, available at http://www.bls.gov/schedule/archives/cpi_nr.htm (last visited Mar. 30, 2009).

⁹ See *Fellenbaum*, 2002 WL 31357917, at *6.

since his deposition was presented by video at trial. Iannarella therefore cannot recover the transcript fee for Dr. Kalamchi's deposition.¹⁰

9. Iannarella's requests for costs associated with videotape production of Dr. Kalamchi's trial deposition and transcribing Dr. Carey's deposition, which was read into evidence at trial, are appropriate under Rule 68 and have not been contested by Powell. This portion of Iannarella's motion will therefore be granted.

10. Finally, Iannarella has moved for interest to be added to the Court's award of costs, to run from the date of this order. To the extent this Court's order grants certain of Iannarella's requests for costs, it constitutes a money judgment upon which interest will accrue from the date of entry.¹¹

¹⁰ See, e.g., *Gress v. Viola*, 2007 WL 1748657, at *2 (Del. Super. May 31, 2007); *Fellenbaum*, 2002 WL 31357917, at *6.

¹¹ See, e.g., *Moffitt v. Carrol*, 640 A.2d 169, 177-78 (Del. 1994).

11. For the foregoing reasons, Iannarella's Motion for Costs is **DENIED IN PART AND GRANTED IN PART**. Iannarella is hereby awarded costs in the total amount of \$1,093.50.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

cc: Carol J. Antoff, Esq.
Edward J. Fornias, III, Esq.