

primarily relate to defense of the Plaintiff's Rule 59 motion (denied by the Court) and preparation for the hearing on the award of attorney's fees.

2. Plaintiff has now filed an objection to an award of these supplemental fees. The objection does not contend that the fee amounts are unreasonable or dispute that the fees were incurred in defense of this action. Rather, the objection in large part perpetuates the same arguments Plaintiff previously made in her Rule 59 motion (and which were rejected by the Court) taking issue with the Court's dismissal of her suit. She also refers to several post-trial motions she intends to file, and appears to assert that the hearing on the fees should be postponed pending resolution of her appeal of the dismissal and resolution of her other post-trial motions.

3. Plaintiff's objection is without merit and the relief she has requested must be denied for multiple reasons:

a) The Court properly dismissed this action for lack of subject matter jurisdiction under the Colorado Governmental Immunity Act [CGIA] and applied the proper standard of review for that type of motion under C.R.C.P. 12(b)(1). Again, for a Rule 12(b)(1) motion, the Court is not to give the plaintiff the benefit of all reasonable doubts as it would for a motion to dismiss made under Rule 12(b)(5), but rather is "free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Trinity Broadcasting of Denver, Inc. v. City of Westminster*, 848 P.2d 916, 925 (Colo. 1993). Plaintiff continues to confuse these two rules and two very different standards in erroneously asserting in her objection that the Court purportedly failed to follow "volumes of well-settled law" regarding making decisions in the light most favorable to the plaintiff.

b) The Court is required to award the Defendant reasonable attorney fees incurred in defense of this properly dismissed action under both C.R.S. § 24-10-110(5)(a)(c) and C.R.S. §13-17-201; the award is mandatory. *Crandall v. City of Denver*, 238 P.3d, 659, 663 (Colo. 2010) (discussing mandatory nature of award). The statutory language of C.R.S. §13-17-201 expressly refers to an award of fees incurred in defense of the action, not just incurred in filing of a motion to dismiss. In fact, when the dismissal is successfully defended on appeal, the defendant is entitled to an award of any additional fees incurred in defense of the appeal. *Id.*, at 665. The Defendant is also entitled to an award of the fees incurred in establishing the amount of the fee award at a hearing. *Schmidt Const. Co. v. Becker-Johnson Corp.*, 817 P.2d 625 (Colo. App. 1991) (upholding attorney fee award which included fees incurred by defendant in fee award hearing).

Therefore, Plaintiff's assertion that any fees incurred beyond the filing of the motion to dismiss is not just illogical, it is contrary to the express statutory language of §13-17-201 and the case law interpreting it. She was given an opportunity to voluntarily dismiss this suit before Defendant Beals filed his motion to dismiss; she refused, and has continued to stubbornly litigate this case resulting in the continuing accrual of attorney's fees defending this action and the award itself. Defendant is most certainly entitled to an award of those reasonable fees, and properly supplemented his attorney fee submission to reflect that information – and he will continue to do so as those fees continue to accrue.

c) The Plaintiff's filing of an appeal of the underlying dismissal of her case does not deprive this Court of jurisdiction to hold the attorney fee hearing and determine the amount of the reasonable attorney fee judgment in favor of the defendant. In this instance, such

fees are taxed as costs (not damages), and the trial court can properly proceed with making that determination following entry of the judgment of dismissal and the filing of the appeal. *Tallitsch v. Child Support Services, Inc.*, 926 P.2d 143, 146-47 (Colo. App. 1996); *Koontz v. Rosener*, 787 P.2d 192 (Colo. App. 1989). Accordingly, there is no valid basis to stay the taxing of costs and determination of fees pending the outcome of the plaintiff's appeal.

d) The fact that the co-defendant Jeremy Call chose to settle this action has no bearing on the merits of the plaintiff's claim against Defendant Beals. Defendant Call is not a governmental employee and thus the provisions of the CGIA forming the basis for the proper dismissal of the claim against Defendant Beals did not apply to the claim made against Call. The settlement with Call thus does not in any way affect the propriety of the dismissal of the claims against Defendant Beals on governmental immunity grounds, or his entitlement to an award of his reasonable attorney's fees based on the authority previously cited by this Defendant. It also provides no basis for the court to order mediation between Defendant Beals and the plaintiff at this juncture, as requested by the Plaintiff.

e) The balance of the Plaintiff's objection, consisting largely of an inappropriate analogy to the criminal trial of a "pimp" and misplaced accusations against undersigned counsel, likewise provide no sound reason for the Court to decline to award Defendant Beals' his ongoing fees incurred in defense of this action. Again, for the reasons set forth above, those fees are properly awarded as part of the mandatory attorney fee judgment here.

WHEFORE, for the reasons set forth above, Defendant Beals respectfully requests the Court deny the relief requested by the Plaintiff in her objection pleading, and proceed to enter judgment in favor of Defendant Beals and against the plaintiff for all reasonable attorney's fees incurred in defense of this action, including all fees reflected in the two fee affidavits submitted to this Court and any further supplements thereto.

Respectfully submitted this 13th day of August, 2019.

WICK & TRAUTWEIN, LLC

By: s/ Kimberly B. Schutt
Kimberly B. Schutt, #25947
Attorneys for Defendant Beals

[This document was served electronically pursuant to C.R.C.P. 121 §1-26. The original pleading signed by defense counsel is on file at the offices of Wick & Trautwein, LLC and the Fort Collins City Attorney's Office]

CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANT BEALS' REPLY TO PLAINTIFF'S OBJECTION TO DEFENDANT'S REQUEST FOR AWARD OF ADDITIONAL ATTORNEY'S FEES** was filed via the Colorado Courts E-Filing System and served this 13th day of August, 2019, on the following:

Stacy Lynne
305 W. Magnolia Street #282
Fort Collins, CO 80521

A courtesy copy was also emailed to Ms. Lynne at *stacy_lynne@comcast.net*

s/ Jody L. Minch

[The original certificate of electronic filing signed by Jody L. Minch is on file at Wick & Trautwein, LLC]

