IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

PAULINE CRUSENBERRY,	)	
	)	
Plaintiff,	)	Case No. 2:99CV00129
	)	
v.	)	**OPINION AND ORDER**
	)	
BODDIE-NOELL ENTERPRISES, INC.,	)	By: James P. Jones
	)	United States District Judge
Defendant.	)	

The losing plaintiff has objected to the award of costs under Federal Rule of Civil Procedure 54(d)(1) in this slip and fall case. For the reasons that follow, I will exercise my discretion to deny costs.

I

In this diversity case, the plaintiff Pauline Crusenberry sought recovery against the defendant Boddie-Noell Enterprises, Inc., following an accident in which Mrs. Crusenberry fell while crossing stepping stones outside of the defendant's Hardee's restaurant. I denied summary judgment to the defendant and the case was tried to a jury, which found its verdict in favor of the defendant, and upon which verdict judgment was entered. Thereafter, the defendant filed a bill of costs to which the plaintiff has objected. The parties have submitted briefs and other materials in support

of their respective positions, and the question of costs is ripe for decision.

II

Rule 54(d)(1) provides that costs "shall be allowed as of course to the prevailing party unless the court otherwise directs . . . ." Fed. R. Civ. P. 54(d)(1). This means that there is a presumption in favor of an award of costs. *See Teague v. Bakker*, 35 F.3d 978, 996 (4th Cir. 1994). Costs may be refused under this rule only if the district court "justif[ies] its decision by 'articulating some good reason for doing so.'" *Id.* (quoting *Oak Hall Cap & Gown Co. v. Old Dominion Freight Line, Inc.*, 889 F.2d 291, 296 (4th Cir. 1990)).

The defendant here seeks costs totaling $4,881.74, representing witness fees and subpoenas, court reporter fees, hotel charges for counsel and corporate representatives, photocopies, and enlargements of trial exhibits, among other things. The plaintiff makes specific objections to certain items, but generally objects to the award of costs on the ground that the plaintiff is indigent and that the defendant's conduct contributed to the proliferation of expense.

Various factors may properly govern the court's discretion in denying costs to a prevailing party. *See Cherry v. Champion Int'l Corp.*, 186 F.3d 442, 446 (4th Cir. 1999). The losing party's good faith is insufficient standing alone, although it is a

prerequisite to denying costs to the winner. *See id.* Moreover, the parties' comparative financial strength does not justify a decision to deny costs. *See id.* at 448.

Nevertheless, financial inability to pay may be considered by the court in exempting an unsuccessful party from her presumptive obligation, *see Teague*, 35 F.3d at 996, although the court must carefully consider whether the losing party does in fact have "the effective ability to satisfy [the prevailing party's] bill of costs." *Cherry*, 186 F.3d at 447.

In the present case it is undisputed that Mrs. Crusenberry is in her eighties, is physical disabled, lives alone in an apartment, has meager assets consisting of her furniture and an amount saved for her burial, and subsists only on her monthly government checks. Her attorney has represented that he will not seek reimbursement of the plaintiff's expenses of litigation, but will bear them himself to the extent he is permitted to do so by the Virginia Rules of Professional Conduct.

I find that the case was a "relatively close and difficult" one, *see Teague*, 35 F.3d at 996, and that both parties, and their counsel, acted in good faith in the prosecution and defense of the matter. Mrs. Crusenberry is unable to pay the costs and because of her age and condition, is unlikely to ever have the ability to pay. Under all of these circumstances, I believe that it would be inequitable to award costs in this case.

III

For the foregoing reasons, it is **ORDERED** that, upon review, the defendant's bill of costs is denied.

ENTER: March 15, 2001

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United States District Judge