

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

ROBERT B. ARNOLD	)	
	)	
Plaintiff	)	FAMILY NO. D210/1986
	)	
vs.	)	ACTION FOR DIVORCE
	)	
MARY ANNE ARNOLD	)	
	)	
Defendant	)	
	)	

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FINCH, Judge

MEMORANDUM OPINION AND ORDER
(Filed September 23, 1987)

I. INTRODUCTION

This matter came before the Court on defendant, Mary A. Arnold's motion for an award of attorney's fees and costs. For the reasons mentioned below, this Court finds that an award of \$330.78 as costs, and \$21,878.50 as fees is reasonable.

II. FACTS

The parties in this matter were married on January 10, 1975. On August 25, 1986, plaintiff, Robert B. Arnold, filed

a complaint seeking a divorce absolute from defendant, Mary A. Arnold. Defendant filed a counterclaim requesting a divorce, an award of alimony, and tort damages. A trial was held on June 10, 1987. Judgment was rendered granting the parties a divorce absolute, and awarding defendant alimony and attorney's fees and costs. On June 24, 1987, defendant filed the instant motion, supported by affidavits, requesting an award of \$35,234.00 in fees, and \$10,633.38 in costs. Plaintiff has opposed the motion, and requests that defendant's claim be substantially reduced.

III. DISCUSSION

Awards of attorney's fees and costs are governed by 5 V.I.C. 541. The amount to be awarded rests solely within the Court's discretion. Lucerne Investment Co. v. Estate Belvedere, Inc., 7 V.I.C. 242, 245 (3rd Cir. 1969). Relevant factors for determining fees are the time and labor required, the novelty and difficulty of the questions involved, the skill requisite to properly conduct the cause, and the customary charges for similar services. Id., at 245-246. The award "is intended to be an indemnification of the prevailing party for a fair and reasonable portion of his attorney's fees incurred..., and not for the whole amount charged by the attorney, especially if that amount is excessive under the

facts of the case." (Emphasis supplied). Id., at 245. Guided by these principles, this Court will examine defendant's claim, and make a reasonable award to which she is entitled as the prevailing party in this action.

A) Costs

Defendant requests indemnification for costs as follows:

Per affidavit of Attorney Capdeville	\$3,093.26
Per affidavit of defendant	<u>7,540.12</u>
Total claimed	<u>\$10,633.38</u> =====

Included in this total are amounts for deposition transcripts and other related expenses. "Necessary expenses of taking depositions which were reasonably necessary in the action," are taxable as costs. 5 V.I.C. 541(a)(2). Introduction of a deposition at trial is not a prerequisite for finding that it was reasonably necessary in the action. However, if not used at trial, the deposition must have been reasonably necessary for the proper presentation of the case, and not merely obtained for the attorney's convenience or for investigative purposes. Kriegel v. St. Thomas Beach Resorts, Inc. 18 V.I. 365, 368 (D.C.V.I. 1981); and Hudson v. Nabisco Brands, Inc., 758 F.2d 1237, 1243 (7th Cir. 1985).

Defendant has failed to specify which depositions, if any, were used at trial. The records show that none of them were admitted into evidence. Further, there is nothing in her

affidavits which indicate how any of them were reasonably necessary in this action. The affidavits merely list dates, amounts expended, and purpose of costs (i.e., depositions). Accordingly, the following deposition transcript expenses will be disallowed:

Per Affidavit of Attorney Capdeville

<u>Date</u>	<u>Amount</u>
1/15/87	\$ 433.50
3/4/87	336.00
6/4/86	435.00
6/4/86	269.00
6/4/86	294.80
Total	<u>\$1,768.30</u> =====

Per Affidavit of Defendant

<u>Date</u>	<u>Amount</u>
12/2-6/86	\$ 336.00
12/2-6/86	433.50
3/9-13/87	663.75
3/25/87	294.80
Total	<u>\$1,728.05</u> =====

Defendant also claims certain deposition related expenditures including travel, lodging and meals. In general, travel expenses incurred in connection with the taking of depositions are not taxable as costs. However, under exceptional circumstances, including bad faith, vexatiousness, or oppressiveness, such expenses are allowable as costs. Kriegel, supra, at 368; J. T. Gibbons v. Crawford Fitting

Co., 760 F.2d 613, 616 (5th Cir. 1985); and Wright, Miller & Kane, Federal Practice and Procedure, Depositions Sec. 2676 (1983). The travel and other expenses claimed by defendant were related to depositions, the cost (i.e. transcript) of which has been disallowed. The expenses, per defendant's affidavit, relative to depositions of W. Arnold, and W. Palmer dated 3/9-13/87 and 5/30/87 are unallowable for the further reasons that the depositions were never taken. The expenses, per defendant's affidavit, claimed for attendance to a deposition dated 3/1/87, are also unallowable since it was unrelated to this proceeding (i.e. related to a criminal case). In addition, this Court finds no exceptional circumstance which would have warranted an award of travel expenses in this case. Therefore, defendant's travel and other deposition related expenses will be disallowed as follows:

Per Affidavit of Attorney Capdeville

<u>Date</u>	<u>Type</u>	<u>Amount</u>
4/1/87	Airfare	\$ 467.96
4/1/87	Ground transportation	300.00
4/1/87	Lodging	98.00
6/4/87	Airfare	232.00
		<u>\$1,097.96</u>
		=====

Per Affidavit of Defendant

12/2-6/86	Lodging	\$ 579.26
12/2-6/86	Airfare	116.00
12/2-6/86	Meals	225.00

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<u>Date</u>	<u>Type</u>	<u>Amount</u>
12/2-6/86	Airfare	\$ 631.00
3/9-13/87	Airfare	411.00
3/9-13/87	Attempted service on W. Arnold	106.95
3/9-13/87	Airfare and lodging	610.33
3/18/87	Attendance of deposition	200.00
3/25/87	Airfare	58.00
5/28-30/87	Airfare	342.00
5/28-30/87	Lodging	115.50
5/28-30/87	Ground transportation	14.00
5/28-30/87	Meals	33.10
5/30/87	Airfare, car rental, Court Reporter	481.20
4/1/87	Airfare	79.00
6/8-11/87	Airfare	684.00
6/8-11/87	Airfare	118.00
6/8-11/87	Meals	55.20
6/8-11/87	Lodging	376.25
		<u>\$5,235.79</u>
		=====

Defendant has claimed three items as copying expenses. Such expenses are allowable only if the document is used as evidence at trial. 5 V.I.C. 541(a)(5). There is no indication as to which, if any, of the documents copied were used as evidence at trial. Further, the expense dated 5/27-29/87 is unrelated to this proceeding (i.e. related to prior divorce action). Accordingly, the total claimed as copying expenses is disallowed:

Per Affidavit of Defendant

<u>Date</u>	<u>Amount</u>
3/9-13/87	\$ 312.50
5/27-29/87	12.00
6/1-3/87	28.00
	<u>\$ 352.50</u>
	=====

Finally, defendant's claim of \$120.00 (see defendant's affidavit--4/1/87) for lost wages is not a taxable cost, and is thus disallowed. 5 V.I.C. 541(a).

B) Fees - Attorney Capdeville

The affidavit of Attorney Capdeville indicates that he spent a total of 204.8 hours of work on this case. His rate is \$100 per hour and thus defendant requests indemnification of \$20,480.00. The Court finds that the rate of \$100 per hour is reasonable. However, after having carefully examined Attorney Capdeville's affidavit, and being otherwise fully cognizant of the circumstances surrounding this case, this Court further finds that the indemnification requested is slightly excessive.

Accordingly, defendant will be allowed indemnification for a reasonable amount of hours, i.e. 175, at the rate of \$100 per hour, for a total of \$17,500.00. This represents approximately 85 percent of the amount claimed. Upon considering the relevant factors, this Court finds no reason to adjust the lodestar of \$17,500.00. Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp., 487 F.2d 161 (3rd Cir. 1973).

C) Fees - Attorney Klein

The affidavit of Attorney Klein indicates that he spent a

total of 146.05 hours of work on this case. His rate is \$100 per hour, and thus defendant requests indemnification of \$14,605.00. Additionally, Klein's affidavit indicates a cost of \$149.00 for "airborne express". This Court is unable to decipher the purpose of the cost, and finds no basis for indemnification thereof. Therefore, it will be disallowed.

The Court finds that the rate of \$100 per hour is reasonable. However, some of time charged appears to be 1) unrelated to this litigation, 2) excessive, and 3) unnecessary. Charges for these hours will not be allowed:

Unrelated Charges

<u>Date</u>	<u>Item</u>	<u>Hours Charged</u>
10/28-31/86	Conference concerning criminal charges	4
2/4/87	Litigation concerning Arnold Graphics	.75
2/5/87	Conference concerning Racing Commission	.25
2/24-25/87	Litigation regarding marital home	1
2/24-25/87	Conference regarding marital home	1
2/24-25/87	Conference regarding DBA Marketing litigation	.25
3/17/87	Deposition regarding criminal matters	3
	Total hours disallowed	<u>10.25</u> =====

Excessive Charges

10/14/86	Letter to defendant	3
12/3-6/86	Preparation of and attendance to deposition	13
2/5/87	Letter to Attorney Capdeville	<u>2</u>
		<u>18</u> =====

Unnecessary Charges

<u>Date</u>	<u>Item</u>	<u>Hours Charged</u>
12/15/86	Conference concerning depositions	.25
2/4/87	Conference concerning depositions not taken	.50
2/5/87	Telephone call regarding deposi- tions not taken	1
2/24-25/87	Same as above	3.30
3/4/87	Telephone call to one Ken Sheerer	.20
5/20/87	Telephone call regarding deposi- tion not taken	.30
5/24-30/87	Same as above	.40
5/30/87	Travel to Ohio regarding deposi- tions not taken	3.30
		<u>9.25</u>
		====

Finally, Attorney Klein has failed to account for 3.6 hours claimed (see affidavit - hours charged = 146.05 and hours accounted for = 142.45). Accordingly, those hours will be disallowed.

As a result of disallowing the hours mentioned above, defendant will be allowed indemnification for a reasonable amount of hours, i.e. 104.95, at the rate of \$100 per hour, for a total of \$10,495.00. After considering the relevant factors, this Court finds no reason to adjust the lodestar. Lindy I, supra.

IV. CONCLUSION

Based upon the foregoing reasons, defendant will be awarded attorney's fees of \$21,878.50, and costs of \$330.78 broken down as follows:

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	<u>Costs</u>	
	<u>Per Affidavit of Attorney Capdeville</u>	<u>Per Affidavit of Defendant</u>
Amount claimed	\$3,093.26	\$7,540.12
Amount disallowed:		
Deposition transcript	\$1,768.30	\$1,728.05
Deposition related expenses	1,097.96	5,235.79
Copying expenses	-0-	352.50
Wages		120.00
Total disallowed	<u>2,866.26</u>	<u>7,436.34</u>
Allowable costs	227.00	103.78
Amount per defendant's affidavit	103.78	
Total costs awarded	<u>\$ 330.78</u> =====	

	<u>Fees</u>	
	<u>Per Affidavit of Attorney Capdeville</u>	<u>Per Affidavit of Attorney Klein</u>
Amount claimed	\$20,480.00	\$14,754.00
Amount disallowed (approximately 15% disallowed)	<u>2,980.00</u>	41.1 hrs. <u>4,259.00</u> plus
	\$17,500.00	\$149 \$10,495.00 disallowed
Less: Payments advanced per attorney's affidavit	<u>6,116.50</u>	-0- <u>\$10,495.00</u> =====
Allowable fees	11,383.50	
Amount per Klein's affidavit	<u>10,495.00</u>	
Total fees awarded	<u>\$21,878.50</u> =====	

DATED: 9/23/87


 Raymond L. Finch, Judge