NONPRECEDENTIAL DISPOSITION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 October 30, 2024*
Decided November 1, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1475

DENNIS JOHN TIMS,
Plaintiff-Appellant,

v.

LINDA KLOVAS, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 19-CV-508

William M. Conley,
Judge.

O R D E R

Dennis Tims, a Wisconsin prisoner, appeals the award of costs to Linda Klovas, one of the parties who prevailed at the trial of Tims's civil-rights suit under 42 U.S.C. § 1983. We vacate and remand.

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* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Tims sued several officials at the Clark County Jail where he was a pretrial detainee in 2019. Tims alleged that Klovas, a jail nurse, and others were deliberately indifferent to his serious medical needs when they delayed care for a painful tooth.

The claims against Klovas and another defendant, Dave Fields, a physician assistant at the jail, went to trial. (Earlier, the district court had entered summary judgment in favor of the other defendant, Todd Tessman,[†] a captain at the jail.) Tims, who was not represented by counsel, called several witnesses in his case-in-chief, including Jonathan Churkey, another detainee at the jail, Brendt King, an officer at the jail, and Tessman. Klovas testified in her own defense. The trial lasted two days, and the jury returned a verdict for Klovas and Fields.

After the trial, Klovas filed a timely petition for costs under Federal Rule of Civil Procedure 54(d)(1) and 28 U.S.C. § 1920. She sought $2,929.56: $1,143.91 for the transcripts of Tims's two depositions; $1,250.10 for mileage, lodging, and subsistence expenses for witnesses King and Tessman; $52.75 for certified copies of criminal judgments for Tims and Churkey; and $482.80 for Klovas's lodging during trial.

Tims objected, but the district court awarded all costs to Klovas. Tims now appeals.

Under Federal Rule of Civil Procedure 54(d)(1), there is a presumption that a prevailing party recovers costs, and the losing party bears the burden of showing that the requested costs are not appropriate. *Richardson v. Chi. Transit Auth.*, 926 F.3d 881, 893 (7th Cir. 2019). But "[a] district court may not tax a prevailing party's costs to the losing party under Rule 54(d) unless the specific expense is authorized by a federal statute." *Little v. Mitsubishi Motors N. Am., Inc.*, 514 F.3d 699, 701 (7th Cir. 2008). We carefully review whether an expense is recoverable, "[b]ut we will disturb a decision on reasonableness only when there is a 'clear abuse of discretion.'" *Lane v. Person*, 40 F.4th 813, 815 (7th Cir. 2022) (quoting *Majeske v. City of Chicago*, 218 F.3d 816, 824 (7th Cir. 2000)).

Tims first argues that the district court abused its discretion in taxing costs against him because he is indigent. But a losing party's indigency does not

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[†] Tessman is frequently spelled as "Tesseman" in the district court. But in their disclosure statement, *see* CIR. R. 26.1, the appellees state that the correct spelling is "Tessman." Accordingly, we use "Tessman" in this order.

automatically excuse him from paying costs, and the indigence exception "is a narrow one." *Rivera v. City of Chicago*, 469 F.3d 631, 635–36 (7th Cir. 2006). To be sure, the district court has the discretion to consider a litigant's indigency when taxing costs, *Richardson*, 926 F.3d at 893, and it did so here. The court noted Tims's financial circumstances, but reasonably concluded that taxing costs against him was appropriate, in part, because it "serve[d] the valuable purposes of discouraging unmeritorious claims and treating all unsuccessful litigants alike." *McGill v. Faulkner*, 18 F.3d 456, 460 (7th Cir. 1994). To the extent that Tims argues that the district court's reasoning was insufficient, he is mistaken. The district court was not required to provide the kind of detailed explanation Tims seeks. *See Richardson*, 926 F.3d at 893 (no case requires district court explicitly to consider indigency argument where it taxes costs with an otherwise sufficient explanation). Finally, Tims argues that the district court overlooked a case from the Ninth Circuit that, he says, supports the argument that his indigency should excuse him from paying costs. But even if that case were comparable, it is not controlling in this circuit.

Tims next argues that the district court abused its discretion by taxing costs for the transcripts of Tims's deposition and the certified criminal judgments. We disagree. Section 1920 authorizes costs for printed transcripts and exemplification that are "necessarily obtained for use in the case." *See* § 1920(2), (4). Klovas reasonably obtained the deposition transcripts and criminal judgments in preparation for trial and to use as potential impeachment evidence. Tims objects that Klovas did not actually use Churkey's criminal judgment as impeachment evidence during his testimony. But she would have been permitted to do so under Federal Rule of Evidence 609(a)(1), and a document does not need to be introduced at trial to be necessary to the litigation, *Majeske*, 218 F.3d at 825. Tims further counters that Klovas could have obtained copies of the criminal judgments at no cost from online sources. But a certified copy of a judgment would have been required if Klovas sought its admission into evidence. *See* FED. R. EVID. 902(2). As for the deposition transcripts, Tims raises several objections, including that the costs are excessive because only one deposition should have been necessary. Tims asserts that a second deposition occurred only because Klovas had not given him proper notice of the first deposition. But Tims received notice several days in advance of the first deposition, and he does not explain why more notice was required based on the complexity of the case or any other factor. Moreover, he acknowledges that he refused to answer any questions during the first deposition, and so a second deposition was needed.

The district court also acted within its discretion in taxing costs for King and Tessman's mileage, lodging, and subsistence expenses. Witnesses are entitled to their reasonable travel expenses under §§ 1821(c) and 1920(3). *See Majeske*, 218 F.3d at 825–26. Tims contends that it was unreasonable for King and Tessman to stay for two nights when they testified on only one day of the trial. But the bill of costs showed that the two men traveled more than two hours for trial, and both parties listed them as potential witnesses. Thus, it was reasonable for both witnesses to stay overnight in the event that their testimony was needed during Klovas's defense on the second day of trial. *See* § 1821(d)(1). Tims further argues that he should not have to pay King and Tessman's travel expenses at all because he had requested that they testify over Zoom like Tims's other witnesses. But Klovas produced King and Tessman in person because she had anticipated calling them as witnesses in her defense. Although she ultimately did not call them, they can be compensated for their availability and readiness to testify, *see Haroco, Inc. v. Am. Nat'l Bank & Tr. Co. of Chi.*, 38 F.3d 1429, 1442 (7th Cir. 1994), and nothing required her to reduce costs by calling her witnesses over Zoom.

Tims next takes issue with the district court's decision to tax costs of $482.80 for Klovas's lodging expenses that she incurred during the trial. On this point, the district court abused its discretion. A "district court may not tax witness fees for party witnesses under 28 U.S.C. § 1920(3)." *Haroco, Inc.*, 38 F.3d at 1442. This includes the travel, lodging, and subsistence costs of a party witness. *See Barber v. Ruth*, 7 F.3d 636, 645–46 (7th Cir. 1993); 10 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2678 at 472 & n.13 (4th ed. 2024). Klovas was a named defendant at trial. The statute does not authorize her, as a named party, to recover costs associated with her appearance at trial. An award that is legal error is an abuse of discretion. *Lane*, 40 F.4th at 815.

We have considered Tims's other arguments, and none requires further discussion. We therefore VACATE the judgment awarding costs and REMAND for entry of a new judgment awarding costs in the amount of $2,446.76, which excludes the $482.80 for Klovas's hotel accommodations. Costs on appeal are taxed against the appellees.