

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

MARY ANN SINGLETON,

Plaintiff,

v.

**DEPARTMENT OF CORRECTIONAL
EDUCATION, ET AL.,**

Defendants.

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Case No. 1:03CV00004

OPINION AND ORDER

By: James P. Jones

United States District Judge

Hilary K. Johnson, Abingdon, Virginia, for Plaintiff; Sydney E. Rab, Senior Assistant Attorney General, Richmond, Virginia, for Defendants.

This civil case is before me on Plaintiff's Objections to Defendants' Bill of Costs. The plaintiff is appealing summary judgment against her and argues that the taxation of costs is thus premature. However, in the interest of judicial efficiency, I find that taxation of costs is now appropriate because it would permit any appeal as to costs to be consolidated with that on the merits.

The plaintiff filed this Title VII action charging that she was sexually harassed while an employee of the Virginia Department of Correctional Education. After hearing oral argument, I granted summary judgment in favor of the defendants. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, the defendants

thereafter filed a Bill of Costs claiming fees for court reporting services and for copies of papers necessarily obtained. The plaintiff filed a timely Notice of Appeal and simultaneously filed an objection to the Bill of Costs, arguing that the taxation of costs was premature due to the pending appeal. The plaintiff's objection is now ripe for decision.

Rule 54 of the Federal Rules of Civil Procedure dictates that a prevailing party is entitled to recover its costs by filing a request with the clerk of the court to tax costs. Fed. R. Civ. P. 54(d). These costs may include fees of the clerk and marshal, fees of the court reporter, fees and disbursements for printing and witnesses, fees for copies of papers necessarily obtained for use in the case, docket fees, and compensation for interpreters and court-appointed experts. 28 U.S.C.A. § 1920 (West 1994). Within five days after the taxation of costs, the non-prevailing party may move the court to review the clerk's action. Fed. R. Civ. P. 54(d)(1).

A district court has jurisdiction to review the clerk's taxation of costs even while an appeal on the merits is pending. Upon appeal, the district court loses jurisdiction over any matters involved in the appeal but maintains jurisdiction on matters collateral to the merits of the appeal. *See Langham-Hill Petroleum Inc. v. S. Fuels Co.*, 813 F.2d 1327, 1330-31 (4th Cir. 1987); *Wright v. Jackson*, 522 F.2d 955, 957 (4th Cir. 1975). Accordingly, costs "that are not compensation for the injury

giving rise to the action and thus are not an element of relief” may be determined by the district court while an appeal on the merits is pending because such costs raise issues that are collateral to the primary cause of action. *Langham-Hill Petroleum Inc.*, 813 F.2d at 1331; *see also White v. N.H. Dep’t of Employment Sec.*, 455 U.S. 445, 451 (1982); *Deering, Milliken & Co. v. Temp-Resisto Corp.*, 169 F. Supp. 453, 455 (S.D.N.Y. 1959).

The decision to proceed with taxation of costs or to defer such taxation pending appeal is at the discretion of the district court. *See Langham-Hill Petroleum Inc.*, 813 F.2d at 1331; *Wright*, 522 F.2d at 957; *KiSKA Constr. Corp.-USA v. Wash. Metro. Area Transit Auth.*, No. 97-2677 (CKK/JMF), 2002 WL 393082, at *1 (D.D.C. Mar. 11, 2002); *EEOC v. Allied Sys., Inc.*, No. 97-CV-1396, 1999 WL 395377, at *1 (N.D.N.Y. June 9, 1999); *Am. Infra-Red Radiant Co. v. Lambert Indus., Inc.*, 41 F.R.D. 161, 163-64 (D. Minn. 1966); *Deering*, 169 F.Supp. at 455-56. However, because Rule 54(d) creates a presumption in favor of the taxation of costs, *LeMoine v. Combined Communications Corp.*, No. 95 C 5881, 1996 WL 435115, at *1 (N.D. Ill. July 31, 1996), a district court deciding not to award costs at the customary stage must provide a valid reason. *EEOC*, 1999 WL 395377, at *1.

In the instant case, the plaintiff has not presented any substantive reasons why I ought to exercise my discretion and delay the taxation of costs pending appeal. To

the contrary, my discretion is best exercised by proceeding with a review of the taxation of costs because it would avoid piecemeal appeals. With prompt taxation, any appeal from the award of costs could feasibly be consolidated with the pending appeal on the merits, thereby enhancing judicial efficiency. *See Langham-Hill Petroleum Inc.*, 813 F.2d at 1331; *Reed v. Health & Human Services*, 774 F.2d 1270, 1277 (4th Cir. 1985); *Wright*, 522 F.2d at 957.

For these reasons, it is **ORDERED** that the plaintiff's procedural objection to the defendants' Bill of Costs is overruled. The plaintiff has thus far failed to assert any substantive objections to the Bill of Costs but is granted leave to file any such objections within ten days of the entry of this order.

ENTER: October 3, 2003

United States District Judge