

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:17-CV-00884-CMA-STV

CHAYCE AARON ANDERSON,

Plaintiff,

vs.

JASON SHUTTERS,

Defendant.

PLAINTIFF’S REPLY IN SUPPORT OF MOTION TO REVIEW COSTS

Plaintiff Chayce Aaron Anderson (“Plaintiff” or “Mr. Anderson”), by and through undersigned counsel, hereby respectfully submits this Reply in Support of Motion to Review Costs (Dkt. No. 175).

I. INTRODUCTION

The language of the Federal Rules of Civil Procedure is clear—an award of costs under Fed. R. Civ. P. 54 is discretionary. And case-law interpreting Fed. R. Civ. P. 54(d)(1) is also clear that exercise of such discretion to deny an award of costs is supported when “the losing party can show that equity and good conscience require a different judgment.” That is precisely the case here—equity and good conscience support a denial of costs.

II. ARGUMENT

A. The Combination of Circumstances Demonstrate That Equity in This Case Warrants a Denial of Costs.

The Tenth Circuit has “discussed the circumstances in which a district court may properly exercise its discretion under Rule 54(d) to deny costs to a prevailing party.” *Cantrell v. Int’l Brotherhood of Elec. Workers, AFL-CIO, Local 2021*, 69 F.3d 456, 459 (10th Cir. 1995). These include the non-prevailing party’s indigence, see, e.g. *id.*, as well as the Court’s authorization or request “that pro bono counsel consider representing the non-prevailing indigent litigant,” see, e.g. *Broadus v. Correctional Health Partners, Inc.*, Civ. A. No. 15-cv-0182-WJM-KLM, 2019 WL 859702, at *2, *3 (D. Colo. Feb. 22, 2019) (quoting *Shapiro v. Rynek*, 250 F. Supp. 3d 775, 780 (D. Colo. 2017)). Ultimately such discretionary decision hinges on equity. See *Brooks v. Gaenzle*, Civ. A. No. 06-cv-01436-CMA-MJA, 2009 WL 4949922, at *5 (D. Colo. Dec. 15, 2009) (explaining costs may be denied to prevailing party when “the losing party can show that equity and good conscience require a different judgment”) (internal quotation marks and citation omitted).

Defendant attempts to discredit Mr. Anderson’s indigence, but the combination of Mr. Anderson’s grant of *in forma pauperis* status and appointment of pro bono counsel (based in part on Mr. Anderson’s inability to retain an attorney by other means) demonstrate plainly that Mr. Anderson is indigent. (See Dkt. Nos. 3, 89.) Further, Mr. Anderson has provided with this Reply a declaration attesting to his limited financial means and inability to pay the costs taxed in this case. (Exhibit A, Declaration of Chayce Anderson.)¹ In sum, Mr. Anderson is undeniably indigent.

¹ The deadline to file a motion to review costs taxed is within the seven days following taxation of costs. Fed. R. Civ. P. 54(d)(1). Mr. Anderson was unable to execute a declaration within that amount of time given the challenges inherent to his incarceration and the additional precautions taken in response to the COVID-19 pandemic. Mr.

In addition to his indigence, Mr. Anderson was appointed and represented by pro bono counsel in this case after his excessive force claim survived Defendant's motion to dismiss. (See Dkt. Nos. 85, 89.) Recent case law recognizes that this factor supports a denial of costs. See *Shapiro*, 250 F. Supp. 3d at 780; *Broadus*, 2019 WL 859702, at *3. This underscores how the facts of the case, and more importantly equity, should drive the analysis. Indeed, this also underscores that the universe of circumstances sufficient to support a denial of costs is not closed. What is clear is that not all circumstances recognized to-date to support a denial of costs are required to be present in a case for costs to nonetheless be denied. See, e.g. *Broadus*, 2019 WL 859702, at *2-*3 (listing but not analyzing partial success factor, obstruction/bad faith factor, nominal damages factor, and unreasonable/unnecessary costs factor before exercising discretion to deny costs).

Here, the combination of Mr. Anderson's ongoing indigence and appointment of pro bono counsel demonstrate that equity warrants a denial of costs in this case. While \$1,704.88 may not sound like an unnecessarily high amount of money for the average litigant, Mr. Anderson is not an average litigant. Mr. Anderson faces a lifetime in prison, where he currently cannot earn any wages due to COVID-19 precautions, and where prior to such precautions, he never earned more than \$20 per month. (Exhibit A at ¶¶ 2, 6.) In view of these finances, Mr. Anderson simply will not be able to satisfy an award of costs in any reasonable amount of time.

Anderson indicated in his Motion to Review Costs that a supporting declaration would be forthcoming. The Declaration attached to this Reply reiterates and supports information already contained in the Motion to Review Costs; no new information is contained in this Declaration.

Nor should he be required to. Mr. Anderson initiated this lawsuit to seek justice for alleged civil rights violations. He did so despite his limited financial means, lack of legal training, and inability to hire counsel to assist him. Mr. Anderson does not have a history of filing frivolous lawsuits. Although his excessive force claim was ultimately dismissed,² it was only after the Court determined his claim should proceed past the pleadings stage and that appointment of counsel “would significantly assist in completing the discovery process.” (Dkt. No. 89.) He should not be penalized for diligently pursuing his claim.

Because an award of costs would constitute an undue hardship on Mr. Anderson and because an award of costs would be an inequitable penalization of Mr. Anderson for diligently pursuing his excessive force claim with the help of pro bono counsel, the Court should deny any costs taxed in this case.

Respectfully submitted this 2nd day of June, 2020.

/s/ Alexandra Lakshmanan

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² and is currently under appeal

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June, 2020, I electronically filed a copy of the foregoing **PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO REVIEW COSTS** with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all counsel of record:

s/ Michelle R. Soule

Michelle R. Soule, Paralegal