

**SUPERIOR COURT FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

NAKIRA DARDEN,)	
Plaintiff,)	
)	
v.)	C.A. No. 12C-01-219 FSS
)	
NEW CASTLE MOTORS, INC.,)	
Defendant.)	

Submitted: December 12, 2013
Decided: March 27, 2014

ORDER

Upon Plaintiff's Motion for Costs - GRANTED in part.

1. This is a personal injury case following Plaintiff's slip and fall on Defendant's property. On February 23, 2011, Plaintiff slipped on black ice while looking at cars on Defendant's property and was injured. Trial was held November 25 and 26, 2013. The jury found for Plaintiff, although it also found her 20% contributorily negligent. The jury awarded \$70,476.43. On December 4, 2013, Plaintiff timely filed this motion for costs in accordance with Superior Court Civil Rule 54 and 10 *Del.C.* § 8906. Defendant responded December 16, 2013.

2. Plaintiff seeks \$2,500.00 for Dr. Damon Cary's video testimony and \$678.43 for his deposition transcript. Plaintiff also seeks \$523.00 in court costs.

3. Defendant argues \$2,500.00 for a one hour deposition is excessive. Defendant also objects to the transcript fee as the transcript was not admitted into evidence.

4. Superior Court Civil Rule 54(d) permits costs “as of course to the prevailing party upon application to the Court within ten (10) days of the entry of final judgment.” Amounts awarded and denying costs are matters of judicial discretion.¹

5. When determining reasonable fees to award medical experts, the court often defers to the Medico–Legal Affairs Committee of the Medical Society of Delaware.² In November 2013, the reasonable fee for a deposition lasting up to two hours was \$1,371-\$2,741.³ Accordingly, the \$2,500.00 requested is reasonable.

6. Superior Court Civil Rule 54(f) clearly states “fees paid [to] court reporters for the Court's copy of transcripts of depositions shall not be taxable costs unless introduced into evidence.” As Dr. Cary’s transcript was not introduced into evidence, it is not recoverable.

7. Defendant does not dispute Plaintiff’s request for court costs. Plaintiff can, therefore, recover \$523.00 in court costs.

¹ *Donovan v. Delaware Water & Air Res. Comm'n*, 358 A.2d 717, 722-723 (Del. 1976).

² *Enrique v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 2636845,*1 (Del.Super. Ct. 2010), *aff'd*, 16 A.3d 938 (Del. 2011).

³ *Noel v. Rodriguez*, 2013 WL 6917135 (Del. Super. 2013).

Based on the foregoing, Plaintiff's Motion for Costs is **GRANTED in**

part. Plaintiff shall recover the following costs:

Dr. Cary's Video:	\$2,500.00
<u>Court Costs:</u>	<u>\$ 523.00</u>
Total Costs Awarded:	\$3,023.00

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary (Civil)
Kenneth M. Roseman, Esquire
George T. Lees, III, Esquire