

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ANITA ANDREWS,

Plaintiff,

v.

Case No.: 2:16-cv-814-FtM-38MRM

DEPUTY BRANDON MARSHALL,
SERGEANT ROBERT KIZZIRE,
CORIZON HEALTH, INC. and
CARMINE MARCENO,

Defendants.

OPINION AND ORDER¹

Before the Court is Defendants' Motion to Tax Costs ([Doc. 151](#)), Renewed Motion to Enter Judgment ([Doc. 152](#)), and Motion for Taxation of Costs ([Doc. 154](#)). For these reasons, the Motions are denied without prejudice with leave to refile.

On May 8, 2019, the Court granted summary judgment for Defendants. ([Doc. 148](#)). The Clerk entered judgment on May 16, 2019. ([Doc. 150](#)). Afterwards, Defendants filed these Motions to Tax Costs ([Docs. 151; 154](#)) and the Renewed Motion to Enter Judgment ([Doc. 152](#)). The Motions to Tax Costs ([Docs. 151; 154](#)) are grounded in [Federal Rule of Civil Procedure 54\(d\)\(1\)](#), which allows certain costs for the prevailing party. The

¹ Disclaimer: Documents filed in CM/ECF may contain hyperlinks to other documents or websites. These hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees. By allowing hyperlinks to other websites, this Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their websites. Likewise, the Court has no agreements with any of these third parties or their websites. The Court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the Court.

Renewed Motion to Enter Judgment ([Doc. 152](#)) seeks costs of a previous action that was voluntarily dismissed. ([Doc. 152-1](#)). Plaintiff did not respond to any of the Motions. But Plaintiff recently filed a Notice of Appeal on the merits of summary judgment. ([Doc. 155](#)). That case remains pending before the Eleventh Circuit Court of Appeals.

“As a general rule, the filing of a notice of appeal divests a district court of jurisdiction on any matter involved in the appeal.” [Elver v. Whidden, No. 2:18-cv-102-FtM-29CM, 2019 WL 718536, at *1 \(M.D. Fla. Feb. 20, 2019\)](#). But district courts can retain jurisdiction to consider motions on issues collateral to those on appeal, such as attorney’s fees and costs. [Landon v. City of North Port, No. 8:15-cv-2272-T-36JSS, 2018 WL 904301, at *1 \(M.D. Fla. Jan. 30, 2018\)](#), report and recommendation adopted, [2018 WL 894012 \(M.D. Fla. Feb. 14, 2018\)](#). Although this jurisdictional limit does not prohibit the current motions, district courts have discretion to deny a motion for attorney’s fees without prejudice with leave to refile after the appeal has concluded. See [Fed. R. Civ. P. 54\(d\)](#) Advisory Committee Note to 1993 Amendment (stating that “[i]f an appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion without prejudice, directing under subdivision (d)(2)(B) a new period for filing after the appeal has been resolved”); see also [Elver, 2019 WL 718536, at *1](#) (denying motion for attorney’s fees and costs until appeal concluded); [Landon, 2018 WL 904301, at *1](#) (denying motion for costs until appeal concluded).

Here, the Court concludes that justice would be better served by denying the motions without prejudice with leave to refile after the appeal concludes. See [Bowers v. Universal City Dev. Partners, Ltd., No. 603CV985ORL18JGG, 2005 WL 1243745, at *2 \(M.D. Fla. May 19, 2005\)](#) (“If the district court were to resolve the fee and cost issue while

an appeal remains pending, it would be asked to repeat the procedure following the appeal. This Court prefers to avoid the piecemeal resolution of fee disputes.”). Thus, because Plaintiff’s appeal is pending before the Eleventh Circuit, the Court will deny without prejudice Defendants’ Motion to Tax Costs ([Doc. 151](#)), Renewed Motion to Enter Judgment ([Doc. 152](#)), and Motion for Taxation of Costs ([Doc. 154](#)). If necessary, Defendants may refile the motions within fourteen days after the appeal has been resolved. See [Elver, 2019 WL 718536 at *1](#); [Landon, 2018 WL 904301, at *1](#).

Accordingly, it is now

ORDERED:

- (1) Defendants’ Motion to Tax Costs ([Doc. 151](#)) is **DENIED without prejudice**.
- (2) Defendants’ Renewed Motion to Enter Judgment ([Doc. 152](#)) is **DENIED without prejudice**.
- (3) Defendant’s Motion for Taxation of Costs ([Doc. 154](#)) is **DENIED without prejudice**.
- (4) Defendants may **REFILE** their motions, if appropriate, within **fourteen (14) days** after the date that the Eleventh Circuit Court of Appeals issues its mandate on the pending appeal.

DONE and **ORDERED** in Fort Myers, Florida this 17th day of June, 2019.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record