IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

JAMES FIGGS and ROBERT JACKSON — **PLAINTIFFS**

V. — **NO. 4:14CV119-M**

QUITMAN COUNTY, MISSISSIPPI et al — **DEFENDANTS**

ORDER

This cause comes before the court on the motion of defendants Quitman County, Mississippi, *et al*, seeking attorneys' fees and costs in the above-entitled action. Plaintiffs James Figgs and Robert Jackson have responded in opposition to the motion. Having considered the parties' submissions, this court concludes that defendants' motion for attorneys' fees should be denied but that their motion for costs should be granted.

This is a Voting Rights Act ("VRA") case in which plaintiffs alleged that Quitman County had violated section 2 of the VRA by unlawfully diluting African-American voting strength through its re-drawing of supervisor districts based upon 2010 census data. On October 14, 2015, defendants filed a motion seeking summary judgment, and plaintiffs responded to that motion on November 12, 2015. On January 20, 2016, however, plaintiffs moved this court "for the entry of an order to finally dismiss this action with prejudice on merits." Defendants agreed to the voluntary dismissal, but they expressly reserved their right to file a motion for attorneys' fees and costs. On January 26, 2016, this court granted plaintiffs' motion and entered a judgment dismissing this case with prejudice. On February 3, 2016, defendants filed the instant motion for attorneys' fees and costs, which this court will presently consider.

In seeking attorneys' fees, defendants rely upon § 14(e) of the Voting Rights Act of 1965, which provides that "[i]n any action or proceeding to enforce the voting guarantee of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, reasonable expert fees, and other reasonable litigation expenses, as part of the costs." *See* 52 U.S.C. §10310(e). Defendants also cite 42 U.S.C. §1988, which provides that "[i]n any action or proceeding to enforce a provision of sections…1983… of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys' fee as part of the costs…" Thus, these federal statutes each authorize the award of attorneys' fees to the "prevailing party," but defendants acknowledge that the U.S. Supreme Court has made it much easier for prevailing plaintiffs to recover such fees than for prevailing defendants to do so. In *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978), the U.S. Supreme Court held that prevailing defendants are only able to recover attorneys' fees based "upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith."

Before this court may evaluate the issue of frivolity under the *Christiansburg* standard, it must first determine whether defendants enjoy the status of "prevailing parties" in this case. Importantly, the Fifth Circuit has held that "[a] defendant is not a prevailing party within the meaning of § 1988 when a civil rights plaintiff voluntarily dismisses his claim, unless the defendant can demonstrate that the plaintiff withdrew to avoid a disfavorable judgment on the merits." *Dean v. Riser*, 240 F.3d 505, 511 (5th Cir. 2001). In *Dean*, the Fifth Circuit explained its decision to place the burden on defendants to make this showing thusly:

> Many circumstances may influence a plaintiff to voluntarily dismiss his claim with prejudice. . . . [A] plaintiff whose claim appeared meritorious at the onset

> may encounter various changes in his litigation posture during the unpredictable course of litigation. "Decisive facts may not emerge until discovery or trial. The law may change or clarify in the midst of litigation." Should such events create insurmountable problems of proof for the plaintiff, voluntarily withdrawing the complaint with prejudice would be the prudent thing to do. However, to hold that in such circumstances the defendant necessarily prevails would penalize the plaintiff for doing precisely what should be done. In addition, potential plaintiffs' resulting fear of an increased risk of being assessed attorney's fees " 'would create a disincentive to the enforcement of civil rights laws.' " This type of chilling effect would utterly contradict Congress's intent.

Dean, 240 F.3d at 511.

In considering this issue, this court first acknowledges the obvious point that it is not in a position to know exactly what plaintiffs were thinking when they decided to voluntarily dismiss their claims. Nevertheless, considering all of the circumstances of this case, it seems very likely that plaintiffs dismissed their lawsuit to avoid a disfavorable judgment on the merits and that defendants should therefore enjoy the status of prevailing parties in this action. In so concluding, this court first emphasizes that plaintiffs have offered this court no contrary reason for their actions. This court regards this as significant since, while defendants do have the burden of proof in this regard, only plaintiffs and their counsel truly know why they dismissed their claims. Their silence on this issue is thus telling. In attempting to ascertain the reason for plaintiffs' decision, this court notes that defendants filed what it regards as a rather strong summary judgment brief in this case, in which they pointed out weaknesses in the proof and methodologies used by plaintiffs' expert, Dr. Allan Lichtman. While plaintiffs did respond in opposition to the motion, it seems likely to this court that they recognized the strength of defendants' proof and that this played a predominant role in their decision to dismiss their claims.

A finding that defendants enjoy the status of prevailing parties in this case is also

supported by Fifth Circuit precedent on point. In *Schwarz v. Folloder*, 767 F.2d 125, 130 (5th Cir. 1985), the Fifth Circuit reversed a district court's refusal, without explanation, to award costs to a defendant against whom the plaintiff had voluntarily dismissed his claims with prejudice under Rule 41(a)(2). In so ruling, the Fifth Circuit wrote that:

> Having already held that a dismissal with prejudice may be granted at any time in a lawsuit because it does not prejudice the defendant, we would be inconsistent to deny the defendant "prevailing party" status, since such a denial would be precisely the type of prejudice to the defendant that we claimed would not occur. Because a dismissal with prejudice is tantamount to a judgment on the merits, the defendant in this case—Alexander Grant—is clearly the prevailing party and should ordinarily be entitled to costs.

Schwarz, 767 F.2d at 130. Rule 41(a)(2) is, of course, the same device used by plaintiffs to dismiss their claims in this case, and *Schwarz* thus constitutes helpful authority to defendants on both the issue of whether they are the prevailing parties in this lawsuit and whether they are entitled to recover costs. *Schwarz* suggests that both questions should be answered in the affirmative.

In *Anthony v. Marion County General Hospital*, 617 F.2d 1164, 1170 (5th Cir. 1980), the Fifth Circuit, as in *Schwarz*, placed considerable weight upon whether or not a dismissal is with prejudice in determining whether the defendant is the prevailing party. In *Anthony*, the Fifth Circuit concluded that a defendant was a prevailing party under § 1988 when a plaintiff's Title VII racial discrimination suit was involuntarily dismissed with prejudice for want of prosecution. In so stating, the Fifth Circuit stated that:

> Although there has not been an adjudication on the merits in the sense of a weighing of facts, there remains the fact that a dismissal with prejudice is deemed an adjudication on the merits for the purposes of *res judicata*. As such, the [defendant] has clearly prevailed in this litigation.

Anthony, 617 F.2d at 1169–70.

In light of the foregoing, the language of the plaintiffs' own motion to voluntarily dismiss their claims supports a conclusion that defendants prevailed in this case. The entirety of the plaintiffs' motion reads as follows:

> PLAINTIFFS MOTION FOR VOLUNTARY DISMISSAL
>
> Plaintiffs, by and through counsel of record, pursuant to Fed. R. Civ. P. 41(a)(2), move this court for the entry of an order to finally dismiss this action with prejudice on merits.

Based on *Schwarz* and *Anthony*, this court regards as significant both plaintiffs' agreement that their dismissal was "with prejudice" and that it was "on merits." Indeed, the latter language arguably renders this case a clearer one than *Anthony*, since the Fifth Circuit found in that case that the dismissal for want of prosecution in that case was *not* "an adjudication on the merits." The one in this case was, in fact, "on merits," based on the language of plaintiffs' own motion.

In the court's view, plaintiffs' strongest authority on the "prevailing party" issue is *Dean*, since it places the burden on defendants to show that the voluntary dismissal was made to avoid a "disfavorable judgment on the merits." That being the case, the "on merits" language in plaintiffs' motion is quite significant, since it represents "something extra" above the bare dismissal language that is normally seen and, indeed, it constitutes the only two words which plaintiffs have (as far as this court is aware) uttered in explaining the basis for their actions. Moreover, this language greatly assists defendants in meeting their burden under *Dean*, since it indicates that the substantive merits of their claim were on plaintiffs' mind in dismissing their claims, even though they deny this now (without clarifying what *did* motivate their decision).

While this court recognizes that *Dean* included language saying that plaintiffs should be encouraged to dismiss their claims when they realize they lack merit, it appeared to reference such in the context of newly developed facts which arise in discovery. *Id.* at 511 ("Decisive

facts may not emerge until discovery or trial.") In this case, by contrast, the strength of defendants' summary judgment motion lies in its analysis of prior elections, which was a matter of public record at the time plaintiffs' filed their lawsuit. This court does not believe that defendants should be deprived of their status as prevailing parties simply because they pointed out a better way of looking at the known facts of the case than plaintiffs did.[1] It seems likely to this court that plaintiffs included the "on merits" language in their motion to make it more likely that defendants would agree to it. If so, then the language had its desired effect, but this court does not believe that plaintiffs should be allowed to turn around now and pretend that they actually had strong claims and that their dismissal was unrelated to the merits of their claims or the pending summary judgment ruling from this court.

This court agrees with defendants that the circumstances of this case are quite similar to those in *Fox v. Vice*, 594 F.3d 423 (5th Cir. 2010), *vacated and remanded on other grounds*, 563 U.S. 826, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011). In *Fox*, the Fifth Circuit concluded that the defendant was the prevailing party when the plaintiff dismissed his federal claim after it had been challenged in a summary judgment motion, following many months of litigation. In so concluding, the Fifth Circuit specifically noted the *Dean* holding, but it found that the circumstances of plaintiff's dismissal of his claims indicated that he did so in order to avoid an unfavorable decision on the merits. The same conclusion applies in this case.

In the court's view, public policy considerations also support recognizing the victory

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[1]This court notes that there is no indication that the plaintiffs might be intending to pursue state law claims, which *Dean* noted was one potential reason why plaintiffs might wish to voluntarily dismiss their claims in federal court. Indeed, it is far from clear to this court that such would even be permissible, based upon considerations of *res judicata* and the language of the plaintiffs' motion in this case.

which defendants have earned in this case. To a greater extent than most other civil rights actions, voter dilution actions under the VRA involve matters of significant public concern, particularly since they tend to affect many voters and tend to recur with each 10-year census. That being the case, this court believes that the public interest is served by accurately recording who won and who lost when a voter dilution lawsuit is filed and later dismissed. The fact that plaintiffs agreed to a dismissal of this case with prejudice "on merits," after defendants submitted powerful summary judgment briefing, leads inescapably to the conclusion that defendants are the prevailing parties in this case. Under these circumstances, it would be harsh indeed to deny defendants their well-earned status of victors in this lawsuit, and this court will not seek to re-write history or change plaintiffs' own characterization of the dismissal which they sought.

While this court thus finds that defendants have prevailed in this litigation, it nevertheless concludes that this lawsuit does not represent the sort of unreasonable or frivolous action as to which attorneys' fees might be awarded to a defendant under *Christiansburg*. This court's conclusion in this regard comes in part from reviewing the parties' summary judgment briefing and from comparing it to the many other such briefs which it has reviewed in its years serving as a federal district judge. While this court would not characterize plaintiffs' proof in this case as being particularly strong, it has, without question, seen many weaker cases before it which were not met with motions for attorneys' fees after they were dismissed. Indeed, this court frankly doubts that a motion for attorneys' fees would have been filed at all if plaintiffs had simply chosen to await this court's summary judgment ruling. There was certainly no indication in defendants' summary judgment briefing that they would be seeking such fees, and there was no

change in the facts of the case between the filing of that briefing and defendants' subsequent motion for fees.

The one thing which did change during this interim period is that plaintiffs voluntarily dismissed their claims, and it seems very likely that this was the reason for defendants' decision to seek attorneys' fees. This is arguably a case of "no good deed going unpunished," since, as officers of the court, attorneys should be commended for continuing to make candid evaluations of their claims and acting accordingly. As noted previously, the court does not believe that plaintiffs' decision should deprive defendants of the status of victors in this lawsuit, but, by the same token, it does not believe that the decision should lead to an inference of frivolity which is not supported by the actual merits of plaintiffs' claims. It may be that this court is attempting to find an appropriate "middle ground" in this context, but this is the approach which seems most appropriate in this case.

This court's conclusion that this case is not a frivolous one is also based upon the nature of plaintiffs' claims. Vote dilution claims tend to be quite complex, often dependant upon competing expert analyses of data relating to the results of prior elections. That is certainly true in this case. In *Thornburg v. Gingles*, 478 U.S. 30, 50-51, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986), the Supreme Court held that a vote dilution claim requires proof that a minority group be "sufficiently large and geographically compact to constitute a majority in a single-member district," that it be "politically cohesive" and that "the white majority vot[e] sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate." In their summary judgment briefing, all parties agreed that the third *Gingles* factor was the key one in this case, and they presented their respective proof and arguments as to whether, in Quitman County elections, "the

white majority vot[e] sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate."

Defendants' brief appeared to acknowledge that plaintiffs' proof, including the testimony of their expert witness Dr. Lichtman, provided what might appear to be proof of vote dilution, but defendants argued that a closer inspection of the facts did not support this conclusion. In contesting Dr. Lichtman's testimony that a white voting bloc usually managed to defeat minority-preferred candidates in Quitman County, for example, defendants engaged in a thorough and detailed analysis of the elections upon which he based his conclusions. In this vein, defendants noted in their summary judgment brief that:

> Lichtman's election analysis is flawed in several ways. First, his primary focus is the fact that African American candidates won in only six of the twenty-two elections he chose to examine. His limiting choice turns a blind eye to the fact that a racially white, but nonetheless African American-preferred, candidate won in three additional elections. This is also an exceptional example of the fact that not every minority-preferred candidate is racially African American. In fact, the majority of African Americans in Quitman County have on several occasions supported racially white candidates.

[Defendants' brief at 11]. Defendants then proceeded to discuss weaknesses in Dr. Licthman's analysis of specific elections, including a 2003 Democratic primary for Coroner, a 2007 Democratic Primary for Justice Court Judge, a 2011 Democratic Primary for Sheriff, and a 2014 election for Tax Assessor. [Brief at 11-12].

In their summary judgment briefing, defendants also offered their own expert testimony, namely that of Dr. Peter Morrison. In discussing Dr. Morrison's opinions, defendants argued that:

> As previously discussed, defendants' expert Dr. Peter Morrison provided a more inclusive analysis of Quitman County elections than Lichtman's analysis undertook. Morrison reviewed a lengthier history and a larger number of

> elections, both endogenous and exogenous, to afford a more complete view of the electoral state of Quitman County. It should be stated that the plaintiffs are required to meet the burden of proving the third *Gingles* prong. Seeing as they have not, a review of Morrison's findings presents further support that plaintiffs would not be able to meet this burden, even without Lichtman's analysis.

[Brief at 13]. While this court will not discuss defendants' summary judgment submissions in depth, it does conclude that their briefing presented thorough arguments as to why their view of the case was preferable to that of the plaintiffs. That briefing did not, however, establish that plaintiffs' claims were frivolous, nor did it even attempt to make such a showing, as best this court can tell.

In the court's view, the tone and content of defendants' summary judgment briefing was not that of parties who maintained that the plaintiffs had filed frivolous claims. In summarizing their critique of Dr. Lichtman's testimony, for example, defendants wrote that:

> [Dr. Lichtman's] errors call into question the certainty of the plaintiffs' proof of the third *Gingles* precondition. For the reasons outlined above, the plaintiffs' reliance on Dr. Lichtman's election analysis is misplaced for any portion of their Section 2 claim, especially the third *Gingles* precondition. Without this crucial evidence, plaintiffs have not sufficiently proven their Section 2 claim, and, therefore, it must fail.

[Brief at 13]. This language was consistent with that of defendants' brief as a whole. That is, defendants appeared to acknowledge that Dr. Lichtman's testimony gave plaintiffs some basis for arguing that the *Gingles* test was met in this case, but they sought to point out weaknesses in his analysis which lent themselves to a conclusion that no vote dilution was present. It appears to this court that defendants' belated arguments of frivolity are born of simple necessity, since the *Christiansburg* standard requires them to demonstrate it in order to recover attorneys' fees. This necessity does not make those frivolity arguments any stronger, however.

While the court finds the above factors to be most relevant in this case, it notes that there

is also authority suggesting that it may consider other factors in determining the issue of frivolity. The Fifth Circuit has stated that, to determine whether a claim is frivolous or groundless, courts may examine factors such as: (1) whether the plaintiff established a *prima facie* case; (2) whether the defendant offered to settle; and (3) whether the court dismissed the case or held a full trial. *Myers v. City of W. Monroe*, 211 F.3d 289, 292 (5th Cir. 2000). "These factors are, however, guideposts, not hard and fast rules. Determinations regarding frivolity are to be made on a case-by-case basis." *Doe v. Silsbee Indep. Sch. Dist.*, 440 F. App'x 421, 425 (5th Cir. 2011), *citing E.E.O.C. v. L.B. Foster Co.*, 123 F.3d 746, 751 (3rd Cir. 1997).

In the court's view, these guideposts are less relevant in this case than in certain other ones, considering that this case involves a VRA claim (as opposed to Title VII or § 1983 claims as in the cases above) and considering also the rather unusual procedural manner in which it terminated. In this case, it was the plaintiffs, rather than this court, which dismissed this action, although this court approved their doing so (with defendant's approval). This unusual fact scenario seems to render the third factor a rather unclear means of analyzing the frivolity of this lawsuit. Nevertheless, this court finds that the circumstances of the dismissal in this case favor defendants on the issue of whether they are the prevailing parties but that it favors plaintiffs on the issue of frivolity. To reiterate, it appears to this court that the dismissal in this case reflects the strength of defendants' summary judgment briefing, but this court does not view it as indicating that the suit was frivolous when filed. This court will not repeat its reasons for making this conclusion here.

This court notes that the Fifth Circuit has itself questioned applying the second factor, i.e. whether the defendant offered to settle, outside of employment discrimination claims against

private employers, writing that:

> [W]hether a defendant offers to settle a case is of questionable value in determining whether the plaintiff's claims are frivolous. In this case, it appears that the City of West Monroe defended both itself and the police officers. The City may have a policy of rarely settling claims in order to discourage lawsuits. If that is the City's policy, it seems odd to allow that factor to further enable the city to obtain attorney fees from losing plaintiffs. . . . *Mississippi* allows consideration of whether the defendant offered to settle. Assuming that the factor has been transported from the employment law cases, we would then question its strict applicability in § 1983 cases. Whether a municipality offers to settle simply seems less indicative of the weakness of a plaintiff's case than whether a private employer offers to settle. A private employer who is insured and who sees few of these cases may settle to make the problem go away. A municipality may choose not to address the problem in as businesslike a fashion and may be more worried that settlement will simply generate more lawsuits.

Myers, 211 F.3d at 292. This case obviously involves a municipal defendant in a non-employment discrimination case, and it is thus significant that the Fifth Circuit has itself questioned the relevance of the second factor to such defendants. Nevertheless, to the extent that this factor may be deemed relevant, this court accepts defendants' contention that they did not offer to settle this case, and it regards this as being a rather minor factor in support of a finding of frivolity.

This court notes that the first factor, i.e. whether the plaintiffs have established a *prima facie* case, is of unclear applicability in this VRA vote dilution case, since the factor has its origin in a Title VII case. *See EEOC v. Kimbrough Inv. Co.*, 703 F.2d 98, 103 (5th Cir. 1983). *Kimbrough* was approvingly cited by the Fifth Circuit in *United States v. Mississippi*, 921 F.2d 604, 609 (5th Cir. 1991), but, as quoted above, the Fifth Circuit has itself questioned how applicable it might be outside the context in which it was decided. Title VII cases are, of course, subject to the familiar *McDonnell Douglas* burden-shifting framework, including its requirement that the plaintiff establish a *prima facie* case. It is thus significant that the Fifth Circuit has held

in the employment discrimination context that "to establish a *prima facie* case, a plaintiff need only make a very minimal showing." *Nichols v. Loral Vought Sys. Corp.*, 81 F.3d 38, 41 (5th Cir. 1996).

In their brief, defendants note that the three *Gingles* factors are characterized as "preconditions" which, if met, require an analysis of the totality of the circumstances of the case. Defendants argue that this renders the *Gingles* factors tantamount to a *prima facie* case, within the meaning of the three *Kimbrough* factors. It should be apparent, however, that establishing the three *Gingles* factors is infinitely more difficult than making the minimal showing required to establish a *prima facie* case in the Title VII context. Indeed, there is simply no comparison in the quantum of proof which is required in these two contexts. That being the case, this court frankly doubts that the Fifth Circuit would conclude that failure to meet all three *Gingles* preconditions supports a conclusion that a vote dilution claim is frivolous under *Kimbrough*, since that would likely have an extraordinarily chilling effect upon voting rights lawsuits. As noted previously, the Fifth Circuit has itself indicated a willingness to limit the three frivolity factors set forth in *Kimbrough* to the employment discrimination context in which they were created, and this court suspects that it would do so in this case as well.

Assuming for the sake of argument that it is proper to apply the *Kimbrough* standard in the context of a vote dilution case, then this court would still conclude that the plaintiffs in this case made more than a *prima facie* showing of vote dilution, for essentially the reasons previously stated. Indeed, the court regards the strength of defendants' case to arise mainly from the manner in which they *rebutted* plaintiffs' proof in this case, rather than the inherent frivolity of those claims. This court therefore believes that plaintiffs' proof in this case can properly be

regarded as exceeding that needed to make a *prima facie* case within the meaning of the above authority. This court accordingly concludes that defendants have failed to demonstrate a right to attorneys' fees under *Christiansburg*, and their motion seeking such fees will be denied.[2]

Defendants have also filed a separate motion for costs, and they face a considerably easier burden in recovering such costs than with their motion for attorneys fees. Fed. R. Civ. P. 54(d)(1) provides that "[u]nless a federal statute, these rules, or a court order provides otherwise, costs--other than attorney's fees--should be allowed to the prevailing party." As noted previously, this court has concluded that defendants are, in fact, the prevailing parties in this case, and plaintiffs point to no rule, statute or court order precluding the awarding of costs to them. Moreover, the Fifth Circuit has repeatedly rejected arguments that *Christiansburg*'s requirement of frivolity should be extended to an award of costs. In *Trevino v. Sugar Holly Corp.*, for example, the Fifth Circuit wrote that:

> Plaintiffs also challenge the district court's award of costs to defendants Holly and the Union pursuant to Fed.R.Civ.P. 54(d). Rule 54(d) provides that: "Costs shall be allowed as of course to the prevailing party unless the court otherwise directs."[3] Plaintiffs contend that the standard announced by the Supreme Court in *EEOC v. Christiansburg Garment Company*, 434 U.S. 412, 98 S. Ct. 694, 54 L. Ed. 2d 648 (1978), that attorneys' fees should be awarded a prevailing defendant in a Title VII case only if the plaintiffs' action was frivolous, should be extended to an award of costs. However, we have rejected this argument in previous decisions. *Lewis v. NLRB*, 750 F.2d 1266, 1279 (5th Cir. 1985); *Hill v. J.C. Penney Co.*, 688 F.2d 370, 375 (5th Cir. 1982). We thus affirm the district court's award of costs to defendants.

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[2]In light of this ruling, defendants are clearly not able to recover attorneys' fees or costs against counsel for plaintiffs under 28 U.S.C. § 1927. Indeed, this court's finding that plaintiffs had a good faith basis for filing this action necessarily precludes recovery of such fees.

[3]This language in Rule 54(d)(1) has since been amended to that quoted above, but the change was "stylistic only." Advisory Committee's Notes, 28 U.S.C.App., p. 734 (2006 ed., Supp. V)

Trevino, 811 F.2d 896, 906 (5th Cir. 1987). The Fifth Circuit has thus rejected the notion that plaintiffs should be exempt from paying costs in non-frivolous actions in which they are the losing parties.

While awarding costs against unsuccessful plaintiffs may seem harsh, Rule 54(d) as interpreted by the Fifth Circuit requires this result. This court reiterates that, in *Schwarz*, the Fifth Circuit reversed a district court's refusal, without explanation, to award costs to a defendant against whom the plaintiff had voluntarily dismissed his claims under Rule 41(a)(2). Once again, the Fifth Circuit explained its decision in this regard as follows:

> Having already held that a dismissal with prejudice may be granted at any time in a lawsuit because it does not prejudice the defendant, we would be inconsistent to deny the defendant "prevailing party" status, since such a denial would be precisely the type of prejudice to the defendant that we claimed would not occur. Because a dismissal with prejudice is tantamount to a judgment on the merits, the defendant in this case—Alexander Grant—is clearly the prevailing party and should ordinarily be entitled to costs.

Schwarz, 767 F.2d at 130. As stated previously, the plaintiffs in this case dismissed their claims with prejudice, and Fifth Circuit authority strongly supports a conclusion that this dismissal rendered defendants the prevailing parties in this case. Moreover, *Schwarz* and *Trevino* clearly support a conclusion that, as prevailing parties, defendants are generally entitled to recover their costs.

This court notes that plaintiffs have submitted very little argument on the specific issue of Rule 54(d) costs at all, and they may recognize that the law on this issue is against them. The court recognizes that the Fifth Circuit has often stated its preference that district courts make findings of fact justifying the imposition of costs, but, in this case, this court has no arguments on the part of plaintiffs to address, and it does not wish to argue against itself on this issue. The

general rule is that costs are available to the prevailing party under Rule 54(d), and this court regards it as being incumbent upon plaintiffs to demonstrate why this general rule should not be followed in this case. Rule 54(d) as interpreted by the Fifth Circuit seems clear enough, and this court therefore sees no basis upon which it would refuse defendants their request for costs.

It is therefore ordered that defendants' motion for attorneys' fees [105-1] is denied and their motion for costs [107-1] is granted. This court notes that defendants have submitted a bill of costs in the amount of $6,413.87, but their brief represents that they seek costs in the amount of $7,997.00. [Brief at 11]. This discrepancy is apparently due to defendants' contention that they could not fit some of their expenses in the Bill of Costs form, but this court finds their submissions in this regard to be both confusing and legally inadequate. The Bill of Costs states that defendants seek a total amount of $6,413.87, and there being no objections from plaintiffs regarding the calculated amount, this court will award defendants that amount in costs.

So ordered, this the 16th day of June, 2016.

/s/ MICHAEL P. MILLS
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF MISSISSIPPI