

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**ROGER JOHNSON**

**PLAINTIFF**

**vs.**

**CIVIL ACTION No.: 3:04-CV-393-HTW-FKB**

**WILLIE E. JOHNSON, et al**

**DEFENDANTS**

**ORDER GRANTING ATTORNEY FEES**

BEFORE THIS COURT is the request for attorney fees filed by the defendants in their response to plaintiff's Motion for New Trial [315] and Motion for Judgment as a Matter of Law [316]. [Docket no. 319]. By their motion, defendants ask this court to grant them reasonable attorney fees because they had to respond to allegedly frivolous motions. Plaintiff does not address defendants' request for attorney fees, he merely repeats his prior arguments, none of which touches on attorney fees.

This court notes that at the close of the jury trial of this matter, this court awarded defendants prevailing party status and, as such, granted attorney fees to defendants upon a filing of an itemized bill of costs and fees. Defendants, at that time, decided to forego attorney fees. Shortly following the entry of the final judgment in this lawsuit, plaintiff filed his first consignment of post-judgment motions, which this court denied, warning plaintiff that the United States Fifth Circuit Court of Appeals had already addressed his contentions and found his arguments wanting. *See* [Docket no. 314]. Undeterred

The United States Fifth Circuit Court of Appeals has cautioned *pro se* plaintiffs before that it would not impose sanctions on the first iteration of frivolous filings, but would do so if the *pro se* plaintiff continued to file frivolous motions. *See Grigsby v. Potter*, 291 Fed. App'x 673 (5<sup>th</sup> Cir. 2008). This court has already so cautioned the instant *pro se* plaintiff and warned him that further

frivolity would pose sanctionable conduct. This court further cautioned plaintiff that he shall not file any more motions challenging whether the lawsuit *sub judice* presented a “condition of confinement” or “an episodic act or omission.”<sup>1</sup> Undeterred by this court’s admonition, plaintiff again filed several motions challenging which standard applied and this court denied such motions as frivolous. *See* [Docket no. 326].

IT IS, THEREFORE, ORDERED that defendants’ request for attorney fees is hereby GRANTED and defendants must submit their bill of costs and attorney fees within thirty (30) days of this order for this court’s review and approval.

IT IS FURTHER ORDERED that defendants’ bill of costs and attorney fees encompasses only their responses to plaintiffs’ motions at [Docket nos. 315, 316, 321, and 323].

**SO ORDERED this the 8<sup>th</sup> day of March, 2019.**

**s/ HENRY T. WINGATE**  
**UNITED STATES DISTRICT COURT JUDGE**

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<sup>1</sup> The United States Fifth Circuit Court of Appeals has already ruled that this lawsuit presented “an episodic act or omission”. *See Johnson v. Johnson*, 694 F. App’x 945, 946 (5th Cir. 2017).