

I. INTRODUCTION

From May 15 to 16, 2017, this Court heard this automobile accident liability action brought by a mother and daughter against their automobile insurance company. The jury returned a verdict in favor of the Defendant, Allstate Insurance Group (“Allstate”), on May 16th. Two days later, Allstate moved this Court to assess costs against Plaintiffs (Allstate’s own policyholders) Isabel Bahena Arroyo and Yury Bahena. For the reasons stated below, Allstate’s motion is **DENIED**.¹

II. FACTUAL AND PROCEDURAL BACKGROUND

This was an uninsured motorist claim brought by Plaintiffs Isabel Bahena Arroyo and Yury Bahena against their automobile insurer, Allstate. A school bus crashed into the Bahenas’ vehicle resulting in significant bodily injuries and damages. The police incident report suggested that the collision was triggered by an unknown driver of an unidentified vehicle who did not remain at the scene following the collision. The initial claim submitted by the Bahenas to the bus

¹ The undersigned judge sat on the trial of this case because the assigned judge was unavailable while she presided over the trial of a complex commercial case. After this trial, the Bahenas filed an appeal to challenge only certain of the assigned judge’s pre-trial rulings. *See* Not. of Appeal, *Bahena Arroyo & Bahena v. Allstate Ins. Co., et al.*, No. 251, 2017 (Del. June 16, 2017). As a general rule the proper perfection of an appeal after a final order divests this Court of its jurisdiction over a cause of action. *Radulski v. Del. State Hosp.*, 541 A.2d 562, 567 (Del. 1988). But there are instances where a trial court may continue to exercise jurisdiction to consider and decide a collateral or independent matter. *Id.* Allstate’s costs motion is just such a collateral matter. And so, the Court decides the motion now, notwithstanding the pending appeal.

driver's liability insurer was denied. That denial led to this action seeking coverage from the Bahenas' own insurer, Allstate. Ms. Bahena Arroyo and Mrs. Bahena alleged Allstate was contractually liable for the acts of the phantom driver as an uninsured motorist. Allstate believed it was not.

Following trial and the jury verdict in Allstate's favor, Allstate filed a motion for costs. The Bahenas oppose that motion. Invoking 10 *Del. C.* § 5101 and this Court's Civil Rule 54(d), Allstate's application enumerates the costs requested simply as follows:

Lexis Filing fees	\$607.17
Service of trial Subpoenas	\$60.00
TOTAL	\$667.17²

III. DISCUSSION

Under Delaware law, the Court, in its discretion, may award costs to a prevailing party.³ Such costs may include filing and service fees.⁴ Under 10 *Del.*

² Def.'s Mot. for Costs at 2.

³ *Meuser v. Sowiak*, 2001 WL 258644, at *1 (Del. Super. Ct. Feb. 21, 2001) ("The numerous opinions of this Court concerning costs demonstrate how that discretion has been exercised in a number of ways and probably not always consistently."); *Donovan v. Del. Water & Air Res. Comm'n*, 358 A.2d 717, 722-23 (Del. 1976) ("Determining when costs are awarded and when they are not is, in our judgment, a matter of judicial discretion under the statute. That conclusion is consistent with Superior Court Civil Rule 54(d) . . .").

⁴ *Chaplake Holdings, Ltd v. Chrysler Corp.*, 2002 WL 148088, at *46 (Del. Super. Ct. Jan. 10, 2002); *Nygaard v. Lucchesi*, 654 A.2d 410, 412 (Del. Super. Ct. Oct. 28, 1994).

C. § 5101, costs are “[g]enerally” recoverable.⁵ And this Court’s Civil Rule 54(d) permits cost awards “unless the Court otherwise directs.”⁶

This Court has observed more than once: “[s]ometimes it is important to win with grace.”⁷ Too, it is always important to both be clement and appear fair in victory. Here, many of the costs Allstate requests can be justly characterized as inflicted by its own hand.

In support of its request, Allstate gives a bald fee total of \$667.17.⁸ As supporting evidence, Allstate attaches to its motion billing statements from the electronic filing service that are barely decipherable. Those billing documents include not only the statements from this above-captioned action, but also statements from a related matter that was consolidated into this case. Closer examination of those papers demonstrates that Allstate asks the Bahenas to now bear costs that were far less related to the Plaintiffs’ actions during the litigation of this case than to Allstate’s own litigation choices.

⁵ DEL. CODE ANN. tit. 10, § 5101 (2016).

⁶ *Moore v. Garcia*, 1995 WL 945553, at *1 (Del. Super. Ct. July 10, 1995); *Sammons v. Kang*, 2013 WL 4492779, at *2 (Del. Super. Ct. Aug. 2, 2013), *as corrected* (Aug. 14, 2013).

⁷ *Sammons*, 2013 WL 4492779, at *2; *Nelson v. Feldman*, 2011 WL 531946, at *2 (Del. Super. Ct. Jan. 26, 2011); *Mosley v. Milner*, 1999 WL 463550, at *1 (Del. Super. Ct. Apr. 8, 1999); *Sartin v. Pinkowski*, 1998 WL 35483217, at *1 (Del. Super. Ct. Oct. 28, 1998); *Moore*, 1995 WL 945553, at *1.

⁸ Def.’s Mot. for Costs at 2.

For example, Allstate asks the Bahenas to pay for: Allstate's substitution of its own counsel,⁹ costs Allstate racked up when it went after another party for subrogation,¹⁰ and an excess filing fee.¹¹

The Bahenas incurred their own prosecution costs and medical bills associated with this case; a majority of those costs remain outstanding. Where an incident deserves full evidentiary testing, "it is right, and just and fair for the defendant to bear the defense cost burden of the successful defense."¹² Given the specifics of the accident, this case was properly heard by a jury. And in the Court's judgment, Allstate should bear the \$667.17 in costs it has now sought to defend it.

IT IS SO ORDERED.



Paul R. Wallace, Judge

Original to Prothonotary
cc: Counsel via File and Serve

⁹ See Def.'s Mot. for Costs, Ex. A at 4.

¹⁰ See *id.*, Ex. A at 5.

¹¹ See *id.*, Ex. A at 8 (This cost alone was \$245.00, or 36%, of Allstate's total request). See DEL. SUPER. CT. CIV. R. 77(h)(B) ("The filing fee shall cover the first forty (40) filings of an action. An additional fee of \$245.00 shall be paid after each increment of fifty (50) filings is recorded.").

¹² *Moore*, 1995 WL 945553 at *1.