

FILED

FEB 20 2014

DAVID CREWS, CLERK
BY  Deputy

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

LEORY DONALD NESBIT**PLAINTIFF****VS.****CIVIL ACTION NO.: 2:09-CV-156-MPM****WEST BOLIVAR SCHOOL DISTRICT****DEFENDANT**

**CLERK OF COURT'S MEMORANDUM OPINION AND ORDER ADJUDICATING
CONTESTED BILL OF COSTS**

1. For the reasons stated below, costs are taxed against the Plaintiff in favor of the Defendant in the sum of \$1,611.40 for the items appearing in the following table:

Item	Claimed	Allowed
Fees to Serve Subpoena	\$ 150.00	\$ 150.00
Fees of the Clerk	\$ 450.00	\$ 00.00
Fees of the Court Reporter	<u>\$ 1,461.40</u>	<u>\$ 1,461.40</u>
TOTAL	\$ 2,061.40	\$ 1,611.40

2. The jury heard this case from January 28, 2013 to January 31, 2013, and it determined Defendant was not liable to Plaintiff as to any claim.. The final judgment in this case found “defendant, West Bolivar School District recover of the plaintiff, Leroy Donald Nesbit, its cost of action.” (See docket entry no. 148). On March 2, 2013, Defendant filed a Motion for Bill of Costs, seeking to recover \$2,061.40 in costs associated with this action. On March 18, 2013, Plaintiff submitted its objections to Defendant’s Bill of Costs. This matter is now ripe for review.

3. Plaintiff objects to Defendant's Bill of Costs on two grounds. First, Plaintiff maintains that because Defendant did not call Robinson as a witness, the charge to Keith Investigations for serving Robinson should not be taxed. Second, Plaintiff argues that the \$450.00 charged to Plaintiff for costs on appeal to the Fifth Circuit is inappropriate.¹ Plaintiff does not object to the other charges included therein.

4. Federal Rule of Civil Procedure 54(d) provides that costs other than attorney's fees shall be allowed as of course to the prevailing party unless the court otherwise directs. Defendant is clearly the prevailing party in this matter and as such is entitled to recover the costs associated with defending this action. The Court specifically awarded Defendant the costs of the action, and Plaintiff's objections are granted in part and denied in part.

5. Specific Items of Costs

A. Fees to Serve Subpoena.

Plaintiff argues that defendant did not call Robinson as a witness because he could not be helpful to defendant's case. Defendant, however, claims that Robinson was subpoenaed to authenticate documents that were objected to by Plaintiff in the Pre-trial Order. At the trial in this matter, Plaintiff withdrew his objection to the documents, but the subpoena, and the costs associated with service of the subpoena, were already incurred. Therefore, Plaintiff's objection to the \$150.00 paid to Keith Investigation is overruled and will be taxed as a cost.

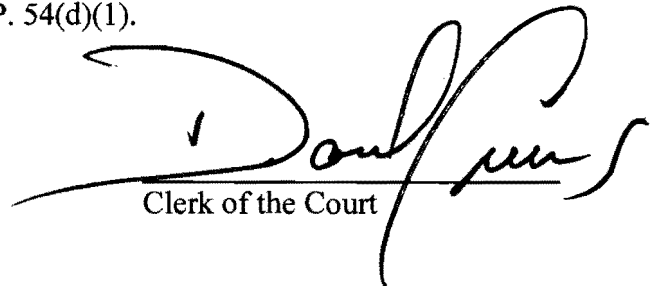
B. Fees of the Clerk

¹ The charge is actually \$455.00 but that does not affect the analysis in regards to the Bill of Costs.

Defendant also seeks to tax \$450.00 in transcript fees paid to this Court for appeal to the Fifth Circuit. Plaintiff's objection to this cost is well-taken and therefore it should not be included in the Bill of Costs. The Judgment of the Fifth Circuit filed October 4, 2011 dismissed Defendant Kemp's appeal and stated "that defendant-appellant pay to plaintiff-appelle the costs on appeal to be taxed by the Clerk of this Court." Therefore, it is inappropriate for this court to now grant the costs to Defendant.

6. I award Defendant \$1,611.40 for the costs of this action. On motion served within seven days, this Order may be reviewed. Fed. R. Civ. P. 54(d)(1).

Date: February 20, 2014

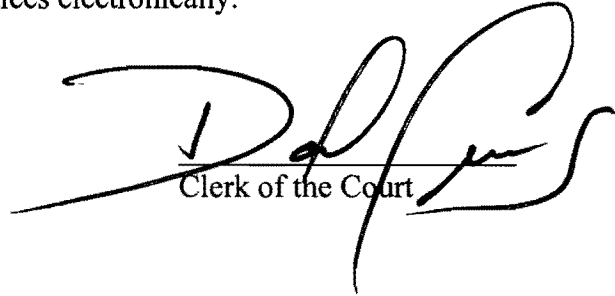


Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that this *Clerk of Court's Memorandum Opinion and Order Adjudicating Contested Bill of Costs* was served on February 20, 2014 via the Court's Electronic Case Filing System, on all parties registered to receive notices electronically.

Date: February 20, 2014


Clerk of the Court