

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

CRAIG A. BOUNDS and LESLIE)
BOUNDS, husband and wife,) C.A. No. 01C-07-028 JTV
)
Plaintiffs,)
)
v.)
)
DELMARVA POWER & LIGHT)
COMPANY,)
)
Defendant.)

Submitted: July 11, 2003
Decided: January 30, 2004

Wayne N. Elliott, Esq., Prickett, Jones & Elliott, Dover, Delaware. Attorney for Plaintiffs.

Somers S. Price, Jr., Esq., Potter, Anderson & Corroon, Wilmington, Delaware. Attorney for Defendant.

Upon Consideration of
Plaintiffs' Motion for Costs
GRANTED in Part

VAUGHN, Resident Judge

Bounds v. Delmarva Power & Light

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ORDER

Upon consideration the plaintiffs' motion for costs, the defendant's opposition, and the record of the case, it appears that:

1. The plaintiffs, Craig A. Bounds and Leslie Bounds seek an award of costs after having successfully obtained a jury verdict against the defendant.

2. The defendant, Delmarva Power and Light Company ("DP&L") opposes the motion, contending that it is not a citizen of Kent County. It contends it is a citizen of New Castle County, where its principle place of business is located. Since it does not reside in Kent County, it contends, costs are not recoverable under 10 *Del. C.* § 5102. That statute provides that a plaintiff cannot recover costs when a citizen of this State is sued in any county other than that within which such citizen resides. It relies upon *Zazanis v. Jarman*,¹ *W&G Milford Associates, L.P. v. Jeffcor, Inc.*,² cases from other states, and secondary sources relating to the residence of a corporation. These authorities variously state that a corporation's residence is the place where its principal office or place of business is located, although it may also have offices or places of business elsewhere, the place where the corporate books are kept, or the county designated in its certificate of incorporation. It is also stated that the sole residence of a domestic corporation for venue purposes is the county designated in its certificate of incorporation, despite its maintenance of an office or facility in another county.

¹ 1990 WL 58158, at *3 - 4 (Del. Super.).

² 1991 WL 113353, at *4 (Del. Super.).

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3. *Zazanis* held that a Sussex County fire company was a resident of Sussex County and that costs could not be recovered against it where it was a defendant in a case filed in New Castle County.

4. *W&G Milford Associates* held that the corporate defendant involved there was a resident of Kent County and Sussex County and that costs could, therefore, not be recovered against it in an action heard in New Castle County.

5. The corporate defendant in this case has an extensive presence throughout the State of Delaware. For this reason, and notwithstanding the foregoing authorities submitted by the defendant, I conclude that the defendant should be considered a citizen of all three counties for purposes of 10 *Del. C.* § 5102.

6. The prevailing party in a civil action is entitled to be awarded by the court against the adverse party the incurred court costs.³ “The fees for witnesses testifying as experts . . . shall be fixed by the court in its discretion, and such fees so fixed shall be taxed as part of the costs in each case and shall be collected and paid as other witness fees are now collected and paid.”⁴ Witness fees granted under this provision are limited to time spent in court for the purpose of testifying but not for listening to other witnesses for orientation or consultation with a party.⁵ However, time spent commuting to and from the courthouse as well as time spent while waiting to testify in court at the courthouse can also be considered as time

³ 10 *Del. C.* § 5101.

⁴ 10 *Del. C.* § 8906.

⁵ *State v. 0.0673 Acres of Land*, 224 A.2d 598 (Del. 1970).

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spent in attendance at court.⁶

7. This Court has previously noted a 1995 study compiled by the Medical Society of Delaware's Medico-Legal Affairs Committee for guidance in assessing expert witness fees, at least in the medical field.⁷ The report advised that a reasonable range of fees for court appearances was from \$1,300 to \$1,800 per half day. The report further advised that for depositions a range of \$500 to \$900 for a two-hour deposition was reasonable, with a \$150 to \$250 charge for each additional half hour.⁸ The Court has also previously noted that between 1994 and 1997 the medical care price index grew by about 11.7% through June 1997.⁹ The Court has also previously noted that the index also increased by an additional 6.2% through June 1999, for a total increase since the report was prepared of 17.9%.¹⁰ Based upon this information, the Court adjusts the figures stated above to \$1,500 to \$2,100 for court appearances per half day, \$550 to \$1,050 for a two-hour deposition, with a \$175 to \$290 charge for each additional half hour. These guidelines will be applied to each medical expert. In determining the amount to be awarded with respect to each expert, the Court is considering only time spent testifying, time in

⁶ *Stevenson v. Henning*, 268 A.2d 872 (Del. 1970).

⁷ *Clough v. Wal-Mart Stores, Inc.*, Del. Super., C.A. No. 94-C-05-030, Ridgely, P.J. (Sept. 9, 1997) (Letter Op.).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Rowlands v. Lai*, 2000 Del. Super. LEXIS 186 (Del. Super.).

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attendance to testify and travel time. Time in attendance to listen to the testimony of other witnesses is not considered.

8. The sum of \$2,887.50 is sought for Dr. Gregory Harrison for 10 ½ hours spent traveling to court to testify, waiting in court to testify, and testifying. This sum is approved.

9. The sum of \$640 is approved for Dr. Minnehan for his travel to court and his testimony.

10. I will allow \$950 for the deposition of Dr. DuShuttle.

11. The sum of \$600 is allowed for the deposition of Dr. Rosenthal.

12. I note that the amount sought for Dr. Trauger is withdrawn.

13. The court reporter/videographer fees in the total amount of \$1,415.51 are approved.

14. Therefore, the plaintiff's motion is ***granted in part*** and costs and expert witness fees are awarded in the amount of \$6,493.01.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

Resident Judge

oc: Prothonotary
cc: Order Distribution
File