

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KAREN BRISCOE :
 : CIVIL ACTION
 v. :
 : 95-1852
 :
 CITY OF PHILADELPHIA, et al. :

MEMORANDUM

Broderick, J.

January 27, 1998

Plaintiff Karen Briscoe has filed this Motion to Set Aside Judgment for Taxation of Costs. For the reasons stated below, the Court will deny Plaintiff's Motion.

The instant action involved the elimination of Plaintiff Karen Briscoe's position as the Coordinator of the Community Monitoring Project, a monitoring program for members of the Pennhurst class. The Project was designed by the City of Philadelphia and run by the Hall Mercer Community Mental Health/Mental Retardation Center of Pennsylvania Hospital. Plaintiff alleged in her Complaint that she was wrongfully terminated and "blacklisted" from other employment in her profession because she testified in court as to the Community Monitoring Project's documentation of Pennhurst class members suffering from unexplained injuries, abuse, and neglect. Plaintiff named as Defendants the City of Philadelphia, Pennsylvania Hospital and several individuals.

On November 27, 1996, this Court granted summary judgment in favor of Defendants and against Plaintiff Briscoe. Plaintiff filed an appeal, and, on July 21, 1997, the Third Circuit Court of Appeals affirmed this Court's judgment.

On September 9, 1997, Defendants filed a Bill of Costs seeking reimbursement from Plaintiff in the amount of \$9,600.95. This amount, according to Defendants, represented costs they incurred in the taking of depositions. On November 6, 1998, the Clerk of the Court in the United States District Court in the Eastern District of Pennsylvania held a telephone conference with counsel for the Plaintiff and counsel for Defendants. On that same day, the Clerk taxed costs against Plaintiff in the full amount requested by Defendants, \$9,600.95, pursuant to Rule 54(d) of the Federal Rules of Civil Procedure. Plaintiff then filed the instant Motion to Set Aside Judgment for Taxation of Costs.

Plaintiff contends in her Motion that she is unemployed and "has no savings or other financial assets" which would enable her to pay the judgment against her. Plaintiff further contends that the City of Philadelphia will be indemnified for its litigation costs by Pennsylvania Hospital, and that the City is thus "apparently pursuing retaliatory and punitive action against Karen Briscoe rather than seeking reimbursement of public funds, for it knows with certainty that she [Plaintiff] cannot pay and will suffer further psychological and financial distress by the entry of this Judgment."

Rule 54(d) of the Federal Rules of Civil Procedure provides in relevant part:

Except when express provision therefore is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing

party unless the court otherwise directs; but costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law.

The Third Circuit has held that, under Rule 54(d), "a prevailing party generally is entitled to an award of costs unless the award would be 'inequitable.'" Smith v. Southeastern Pa. Trans. Auth., 47 F.3d 97, 99 (3d Cir. 1995) (citations omitted). In Smith, the Third Circuit held that, "[i]f the losing party cannot afford to pay, that party is not automatically exempted from the taxation of costs." 43 F.3d at 100. However, the Third Circuit recognized that "a district court may consider a losing party's indigency in applying Rule 54(b)." Id.

In the instant case, however, the Court is precluded from considering Plaintiff's indigence. Despite the averments in her Motion, the Plaintiff has failed to produce any evidence to establish that she is indigent or unable to pay the full amount of the award against her. Accordingly, the Court can not consider Plaintiff's indigence in its determination of whether the award of costs to Defendants in the instant case is inequitable.

Accordingly, the Court has discerned no ground on which it could grant Plaintiff's Motion to Set Aside the Taxation of Costs against her. The expenses enumerated in Defendants' Bill of Costs appear reasonable and accurate, and Plaintiff's argument regarding Pennsylvania Hospital's indemnification of the City of

Philadelphia is without merit.

In closing, however, the Court feels compelled to note that-- assuming Plaintiff's allegations of indigence are true-- Defendants would be ill-advised to spend additional time and resources in their effort to collect costs against this Plaintiff. Such efforts could consume considerable resources and would likely be unsuccessful.

An appropriate Order follows.