UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Civil No. 24-3132

Sophia Wilansky,

Plaintiff / Appellant,

v.

Morton County, North Dakota, et al.,

Defendants / Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA
(NO. 1:18-CV-00236)
HONORABLE JUDGE DANIEL MACK TRAYNOR

BRIEF OF APPELLEE ADAM J. DVORAK

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SUMMARY OF THE CASE

The merits of the underlying litigation have been extensively briefed in the related appeals, Appeal Nos. 24-1911 and 24-1919. Solely at issue here is the district court's award of costs to Defendants. As regards to State Defendant/Appellee Dvorak, Wilansky disagrees with the district court's decision to award him $3,474.65 for the costs associated with two depositions. But based on the precedent of this Court and the reason for the expenditures, the district court's award of costs was entirely within its substantial discretion. The district court's judgment should be affirmed. Because the facts and legal issues are adequately presented in the briefs in this matter, State Defendant/Appellee Dvorak does not believe that oral argument is necessary to aid in the decisional process.

CORPORATE DISCLOSURE STATEMENT

Appellee Adam J. Dvorak is sued in his individual capacity for alleged actions arising out of the course of his employment with the North Dakota Highway Patrol. He is a government employee, not a corporation, and therefore no corporate disclosure statement is required pursuant to Fed. R. App. P. 26.1 or 8th Cir. R. 26.1A.

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STATEMENT OF ISSUES RELATING TO APPELLEE DVORAK

1. Whether the district court erred in awarding costs for deposition transcripts to Dvorak in the amount of $3,474.65;

Most apposite authority:

Zotos v. Lindbergh Sch. Dist., 121 F.3d 356, 363 (8th Cir. 1997)

28 U.S.C. § 1920

2. Whether the district court erred in awarding any costs at all.

Most apposite authority:

In re Derailment Cases, 417 F.3d 840 (8th Cir. 2005)

28 U.S.C. § 1920

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STATEMENT OF THE CASE

As this appeal pertains only to the district court's judgment on costs and not to the merits of the underlying case, the facts relevant to this appeal are simply the procedural history relating to the award of costs.

The underlying litigation stems from 2018. *See* R.Doc.1.[1] By the time the case was dismissed in 2024, the remaining Defendants fell into two groups: the State Defendant, Adam J. Dvorak, and the Morton County Defendants, consisting of Morton County, Kyle Kirchmeier, and Jonathan Moll. (App.72; R.Doc.312.) Judgment in this matter was based on the district court's granting of Defendants' motions to dismiss. R.Doc.290. The extensive district court docket shows that Wilansky filed three total complaints across the six years of litigation which were met with multiple motions to dismiss and one motion for summary judgment, interspersed with several periods of limited discovery. *See, e.g.,* R.Doc.1 (Complaint filed November 19, 2018); R.Doc.26 (Motion to Dismiss filed January 22, 2019); R.Doc.51 (Order for Limited Discovery filed November 6, 2020); R.Doc.110 (Memorandum in Support of Summary Judgment (Supplemental) filed June 4, 2021); R.Doc.153 (Amended Complaint filed July 21, 2022); R.Doc.199 (Order Denying Motion to Stay Discovery filed October 6, 2022); R.Doc.259 (Second Amended Complaint filed July 28, 2023).

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[1] In this brief, State Defendant/Appellee Dvorak uses "R.Doc." to refer to the underlying district court docket in case # 1:18-cv-236. The abbreviation "App." refers to the appendix filed by Plaintiff Sophia Wilansky. The abbreviation "Aple.App." refers to the appendix filed by County Appellees Morton County, Kyle Kirchmeier, and Jonathan R. Moll. Dvorak has not filed his own separate appendix.

After judgment was entered in Defendants' favor, State Defendant/Appellee Dvorak filed a Verified Statement of Costs stemming from two depositions, for a total of $3,474.65, accompanied by invoices breaking down the costs. (Aple.App.136, 137-141; R.Doc. 299, 299-1 at 1-4).

Plaintiff filed a response in opposition to both the County Defendants' and the State Defendants' Verified Statements of Costs. R.Doc.303. Both the County Defendants and the State Defendants replied in support of their Verified Statement of Costs. (R.Doc.306, R.Doc.309.) The district court ultimately granted in part the County Defendants' motion for costs and granted in full Dvorak's motion for costs pursuant to 28 U.S.C. § 1920(2). (App.71; R.Doc.311 at 14.)

In granting Dvorak's motion, the district court wrote:

> Wilansky argues Dvorak did not file receipts or other proofs to support his request for deposition costs. This is contrary to the record. Dvorak has filed the receipts for the depositions for which he seeks costs. Doc. No. 299-1. As discussed above, the depositions were also necessarily obtained for use in this case. 28 U.S.C. § 1920(2) (permitting taxation of costs for "printed or electronically recorded transcripts necessarily obtained for use in the case"). Accordingly, Wilansky will be taxed a total of $3,474.65 for deposition costs as requested by Dvorak.

(App.71;R.Doc.311 at 14.)

This appeal followed.

SUMMARY OF THE ARGUMENT

Wilansky's contentions are unavailing for two main reasons. First of all, she sets forth the wrong standard for determining whether a deposition was necessary to Defendants' case. This determination is made *at the time the deposition was taken*, and at the time the depositions here were taken, they were necessary to Defendants'

cases. Second, she sets forth no legal authority for her position that the award of costs in a civil rights claim, or when a plaintiff is indigent, constitutes an abuse of the district court's broad discretion. Accordingly, the district court's judgment should be affirmed.

ARGUMENT

Wilansky's arguments are based on a misreading of Eighth Circuit precedent and a misunderstanding of the record. The majority of her arguments are directed only at the County Defendants. Her arguments on the award of costs to Dvorak are limited to her contention that the depositions were not necessary to Dvorak's case and should not be awarded, and, that the district court should have denied costs entirely because this is a civil rights case and because Wilansky is indigent. Neither of these arguments have merit.

I. Applicable Legal Standards.

Under Federal Rule 54(d), a district court may award costs to a prevailing party. *Smith v. Tenet Healthsystem SL, Inc.*, 436 F.3d 879, 889 (8th Cir. 2006). Costs must be set out in 28 U.S.C. § 1920 or some other statutory framework. *Smith*, 436 F.3d at 889, citing *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 438 (1987). Under 28 U.S.C. § 1920, a court may tax as costs six categories of items, including "Fees for printed or electronically recorded transcripts necessarily obtained for use in the case." 28 U.S.C. § 1920(2).

District courts have "substantial discretion" when awarding costs under Rule 54(d). *Smith*, 436 F.3d at 879, citing *Zotos v. Lindbergh Sch. Dist.*, 121 F.3d 356, 363 (8th Cir.1997). This court reviews *de novo* the "legal issues" related to the award of

costs. *Craftsmen Limousine, Inc. v. Ford Motor Co.*, 579 F.3d 894, 896 (8th Cir. 2009) (citations omitted). This court reviews for an abuse of discretion a district court's actual award of costs. *Jet Midwest Int'l Co. v. Jet Midwest Grp., LLC*, 93 F.4th 408, 416 (8th Cir. 2024), citing *Marmo v. Tyson Fresh Meats, Inc.*, 457 F.3d 748, 763 (8th Cir. 2006).

II. The District Court Properly Awarded Costs for Deposition Transcripts to Dvorak in the Amount of $3,474.65.

Wilansky first argues that none of the depositions were "necessarily obtained for use in the case," removing them from the purview of 28 U.S.C. § 1920. Appellant's Brief at 7-8. Her claim rests on the fact that judgment was based on a motion to dismiss. Appellant's Brief at 7-10. She writes: "Here, defendants have not demonstrated that they were preparing for trial, or for any other reason required depositions before moving to dismiss the case *on the pleadings*." *Id.* at 9 (emphasis in original). This is incorrect.

In her discussion of governing caselaw, Wilansky omits critical context. She quotes *Marmo v. Tyson Fresh Meats, Inc.*, 457 F.3d 748, 763 (8th Cir. 2006) for the proposition that "[A] prevailing party must show that the deposition was introduced into evidence, relied upon for cross-examination or impeachment purposes, or otherwise useful in assisting a resolution of contested issues." Brief at 8. But she omits the fact that the Court in *Marmo* was merely quoting the Bill of Costs Handbook used by the District of Nebraska. *Marmo*, 457 F.3d at 762. She also omits the immediately preceding sentence: "[The handbook] provides that costs incurred in taking depositions generally will be taxed in favor of the prevailing party 'if the taking of the

depositions **was reasonably necessary at the time it was taken**, even though they may not have been used at trial.'" *Marmo*, 762-63 (emphasis added).

As such, contrary to Wilansky's suggestion, there is no brightline rule precluding awarding of costs for a deposition unless that deposition is introduced at trial. On the contrary, Eighth Circuit precedent requires the determination of necessity be made at the time a deposition is taken. "[T]he determination of necessity must be made in light of the facts known at the time of the deposition, without regard to intervening developments that later render the deposition unneeded for further use." *Zotos v. Lindbergh Sch. Dist.*, 121 F.3d 356, 363 (8th Cir. 1997) (citing *Barber v. Ruth*, 7 F.3d 636, 645 (7th Cir.1993) (superseded by rule on other grounds)). At the time that Arndt's deposition was taken in 2021, the parties were in a period of limited discovery. *See* Aple.App.091; R.Doc.275 at 2. The same is true for Joachinson's deposition in 2024 – in taking this deposition, the parties were following the Court's directive to engage in limited discovery issued the previous September. (Aple.App.098-109; R.Doc.275 at 9-20). Indeed, the directive from the Court to engage in limited discovery was made *over* the objection of Defendants, who didn't want to engage in discovery before the Court adjudicate their motions to dismiss. (Aple.App.092-93; R.Doc.275 at 3-4.) But Plaintiff requested that discovery proceed, *id.*, and the Court agreed. (Aple.App.098-109; R.Doc.275 at 9-20). Defendants did not know that the granting of the Motions to Dismiss would later moot this process. Defendants' participation in discovery at Plaintiff's request and by Court order should not be punished by a denial of costs now. The district court acted soundly within its discretion to award costs for these two depositions to Dvorak because the depositions

were "necessarily obtained for use in the case" *at the time they were taken*. *See* 28 U.S.C. § 1920. The district court was correct to award costs for these two depositions pursuant to 28 U.S.C. § 1920(2). The award of costs for the two depositions should be upheld.

III. The District Court Did Not Err in Awarding Costs Generally.

Wilansky's other point of error relevant to State Defendant/Appellee Dvorak is her claim that the district court should not have awarded costs at all based on the fact that she brought a civil rights claim and that she is indigent. Appellant's Brief at 19-24. These claims are unavailing.

First of all, Wilansky fails to cite any Eighth Circuit precedent even suggesting that a district court's failure to deny costs because a case involves civil rights constitutes an abuse of discretion. This deficit alone demonstrates that the district court did not abuse its discretion by awarding costs here. Further, Dvorak disagrees with Wilansky's claim that she "brought this case in good faith and acted reasonably throughout this lengthy suit." Appellant's Brief at 21. State Defendants' brief in the main case sets forth at length Wilansky's manipulation of her pleadings to contradict the evidence and her misrepresentations over the course of the case. *See* Appellee Brief filed by Adam J. Dvorak in 24-1911, at 19-29. Again, all defendants have denied since the outset of this litigation *any* involvement in Wilansky's injury. Even if a party's acting in good faith were justification for barring an award of costs under 54(b), which it is not, Wilansky cannot establish that she did so and it was not an abuse of discretion for the district court to award costs in this instance.

Lastly, Wilansky's indigent status is not dispositive. A prevailing party is presumptively entitled to recover all its costs. *In re Derailment Cases*, 417 F.3d 840, 844 (8th Cir. 2005) (citations omitted). In *In re Derailment Cases*, this Court was faced with a claim that costs were unjustified because of the "economic disparities" between the parties. 417 F.3d at 845. In response, the Court observed "we have upheld the award of costs under Rule 54(d) in similar situations in which the district court considered the economic hardship of the parties against whom costs were assessed." *Id.,* citing *Lampkins v. Thompson*, 337 F.3d 1009, 1017 (8th Cir. 2003). Ultimately, the Court concluded that even when the district court did not explicitly consider the plaintiffs' financial situation, it did so implicitly and the decision to award costs was not an abuse of discretion. *Id.*

Here, the district court considered Wilansky's indigency and determined that it was not sufficient to overcome Rule 54(d)'s presumption of an award of costs. (App.59-60;R.Doc.311 at ¶¶ 4-7.) In so doing, the district court noted the choice faced by civil rights plaintiffs, who "must choose between the risk of cost taxation in the event they lose the lawsuit and the benefit of an award of attorneys' fees in the event they win." (App.60;R.Doc.311 at ¶ 7.) Wilansky chose to pursue this litigation. She cannot show that the district court's determination to award costs in spite of her indigency was an abuse of discretion.

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CONCLUSION

For all of the above reasons, Dvorak respectfully requests that the judgment of the district court be affirmed.

Dated this 26th day of February, 2025.

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CERTIFICATE OF COMPLIANCE

Civil No. 24-3123

The undersigned hereby certifies that this Brief conforms with the type-volume limitations of Fed. R. App. P. 27(d) and that the text of this brief contains 2,201 words, excluding the parts exempted by Fed. R. App. P. 32(f). This brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 365 word processing software in Times New Roman 14 point font. The brief has been scanned for viruses and is virus-free. I further certify that the digital version of this brief was generated by printing to PDF from the original word processing file so that the text of the digital version of the pleading may be searched and copied in compliance with this Court's Local Rule 25(A).

Dated this 26th day of February 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2025, I electronically submitted **STATE BRIEF OF APPELLEE ADAM J. DVORAK** to the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system and that ECF sent a Notice of Electronic Filing to all participants who are registered CM/ECF users.

Dated this 26th day of February, 2025.

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