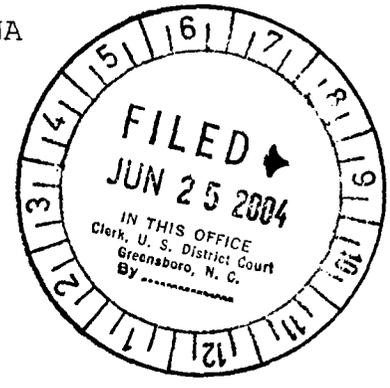


IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



LOUISE E. LUALLEN,)
TINA C. NTUEN, MARIANA)
WILLIAMS, BRENDA K. SMITH,)
VELVET GARRIQUES, LINDA)
GLASGOW,)

Plaintiffs,)

v.)

1:02CV00738

GUILFORD HEALTH CARE CENTER,)
PARENT CORPORATION MEDICAL)
FACILITIES OF NORTH CAROLINA,)
INCORPORATED,)

Defendants.)

MEMORANDUM OPINION and ORDER

OSTEEN, District Judge

Defendants Guilford Health Care Center, Inc. and Medical Facilities of North Carolina, Inc., having been granted summary judgment against Plaintiffs Louise E. Luallen, Mariana Williams, and Velvet Garriques on December 18, 2003, now move for an award of costs in the amount of \$7,458.65 pursuant to Rule 54(d)(1) of the Federal Rules of Civil Procedure and Local Rule 54.1. Luallen, Williams, and Garriques (the "Non-Settling Plaintiffs") move to disallow these costs, arguing that expenses associated with the depositions of Tina C. Ntuen, Brenda K. Smith, and Linda Glasgow are not properly taxable since Ntuen, Smith, and Glasgow (the "Settling Plaintiffs") all entered into settlement

agreements and voluntarily dismissed their own claims prior to this court's grant of summary judgment in Defendants' favor. As the Non-Settling Plaintiffs correctly note, Local Rule 54.1(d) provides that, in an action terminated by settlement, "[t]he court will not tax costs" and "any issue relating to costs" must be resolved in the settlement agreement. LR54.1(d).

Despite the language of the Local Rule, Defendants contend that the deposition costs are taxable since each of the Settling Plaintiffs was listed as a witness for the Non-Settling Plaintiffs. Their status as witnesses, according to Defendants, made their depositions necessary to defend against the Non-Settling Plaintiffs' claims. It is not clear, however, whether these depositions were "reasonably necessary" to Defendants' case against the Non-Settling Plaintiffs, as would be required to award costs related to the depositions. See LaVay Corp. v. Dominion Fed. Sav. & Loan Ass'n, 830 F.2d 522, 528 (4th Cir. 1987). Although Defendants note that the Non-Settling Plaintiffs listed these three individuals as witnesses, other listed witnesses were not deposed. This fact suggests that Defendants would not necessarily have deposed the Settling Plaintiffs had those individuals not originally pursued claims of their own. Further, the depositions in question were conducted while the Settling Plaintiffs' claims were still pending, again suggesting

that the Defendants' purpose in deposing them was primarily to defend against those claims.

Since it is unclear whether the testimony of these three individuals was "reasonably necessary" to Defendants' case against the Non-Settling Plaintiffs, or whether the depositions were needed primarily for a defense against the Settling Plaintiffs' then-pending claims, the court is reluctant to charge the associated expenses to the Non-Settling Plaintiffs. Further, it is impossible to determine whether the scope and expense of each deposition would have been as great had the Settling Plaintiffs been questioned as supporting witnesses rather than parties asserting claims. As such, the court is unable to conclude that these costs are properly taxed to the Non-Settling Plaintiffs or that the costs would not have been more appropriately dealt with as part of the settlement agreements Defendants reached with the Settling Plaintiffs, as Local Rule 54.1(d) provides.

Despite these uncertainties, Federal Rule of Civil Procedure 54(d)(1) provides that "costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs." Fed. R. Civ. P. 54(d)(1). The Fourth Circuit has read this provision to create a presumption in favor of awarding costs to the prevailing party. See Cherry v. Champion Int'l Corp., 186 F.3d 442, 446 (4th Cir. 1999); Teague

v. Bakker, 35 F.3d 978, 996 (4th Cir. 1994). Accordingly, in denying an award of costs a district court "must justify its decision by 'articulating some good reason for doing so.'"

Teague, 35 F.3d at 996 (quoting Oak Hall Cap & Gown Co. v. Old Dominion Freight Line, Inc., 899 F.2d 291, 296 (4th Cir. 1990)).

In this case, the uncertainty surrounding the necessity of Defendants' deposition expenses with respect to the Settling Plaintiffs counsels against taxing those costs to Non-Settling Plaintiffs.¹ Accordingly, Defendants will be awarded the portion of their expenses, \$4,109.40, attributable to photocopying and the Non-Settling Plaintiffs' depositions. The Non-Settling Plaintiffs' motion to disallow costs will be granted to the extent that \$3,349.25, representing expenses incurred for the

¹ This result is bolstered by Plaintiffs' apparent good faith in bringing this lawsuit. Cherry, 186 F.3d at 447 (stating that good faith on the part of the litigants is a "prerequisite" to avoiding the presumptive application of Rule 54(d)); Teague, 35 F.3d at 996 (same). Although good faith alone is insufficient to justify a denial of costs to the prevailing party, see Cherry, 186 F.3d at 447; Teague, 35 F.3d at 996, there is some indication that Plaintiffs may not be able to bear the full costs Defendants seek. (See Defs.' Mem. Supp. Mot. Compel Exs. A at 23-58, C, E at 196-201.) Ability to pay is a relevant factor in determining whether costs are properly taxed to a party, or whether the expenses sought should be reduced. See Bass v. E.I. Dupont de Nemours & Co., 324 F.3d 761, 766 (4th Cir. 2003) (affirming district court's reduction of costs awarded to defendant due to plaintiff's inability to pay); Teague, 35 F.3d at 996-997 (affirming district court's denial of costs due, in part, to plaintiff's inability to pay). But cf. Cherry, 186 F.3d at 447 (noting that a district court would not abuse its discretion in taxing costs against a litigant proceeding *in forma pauperis*).

depositions of the Settling Plaintiffs, will not be awarded to Defendants

For the reasons set forth above,

IT IS ORDERED that Defendants' Motion for Costs [47] is GRANTED in part, such that \$4,109.40 will be taxed to Plaintiffs Luallen, Williams, and Garriques. Luallen, Williams, and Garriques' Motion to Disallow Costs [50] is also GRANTED in part to the extent that \$3,349.25 of the expenses Defendants request will not be taxed to Plaintiffs Luallen, Williams, and Garriques.

This the 25 day of June 2004.


United States District Judge