

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
Urbana Division**

TERRY L. BRANDON,)	
)	
Plaintiff,)	
v.)	
)	Case No. 05-2246
ROBERT RENAHER,)	
)	
Defendant.)	

ORDER

In October 2005, Plaintiff Terry Brandon filed a Complaint (#1) against Defendants Michael Schull and Robert Renaker for alleged violations of the Fourth and Fourteenth Amendments of the United States Constitution. Following a trial in April and May 2007, the jury reached a verdict in favor of Defendants Schull and Renaker and the Court entered judgment in accordance with this verdict.

In May 2007, Defendant Renaker filed a Bill of Costs (#57) requesting \$1,575.60 and Defendant Schull filed a Bill of Costs (#60) requesting \$1,456.20, both under Rule 54(d) of the Federal Rules of Civil Procedure. In response, Plaintiff filed an Objection to the Bill of Costs of Defendant Renaker (#61) and an Objection to the Bill of Costs of Defendant Schull (#62). After reviewing the record and the parties' memoranda, this Court awards costs pursuant to Defendant Renaker's Bill of Costs (#57) and Defendant Schull's Bill of Costs (#60).

I. Background

Defendant Renaker requests reimbursement for (1) court reporting fees and deposition fees of \$1,120.60, and (2) witness fees of \$455.00. The court reporting fees include \$444.30 for court reporter services at the deposition of Plaintiff; \$188.90 for the depositions of Dr. Carlos Gotardo, Sandra Seyfert, and Dr. Mutiah Thangavelu; \$143.00 for the deposition of Sherry Brandon; \$313.20 for the depositions of Michael Schull, Patrick Hartshorn,

Whitney Renaker, and Darrell Acord; and \$31.20 for the deposition of Michael Vice. (#57-2, p. 1.) The witness fees include \$425.00 total for Dr. Gotardo, Dr. Thangavelu, and Ms. Seyfert, and \$30.00 for Brian Cornett. (#57-2, p. 1.)

Defendant Schull requests reimbursement for the following items: (1) court reporting fees and deposition transcript costs totaling \$938.80; (2) witness fees pursuant to deposition and trial subpoenas totaling \$425.00; and (3) record copying charges of \$92.40. The court reporting fees includes \$196.35 for Plaintiff's deposition; \$71.75 for the depositions of Dr. Gotardo, Ms. Seyfert, and Dr. Thangavelu; \$357.50 for the deposition of Sherry Brandon; and \$313.20 for the depositions of Michael Schull, Patrick Hartshorn, Robert Renaker, and Darrell Acord. The witness fee reimbursement request of \$425.00 was for Dr. Gotardo, Dr. Thangavelu, and Ms. Seyfert. Finally, \$20.90 of copying expenses was incurred at Carle Clinic in Danville, Illinois; \$43.40 at Provena-United Samaritan Medical Center in Danville, Illinois; and \$28.10 at Carle Foundation Hospital and Clinic, in Urbana, Illinois.

II. Analysis

Plaintiff raises three objections to the bills of cost: (1) Plaintiff is indigent and cannot pay costs; (2) costs are unreasonable, and the deposition of Sherry Brandon was unnecessary; and (3) Defendant Schull failed to adequately itemize the court reporting fees and copy charges and the Court should strike those charges.

A. Indigency

Courts undertake a two-step process when deciding whether to deny costs. First, to deny an award of costs based on indigency, the court must make a "threshold factual finding that the losing party 'is incapable of paying the court-imposed costs at this time *or* in the future.'" *Rivera v. City of Chi.*, 469 F.3d 631, 635 (7th Cir. 2006) (emphasis added) (quoting *McGill v. Faulkner*, 18 F.3d 456, 459 (7th Cir. 1994)). The losing party bears the burden of making this showing through affidavits or other evidence of income, assets, and expenses. *Id.* Second, the court must use its discretion, and provide explanation, in weighing "the amount of costs, the

good faith of the losing party, and the closeness and difficulty of the issues raised by a case.”
Id. at 635-36.

The losing party must provide a specific reason why future employment is not possible thereby leaving the party unable to pay costs now or in the future. *Compare Denson v. Ne. Ill. Reg'l Commuter R.R. Corp.*, No. 00 C 2984, 2003 WL 21506946, *2 (N.D. Ill. June 27, 2003) (finding that a plaintiff's affidavit noting that she was unemployed, had no savings, had children, and received social security was insufficient to show that she could not be gainfully employed and able to pay costs in the future), *with Cross v. Roadway Express*, No. 93 C 2584, 1994 WL 592168, *1 (N.D. Ill. Oct. 26, 1994) (finding that the plaintiff, an unemployed single parent with severe mental health problems that made it impossible for him to perform his past work as a truck driver, had adequately shown an inability to pay costs in the future).

In the instant case, Plaintiff has filed an affidavit in support of his inability to pay costs. (Brandon's Aff., #61-2, p. 1). Plaintiff's affidavit attests, *inter alia*, that he is forty-seven years old, does not have any assets, has a wife and two minor children, is currently unemployed, has not had continuous employment for the “past several years,” has a criminal record that includes a felony conviction, has high blood pressure and problems with his eyesight, and has no specialized training in any field. These facts do indicate that Plaintiff is incapable of paying costs at this time, however, they are insufficient to show that this incapacity extends into the future. Plaintiff has held jobs in the past and, other than his status as an ex-felon, there is little else to suggest he cannot find some employment in the future. While the costs at issue will impose a burden on him, they are not so onerous that Plaintiff would be *incapable* of paying them when he has found some type of employment.

The indigency exception is a narrow one and a presumption exists that costs will be awarded. *Rivera*, 469 F.3d at 636. Because Plaintiff has not shown he is incapable of working in the future, the Court will not deny Defendants' requests for costs because of indigency.

B. Reasonableness of Costs

Plaintiff also argues that the costs requested by Defendants Renaker and Schull are unreasonable. In particular, Plaintiff contends that Sherry Brandon's deposition was not necessary to the litigation because she was never called as a witness at the trial nor was she listed as a witness.

28 U.S.C. § 1920 enumerates the types of costs that can be assessed under Rule 54(d). *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441 (1987). According to Section 1920:

A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

28 U.S.C. § 1920. Provided they fall into one of these categories, costs are recoverable only if they are both reasonable and necessary to the litigation. *Soler v. Waite*, 989 F.2d 251, 255 (7th Cir. 1993). Costs based on convenience to the prevailing party may not be recovered. *Barber v. Ruth*, 7 F.3d 636, 645 (7th Cir. 1993). Finally, necessity is determined as of the time of the deposition or subpoena. *See Barber*, 7 F.3d at 645; *Movitz v. First Nat. Bank of Chi.*, 982 F. Supp. 571, 574 (N.D. Ill. 1997).

In the instant case, all the costs requested by Defendants fall under subsections (2), (3), or (4). Thus, the Court need only discuss whether they are reasonable and necessary to the litigation.

Plaintiff has not shown that the deposition of his wife, Ms. Brandon, was unnecessary at the time Defendants took the deposition. Depositions may be necessary even if a witness was not called at trial or the deposition was not used at the trial. *Finchum v. Ford Motor Co.*, 57 F.3d 526, 534 (7th Cir. 1995). Here, Plaintiff has offered no other discussion regarding why his wife's deposition was unnecessary. In fact, her close relationship with Plaintiff shows that she had a "substantial connection to [Brandon's] case" and her deposition was not "patently unreasonable or unnecessary to the litigation." *See Soler*, 989 F.2d at 255 (quoting *Soler v. McHenry*, 771 F. Supp. 252, 256 (N.D. Ill. 1991)). Absent a contrary showing, the Court cannot conclude that Ms. Brandon's deposition was unnecessary or that its cost of \$143.00 was unreasonable.

Plaintiff has not indicated which, if any, of the remaining costs he considers unreasonable. The Court will not perform the duties of counsel and analyze each individual cost. The Court notes, however, that all costs appear to be within the range of acceptable costs for cases of this nature, and in fact, fall closer to the low end of the spectrum than to the high end. Furthermore, none of the requested costs appear to be patently unnecessary or unreasonable.

C. Failure To Itemize

Plaintiff also argues that Defendant Schull failed to itemize (1) the \$938.80 total for court reporter fees for the depositions of Plaintiff, Dr. Gotardo, Ms. Seyfert, Dr. Thangavelu, Ms. Brandon, Schull, Patrick Hartshorn, Robert Renaker, and Darrell Acord; and (2) the \$92.40 total for copying the hospital records.

The degree of itemization and detail required by a federal court should be based on the level of detail a client would expect. *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 722 (7th Cir. 2001). For example, in *In re Synthroid Marketing Litigation*, the defendants requested

reimbursement for photocopying costs and the court found the method of billing employed by the defendants was in accordance with commercial practice. Furthermore, excessive or perfect detail is not required; rather, a defendant is required to provide the “best breakdown obtainable from retained records.” *Northbrook Excess & Surplus Ins. Co. v. Procter & Gamble Co.*, 924 F.2d 633, 643 (7th Cir. 1991).

In the instant case, Defendant Schull did provide an itemization for the court reporter and copying costs. In fact, he provided a brief discussing the various charges as well as the actual invoices. (Michael Schull’s Brief in Support of His Bill of Costs, #59, plus attachments.) This level of itemization and detail satisfies both the industry standard and the best available breakdown requirement; therefore, no further itemization is necessary.

Plaintiff has not shown he is unable to pay the costs in the future or that the costs were unreasonable or unnecessary, therefore, the Court will award costs to both Defendants.

III. Summary

For the reasons stated above, Plaintiff’s objections are overruled. The Court awards costs in the amount of \$1,575.60 pursuant to Defendant Renaker’s Bill of Costs (**#57**) and in the amount of \$1,456.20 pursuant to Defendant Schull’s Bill of Costs (**#60**).

ENTER this 8th day of August, 2007.

s/ DAVID G. BERNTHAL
U.S. MAGISTRATE JUDGE