

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

MADOLEEN MCNATT, as NEXT)	
FRIEND AND GUARDIAN of)	
JUSTIN MCNATT, a minor child,)	
)	
Plaintiffs,)	
v.)	C.A. No. 02C-09-237 JRJ
)	
COLONIAL SCHOOL DISTRICT,)	
COLONIAL SCHOOL DISTRICT)	
BOARD of EDUCATION, and)	
JUAN TAVERAS)	
)	
Defendants.)	

Date Submitted: May 17, 2005
Date Decided: August 4, 2005

Upon Plaintiffs' Motion for Costs

MEMORANDUM OPINION

Ronald Stoner, Esquire, Ronald Stoner, P.A., 1107 Polly Drummond Plaza, Newark, Delaware, 19711, for the plaintiffs.

Jon Parshall, Esquire, Murphy, Spadaro, and Landon, 1011 Centre Road, Suite 210, Wilmington, Delaware 19805, for the defendants.

JURDEN, J.

This matter is presently before the Court on Plaintiffs' Motion for Costs. For the reasons that follow, the motion is **GRANTED**.

BACKGROUND

On February 13, 2004, Colonial School District, Colonial School District Board of Education and Juan Taveras (hereinafter the "Defendants") submitted an Offer of Judgement in the amount of \$5,000.00 to Madoleen McNatt, as next friend and Guardian of Justin McNatt (hereinafter the "Plaintiffs"). On January 5, 2005, a jury awarded the Plaintiffs \$62,000.00. On April 4, 2005, the Court denied the Defendants' Motion for a New Trial or Judgement Notwithstanding the Verdict. On April 13, 2005, the Plaintiffs filed a Motion for Costs in the amount of \$3,255.11 seeking to recoup their costs of litigation. The breakdown of costs sought by the Plaintiffs is as follows:

Filing fees for original Complaint:	\$240.00 ¹
Deposition fee for Dr. Yezdani:	\$1,000.00
Court reporter fee for deposition:	\$315.11
Dr. Romirowsky testimony fee:	\$1,700.00.

DISCUSSION

The assessment of costs against the losing party flows from 10 *Del. C.* § 5101 and Superior Court Civil Rule 54. Specifically, § 5101 states:

In a court of law, whether of original jurisdiction or of error, upon a voluntary or involuntary discontinuance or dismissal of the action, there shall be judgment for costs for the defendant. Generally, a party for whom final judgment in any civil action, or on a writ of error upon a judgment is given in such action, shall recover, against the adverse party, costs of suit, to be awarded by the court.²

¹ The filing fee costs were uncontested by the Defendants.

² 10 *Del. C.* § 5101.

Additionally, under 10 *Del. C.* § 8906, fees for witnesses testifying as experts shall be fixed by the Court in its discretion, and taxed as costs.³ The award of costs for expert witness testimony is committed to the sound discretion of the trial court.⁴

As a preliminary matter, the Court finds that the Plaintiffs may recover the \$240.00 uncontested filing fee for the original complaint.

Next, regarding the costs associated with depositions of medical experts, Delaware Courts have often relied upon a study done by the Delaware Medico-Legal Affairs Committee for guidance in assessing the appropriate fees for both depositions and testimony of medical experts. A 1995 study done by the Medical Society of Delaware determined that a range of \$500-\$900 is appropriate for the deposition of medical experts.⁵ By adjusting this range using the 34.2% increase in the medical care price index for the years 1996 to 2004, and up until the month of May 2005, the Court determines that a reasonable fee for the deposition of Dr. Yezdani is \$750.⁶ Since the deposition lasted for only 38 minutes plus travel time between Newark and the Doctor's office in New Castle, the award is at the low range of that outlined by the Medical Society of Delaware study.⁷

Turning next to the \$315.11 the Plaintiffs request for the fees associated with Dr. Yezdani's deposition, which include an attendance fee, handling and postage and

³ *Sliwinski v. Duncan*, 1992 Del. LEXIS 110 (Del. Super.).

⁴ *Donovan v. Delaware Water & Air Resources Com'n*, 358 A.2d 717, 723 (Del. 1976); Del. Code Ann. tit. 10, § 8906 (1999).

⁵ *Midcap v. Sears, Roebuck and Co.*, 2004 Del. LEXIS 218 (Del. Super.).

⁶ *Kerr v. Onusko*, 2004 Del. LEXIS 366 (Del. Super.).

⁷ *Tolson v. Chorman*, 2005 Del. LEXIS 220 (Del. Super.).

multiple copies of the transcript, this Court refers to Superior Court Civil Rule 54(f). Rule 54(f) provides that “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.” Pursuant to this rule, the Plaintiffs may recover costs for the Court’s copy of the transcript only.⁸ This award will total \$81.00, in accordance with the \$3.00 per page cost outlined by the decision in *McCredie v. Howard*.⁹

Last is the issue of the fee for the testimony of Dr. Romirowsky. The Plaintiffs request reimbursement for a trial testimony fee of \$1,700.00. However, the Defendants claim that costs should be awarded in an amount of no more than \$750.00. Dr. Romirowsky testified in his deposition that he charged the Plaintiffs \$150.00 per hour. His testimony time, including travel time to and from the courthouse, could not have totaled more than five hours. Five hours constitutes the disruption of half a day’s work, which is the standard basis for determining what costs should be awarded.¹⁰ Again, this Court will refer to adjusted figures from the 1995 Medical Society of Delaware study, which lists appropriate awards for a half-day of testimony as falling in the range of \$1,744.60-\$2,415.60.¹¹ Based on these guidelines, the \$1,700.00 fee requested by the Plaintiffs is reasonable and the Court will grant the Plaintiffs costs for Dr. Romirowsky’s testimony in that amount.

⁸ Dr. Yezdani’s deposition was read into evidence.

⁹ *McCredie v. Howard*, 2004 Del. LEXIS 265 (Del. Super.).

¹⁰ *Sweren v. Sheehy*, 2001 Del. LEXIS 541 (Del. Super.).

¹¹ *McCredie v. Howard*, 2004 Del. LEXIS 265 (Del. Super.).

Based on the foregoing, the Court awards costs to the Plaintiffs in the sum of \$2,771.00.

IT IS SO ORDERED.

Jan R. Jurden