IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

RACHEL TUDOR, Plaintiff, v. SOUTHEASTERN OKLAHOMA STATE UNIVERSITY, and THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA, Defendants.	**Case No. 15-cv-324-C**

DEFENDANTS' OBJECTION TO PLAINTIFF'S BILL OF COSTS

Defendants Southeastern Oklahoma State University ("SEOSU") and The Regional University System of Oklahoma ("RUSO") object to the following items contained in Plaintiff's Bill of Costs. [Doc. 299].

I. UNSUBSTANTIATED AND/OR UNRECOVERABLE PRINTING COSTS:

"The burden is on the prevailing [party] to establish the amount of compensable costs and expenses to which they are entitled. Prevailing parties necessarily assume the risks inherent in a failure to meet that burden." *English v. Colo. Dep't. of Corr.,* 248 F.3d 1002, 1013 (10th Cir. 2001). It is the prevailing party's burden to prove that the costs asserted are actually allowed under 28 U.S.C. § 1920. Plaintiff has failed to do so in her bills of costs.

Plaintiff requests reimbursement for $3,673.62 in "printing" costs. By Plaintiff's counsel's own admissions, a significant portion of these costs are duplicative as a result of Plaintiff's counsels' conduct: (1) errors in failing to follow local court rules regarding trial exhibits resulted in duplicative unnecessary

printing of trial exhibits, and (2) Plaintiff's counsel's dispute with his former firm, Transgender Legal Defense & Education Fund, Inc. (TLDEF), resulted in duplicative printing of all depositions and exhibits. Plaintiff also seeks fees for binders, which is not a permissible, reimbursable printing cost. In addition, while Plaintiff provides a general description of the printing costs, there is no indication of the number of copies for which reimbursement is sought, or the cost of each copy.

In *Helms v. Wal-Mart Stores, Inc.*, 808 F.Supp. 1568, 1570 (N.D. Ga. 1992), the Court held:

> A prevailing party may not simply make unsubstantiated claims that such documents were necessary, since the prevailing party alone knows for what purpose the copies were made.

Plaintiff has not substantiated the necessity of her claim of $3,673.62 in copying costs. Her claim for reimbursement should be denied.

II. FEES FOR SERVICE OF SUMMONS AND SUBPOENA

A significant portion of Plaintiff's $1,807.40 requested fees for service of summons and subpoena were unnecessary, and therefore are not recoverable. All but three witnesses for which Plaintiff seeks recovery of costs for service of trial subpoena were current employees of SEOSU, for which Defendants' counsel had the authority to accept service. The three non-employees are Charles Weiner, Mindy House and Richard Ogden. Rather than discussing service with defense counsel, Plaintiff issued subpoenas but failed to make any attempt to serve them until the eve of trial, thus necessitating the incurrence of unnecessary subpoena service fees in the amount of $679.93. Had Plaintiff's counsel contacted defense counsel about service, these costs could have been avoided. For example, Plaintiff was never

required to serve any SEOSU employees or representatives for depositions during discovery.

In addition, Plaintiff seeks service of subpoena fees for three witnesses Plaintiff did not call at trial, and therefore, these fees ($369.97) are not recoverable. Those "witnesses" include Dan Althoff – not listed on Plaintiff's witness list in the Pretrial Order; Judge Richard Ogden – not properly served to allow sufficient notice to testify, due to Plaintiff's delay; and William Fridley – none of whom were called by Plaintiff. In addition, Plaintiff seeks recovery of $836.99 for multiple service attempts and skip tracing on Dr. Charles Weiner. Dr. Weiner testified during deposition of his place of work and his home address, so futile attempts to obtain service were unnecessary and non-recoverable expenses. Again, Plaintiff's attempts were not made until the eve of trial, and thus, Plaintiff's counsel's lack of trial experience and lack of knowledge of federal rules resulted in these preventable expenses. Finally, Plaintiff fails to provide any supporting evidence of these costs, and the variance of service fees, and therefore these costs should be not permitted. The simple form Plaintiff is required to fill out for her Bill of Costs clearly states on the front page "*Special Note:* Attach to your bill an itemization and documentation for requested costs in all categories." [Doc. 299, p. 1]. Plaintiff's counsel's affidavit [Doc. 299-2], is not sufficient, especially in instances where invoices and receipts should have been received.

III. FEES FOR WITNESSES (LISTED ALSO AS "OTHER COSTS")

Under "Other Costs", Plaintiff also seeks to recover witness fees for three witnesses that did not testify at trial, (Dr. Althoff, Dr. Fridley and Judge Ogden) as

set forth above. As such, these witness fees ($436.19) were not reasonably incurred, and therefore are not recoverable.

III. FEES FOR TRANSCRIPTS

Plaintiff seeks recovery of $7,834.70 for daily trial transcripts. While the cost of trial transcripts is recoverable, Plaintiff's decision to pay for an expedited transcript, which she promptly provided to an outside source to publish on the internet, is not recoverable. Notably, the Court voiced its concern about Plaintiff's practice during trial in this regard. Plaintiff has provided no other explanation of the need for expedited transcripts and, also failed to present any evidence of the cost for transcripts provided in the normal course of litigation. Defendants suggest the reasonable rate for the trial transcript was $782.10, which is the amount Defendants paid for transcripts.

Plaintiff also seeks to recover the costs of the depositions of two witnesses, Chris Roessler and Austin Harmon, (information technology specialists with no substantive knowledge of Plaintiff's claims of discrimination), who did not testify at trial. Contrary to Plaintiff's assertions, none of their testimony was significant, nor necessary for summary judgment or trial. This was substantiated by Plaintiff's decision not to call either of them at trial.

Two witnesses, Roessler and Harmon, were produced by Defendants for deposition in response to certain irrelevant categories listed in Plaintiff United States of America's 30(b)(6) notices, and their testimony further substantiated the lack of necessity for their testimony at trial. While the First Circuit Court of Appeals has strictly interpreted 28 U.S.C. § 1920(2) as allowing reimbursement for

only those deposition transcripts actually introduced into evidence or used at trial as recoverable costs, *Neles-Jamesbury, Inc. v. Fisher Controls Int'l, Inc.*, 140 F.Supp.2d 104, 106 (D. Mass. 2001), Plaintiff has failed to meet even the less onerous burden imposed by the Tenth Circuit which requires a showing that the deposition was not taken solely for discovery. *Furr v. AT&T Technologies,* 824 F.2d 1537, 1550 (10th Cir. 1987). These transcripts were not introduced into evidence and the cost for a copy of the transcript should be denied.

WHEREFORE, premises considered, Defendants request that Plaintiff's Bill of Costs be denied for the lack of documentation. At the very least, the amount of costs should be reduced to $3,025.38.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July, 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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