

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND - BALTIMORE DIVISION

ALBERT SNYDER,
Plaintiff

v.

Civil Action No. 06-CV-1389 RDB

FRED W. PHELPS, SR.,
SHIRLEY L. PHELPS-ROPER,
REBEKAH A. PHELPS-DAVIS, and
WESTBORO BAPTIST CHURCH, INC.
Defendants

PLAINTIFF'S MEMORANDUM IN SUPPORT OF TAXATION OF COSTS

Plaintiff, Albert Snyder, by and through counsel, seeks taxation of costs against defendants.

1. This Honorable Court has authority to award costs to the prevailing party. 28 U.S.C. § 1920. Indeed, awarding costs is common practice -- “the proper taxable items of costs will be allowed to the prevailing party.” Hansen v. Bradley, 114 F.Supp. 382, 384 (D. Md. 1953).

2. “There is a strong presumption favoring the award of costs to the prevailing party.” Sanglap v. LaSalle Bank, FSB, 194 F.Supp.2d 798, 801 (N.D. Ill. 2002). (Internal citations omitted.). Importantly, “[t]he presumption is difficult to overcome, and the district court’s discretion is narrowly confined - the court must award costs unless it states good reasons for denying them.” Id.

3. Fees paid to the clerk are taxable as a cost. 28 U.S.C. § 1920(1). Additionally, fees paid for service are also taxable as a cost.¹ Id.

4. Deposition costs are included as a “cost.” Fees of the court reporter and for stenographic transcripts are proper costs to be awarded to plaintiff. 28 U.S.C. § 1920(2). “Though 1920(2) does not specifically mention a deposition, we agree with prior decisions suggesting that depositions are included by implication in the phrase ‘stenographic transcript.’” U.S. v. Kolesar, 313 F.2d 835, 837-838 (5th Cir. 1963). The cost of deposition transcripts “necessarily obtained for use in the case” are authorized by 28 U.S.C. § 1920(2). The “transcripts need not be absolutely indispensable in order to provide the basis of an award of costs; it is enough that they are reasonably necessary.” Sanglap v. LaSalle Bank, FSB, 194 F.Supp.2d 798, 802 (N.D. Ill. 2002). (Internal citations omitted.)

5. In the instant matter, deposition transcripts were necessary to impeach defendants Phelps and the corporate designee. Further, defendant Phelps is 78 years old, and according to his counsel, his health did not allow him to travel to Maryland for a deposition. Consequently, it was necessary to preserve his testimony in the event that his health precluded his travel to Maryland for trial. As an additional matter, defendant Phelps was disbarred for lying under oath. As this Honorable Court will see in plaintiff’s response to defendants’ Motion for a Stay and response to post-trial motions, defendants lied about their assets or have fraudulently transferred assets prior to trial. Thus, the depositions were indispensable.

6. “The costs of transcripts of pre-trial conferences is taxable when such transcripts are necessary for use in the case.” Modick v. Carvel Stores of New York, Inc., 209 F.Supp. 361,

¹ The amount requested already reflects the amount paid by defendants Fred Phelps and Westboro Baptist Church, Inc. for their Rule 4 violation. In other words, plaintiff has reduced the requested amount by the amount already paid by defendants.

364 (D.C. N.Y. 1962). Where, as here, defendants insisted that each and every pre-trial conference be on the record, the transcripts for the pre-trial conferences were reasonably necessary. Indeed, defendants relied upon the pre-trial conferences for motions and their premature appeals to the Court of Appeals.² Without transcripts, plaintiff would have been unable to meaningfully respond.

7. To a limited extent, plaintiff is entitled to expert witness fees. Even though expert witness fees are not recoverable in their entirety, plaintiff is entitled to the \$40 statutory fee.

Ezelle v. Bauer Corp., F.R.D. 149, 153 (S.D. Miss. 1994).

WHEREFORE, plaintiff Albert Snyder respectfully requests this Honorable Court award \$10,170.33 for costs as the prevailing party.

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² Notably, defendants filed an appeal and made certain representations concerning the Court's statements in a pretrial conference. Plaintiff knew that defendants misrepresented the Court's statements to the Court of Appeals but necessarily needed transcripts from the pretrial conference to prove their lies and half-truths.

CERTIFICATE OF SERVICE

I hereby certify that on this date true and correct copies of Plaintiff's Memorandum in Support of Taxation of Costs are being served in the following manner:

Via ECF:

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Dated: November 16, 2007