[Cite as *Smith v. Pennington*, 2010-Ohio-4570.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

BONNIE SMITH, et al.,	:	
Plaintiffs-Appellants,	:	CASE NO. CA2010-03-071
	:	O P I N I O N
- vs -	:	9/27/2010
LESLIE E. PENNINGTON, et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2008-07-3289

Roger D. Staton, 355 Summit Street, Lebanon, Ohio 45036, for plaintiffs-appellants, Bonnie and Otis Smith

John J. Garvey III, Jason E. Abeln, Suite 1400, 105 East Fourth Street, Cincinnati, Ohio 45202, for defendant-appellee, Leslie E. Pennington and Progressive Insurance

Gregory G. Beck, John W. Hust, P.O. Box 1209, Dublin, Ohio 43017, for defendants, Aetna Insurance and Law Offices of Blake Maislin

RINGLAND, J.

{¶1} Plaintiffs-appellants, Bonnie and Otis Smith, appeal a decision allocating costs by the Butler County Court of Common Pleas.[1]

{¶2} This case arises from a negligence action involving an automobile accident appellants filed against appellee, Leslie Pennington, and various insurance companies.

1. Pursuant to Loc.R. 6(A), we remove this appeal from the accelerated calendar.

A jury found Pennington negligent, and awarded a total of $2,349.39 in compensable damages. The jury entered a zero verdict on appellant Otis Smith's loss of consortium claim. A "Judgment Entry with Stipulation of the Parties" was filed on September 10, 2009. The entry states that "Court costs are to be paid by Defendant, Leslie Pennington."

{¶3} On September 25, 2009, the clerk of courts issued a notice of court costs due, advising costs in the amount of $848. On December 15, 2009, appellants filed a motion seeking $1,490.38 as additional court costs for the videotape depositions and transcription thereof admitted at trial of their expert witnesses, Douglas C. Gula, D.O., and Stephen T. Autry, M.D. Following a hearing, the trial court awarded appellants $325.90. Appellants timely appeal, raising one assignment of error:

{¶4} "THE TRIAL COURT ERRED WHEN IT REFUSED TO GRANT COURT COSTS TO THE PLAINTIFFS AND WHEN IT ASSESSED COURT COSTS AGAINST PLAINTIFFS."

{¶5} In their sole assignment of error, appellants argue that the trial court erred in assessing costs of the depositions and transcripts of their expert witnesses. Appellants claim they are entitled to the full amount of those expenses.

{¶6} Civ.R. 54(D) governs the award of costs as follows:

{¶7} "Except when express provision therefor is made either in a statute or in these rules, costs shall be allowed to the prevailing party unless the court otherwise directs."

{¶8} The instant appeal asks us to resolve both questions of law and fact. Determining whether an expense is a "cost" is a question of law, subject to a de novo standard of review. *Jackson v. Sunforest OB-GYN Assoc. Inc.*, Lucas App. No. L-08-1133, 2008-Ohio-6170, ¶7. A trial court's allocation of costs is a discretionary matter.

Vance v. Roedersheimer, 64 Ohio St.3d 552, 555, 1992-Ohio-24. In such instances, we cannot reverse the trial court's decision absent an abuse of discretion. *Blakemore v. Blakemore* (1983), 5 Ohio St.2d 217, 218. Abuse of discretion requires more than simply an error in judgment; it implies unreasonable, arbitrary, or unconscionable conduct by the court. Id. at 219.

{¶9} The Ohio Supreme Court Rules of Superintendence classify the expense of videotape depositions as "costs" subject to allocation under Civ.R. 54. Specifically, the Rules of Superintendence state, "[t]he reasonable expense of recording testimony on videotape, the expense of playing the videotape recording at trial, and the expense of playing the videotape recording for the purpose of ruling upon objections shall be allocated as costs in the proceeding in accordance with Civil Rule 54." Sup.R. 13.

{¶10} Further, Butler Loc.R. 4.12 requires "a typed transcript of any video tape deposition" to be filed within at least five days prior to trial. "When it is necessary in * * * a civil action to procure a transcript of a judgment or proceeding, or exemplification of a record, as evidence in such action or for any other purpose, the expense of procuring such transcript or exemplification shall be taxed in the bill of costs and recovered as in other cases." R.C. 2303.21.

{¶11} Butler Loc.R. 4.12 makes a transcript a "necessary" expense when employing a videotape deposition at trial. Since the local rule mandates transcripts of videotape depositions if a party wishes to use the deposition at trial, the transcripts are also "costs" subject to allocation under Civ.R. 54. See *Jackson*, 2008-Ohio-6170 at ¶9.

{¶12} Pennington was found negligent in this case and acknowledged appellants as the prevailing party in the signed judgment entry. Further, the judgment entry states that Pennington was responsible for payment of court costs. Substantial case law exists concluding that expenses for videotape depositions and the required transcription

thereof pursuant to a local rule are "costs" which must be allocated in accordance with Civ.R. 54. See *Jackson* at ¶8-9; *Raab v. Wenrich*, Montgomery App. No. 19066, 2002-Ohio-936, ¶20, ¶24; *Foreman v. Wright*, Cuyahoga App. No. 82067, 2003-Ohio-5819, ¶26; *Vilagi v. Allstate Indem. Co.*, Lorain App. No. 03CA008407, 2004-Ohio-4728, ¶25-31.

{¶13} The courts in the above-cited cases found that the injured party was entitled to an award of court costs for the videotape depositions and requisite transcripts used during trial. Id. We agree with the decisions of the Second, Sixth, Eighth, and Ninth Appellate Districts. See, also, *Cave v. Conrad*, 94 Ohio St.3d 299, 302, 2002-Ohio-793; and *Barrett v. Singer Co.* (1979), 60 Ohio St.2d 7, 9.

{¶14} In the judgment entry, Pennington acknowledged responsibility for costs of the action. We find the trial court erred when it denied appellants' motion for costs. Appellants are entitled to recover costs for recording the videotape deposition of their medical experts, which were played in lieu of live testimony at trial, as well as the transcripts required under the local rule. *Jackson* at ¶9; *Raab* at ¶25; *Foreman* at ¶26; *Vilagi* at ¶30.

{¶15} Appellants seek costs in the amount of $1,490.38. Sup.R. 13(D)(1) provides, "[t]he expense of videotape as a material shall be borne by the proponent." In the amount sought by appellants, $30 was charged for a duplicate videotape of the Autry deposition. Appellants are not entitled to recover the costs of the duplicate videotape of the Autry deposition pursuant to Sup.R. 13(D)(1).

{¶16} Appellants' sole assignment of error is sustained.

{¶17} Judgment reversed. Appellants' motion for costs is granted in the amount of $1,460.38.

BRESSLER, P.J., and POWELL, J., concur.