

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

MELECIA TERRELL on her own behalf and as next	)	
of friend for L.D. and M.T., minors,	)	
	)	
Plaintiff,	)	
vs.	)	CASE NO. ST-05-CV-467
	)	
CORAL WORLD,	)	
Defendant.	)	

MEMORANDUM OPINION

Following a jury verdict on August 28, 2009, in favor of Plaintiff, this Court issued an Opinion on June 21, 2010, awarding Plaintiff some of her litigation costs and denying her travel expenses, expert fees, and other miscellaneous expenses. On July 20, 2011, the Supreme Court of the Virgin Islands reversed the ruling on the expert fees as well as the award for total costs and remanded the case for further consideration.¹ For the following reasons, Plaintiff will be awarded expert fees as prescribed by 5 V.I.C. §§ 541 and 660. Additionally, the Court will award Plaintiff copying, postage, lay witnesses, and deposition costs.

ANALYSIS

Costs that may be recovered in a civil action include: "(1) Fees of officers, witnesses, and jurors [and] (2) Necessary expenses of taking depositions which were reasonably necessary in the action." 5 V.I.C. § 541. Witness fees are more specifically described in 5 V.I.C. § 660, which indicates that:

A witness attending in the district court of the Virgin Islands, or before a district court commissioner, or before any person authorized to take his

¹ *Terrell v. Coral World*, S. Ct. Civ. No. 2010-0058, slip op. (V.I. July 20, 2011).

deposition pursuant to any rule or order of court, shall receive \$4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and shall be reimbursed for his necessary and reasonable expenses of travel in going from and returning to his place of residence. A witness who is not a salaried employee of the Virgin Islands or Federal government and who is not in custody and who is required to attend, as herein described, in a judicial division in which he does not reside, shall be entitled to an additional allowance of \$8 per day for subsistence including the time necessarily occupied in going to and returning from the place of attendance.

Plaintiff indicates that four expert witnesses—Cedric Bain, Robert Johnson, Dr. C. Copemann, and S. McKenzie—testified one day each at trial. Under 5 V.I.C. § 660, the witnesses are entitled to Twelve dollars (\$12.00) each for their services, which includes Four dollars (\$4.00) for a day's attendance at trial plus an Eight dollar (\$8.00) allowance for subsistence. Plaintiff also indicates that Dr. Gary Jett attended the trial for two days, in which case he is entitled to Eight dollars (\$8.00) for his expert witness services and Sixteen dollars (\$16.00) for subsistence. As the prevailing party, Plaintiff shall receive a total sum of Seventy-two dollars (\$72.00) for expert witness fees as permitted under 5 V.I.C. §§ 541 and 660.²

The Court also notes that in this Court's June 21, 2010, Opinion, Plaintiff was awarded Seven hundred twenty-eight dollars and fifty-one cents (\$728.51) for copying and postage, One thousand thirty-five dollars (\$1,035.00) for lay witnesses, and Four thousand one hundred eight dollars and nineteen cents (\$4,108.19) for deposition costs. Considering that the Supreme Court has not reversed those awards, Plaintiff is entitled to

² In Plaintiff's August 30, 2011, response to this Court's August 10, 2011, Order to supplement the record, Plaintiff requested that the Court exercise its discretion and award Plaintiff costs and fees for her experts as itemized in her September 16, 2009, motion for award of costs. The Supreme Court of the Virgin Islands, however, "emphasize[d] that in this case, [Plaintiff] sought her costs award based solely on section 541, and thus has waived any argument that the Superior Court may possess discretion to make a cost award based on its inherent power or some other authority." *Terrell*, S. Ct. Civ. No. 2010-0058, at page 12.

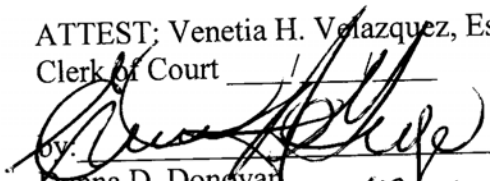
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Five thousand eight hundred seventy-one dollars and seventy cents (\$5,871.70) for copying, postage, lay witnesses, and deposition costs. Accordingly, the Court will grant in part Defendant's pending motion for reconsideration filed on July 30, 2010.

An Order consistent with this Opinion shall follow.

Dated: December 12, 2011

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court

by: 
Donna D. Donovan

Court Clerk Supervisor 12/12/2011


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

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**MELECIA TERRELL on her own behalf and as next
of friend for L.D. and M.T., minors,**

Plaintiff,

vs.

CORAL WORLD,

Defendant.

CASE NO. ST-05-CV-467

ORDER

Upon consideration of the premises, it is hereby

ORDERED that Defendant's motion for reconsideration is GRANTED in part;
and it is

ORDERED that Plaintiff is entitled to Five thousand eight hundred seventy-one
dollars and seventy cents (\$5,871.70) for copying, postage, lay witnesses, and deposition
costs; and it is

ORDERED that Plaintiff is entitled to Seventy-two dollars (\$72.00) for expert
witness fees as permitted under 5 V.I.C. §§ 541 and 660; and it is

ORDERED that a copy of this Order shall be directed to counsel of record.

Dated: December 12, 2011

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court

by:

Donna D. Donovan

Court Clerk Supervisor


HON. MICHAEL G. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

12/12/2011