

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Case No. 09-cv-02418-PAB-MJW

MELISSA MELLOTT,

Plaintiff,

v.

MSN COMMUNICATIONS, INC.,

Defendant.

ORDER

This matter is before the Court on plaintiff's motion to dismiss with prejudice [Docket No. 121]. Pursuant to Federal Rule of Civil Procedure 41(a)(2), "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Plaintiff seeks to have the Court dismiss the action with prejudice. Defendant objects to any dismissal that would require it to pay its own fees and costs because of its pending motion requesting certain fees and costs [Docket No. 85] and its request for all of its attorney's fees and costs within its motion to dismiss [Docket No. 51]. A dismissal, however, does not prevent the Court from resolving these and other such collateral matters. Upon granting plaintiff's request for dismissal of her complaint, the Court will retain "jurisdiction to 'consider collateral issues' including 'an award of counsel fees.'" *Lorillard Tobacco Co. v. Engida*, 611 F.3d 1209, 1218 (10th Cir. 2010) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990)); see *Qureshi v. United States*, 600 F.3d 523, 525 (5th Cir. 2010) ("For example, the court may,

notwithstanding dismissal of the underlying action, impose sanctions under Federal Rule of Civil Procedure 11, impose costs, impose attorney's fees, or undertake contempt proceedings.") (citations and footnote omitted). Consequently, it is

ORDERED that plaintiff's motion to dismiss with prejudice [Docket No. 121] is GRANTED. Plaintiff's complaint is dismissed with prejudice. It is further

ORDERED that judgment shall not enter until the Court resolves the collateral issues still pending in this matter. It is further

ORDERED that defendant's motion to dismiss [Docket No. 51] is denied as moot. It is further

ORDERED that defendant is granted leave to file a separate and updated motion seeking its attorney's fees and costs on or before November 22, 2010, such motion not to exceed 15 pages. Plaintiff may file a response on or before December 6, 2010, such response not to exceed 15 pages. On or before December 13, 2010, defendant may file a reply which does not exceed 10 pages. The Court will take up defendant's motion and any other relevant collateral issues at the hearing already set in this matter for 8:30 a.m. on December 21, 2010. Plaintiff is reminded that she has been ordered to attend the December 21, 2010 hearing.

DATED October 29, 2010.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge