

and certainly does not prohibit a district court from considering indigence when assigning costs to a losing party.” *Id.*

To deny a bill of costs on the grounds of indigence, “the district court must make a threshold factual finding that the losing party is incapable of paying the court-imposed costs at this time or in the future.” *Id.* at 635. “The burden is on the losing party to provide the district court with sufficient documentation to support such a finding.” *Id.* “This documentation should include evidence in the form of an affidavit or other documentary evidence of both income and assets, as well as a schedule of expenses.” *Id.* Second, the district court “should consider the amount of costs, the good faith of the losing party, and the closeness and difficulty of the issues raised by a case when using its discretion to deny costs.” *Id.*

Here, although Plaintiff was allowed to proceed *in forma pauperis* when this action was commenced, that determination was made in July 2017 based on information that is nearly four years old. (Docs. 4, 5). Plaintiff did not provide any documentation with his objection establishing indigency at this time or his future ability to pay costs. Instead, he relies on his continued incarceration and the Defendants’ ability to obtain information by written discovery as grounds to deny or reduce the costs.

As previously noted, under Rule 54(d)(1), there is a presumption that costs are awarded to the prevailing party, and the burden is on the non-prevailing party to overcome the presumption. *Rivera*, 469 F.3d at 636. Plaintiff has not met that burden. Accordingly, the Bill of Costs (Doc. 90) is **GRANTED**.

IT IS SO ORDERED.

DATED: April 12, 2021

s/ Staci M. Yandle
STACI M. YANDLE
United States District Judge