

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT FRANKFORT

CIVIL ACTION NO. 06-38

MIKE FITZPATRICK,

PLAINTIFF

v.

OPINION AND ORDER

CITY OF FRANKFORT, WALLACE POSSICH,
*Individually and in his official capacity as
City of Frankfort Fire Chief,*

DEFENDANTS

* * * * *

This matter is before the Court on the Motion for Judgment Awarding Costs (DE 60) filed by the Defendants.

On October 3, 2007, this Court entered summary judgment in favor of the Defendants. The version of Local Rule 54.3 in effect at the time the Defendant filed their Motion provided that the prevailing party must file a Bill of Costs with the Clerk and serve a copy of the Bill on each adverse party within thirty (30) days of entry of judgment. LR 54.3 (amended December 1, 2009). The version of Federal Rule of Civil Procedure 54 in effect at the time that the Defendants filed their motion provided that the Clerk may tax costs on one days' notice and that, on motion served within the next five days, the court may review the clerk's action. Fed. R. Civ. P. 54(d)(1)(amended December 1, 2009).

On October 5, 2007, the Defendants filed a Motion for Bill of Costs (DE 50) requesting the Clerk of the Court to tax costs of \$5,132.42 against the Plaintiff. On October 15, 2007, the Plaintiff filed a Motion to Alter, Amend, or Vacate the Court's Summary Judgment ruling. The Plaintiff never filed an objection to the Defendants' Motion for Bill of Costs and the Clerk entered the Bill

of Costs on October 18, 2007. The Plaintiff never filed a motion to review the clerk's action.

The Court denied the Plaintiff's Motion to Alter, Amend or Vacate the summary judgment ruling and the Plaintiff filed a Notice of Appeal. The Sixth Circuit affirmed this Court's summary judgment ruling and the Defendants then filed the motion now before the Court for a separate judgment awarding costs.

The Bill of Costs entered by the Clerk, however, specifically states, pursuant to 28 U.S.C. § 1920, that "[c]osts are taxed in the amount of \$5,132.42 and *included in the judgment.*" Accordingly, it is unnecessary for this Court to enter a separate judgment specifically stating that costs are taxed to the Plaintiff.

For these reasons, the Court hereby ORDERS that the Motion of Defendants for Judgment Awarding Costs (DE 60) is DENIED.

Dated this 7th day of June, 2010.



Signed By:

Karen K. Caldwell

A handwritten signature in black ink, consisting of the initials "K.K." followed by a stylized flourish.

United States District Judge