IP 04-0782-C H/L Brown v Colgate-Palmolive
Judge David F. Hamilton Signed on 5/17/06

NOT INTENDED FOR PUBLICATION IN PRINT

ANTIONETTE D. BROWN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 1:04-CV-0782-DFH-WTL
	)	
COLGATE-PALMOLIVE COMPANY and	)	
HILL'S PET NUTRITION, INC.,	)	
	)	
Defendants.	)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ANTIONETTE D. BROWN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 1:04-CV-0782-DFH-WTL
	)	
COLGATE-PALMOLIVE COMPANY and HILL'S PET NUTRITION, INC.,	)	
	)	
Defendants.	)	

ENTRY ON BILL OF COSTS

The court granted summary judgment for defendants and entered final judgment. Pursuant to 28 U.S.C. § 1920 and Rule 54(d) of the Federal Rules of Civil Procedure, defendants submitted a timely bill of costs seeking $2,674.73. Plaintiff has opposed the request for costs. The court awards defendants costs in the amount of $1,624.13.

The silence in the judgment about the subject of costs means that costs are available to the prevailing parties. *Chicago College of Osteopathic Medicine v. George A. Fuller Co.*, 801 F.2d 908, 910 (7th Cir. 1986); *Popeil Brothers, Inc. v. Schick Electric, Inc.*, 516 F.2d 772, 777 (7th Cir. 1975). Under Rule 54(d)(1) of the Federal Rules of Civil Procedure, a prevailing party is entitled to an award of costs other than attorney fees "as of course." The Seventh Circuit has described Rule

54(d)(1) as creating a presumption in favor of costs, and a presumption that is "difficult to overcome." *Congregation of the Passion, Holy Cross Province v. Touche, Ross & Co.*, 854 F.2d 219, 221-22 (7th Cir. 1988); accord, *Contreras v. City of Chicago*, 119 F.3d 1286, 1295 (7th Cir. 1997). A losing party's good faith in pursuing a claim or defense does not defeat the presumption. See *Muslin v. Frelinghuysen Livestock Managers, Inc.*, 777 F.2d 1230, 1236 (7th Cir. 1985).

The "inability to pay is a proper factor to be considered in granting or denying taxable costs," and the presumption that costs are to be awarded to the prevailing party "may be overcome by a showing of indigency." *Badillo v. Central Steel & Wire Co.*, 717 F.2d 1160, 1165 (7th Cir. 1983), *superseded in part by statute on other grounds*; see also *Reed v. Int'l Union Of United Auto., Aerospace & Agric. Implement Workers of America*, 945 F.2d 198, 204 (7th Cir. 1991) ("To reverse a district court's award of costs to a prevailing party, it is not enough to establish good faith and a disparity between the parties' financial situations: a party must demonstrate misconduct on the part of the opposing party or indigence."); *Delta Air Lines, Inc. v. Colbert*, 692 F.2d 489, 491 (7th Cir. 1982) (stating it is "unfortunate that the costs may be large and the losing [party] may be hard-pressed to pay them, but we cannot find in those circumstances a good basis for denying costs," but instructing district court to determine on remand whether plaintiff was indigent, and thus, could be excused from paying costs). The losing party must show not only that she is presently unable to pay costs but

also that she will likely be unable to pay costs in the future. *McGill v. Faulkner*, 18 F.3d 456, 459 (7th Cir. 1994).

Plaintiff Brown has not established indigence. She has not submitted an affidavit or a full statement of her financial condition. She has cited evidence that she is a single mother who, at least at the time of her deposition last year, was working two or three part-time jobs to add up to a 40-hour work week. Ms. Brown obviously is not prosperous, but she has not provided the type of detailed information that persuaded the court that an award of costs would be futile in *Knapp v. Child Craft Industries, Inc.*, 2001 WL 1160964, *4 (S.D. Ind. Aug. 16, 2001), or that she would be unable to pay a cost award in the future or over time. Accordingly, Ms. Brown has not shown indigency such that the court would deny costs that would otherwise be proper.

The court denies defendants' request to charge Ms. Brown for the costs of videotaping her deposition. Such costs may be assessed if the videotaping is reasonably necessary rather than a convenience for counsel. In this case, there is no indication of necessity, only of defense counsel's preference for videotaping the plaintiff's deposition. See *Knapp*, 2001 WL 1160964, *3-4, and cases cited therein. Defendant is entitled to the $1,040.65 cost for the original transcript plus one copy.

Fourth, defendants have included a request for reimbursement of the $60.00 they incurred in fees for the admission of two attorneys to practice *pro hac vice* in this court. Such costs may be awarded, see *United States v. Emergency Medical Associates of Illinois, Inc.*, 436 F.3d 726, 730 (7th Cir. 2006) (finding no abuse of discretion in awarding *pro hac vice* fees to defendant who prevailed in *qui tam* action), but they need not be. The general principle under Rule 54(d)(1) is to award costs that were reasonable and necessary for the prevailing party to incur. *Northbrook Excess and Surplus Ins. Co. v. Procter & Gamble Co.*, 924 F.2d 633, 642 (7th Cir. 1991) (district court's discretion under Rule 54(d) is constrained by requirements that costs be allowable items and that the amounts be "reasonable and necessary"). Defendants chose to have five attorneys, including two who were not members of the bar of this court, appear on its behalf. The attorneys who appeared *pro hac vice* in this case have also been representing these defendants in at least three similar cases, also appearing *pro hac vice* in those cases. No one has suggested that an attorney can charge to an opposing party the cost of lifetime admission to the bar or any fees needed to maintain such bar admission. It is not clear why the attorneys chose to pay the *pro hac vice* fee four times in four cases. (At the relevant times, the *pro hac vice* fee was $30 per attorney, while lifetime admission to the bar of this court then cost only $60.) In any event, there is no reason why plaintiff should be required to pay this fee resulting from defendants' choice of counsel and their choice not to seek lifetime admission to this court's bar. The fees were not necessary for the defense of the case.

Finally, the court allows copying costs at 10 cents per page rather than the 15 cents requested by defendants (apart from those costs paid to third parties, such as for copies of medical records), for copying charges of $583.48. The total amount of costs awarded to defendants is therefore $1,624.13.

So ordered.

Date: May 17, 2006

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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