

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

DAWN ATKINS

PLAINTIFF

V.

CASE NO. 10-CV-4052

FRED'S STORES OF TENNESSEE, INC.

DEFENDANT

**ORDER**

Before the Court is Defendant's Motion for Attorney's Fees and Costs for Atkins I. (ECF No. 57). Plaintiff has responded. (ECF No. 59). Defendant has filed a reply and a supplement to the original motion. (ECF Nos. 63 and 90). The Court finds the matter ripe for consideration.

Plaintiff originally filed a lawsuit in this Court against Defendant on September 4, 2008, Case No. 4:08-cv-4089 (hereinafter referred to as "Atkins I"). The trial was scheduled to begin on January 26, 2010. On January 25, 2010, Plaintiff notified the Court that she wished to voluntarily dismiss her case, and she filed her motion to dismiss on January 27, 2010. The Court granted Plaintiff's motion to dismiss on January 28, 2010, and stated in its order that if the matter was refiled in any court, Plaintiff would be ordered to pay costs and expenses, including reasonable attorney's fees, which are duplicated as a result of refiled. On April, 14, 2010, Plaintiff filed the present case (hereinafter referred to as "Atkins II"). A jury trial was held in Atkins II, and the judgment has been entered. Defendant now moves the Court to award it attorney's fees and costs for Atkins I.

Federal Rule of Civil Procedure 41(d) provides that if a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, a court may order the plaintiff to pay all or part of the costs of the previous action. Here, Defendant asks the Court to award it \$21,097.23 in attorney's fees and \$2,5323.18 in costs. The Court has reviewed Defendant's motion for attorney's fees and costs and the supporting materials

and finds that a fair amount to compensate Defendant for duplicated work by its attorney is eighteen hours of attorney's fees. Defendant's attorney has stated that his rate for this specific case was \$150.00 per hour. (ECF No. 90).

Accordingly, Defendant's motion for attorney's fees and costs is **GRANTED IN PART** and **DENIED IN PART**. Defendant is awarded a total of \$2,700.00, which consists of eighteen hours of attorney's fees. Other requests by Defendant are denied.

**IT IS SO ORDERED**, this 21st day of October, 2011.

/s/ Harry F. Barnes  
Hon. Harry F. Barnes  
United States District Judge