

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

DAVID OGILVIE,

Plaintiff,

v.

Case No: 2:14-cv-354-FtM-38CM

JERRY SWANK, individually and  
PETE CACERES, individually,

Defendants.

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**ORDER<sup>1</sup>**

This matter comes before the Court on Defendants Jerry Swank and Pete Caceres' Motion to Tax Costs ([Doc. #70](#)) filed on June 3, 2016. In support of their motion, Defendants submit an affidavit of defense counsel ([Doc. #70-1](#)); a Bill of Costs ([Doc. #70-2](#)), and invoices ([Doc. #70-3](#)). Plaintiff David Ogilvie has not filed a response, and the time to do so has expired. Thus, this matter is ripe for review.

On June 26, 2014, Plaintiff initiated this civil rights suit against Defendants. ([Doc. #1](#)). Almost two years later, a jury returned a verdict in favor of Defendants. ([Doc. #69](#)). Defendants now seek taxation of costs for \$7,882.90 pursuant to [Federal Rule of Civil Procedure 54\(d\)](#) and [28 U.S.C. § 1920](#).

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Prevailing parties are entitled to receive costs other than attorneys' fees under Rule 54(d)(1). See *Desisto College, Inc. v. Howey-in-the-Hills*, 718 F. Supp. 906 (M.D. Fla. 1989). Taxable costs are limited to those items set forth in 28 U.S.C. § 1920. These statutorily permitted taxable costs are:

1. Fees of the clerk and marshal;
2. Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
3. Fees and disbursements for printing and witnesses;
4. Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
5. Docket fees under section 1923 of this title;
6. Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

*Id.* § 1920. And, "a court may only tax costs as authorized by statute." *E.E.O.C. v. W&O, Inc.*, 213 F.3d 600, 620 (11th Cir. 2000).

As the prevailing party, Defendants move for taxation of costs in the amount of \$7,882.90. Comprised in this total are (1) \$400 for a court-filing fee; (2) \$3,350.40 for court reporter fees associated with nine depositions; (3) \$1,705.65 for witness fees; (4) \$775.00 for mediation fees; and (4) \$1,651.85 for photocopies. (Doc. #70-1; Doc. #70-2). The Court will address each category in turn.

#### **1. Fees of the Clerk**

Because Defendants removed this case from Florida state court (Doc. #1), they request the cost of the Clerk's \$400 filing fee (Doc. #70-2 at 1). Fees of the clerk are taxable costs under § 1920(1). Thus, the Court will tax \$400.00 for fees of the Clerk.

## 2. Deposition Fees

Next, Defendants seek to tax the costs related to nine depositions, which total \$3,350.40. ([Doc. #70-2 at 1](#)). These costs consist of fees for deposition transcripts, court reporters' attendance, and a videotaped deposition. ([Doc. #70-1 at 2-3](#)). Costs for deposition transcripts are taxable if "the deposition was wholly or partially necessarily obtained for use in the case." *W&O*, 213 F.3d at 621 (citations omitted); see also *Peeler v. KVH Indus., Inc.*, No. 8:12-cv-1584, 2014 U.S. Dist. LEXIS 81540, at \*10-\*11 (M.D. Fla. June 16, 2014) ("Fees to the Court Reporter for transcripts necessarily obtained for use in the case are indeed taxable costs under § 1920. This includes deposition costs."). Courts have generally held that depositions of individuals named on the witness list at trial are recoverable as costs necessary for the case. See *Maris Distrib. Co. v. Anheuser-Busch, Inc.*, 302 F.3d 1207 (11th Cir. 2002). Also, a court reporter's attendance fee at depositions are taxable. See *Hernandez v. Wilsonart Intern.*, No. 2:09-cv-747-FtM-36SPC, 2011 WL 7092657, at \*4 (M.D. Fla. Dec. 30, 2011), *report and recommendation adopted at* [2012 WL 220265](#).

Here, the requested deposition fees are reasonable – with one exception. The shipping costs related to the nine depositions are not taxable. ([Doc. #70-3 at 2-9](#)); see also *Watson v. Lake Cnty.*, 492 F. App'x 991, 997 (11th Cir. 2012) (stating "§ 1920 does not authorize recovery of costs for shipment of depositions or costs for binders, tabs, and technical labor"); *Awwad v. Largo Med. Ctr., Inc.*, No. 8:11-cv-1638-T-24TBM, 2013 WL 6198856, at \*4 (M.D. Fla. Nov. 27, 2013). Accordingly, the Court will deduct the costs for postage, delivery, and handling fees associated with the deposition transcripts, which

totals \$89.60. ([Doc. #70-3 at 2-9](#)). This calculation entitles Defendants to \$3,260.80 for deposition fees.

### **3. Witness Fees**

Defendants also seek \$205.65 in witness fees for five fact witnesses who testified at trial. ([Doc. #70-1 at 2-3](#); [Doc. #70-2 at 2](#)). Section 1920(3) provides that a judge may tax as costs "[f]ees and disbursements for printing and witnesses." [28 U.S.C. § 1920\(3\)](#). In conjunction with that statute, [28 U.S.C. § 1821\(b\)](#) provides that a witness shall be paid \$40.00 per day for each day's attendance. Here, Defendants seek \$41.12 per witness, but the Court finds that only \$40.00 per witness is reimbursable. See [Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy](#), [548 U.S. 291, 298 \(2006\)](#). Therefore, the Court awards Defendants \$200.00 for these costs.

In addition to the fact witnesses, Defendants seek to recover the deposition fee of its expert witness, Dr. Paul Joseph Hobaica, which is \$1,500.00. ([Doc. #70-1 at 3](#)). However, the Supreme Court has held that, "when a prevailing party seeks reimbursement for fees paid to its own expert witnesses, a federal court is bound by the limit of § 1821(b), absent contract or explicit statutory authority to the contrary." [Crawford Fitting Co. v. J.T. Gibbons, Inc.](#), [482 U.S. 437, 439 \(1987\)](#); see also [Morrison v. Reichold Chemicals, Inc.](#), [97 F.3d 460, 463 \(11th Cir. 1996\)](#) (finding "that the district court erred in taxing as costs any amount for expert fees in excess of the \$40 per day allowed under § 1821"). The Court, therefore, will only tax \$40.00 for Dr. Hobaica's deposition fee.

### **4. Mediation Fees**

Defendants seek to recover \$775 in fees relating to mediation. ([Doc. #70-3 at 10-11](#)). Mediation fees and expenses are not included in § 1920 as taxable costs. However,

such fees have been awarded to the prevailing party when the parties have agreed before trial to tax the cost. See *PNC Bank Nat. Ass'n v. Orchid Group Investments, LLC*, No. 2:13-cv-12-FtM-38CM, 2014 WL 4954779, at \*2 (M.D. Fla. Oct. 12, 2014). The Case Management and Scheduling Order in this case provides that "[u]pon motion of the prevailing party, the party's share maybe taxed as costs in this action." (Doc. #23 at 9). Because Defendants seek their one-half share of the total mediation fees and expenses (Doc. #70-3 at 10-11), the Court will tax the \$775.00 in mediation fees.


#### 5. Photocopying fees

Defendants seek to recover \$1,651.85 for photocopying costs. (Doc. #70-1 at 3). These costs fall within "[the] exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case" under 28 U.S.C. § 1920(4). Because photocopies fall squarely within § 1920, and Plaintiff does not oppose their necessity or reasonableness, the Court grants Defendants these costs.

Accordingly, it is now **ORDERED**:

- (1) Defendants Swank and Caceres' Motion to Tax Costs (Doc. #70) is **GRANTED** to the extent that Defendants are taxed costs and expenses totaling **\$6,326.80**.
- (2) Defendants are **DIRECTED** to file an amended bill of costs, consistent with this order on or before July 15, 2016, which will be immediately taxed by the Clerk of Court.

**DONE** and **ORDERED** in Fort Myers, Florida this 5th day of July, 2016.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record