

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted September 11, 2023*

Decided September 22, 2023

By the court

No. 23-1440

JACINTA DOWNING,
Plaintiff-Appellant,

v.

ABBOTT LABORATORIES and ABBOTT
MOLECULAR INC.,
Defendants-Appellees.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 1:15-cv-05921

John J. Tharp, Jr.,
Judge.

O R D E R

Jacinta Downing worked for many years at Abbott Molecular, Inc. She later sued that company as well as Abbott Laboratories (collectively “Abbott”), alleging racial discrimination and retaliation. Many of her claims survived summary judgment, and those were tried to a jury in August 2021, during the COVID-19 pandemic. The jury found for Abbott and the district court entered judgment for the companies, which we affirmed.

Abbott submitted a Bill of Costs requesting \$63,103.77 under Federal Rule of Civil Procedure 54(d). Downing objected, which the district court sustained in part and overruled in part, awarding Abbott \$36,873.72. Downing appeals the district court’s award.

* Because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court, this case has been decided without oral argument. FED. R. APP. P. 34(a)(2)(C).

Background

This court's published decision resolving the merits of this appeal is incorporated by reference into this order. *Downing v. Abbott Laboratories and Abbott Molecular, Inc.*, 48 F.4th 793 (7th Cir. 2022).

Downing requests that this court reverse the judgment of the district court awarding costs to Abbott, or in the alternative reduce the award of costs. She argues the district abused its discretion when it taxed costs against her which Abbott incurred unnecessarily, including: (1) over \$9,000 for edited trial transcripts; (2) over \$4,000 for deposition videography; and (3) over \$3,000 for color printing instead of black-and-white copies of exhibits. Downing also objects to the costs award because she says Abbott inflated its costs to discourage Downing from appealing her claims. Abbott responds that all of Downing's objections were heard and addressed by the district court that presided over the trial. That court did not abuse its discretion in making its determinations, Abbott submits.

This court reviews the district court's award of costs for abuse of discretion. *Harney v. City of Chicago*, 702 F.3d 916, 921 (7th Cir. 2012). If there is statutory authority to allow an item to be taxed as a cost under 28 U.S.C. § 1920, a district court's decision that a cost was necessary, or that court's determination of what amount is reasonable, will not be overturned "absent a showing of clear abuse of discretion." *Weeks v. Samsung Heavy Indus. Co.*, 126 F.3d 926, 945 (7th Cir. 1997).

A. Edited trial transcripts

The district court awarded costs for one realtime feed per day of trial, reasoning that "one real time feed to reference the days' testimony and prepare for the next witness was reasonably helpful. *See In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 855 (N.D. Ill. 2015)." Then, sustaining Downing's objections, the court substantially reduced the award of costs to Abbott for transcript costs. Relaying its reasoning in detail, the court sustained Downing's objection and rejected Abbott's requests for edited daily transcripts. Assessing what would and would not be required for Abbott to prepare and file various motions, the court deducted expedited transcript fees from Abbott's requests for costs. The court even provided a chart setting forth its calculations for the revised transcript costs which it gathered from the receipts Abbott provided and the transcript rates for the Northern District of Illinois.

Downing argues the district court abused its discretion by awarding costs for a single edited transcript and a realtime transcript, for each day of trial. She relies on the

district court's Statement and Order on the costs, contending that the district court ruled both that edited transcripts were unnecessary as well as that the edited transcripts were necessary and therefore taxable.

This court does not read the district court's reasoning in its Statement and Order the same way as Downing. Abbott originally sought costs for the edited transcripts on an expedited basis. The district court overruled that request, concluding that regular, 30-day transcripts were proper, as the court did not believe Abbott required an edited transcript within 30 days of each trial day. The district court engaged in detailed factfinding and its conclusions were reasonable. The court taxed only those transcript costs that were necessary, for example, by substantially trimming the award for daily transcripts. Such specific examination and thorough consideration is what Rule 54(d) contemplates, and is not an abuse of discretion.

B. Deposition videography

Downing objects to the taxation of costs for videotaping the depositions of three of the trial witnesses. The district court had the authority under 28 U.S.C. § 1920(2) to tax the videorecording and transcript services associated with these witnesses, which Downing does not dispute. Rather, she argues the costs of those services were not necessary.

In its Statement and Order resolving costs, the district court reasoned that when Abbott took the depositions, "it did not know whether it would need to show the jury video depositions." It considered that a witness may not be available, especially due to the possibility of exposure to COVID-19. This reasoning is sound, given the timing of the trial during the pandemic. Downing objects, noting that Abbott did not use the videos of the deposition. But whether a costs award is proper is not decided in hindsight, but whether it was "reasonably necessary" to the cost at the time it was taken. *Cengr v. Fusibond Piping Sys., Inc.*, 135 F.3d 445, 455 (7th Cir. 1998). Given the pandemic, or other reasons why trial witnesses may not be available, the district court did not abuse its discretion by concluding that the choices to videotape these witnesses' depositions was reasonable and necessary when those decisions were made.

Abbott bore the risk of its decision to pay to have these witnesses' testimony preserved on video. If Downing had prevailed at trial, then Abbott would have had to absorb these costs. Because Abbott prevailed, these deposition videography services are a taxable statutory cost, and they were reasonable and necessary when Abbott decided to preserve the witnesses' testimony by video. The district court did not abuse its discretion when it taxed these videography costs.

C. Color printing of certain trial exhibits

Downing argues the district court was wrong to award Abbott costs under 28 U.S.C. § 1920(4) for the color copying of a portion of Abbott's trial exhibits. Abbott responds that any color printing was limited, comprising less than half of the total pages of its trial exhibits, and that the district court explained why this cost was reasonable and necessary.

The district court reasoned that "[m]any of the exhibits presented charts that would not translate well to black and white presentation." That court presided over this case from 2016 through 2023, including its substantial motion practice and the two-week trial. So, it is in the better position to make this decision as to the necessity of color paper hard copies of exhibits, including because, as the district court stated, "[o]ne paper hard copy of exhibits confers sensible protection, however, against the whims of technology; having a hard copy backup was prudent." Given the district court's familiarity with this case and the trial exhibits in dispute, its reason for allowing costs to be taxed for some of the exhibits to be copied in color was not an abuse of discretion.

D. Abbott's offer to waive costs in exchange for Downing waiving her appeal

Downing takes issue with Abbott's attempt to settle this case by offering to waive its costs in exchange for Downing not pursuing her appeal. Downing's assertion is a stretch, ascribing pejorative but unsubstantiated motives to Abbott's offer. A party which prevails at the end of a lengthy and hard-fought trial and then attempts to settle to avoid the attorneys' fees and costs of an appeal acts rationally. Such an offer is not uncommon in civil litigation practice.

That Abbott was not awarded all the costs it requested does not mean Abbott inflated its requests or engaged in gamesmanship. A prevailing party is not always awarded all the costs it seeks. In fact, the history of Abbott's costs requests shows instances of Abbott seeking less costs than it might have, such as for more realtime feeds of the trial proceedings considering COVID-19 restrictions on the number of people who could be present in the courtroom.

Given the district court's knowledge of this case, including its history, the parties, and their counsel, it was well within its discretion to reject this argument by Downing.

Conclusion

As the prevailing party, Abbott was presumptively allowed costs under Federal Rule of Civil Procedure 54(d). Its requests fell within the applicable statute, 28 U.S.C. § 1920, and Abbott provided the appropriate documentation in support of those costs. The district court reviewed the requests and Downing's objections and ultimately reduced Abbott's requested costs by over 40%. Downing has provided no good reasons to disturb the district court's exercise of discretion over the award of costs in this case, including at a two-week trial over which the district court presided. So, we do not disturb the district court's decision.

AFFIRMED.