

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BYRON W. TURNER

PLAINTIFF

v.

Case No. 2:12-CV-02114

GRAPHIC PACKAGING INTERNATIONAL, INC.

DEFENDANT

ORDER

Currently before the Court are Defendant Graphic Packaging International, Inc.'s ("Graphic Packaging") bill of costs in the amount of \$1,743.10 (Doc. 38) and Plaintiff Byron W. Turner's response in opposition (Doc. 39). On January 23, 2014, the Court ruled in favor of Graphic Packaging on a motion for summary judgment and dismissed Plaintiff's complaint with prejudice. Graphic Packaging filed a bill of costs on February 3, 2014, pursuant to Federal Rule of Civil Procedure 54(d)(1), which states that "[u]nless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party."

In evaluating a prevailing party's bill of costs, the court is afforded substantial discretion. *Computrol, Inc. v. Newtrend, L.P.*, 203 F.3d 1064 (8th Cir. 2000) (citing *Greaser v. State, Dept. of Corrections*, 145 F.3d 979, 985 (8th Cir. 1998), *cert. denied*, 525 U.S. 1056 (1998)). The indigency of the losing party is a factor to consider when determining whether to award costs. *Lampkins v. Thompson*, 337 F.3d 1009, 1017 (8th Cir. 2003) (affirming that district court "properly considered [losing party's] indigency" in denying some costs and reducing others); *Poe v. John Deere Co.*, 695 F.2d 1103, 1108 (8th Cir. 1982) ("It is of course within a court's discretion to deny costs because a plaintiff is poor or for other good reason . . .").

Plaintiff avers in his response in opposition to the bill of costs that he is indigent and "solely relies on Social Security Disability and food stamps as his sole source of income." (Doc. 39, p. 1).

Considering Plaintiff's lack of ability to pay costs and the non-frivolous nature of the lawsuit he filed, the Court in its discretion declines to award costs in this matter.

IT IS THEREFORE ORDERED that Defendant Graphic Packaging International, Inc.'s bill of costs (Doc. 38) is **DENIED**.

IT IS SO ORDERED this 7th day of February, 2014.

P. K. Holmes, III

P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE