

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

BENNIE KENNEDY,)	
Plaintiff,)	
)	
v.)	CAUSE NO. 2:12-CV-122-PRC
)	
SCHNEIDER ELECTRIC f/k/a)	
SQUARE D COMPANY,)	
Defendant.)	

OPINION AND ORDER

This matter is before the Court on a Verified Statement of Attorney Fees Pursuant to 28 U.S.C. § 1746 [DE 73], filed by Plaintiff Defendant Schneider Electric, Inc. on March 13, 2017.

On March 1, 2017, the Court issued an Opinion and Order at docket entry 72 on, inter alia, Defendant Schneider Electric’s Motion for Sanctions. Therein, the Court granted Defendant’s Motion and ordered Plaintiff’s attorney, John H. Davis, to pay the reasonable attorney’s fees and other expenses incurred by Defendant in responding to Plaintiff’s Motion to Set Aside the Judgment and in bringing the Motion for Sanctions. The Court ordered Defendant to file a statement of expenses with supporting documentation on or before March 15, 2017. Defendant filed the instant Verified Statement of Attorney Fees Pursuant to 28 U.S.C. § 1746, requesting \$328.16 in costs and \$10,299.00 in fees for 35.90 hours of work at an average hourly rate of approximately \$287.¹ No response has been filed, and the deadline by which to do so has passed.

Plaintiff has filed a Notice of Appeal in this matter. However, an award of fees is not a final judgment until the court determines how much must be paid. *McCarter v. Ret. Plan for Dist. Managers of Am. Family Ins. Grp.*, 540 F.3d 649, 654 (7th Cir. 2008); *see also Feldman v. Olin*

¹The hourly rates charged range from \$195 to \$385.

Corp, 692 F.3d 748, 758 (7th Cir. 2012) (finding that an order granting a motion for sanctions was nonfinal because it reserved the calculation of fees). Further, the award at issue here is entered against Davis only and not against Plaintiff, and Davis has not filed a Notice of Appeal on his own behalf. Any appeal against the fee award must be brought by Davis. *See* Feldman, 692 F.3d at 759. While an appeal is pending, district courts may address issues that are ancillary to the aspects of the case that are on appeal, such as awards of attorneys' fees and costs. *Kusay v. U.S.*, 62 F.3d 192, 194 (7th Cir. 1995). Therefore, this Court has the authority to issue an order on the Statement of Attorney Fees.

Finding the hourly rate and number of hours reasonable, the Court hereby **AWARDS** Defendant against Plaintiff's attorney, John H. Davis, \$10,627.16 in reasonable attorney's fees and other expenses incurred in responding to the Motion to Set Aside Judgment and in bringing the Motion for Sanctions.

SO ORDERED this 30th day of March, 2017.

s/ Paul R. Cherry
MAGISTRATE JUDGE PAUL R. CHERRY
UNITED STATES DISTRICT COURT