[Cite as *Haynes v. Christian*, 2009-Ohio-3973.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

LISA M. HAYNES	C.A. No. 24556
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
MARCEL A. CHRISTIAN	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellant	CASE No. CV 2008-04-3319

DECISION AND JOURNAL ENTRY

Dated: August 12, 2009

WHITMORE, Judge.

{¶1} Defendant-Appellant, Marcel Christian, appeals from the decision of the Summit County Court of Common Pleas, awarding Plaintiff-Appellee, Lisa Haynes, costs for the proceeding. This Court affirms.

I

{¶2} Haynes and Christian were involved in a motor vehicle collision on August 8, 2007 for which Christian admitted liability. Haynes later initiated a personal injury complaint against Christian alleging negligence related to the collision. Haynes sought over $5,200.00 in damages for the medical expenses she incurred to treat neck and back injuries she sustained from the collision. Following a two-day trial, the jury found in Haynes' favor and awarded her $357.00 in damages.

{¶3} Haynes then sought to recover the costs of the proceeding under Civ.R. 54(D). Christian opposed the motion; however, the trial court granted Haynes' motion awarding her

$1,037 in costs. It is from the award of costs that Christian has timely appealed, asserting one assignment of error for our review.

II

Assignment of Error

> "THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING APPELLEE'S MOTION FOR COSTS. THE JURY'S VERDICT IS NOT AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND IS SUPPORTED BY COMPETENT CREDIBLE EVIDENCE."

{¶4} In his sole assignment of error, Christian argues that the trial court erred when it awarded Haynes costs pursuant to Civ.R. 54 because Haynes was not the "prevailing party." Specifically, Christian argues that the jury award of "less then (sic) 7%" of her documented medical expenses suggests that "she failed to prove her case by a preponderance of the evidence[.]" He further asserts that "the Jury verdict determined that Christian, not Haynes, was the prevailing party in the action" based on the size of its award and maintains that, to consider Haynes as having prevailed for the purposes of awarding costs under Civ.R. 54(D), would be against the manifest weight of the evidence. Additionally, he argues that the trial court erred in taxing deposition transcription costs to him because the depositions were never introduced into evidence. We disagree.

{¶5} "[A] trial court has discretion to order that the prevailing party bear his own costs." *Vilagi v. Allstate Indem. Co.*, 9th Dist. No. 03CA008407, 2004-Ohio- 4728, at ¶27, citing *Vance v. Roedersheimer* (1992), 64 Ohio St.3d 552, 555. Accordingly, we will not reverse the trial court absent an abuse of discretion. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 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.

{¶6} Civ.R. 54(D) provides, in relevant part, that "costs shall be allowed to the prevailing party unless the court otherwise directs." While a trial court is permitted to order a prevailing party to bear its own costs, it cannot award costs to a non-prevailing party. *Vance*, 64 Ohio St.3d at 555. This Court has previously explained that:

> "Although the Supreme Court has not defined the term 'prevailing party' for purposes of Civ.R. 54(D), *Vance* and the cases that have followed illustrate its contours.
>
> "A prevailing party is generally the party in whose favor the decision or verdict is rendered and judgment entered. [It includes] [t]he party to a suit who successfully prosecutes the action ***, prevailing on the main issue, *even though not necessarily to the extent of his original contention.* The one in whose favor the decision or verdict is rendered and judgment entered *** may be the party prevailing in interest, and not necessarily the prevailing person. *To be such does not depend upon the degree of success* at different stages of the suit, but whether, at the end of the suit, or other proceeding, the party who had made a claim against the other, has successfully maintained it." (Internal quotations and citations omitted and emphasis added.) *Moga v. Crawford*, 9th Dist. No. 23965, 2008-Ohio-2155, at ¶5-6.

Moreover, it is axiomatic that a party who received a jury verdict in his favor and was awarded damages, no matter how small, has prevailed in the suit. See, e.g., *Wigglesworth v. St. Joseph Riverside Hosp.* (2001), 143 Ohio App.3d 143, 150-51 (noting that "[d]espite the fact that the verdict was actually for zero dollars, appellant successfully maintained his claim and prevailed on the main issue; appellee was liable *** [on the claim, therefore], appellant is the prevailing party."); *Brinn v. Cutter* (Dec. 9, 1993), 8th Dist. No. 63669, at *7 (concluding that plaintiffs in negligence case were the "prevailing party" when they were awarded only ten dollars in damages after rejecting a $500 settlement offer). Despite Christian's assertions to the contrary, he was not the prevailing party at trial. Though the jury believed that his negligence only caused $357.00 in damages to Haynes, Haynes "prevail[ed] on the main issue, even though not necessarily to the extent of [her] original contention." *Moga* at ¶6.

{¶7} Having concluded that Haynes was, in fact, the prevailing party, we next consider whether the court properly awarded her costs incurred in the action pursuant to Civ.R. 54(D). Christian asserts that the costs taxed by the trial court include inappropriate costs for the deposition transcript of Haynes, which was not introduced into evidence at trial and was used solely for impeachment purposes.

{¶8} The Supreme Court has concluded that deposition fees and expenses are taxable as costs under R.C. 2319.27. *In re Election of November 6, 1990 for the Office of Attorney General of Ohio* (1991), 62 Ohio St.3d 1, 4. The deposition, however, must be "used in evidence" at trial in order to do so. *Barrett v. Singer Co*. (1979), 60 Ohio St.2d 7, at syllabus; see, also, *Vilagi* at ¶30. R.C. 2303.21 also permits the "exemplification of a record, [used] as evidence in [a civil] action *** [to] be taxed in the bill of costs and recovered[.]" Additionally, Rule 13(D)(2) of the Rules of Superintendence for Courts of Ohio provides that "[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."

{¶9} The record reveals that the videotaped deposition of Haynes' chiropractor, Dr. Floros, was admitted into evidence at trial and the expenses associated with taking that deposition and later playing it at trial were properly taxed as costs by the trial court. Sup.R. 13(D)(2). See, also, *Barrett*, 60 Ohio St.2d at syllabus; *Vilagi* at ¶30. Additionally, Haynes filed a transcript of the videotaped deposition with the trial court, which is also a permissible cost under statute. R.C. 2303.21. Christian points to no evidence to support his assertion that the deposition recording, replaying, and transcription costs are associated with Haynes' deposition, not the deposition of Dr. Floros. Thus, his argument is without merit.

{¶10} Based on the foregoing, the trial court did not abuse its discretion in awarding Haynes costs for her suit, as she was the prevailing party and the costs awarded to her were within the boundaries of permitted costs under Civ.R. 54. Accordingly, Christian's assignment of error is not well taken.

III

{¶11} Christian's sole assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

CARR, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

SHAWN A. CORMIER-WARREN, Attorney at Law, for Appellant.

JEFFREY HAWKINS, Attorney at Law, for Appellee.