

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Clayton M. Somers,

Plaintiff, **RECEIVED**

v.

Darrell W. Harper,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2017CP4003520

JAN 31 2020
SC Court of Appeals

ORDER GRANTING PLAINTIFF'S MOTION FOR COSTS AND DENYING PLAINTIFF'S MOTION TO ALTER AND/OR AMEND JUDGMENT

This matter came before the Court upon "Motion for Costs" and "Motion [to] Alter and/or Amend Judgment," both filed by Plaintiff on November 26, 2019. The Court GRANTS the motion for costs and DENIES the motion to amend the judgment without oral argument, pursuant to Rule 59(f) of the South Carolina Rules of Civil Procedure.

COSTS

Plaintiff filed his Motion for Costs, along with a supporting affidavit, on November 26, 2019. Defendant opposed the motion in a December 12 filing, in which he argues that Plaintiff is not a "prevailing party," that Plaintiff's request for trial exhibit costs is excessive, and that the sum proposed for witness fees exceeds the amount allowable by Rule 45(b), SCRCP.

I. Prevailing Party

Despite Defendant's objection, the Court finds Plaintiff to meet the definition of a "prevailing party" in this case. Black's Law Dictionary defines prevailing party as "[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded." BLACK'S LAW DICTIONARY 1145 (7th ed. 1999). Similarly, while not dispositive of the issue, Plaintiff would meet the definition of "prevailing party" under other statutes. *See, e.g., Hueble v. S.C.*

Dep't of Natural Resources, 416 S.C. 220, 785 S.E.2d 461 (2016) (finding that where appellant accepted an offer of judgment in a case brought pursuant to 42 U.S.C. §1983, he was a “prevailing party” because he obtained an enforceable judgment in his favor which materially altered the legal relationship between the parties); *see also Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 711 S.E.2d 895 (2011) (where an action was filed alleging a FOIA violation but information was produced in advance of trial, requestor was still the “prevailing party” because the filing of the action was necessary to get the requested relief). Thus, the Court is satisfied that Plaintiff in this action was the “prevailing party” despite the fact that liability was conceded by Defendant.

II. Trial Exhibits

Plaintiff seeks reimbursement of costs for trial exhibits in the amount of \$327.78. Defendant objects to this amount, arguing that Plaintiff's request is not specific and not substantiated by receipts and that only fifteen single-page exhibits were introduced at trial. The Court agrees.

Rule 54(e)(6) of the South Carolina Rules of Civil Procedure allows for the reimbursement of the cost of “one copy of a photograph introduced into evidence.” Having reviewed the records of the Clerk of Court, the Court finds that Defendant's recollection is correct – the only exhibits offered or introduced into evidence at trial were fifteen photographs. Each of them was approximately 8 ½ by 11 inches in size.

Based on the foregoing, plus the fact that Plaintiff has failed to provide the Court with any details of his request, the Court is left to use its best judgment to determine the sum allowable for trial exhibits. The Court denies Plaintiff's request for \$327.78 and awards Plaintiff seventy-five dollars for trial exhibits (at a generous five dollars per photograph).

III. Witness Appearance Fees and Mileage

Finally, Plaintiff seeks reimbursement of \$6,079.36 for witness appearance fees and mileage. Defendant objects to this request pursuant to Rule 45(b)(1), SCRPC, arguing that, at most, Plaintiff should be awarded five hundred dollars.

Rule 54 of the South Carolina Rules of Civil Procedure allows for reimbursement of witness fees and mileage as set forth in Rule 45(b)(1), SCRPC. *See* Rule 54(e)(5), SCRPC. Rule 45(b)(1), SCRPC, specifically provides for a \$25 per diem for each witness, plus mileage. *See* Rule 45(b)(1), SCRPC. No exception is made for expert witnesses. *See, e.g., Black v. Roche Biomedical Laboratories*, 315 S.C. 223, 433 S.E.2d 21 (Ct. App. 1993) (interpreting an earlier, similar version of the relevant rule).

In this case, exclusive of the parties, six witnesses testified at trial – Stacey and Matthew Somers of Wake Forest, North Carolina; Lance Corporal Tyler Morgan Bigg of the South Carolina Highway Patrol; Drs. Matthew Pollack and Nicholas Lind via video deposition; and Dr. Randolph Waid of Mt. Pleasant, South Carolina. Again, Plaintiff has offered no substantiation of his request, leaving the Court to make an award using its best judgment. Therefore, the Court awards witness fees and mileage totaling \$870.36, as follows:

- Stacey Somers = \$303.40 (\$25 + 480 miles at 58 cents/mile)
- Matthew Somers = \$303.40 (\$25 + 480 miles)
- L/Cpl. Bigg = \$48.20 (\$25 + a generous estimate of 40 miles)
- Dr. Matthew Pollack = \$25 (without mileage, as he appeared via video)
- Dr. Nicholas Lind = \$25 (without mileage, as he appeared via video)
- Dr. Randolph Waid = \$165.36 (\$25 + 242 miles)

AMENDING THE JUDGMENT

In Plaintiff's Motion [to] Alter and/or Amend Judgment, he asks that the Court reconsider its decision to apply a setoff of \$25,000 in favor of the underinsured motorist carrier (UIM) pursuant to S.C. Code Ann. §38-77-160 and *Cobb v. Benjamin*, 325 S.C. 573, 482 S.E.2d 589 (Ct. App. 1997) (allowing UIM carriers to credit the full amount of liability limits against their insured's damages). This request is DENIED. Further, to the extent that Plaintiff seeks a written explanation of the Court's reasoning, he is invited to procure a copy of the court transcript.

CONCLUSION

IT IS, THEREFORE, ORDERED that Plaintiff's Motion for Costs is GRANTED, and the Court awards Plaintiff costs in the amount of \$1,366.42.

IS IT FURTHER ORDERED that Plaintiff's Motion [to] Alter and/or Amend Judgment is DENIED.

AND IT IS SO ORDERED.



Richland Common Pleas

Case Caption: Clayton M Somers vs Darrell W Harper

Case Number: 2017CP4003520

Type: Order/Costs

So Ordered

Jocelyn Newman

Electronically signed on 2020-01-14 13:28:47 page 5 of 5

CHAPPELL, SMITH & ARDEN, P.A.
CLIENT EXPENSES ACCOUNT
(803) 929-3600
P.O. BOX 12330
COLUMBIA, SC 29211

 **First Citizens
Bank**
67-604/539

01/30/2020

PAY TO THE ORDER OF South Carolina Court of Appeals

\$ 250.00

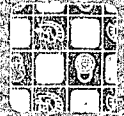
Two hundred fifty and 00/100 ***** DOLLARS

South Carolina Court of Appeals
Clerk of Court
P.O. Box 11629
Columbia, SC 29211

MEMO

209278/Somers, Clayton

Shield



[Handwritten Signature]
AUTHORIZED SIGNATURE

HEAT SENSITIVE RED IMAGE DISAPPEARS WITH HEAT

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COLUMBIA, SC 29211

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