

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION**

MARK EMBREE and JOSEPHINE  
LOGIUDICE,

Plaintiffs,

v.

Case No. 5:16-cv-35-Oc-32PRL

MEDICREDIT, INC.,

Defendant.

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**ORDER**

Plaintiffs Mark Embree and Josephine Logiudice have filed a Second Motion for Attorney's Fees and Costs, seeking attorney's fees and costs for their work on appeal. (Doc. 74). Defendant Mediacredit, Inc. has filed a response in opposition. (Doc. 77). Plaintiffs then filed an unauthorized reply (Doc. 78), which the Court strikes. See M.D. Fla. Local Rule 3.01(c).

While Defendant's contention that this Second Motion for Attorney's Fees is untimely has some appeal, after reviewing Eleventh Circuit Rule 39-2(e), Federal Rule of Civil Procedure 54(d)(2)(B)(i), and Local Rule 4.18, the Court declines to find the motion untimely.

Plaintiffs say that they spent a total of 68.5 hours on the appeal. However, Defendant largely prevailed on appeal; Plaintiffs only won on a relatively small issue.<sup>1</sup> Rather than try to parse out on an hour-by-hour basis the appropriate number of hours to award, the Court, as it did in the previous attorney's fee award (Doc. 72), will reduce Plaintiffs' hours on a percentage basis to account for their limited success on appeal. The Court will discount the 68.5 hours claimed by Plaintiffs on appeal by 75 percent, for a total of 17.125 reasonable hours. Multiplying this number by the undisputed hourly rate of \$300, the Court awards Plaintiffs \$5,137.50 for attorney's fees on appeal.

The Court declines Defendant's invitation to reduce Plaintiffs' costs award based on its limited success on appeal. Therefore, the Court will award Plaintiffs the full \$2,258.71 in costs that they have requested. The Court will also award Plaintiffs 5 hours at \$300.00 an hour for preparing this attorney's fees motion.

Accordingly, it is hereby

**ORDERED:**

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<sup>1</sup> As a result of prevailing on appeal on the limited issue, the Court on remand added 25.2 hours to the 139.2 hours it had previously awarded. The Court thereafter discounted the hours by 30 percent. Thus, Plaintiffs' success on appeal was limited to the Court awarding Plaintiffs 17.64 additional hours, valued at \$5,292.

1. Plaintiffs' Second Motion for Attorney's Fees and Costs (Doc. 74) is **GRANTED** to the extent stated in this Order.

2. The Clerk shall enter judgment in favor of Plaintiffs Mark Embree and Josephine Logiudice and against Defendant Medcredit, Inc. in the amount of \$6,637.50 in attorney's fees and \$2,258.71 in costs.

3. Plaintiffs' unauthorized reply (Doc. 78) is stricken.

4. The Clerk should close the file.

**DONE AND ORDERED** in Jacksonville, Florida the 22nd day of July, 2019.



TIMOTHY J. CORRIGAN  
United States District Judge

sej

Copies:

Counsel of record