

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DEREK NORMAN, et al,

Plaintiffs,

v

DYLAN SYER, et al,

Defendants.

Case No. 2014-142340-CB  
Hon. Wendy Potts

Consolidated with  
Case No. 2014-142461-CH

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OPINION AND ORDER RE: DEREK NORMAN'S MOTION FOR ENTRY OF ORDER  
DEFINING STATUTORY INTEREST AND COSTS IN JUDGMENT DATED SEPTEMBER  
25, 2015 IN CASE NO. 2014-142340-CB

At a session of Court  
Held in Pontiac, Michigan

NOV 10 2015

On September 25, 2015, the Court entered a judgment awarding Derek Norman a total judgment of \$32,000, offset by \$22,800 in credits for cash and personal property of Sire Consultants, LLC that Norman will retain. The September 25<sup>th</sup> judgment also stated that Norman is entitled to statutory interest and costs. On September 30, 2015, Norman filed this motion seeking an amended judgment awarding him \$258.92 in statutory interest and \$3,907.91 in taxable costs. Because Dylan Syer raises no objection to Norman's entitlement to interest or the calculation of the interest, the Court's amended judgment will reflect \$258.92 in statutory interest.

However, Norman's bill of costs is problematic because he appears to be seeking costs that are not taxable. Norman is entitled to tax only the costs authorized by statute, *Elia v Hazen*, 242 Mich App 374, 379; 619 NW2d 1 (2000), and several of the types of costs in Norman's bill

of costs have no apparent statutory authorization. For example, Norman is properly claiming as taxable costs the fees paid to the Clerk of the Court for filing the complaint and motions. See MCL 600.2441(2). However, Norman is also trying to tax the fees he paid to the Court's e-filing vendor to process his e-filings. Norman cites no statutory authority for these fees, and the Court is not aware of a statute that allows an outside vendor's e-filing processing fee as a taxable cost.

Norman also appears to be seeking "witness fees" for several subpoena duces tecum. Although MCL 600.2552(1) authorizes subpoena fees, they are taxable only as they pertain to witnesses. *Van Elslander v Thomas Sebold & Assocs*, 297 Mich App 204, 226; 823 NW2d 843 (2012). Under MCL 600.2546, Norman may be able to tax the costs of serving a subpoena under MCL 600.2559, however, he is not entitled to claim a "witness fee" for a subpoena that was not directed at a witness. To the extent that Norman is claiming the costs charged by various private entities for responding to his subpoena duces tecum, Norman cites no statutory authority for taxing these costs and the Court is not aware of any such authority. Document costs are generally limited to certified records obtained from a public office and are "necessarily used" at trial. MCL 2549; *Beach v State Farm Mut Auto Ins Co*, 216 Mich App 612, 623; 550 NW2d 580 (1996).

Syer also raises several objections to Norman's costs, including whether Norman should be allowed to tax the costs of the process server who unsuccessfully attempted to serve Syer with the complaint and summons. Syer claims that because Norman served Syer through other means, the process server's costs should not be taxable. However, the statute governing service fees, MCL 600.2559, does not state that the fees are authorized only to the extent that service is successful. Moreover, Norman asserts that the process server was unsuccessful because Syer was avoiding service. Because Syer cites no authority for his argument that unsuccessful service fees are disallowed, the Court rejects that argument.

Syer also objects to Norman's taxation of his expert witness fee for Norman Sandles because the fee is "excessive" and because Syer claims Sandles was not an expert. To the extent Syer is claiming that Sandles was not qualified as an expert, this objection could have and should have been raised at trial. Moreover, Syer fails to explain how the \$2,000 fee is unreasonable for an expert who was required to review financial records and offer opinions on the value of the LLC. Syer's objection to the expert fee is denied.

Syer also objects to Norman's request to tax the cost of Syer's deposition transcript on the ground that the deposition was not read at trial. Under MCL 600.2549, deposition costs are taxable only if the deposition is filed in the Clerk's office and "read in evidence." Although Norman claims that the transcript was quoted to show Syer's prior inconsistent statements, the statute expressly excludes a transcript that is used for impeachment purposes. MCL 600.2549. Moreover, there would have been no need to read Syer's deposition transcript into evidence because Syer testified at trial. Thus, Norman is not entitled to tax the costs of Syer's deposition.

Within 14 days, Norman must file a revised bill of costs reflecting the rulings in this opinion along with a supplemental brief citing the statutory authority for the remaining taxable costs claimed. Syer may file a response within 7 days of service of the revised bill of costs and brief. The Court will review the parties' submissions, determine if the remaining costs are taxable, and enter an amended judgment.

Dated:

NOV 10 2015

IT IS SO ORDERED.

Hon. Wendy Epps