

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

CAROLYN S. COLLINS, and :
GREGORY COLLINS :
 :
 Plaintiffs, :
 :
 v. : C.A. No. 01C-08-239 CLS
 :
SHERRY Y. WILSON, :
 :
 Defendant. :

Submitted: July 29, 2003
Decided: October 31, 2003

On Defendant Sherry Y. Wilson's
Motion for Costs.
GRANTED in the amount of \$500.

MEMORANDUM OPINION

Joseph W. Weik, Esquire, Weik Nitsche Dougherty & Componovo Wilmington,
Delaware, Attorney for Plaintiffs.

James J. Haley, Jr., Esquire, Ferrara Haley Bevis & Solomon, Attorney for
Defendant.

SCOTT, J.

I. INTRODUCTION

Defendant Sheree Y. Wilson (“Wilson”) has filed a Motion for Costs. Upon a review of the motion and plaintiff’s response, this court concludes Wilson’s motion should be GRANTED in the amount of \$500.

II. BACKGROUND

On July 10, 2002, Wilson filed an offer of judgment in the amount of \$3,000. On June 10, 2003, the jury returned a verdict in defendant’s favor.

Wilson filed a Motion for Costs on June 20, 2003. Plaintiffs filed a response on June 24, 2003.

III. STANDARD OF REVIEW

Delaware Superior Court Civil Rule 68 (“Rule 68”) provides in part “If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.” This award of costs under Rule 68 is mandatory.¹ Under Rule 68, however, costs are not recoverable if the plaintiff receives no judgment from defendant, i.e. judgment is for defendant.²

Delaware Superior Court Civil Rule 54 (“Rule 54”) provides that “costs shall be allowed . . . to the prevailing party upon application to the Court within ten (10) days of the entry of final judgment unless the court otherwise directs.”³ The

¹ *Mulford v. Haas*, 2001 WL 541023 at *4 (Del. Super.).

² *Hercules, Inc. v. AIU Ins. Co.*, 784 A.2d 481, 509-10 (Del. 2001).

³ Super. Ct. Civ. R. 54(d).

court may, therefore, award costs to defendant under Rule 54 when, as here, defendant is the prevailing party.

IV. DISCUSSION

Wilson has requested reimbursement for the costs of deposing her medical expert (\$3,000) and for cancellation fees (\$200) when plaintiff failed to appear at two scheduled defense medical examinations.

Plaintiffs counter that Wilson's costs are not recoverable under Rule 68 because it is inapplicable when defendant prevails at trial. Alternatively, plaintiffs argue that if costs are recoverable, that the amount be reduced to no more than \$250, reflecting the fact that the deposition lasted no more than a half-hour and that cancellation fees are not a recoverable cost.

The award of costs for expert witness testimony is committed to the sound discretion of the trial court.⁴ When determining reasonable reimbursement for expert costs, the court must "recognize that a significant disruption to a physician's practice occurs when a physician is called to testify as an expert witness and that such testimony is important to the court since it assists the trier of fact and serves a significant public interest."⁵ There is no fixed formula to determine reasonable expert fees.⁶ Nevertheless, in 2002, the court held that a fee of \$1,800 was

⁴ *Delaware Water & Air Resources Com'n.*, 358 A.2d 717, 723 (Del. 1976), 10 Del. C. § 8906 (1999).

⁵ *Sliwinski v. Duncan*, 1992 WL 21132 at *2 (Del.).

⁶ *Id.*

appropriate for expert medical testimony that lasted about an hour and a half plus travel time for a total of a half-day of the witness' time.⁷

The court finds that reimbursement of \$500 for Dr. Bonner's deposition testimony is appropriate here.

The court finds that the cancellation fees were not a "necessarily incurred" expense of defendants and therefore, are not recoverable.⁸

V. CONCLUSION

For the above reasons, Wilson's Motion for Costs is GRANTED in the amount of \$500.

Calvin L. Scott, Jr.
Superior Court Judge

⁷ *Dunckle v. Prettyman*, 2002 WL 833375 at *4 (Del. Super.).

⁸ *See Nygaard v. Lucchesi*, 654 A.2d 410, 415 (Del. Super. 1994).