

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

DARRELL ARCHER,

Plaintiff,

v.

Case No.: 8:16-cv-3067-T-36AAS

**WAL-MART STORES EAST, LP,
KRISTINE WOOD, EDWARD CAMP,
CHARLES CARAWAY, KANARA HARRIS,**

Defendants.

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ORDER

Wal-Mart Stores East, LP (Walmart) requests an award of reasonable attorney's fees and costs incurred following a judgment in its favor. (Docs. 309, 310). Darrell Archer opposes the motions. (Docs. 311, 312).

On October 22, 2019, Walmart served Darrell Archer with a proposal for settlement offer of \$30,000, under Fla. Stat. § 768.79. (Doc. 309, Ex. A). Archer did not accept. (*Id.*). On January 15, 2020, the court granted Walmart's motion for summary judgment and dismissed this action with prejudice, and the Clerk entered final judgment for Walmart. (Docs. 306, 307). Archer appealed the order and judgment. (Doc. 313). Walmart now seeks attorney's fees and costs under § 768.79 and as the prevailing party. (Docs. 309, 310).

The filing of a notice of appeal generally divests a district court of jurisdiction on any matters involved in the appeal. *Shivers v. Hill*, 205 Fed. Appx. 788, 789 (11th

Cir. 2006). But the court has discretion to entertain motions for attorney's fees and costs, defer ruling, or deny the motions without prejudice to refile after the appeal. See Fed. R. Civ. P. 54(d)(2) advisory committee's note ("If 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."); *Hetrick v. Ideal Image Dev. Corp.*, No. 8:07-cv-871-T-33TBM, 2009 WL 1788376, at *1 (M.D. Fla. June 22, 2009) ("The Court has discretion to deny a motion for attorney's fees and costs without prejudice to re-file after the appeal has concluded.").

Courts have cited concerns such as having to repeat the attorney's fees and costs procedure following appeal, the desire to avoid piecemeal adjudication, that resolution is unlikely to assist the Eleventh Circuit, and that attorney's fees and costs issues are often resolved during appellate mediation. See *Britt Green Trucking, Inc. v. FedEx Nat'l LTL, Inc.*, No. 8:09-CV-445-T-33TBM, 2012 WL 12951321, at *1 (M.D. Fla. Jan. 26, 2012).

Given the pending appeal, the court exercises its discretion to deny the instant motions without prejudice and allow the parties to refile after the appeal has been resolved. Accordingly, Walmart's Motions for Attorney's Fees and Costs (Docs. 309, 310) are **DENIED WITHOUT PREJUDICE** to refile within thirty days after entry of a mandate by the Eleventh Circuit. Any renewed motions must be accompanied by supporting affidavit and invoices.

ORDERED in Tampa, Florida on February 25, 2020.

Amanda Arnold Sansone

AMANDA ARNOLD SANSONE
United States Magistrate Judge