

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

SUSAN PRYOR DAY : CIVIL ACTION  
 :  
 v. :  
 :  
 MENDENHALL INN, INC. : NO. 95-830

MEMORANDUM ORDER

Plaintiff sued for injuries she allegedly suffered after falling on a dance floor at defendant's premises. A jury returned a verdict in defendant's favor and judgment was entered against plaintiff. Defendant submitted a \$11,599.23 Bill of Costs to the Clerk of Court. The Clerk reviewed defendant's submission and taxed costs against plaintiff in the amount of \$7,601.47.

Both parties have appealed from the Clerk's order taxing costs. Plaintiff asserts that the Clerk erroneously taxed certain items requested by defendant and asks the court to reduce defendant's award to \$1,532.50. Defendant argues that the Clerk wrongly excluded items from the Bill of Costs and requests that the court increase its award to \$10,462.87.

The court taxes costs "as of course" unless a statute, rule or court order dictates otherwise. See Fed. R. Civ. P. 54(d)(1). Costs are taxed by the Clerk subject to a de novo appeal to the court. See Local R. Civ. P. 54.1(b); Ezold v.

Wolf, Block, Schorr & Solis-Cohen, 157 F.R.D. 13, 15 (E.D. Pa. 1994). The court's review is guided by 28 U.S.C. § 1920.<sup>1</sup> See In re Philadelphia Mortgage Trust, 930 F.2d 306, 307-10 (3d Cir. 1991).

In the Bill of Costs submitted to the Clerk, defendant included expenses related to eleven depositions taken before trial. Costs related to depositions are recoverable when the depositions are "reasonably necessary" for trial or for trial preparation. See 28 U.S.C. § 1920(2); Burks v. City of Philadelphia, 1998 WL 521705, \*4 (E.D. Pa. June 26, 1998);

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<sup>1</sup> 28 U.S.C. § 1920 provides:

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.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

Marcario v. Pratt & Whitney Canada, Inc., 1995 WL 649, \*1 (E.D. Pa. Nov. 1, 1995). The Clerk awarded defendant costs associated with six of those depositions and disallowed amounts related to five.

Plaintiff contends that the Clerk erroneously awarded defendant costs related to the depositions of Donald Meserlian and Jonathan Stanzler. Plaintiff argues that Mr. Meserlian's deposition was unnecessary because defendant had received Mr. Meserlian's expert report before the deposition and that defendant could not have expected to use Mr. Stanzler's deposition at trial because it covered material subject to evidentiary objections.

Defendant was entitled to conduct the depositions of Mr. Meserlian and Mr. Stanzler under the Federal Rules of Civil Procedure and these depositions appear to have been wholly appropriate for defendant's trial preparation. See Tuthill v. Consolidated Rail Corp., 1998 WL 321245, \*6 (E.D. Pa. June 18, 1998) (costs related to depositions of plaintiff's experts taxable even though expert reports and office notes had been provided during discovery); Ezelle v. Bauer Corp., 154 F.R.D. 149, 155 (S.D. Miss 1994) (cost of deposition may be taxed even if used merely to structure questioning at trial). The costs related to the production of transcripts of Mr. Meserlian's and

Mr. Stanzler's depositions are recoverable.<sup>2</sup>

Defendant argues that the Clerk erred by excluding from its award costs for the trial depositions of Dr. Peter Trafton, Elise Stanford Johnson, Cecil Gaigals, Dr. Steven Mandel and Dr. Norman Eckbold. In its order, the Clerk reasoned that expenses related to those depositions were not recoverable because the depositions were videotaped and 28 U.S.C. § 1920(2) only provides for the recovery of "stenographic" transcripts.<sup>3</sup>

While defendant acknowledges that it listed the five depositions for which costs were disallowed as videotaped depositions on its Bill of Costs, it represents that it only requested costs related to the stenographic transcriptions of those depositions. Plaintiff argues that the court should nevertheless affirm the Clerk's Order because these charges were incurred for the convenience of counsel and the transcripts,

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<sup>2</sup> The invoice supporting defendant's request for the cost of producing a combined transcript of the discovery depositions of Thomas Dzuibeck, Jonathan Stanzler and Elise Stanford-Johnson indicates that defendant erroneously included unexplained and non-taxable items in the amount listed on the Bill of Costs. Consistent with defendant's evidence, the court will award defendant \$180.25 for the production of the combined transcript.

<sup>3</sup> While the costs of videotaping depositions may be recoverable under 28 U.S.C. § 1920(2), see Brown v. Kemper Nat'l Ins. Co., 1998 WL 472586, \*2 (E.D. Pa. July 27, 1998); Fitchett v. Stroehmann Bakeries, Inc., 1996 WL 47977, \*6-\*7 (E.D. Pa. Fe. 5, 1996); Marcario, 1995 WL 649160 at \*2 (citing Barber v. Ruth, 7 F.3d 636, 645 (7th Cir. 1993)), the court need not address the issue because defendant only seeks costs related to the production of stenographic transcripts of videotaped depositions.

regardless of their form, were not "necessarily obtained for use in this case." Plaintiff also argues that several of the charges included in the amounts sought by defendant are for expenses unrelated to the production of deposition transcripts.

The five depositions for which the Clerk disallowed costs appear to have been taken as part of regular trial preparation. The invoices submitted by defendant as evidence support its claim that the costs it seeks were substantially incurred in the production of deposition transcripts. Plaintiff correctly points out, however, that several charges listed on invoices relate to services for which defendant is not entitled to recover. See, e.g., Nugget Distribs. Coop. of Am., Inc. v. Mr. Nugget, Inc., 145 F.R.D. 54, 58 (E.D. Pa. 1992) (disallowing costs of obtaining depositions on ASCII disks as duplicative of cost of obtaining regular transcript and merely for convenience of counsel). Also, it appears that defendant obtained expedited transcripts for the depositions of Dr. Trafton and Dr. Mandel. Expedited transcripts will not be taxed where the increased cost does not appear necessary. See Farley v. Cessna Aircraft Co., 1997 WL 537406, \*6 (E.D. Pa. Aug. 1, 1997); Fitchett, 1996 WL 47944 at \*5. Defendant has not adequately justified the expedited production of those deposition transcripts. The court will not assess plaintiff the cost of their production. The court will include in defendant's cost award amounts of \$73.50

for the trial deposition of Elise Stanford Johnson, \$104.25 for the deposition of Cecil Gaigals and \$1,097.50 for the deposition of Dr. Norman Eckbold.

In its Bill of Costs, defendant claimed substantial fees for exemplification and copies of papers under 28 U.S.C. § 1920(4). The clerk taxed the majority of the those costs requested by defendant. Plaintiff argues that certain items are too imprecise to permit recovery. Plaintiff also complains that she cannot determine whether any supporting documents in defendant's Bill of Costs evidence those expenditures, that many of the documents copied related to her medical condition and were provided by her during discovery and that certain copy costs were made "solely for the convenience of counsel."

Copying expenses are recoverable as taxable costs when they are "necessarily obtained for use in the case," regardless of whether they are offered into evidence at trial. See 28 U.S.C. § 1920(4); Hurley v. Atlantic City Police Dept., 1996 WL 549298, \*3 (D.N.J. Sept. 17, 1996). In personal injury cases, a plaintiff's medical records are usually necessary for use in the case. See Depasquale v. International Bus. Mach., 1998 WL 195662, \*3 (E.D. Pa. Apr. 2, 1998); see also Goldstein v. GNOC, Corp., 1994 WL 456360, \*4 (E.D. Pa. Aug. 22, 1994); Bulla v. Sea-Land Serv., Inc., 1994 WL 325923, \*1 (E.D. Pa. June 30, 1994). Nevertheless, the party seeking costs for copying must provide

evidence of the material copied so that the court can determine whether those copies were, in fact, necessary. See, e.g. Hines v. Southeastern Pennsylvania Trans. Auth., 1996 WL 460052, \*2 (E.D. Pa. Aug. 9, 1996).

Defendant's Bill of Costs contains receipts for several bulk copies of plaintiff's medical records totaling \$763.28.<sup>4</sup> Defendant also seeks reimbursement for \$205.64 it paid to obtain plaintiff's medical records from various hospitals. Plaintiff does not argue that the number of documents copied is in excess of those produced in this case, and it appears that copies of plaintiff's medical records were necessary for defendant's trial preparation. The court will tax against plaintiff these photocopying costs.

Defendant asks the court to assess against plaintiff \$1,359.54 it paid for enlargements of her medical records for use as trial exhibits. Courts allow the recovery of costs for printing, enlarging and mounting of trial exhibits when those exhibits are helpful to the court and jury. See Farley, 1997 WL 537406 at \*5; Rogal v. American Broad. Cos., 1994 WL 268250, \*2 (E.D. Pa. June 15, 1994). Plaintiff makes no argument that these trial exhibits were not prepared as a necessary part of its defense or otherwise were not helpful in presenting the case.

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<sup>4</sup> Defendant calculates the total cost of these bulk copies as \$816.28. Defendant's receipts for those copies, however, only support an award of \$763.28.

The court will tax costs for those exhibits against plaintiff.

Defendant also seeks reimbursement for \$1974.10 it paid as a "fee for service of subpoenas for medical records." Despite a thorough review of the documents supporting defendant's Bill of Costs, it is unclear whether there are any receipts supporting this requested item.<sup>5</sup> Even assuming such a fee is recoverable under 28 U.S.C. § 1920(4), defendant has provided no discernable evidentiary support for this requested charge. Defendant's request for this item will be denied.

Defendant asked the Clerk to award costs associated with the service of several subpoenas by private process servers. The clerk allowed these costs in their entirety, taxing plaintiff an additional \$1031.71. Courts are divided over whether private process server fees are allowable under 28 U.S.C. § 1920. See U.S. ex rel. Evergreen Pipeline Constr. Co., Inc. v. Merit Meridian Constr. Corp., 95 F.3d 153, 172 (2d Cir. 1996); Alflex Corp. v. Underwriters Labs., Inc., 914 F.2d 175, 178 n.6 (9th Cir. 1990), cert. denied, 502 U.S. 812 (1991); Crues v. KFC Corp., 768 F.2d 230, 234 (8th Cir. 1985). Courts in this district have allowed such costs when limited to the fee that would have been incurred if the subpoenas had been served by the

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<sup>5</sup> Defendant has appended eighty-three pages of receipts to its Bill of Costs. These receipts are neither ordered, numbered or labeled. There are duplicates of several documents. Other documents have no obvious corresponding entry in defendant's Bill of Costs.

United States Marshall.<sup>6</sup> See Brown, 1998 WL 472586 at \*1; Fitchett, 1996 WL 47977 at \*8. Plaintiff represents that she had agreed to produce Messrs. Meserlian and Stanzler for deposition and thus there was no need for defendant to incur service costs as to them. The court will award defendant \$80 for service of subpoenas on Leann Dennewitz and Nicole D'Antonio.

In sum, the court will tax costs against plaintiff as follow:

I. Cost of Deposition Transcripts

1.	Susan Pryor-Day	\$494.75
2.	Lou Hionis	\$376.55
3.	Steven Angeline	\$265.75
4.	Nicole D'Antonio	\$195.45
5.	Donald Meserlian, P.E.	\$409.75
6.	Thomas Dzuibeck, Jonathan Stanzler and Elise Stanford-Johnson	\$180.25
7.	Elise Stanford-Johnson	\$73.50
8.	Cecil Gaigals	\$104.25
9.	Dr. Norman Eckbold	\$1,097.50

II. Fees and Disbursements for Witnesses

10.	Donald Meserlian	\$40.00
11.	Leann Dennewitz	\$40.00
12.	Nicole D'Antonio	\$40.00
13.	Steven Angeline	\$40.00
14.	Robert Fijan, Ph.D.	\$40.00

III. Fees for Exemplification and Copies of Papers

15.	Fee for copying plaintiff's medical records for trial exhibits	\$1,359.54
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<sup>6</sup> The current fee charged by the United States Marshall for serving process is \$40.00 for the first two hours and \$20.00 for every hour thereafter until process is served.

16.	Fee of Recordex for copying E.R. records of Chester County Radiology	\$43.56
17.	Fee of Recordex for Chester County Hosp. E.R. records	\$40.00
18.	Fee for records from Miriam Hosp.	\$20.00
19.	Fee for records from Deaconess Hosp.	\$33.00
20.	Fee for records from West Paces Ferry Hosp.	\$69.08
21.	Copy fees from Copy America for Plaintiff's medical records	\$763.28
IV.	Cost of Service of Trial and Witness Subpoenas	
	22. service on Leann Dennewitz and Nicole D'Antonio	\$80.00
	Total:	\$5,806.21

**ACCORDINGLY**, this                    day of September, 1998, upon consideration of plaintiff's Appeal from the Clerk's Order for Taxation of Costs (Doc. #76) and defendant's response thereto, **IT IS HEREBY ORDERED** that the Clerk's Taxation of Costs is **AFFIRMED IN PART** and **REVERSED IN PART** in that costs in the above case are awarded to defendant Mendenhall Inn in the amount of \$5,806.21.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**