IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. PHOEBE PUTNEY MEMORIAL HOSPITAL, INC., Defendant.	:	Case No. 1:17-CV-201 (LAG)

ORDER

Before the Court is Defendant Phoebe Putney Memorial Hospital, Inc.'s Post-Trial Motion for Costs and Attorneys' Fees (Motion). (Doc. 98). For the reasons explained below, Defendant's Motion is **GRANTED in part** and **DENIED in part**.

BACKGROUND

In the Motion, Defendant seeks attorneys' fees following a favorable judgment at trial. (*See* Doc. 98). The Equal Employment Opportunity Commission (EEOC) filed an action on behalf of Complainant Wendy Kelley, alleging that Defendant Phoebe Putney Memorial Hospital, Inc. discriminated against Kelley "when it discharged her because of [a disability or perceived disability] and in retaliation for requesting a reasonable accommodation[,]" in violation of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.* (Doc. 1 at 1). The jury decided in favor of Defendant on all counts and answered a special interrogatory, finding that:

1. Wendy Kelley did not have a disability under the ADA;
2. Wendy Kelley was not regarded as disabled under the ADA;
3. Wendy Kelley was able, with or without reasonable accommodation, to perform the essential functions of her position;
4. Wendy Kelley's request for accommodation was not made in good faith;

5. Any Phobe Putney employee(s) who made an adverse decision regarding Wendy Kelley did not have actual knowledge of her disability;
6. The proffered reasons by Defendant for Wendy Kelley's termination were not false or a pretext for discrimination based on her disability; and
7. None of the adverse actions taken against Wendy Kelley were because of her disability.

(*See* Doc. 93 at 1–2). Judgment was entered in favor of Defendant on November 9, 2022. (Doc. 95).

On November 22, 2022, Defendant timely filed a Motion for Attorney Fees. (Doc. 98). Plaintiff responded on December 7, 2022 (Doc. 101) and filed an amended Response on December 8, 2022. (Doc. 102). Defendant filed a Reply on December 20, 2022. (Doc. 103). The Motion is now ripe for review. *See* M.D. Ga. L.R. 7.3.1(A).

DISCUSSION

Defendant requests post-trial costs and attorneys' fees pursuant to their favorable judgment, Federal Rules of Civil Procedure 11 and 54(d), and Local Rules 54.1, 54.2.1, and 54.2.2. (Doc. 98 at 1). Defendant further requests "[a]lternatively, or additionally, [that] the Court . . . find that [Defendant] has made the necessary showing pursuant to 42 U.S.C. § 12205 to be awarded its attorneys' fees" in defending against this lawsuit. (Doc. 98-1 at 7). Plaintiff argues that (1) Defendant's Bill of Costs should be denied in part for the inclusion of improper costs; (2) Defendant's Motion for Attorneys' Fees should be denied because "the EEOC's claims were not frivolous"; and (3) Defendant's request for Rule 11 sanctions should be denied because "the Commission acted reasonably" and "its actions were factually and legally justified throughout the litigation of this action." (Doc. 102 at 3–13).

I. Attorney's Fees Pursuant to the ADA's Fee-Shifting Provision

Defendant argues that they are entitled to attorneys' fees and costs pursuant to the ADA because (1) "the prevailing defendant is a non-profit hospital, and the losing plaintiff is a governmental agency that failed to investigate its claims prior to filing a lawsuit"; (2) Plaintiff "utilized false or misleading information to stave off summary

judgment"; (3) Plaintiff "failed to reassess its claims as the evidence became overwhelmingly clear those claims were frivolous"; (4) Plaintiff "suffered an adverse jury verdict after less than one hour of deliberation"; and (5) "[Plaintiff's] case was without legal or factual foundation from its inception." (Doc. 98-1 at 5). Defendant further argues that "although a showing of bad faith is not required, such was evidenced in this litigation by way of [Plaintiff] requesting punitive damages in a case where the jury soundly and quickly rejected the entirety of the [Plaintiff's] claims." (*Id.*). Plaintiff argues that because it survived summary judgment and established a *prima facie* case, "that means the claims [are] not frivolous" and that because "there was a question of fact as to whether the proffered reasons for discharging Kelley were pretextual, [this] meant that the case should proceed to trial" and such a finding "is sufficient by itself to deny the Motion." (Doc. 102 at 4).

The attorneys' fees provision of the ADA provides that:

> In any action . . . commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

42 U.S.C. § 12205. When considering the ADA's fee-shifting provision, "a district court may in its discretion award attorney's fees to a prevailing defendant in a[n] [ADA] case upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978); *see also Bruce v. City of Gainesville*, 177 F.3d 949, 951–52 (11th Cir. 1999) (applying the *Christianburg* standard to the ADA fee-shifting provision). The Supreme Court has further held that "in civil-rights cases[,] the 'plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so.'" *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1176 (11th Cir. 2005) (quoting *Christianburg*, 434 U.S. at 422).

Courts consider three factors in determining whether a claim is frivolous: "(1) whether the plaintiff established a prima facie case; (2) whether the defendant offered to settle; and (3) whether the trial court dismissed the case prior to trial or held a full-blown trial on the merits." *Sullivan v. Sch. Bd. of Pinellas Cnty.*, 773 F.2d 1182, 1189 (11th Cir. 1985) (citations omitted). "In addition to the three *Sullivan* factors," the Eleventh Circuit "has recognized a fourth consideration: whether there was enough support for the claim to warrant close attention by the court." *Beach Blitz Co. v. City of Miami Beach*, 13 F.4th 1289, 1302 (11th Cir. 2021). This fourth consideration "is a particularly important one[,]" as "when the plaintiff's claim warranted close attention, [the Eleventh Circuit] ha[s] held that a district court abused its discretion in awarding fees, even when the other guideposts pointed toward finding the claim frivolous." *Id.* (citing *Cordoba*, 419 F.3d at 1181–82); *see also PBT Real Estate, LLC v. Town of Palm Beach*, No. 19-11264, 2021 WL 5157999, at *2 (11th Cir. Nov. 5, 2021) (per curiam). It is important to note, however, that "[t]hese factors . . . are only general guidelines, and frivolity determinations must be made on a case-by-case basis." *Lawver v. Hillcrest Hospice, Inc.*, 300 F. App'x 768, 773–74 (11th Cir. 2008) (per curiam) (quoting *Quintana v. Jenne*, 414 F.3d 1306, 1309 (11th Cir. 2005)).

"The fact that a plaintiff may ultimately lose his case is not in itself a sufficient justification for the assessment of fees." *Beach Blitz Co.*, 13 F.4th at 1302 (quoting *Hughs v. Rowe*, 449 U.S. 5, 14 (1980) (internal quotation marks omitted)). Rather, "the district court 'must focus on the question whether the case is so lacking in arguable merit as to be groundless or without foundation rather than whether the claim was ultimately successful.'" *Cordoba*, 419 F.3d at 1176 (quoting *Sullivan*, 773 F.2d at 1189). "When determining whether a claim was or became frivolous, [courts] view the evidence in the light most favorable to the non-prevailing plaintiff." *Id.* at 1179 (quoting *Johnson v. Florida*, 348 F.3d 1334, 1354 (11th Cir. 2003) (emphasis omitted).

The first *Sullivan* factor clearly weighs in Plaintiff's favor as, at the summary judgment stage, the Court held that Plaintiff "established a *prima facie* case of employment discrimination under the ADA" and "established [a] *prima facie* retaliation

case." (Doc. 53 at 17, 20). Defendant attempts to negate the weight of this factor by arguing that Plaintiff relied on misleading evidence at the summary judgment stage and that, but for this reliance, the Court would not have held that Plaintiff established a *prima facie* case. (Doc. 98-1 at 7–9). Specifically, Defendant argues that "[b]ecause there was no evidence—including the medical records—demonstrating that Kelley's anxiety substantially impaired a major life activity, all of the EEOC's claims based upon her purported disability never should have been filed and likely would have been dismissed as a matter of law pursuant to Phoebe's [M]otion for [S]ummary [J]udgment, had the EEOC not made a misleading representation to the contrary." (*Id.* at 8–9). Defendant further contends that Plaintiff "misrepresented to the Court with respect to the impact upon Kelley of her anxiety that 'Kelley's generalized anxiety disorder substantially limits the major life activities of sleeping, concentrating, and communicating . . . .'" (*Id.* at 9 (quoting Doc. 39 at 17)). Defendant argues that this statement is "not supported by Kelley's deposition or trial testimony or by Kelley's medical records, and w[as] simply manufactured or embellished upon by the EEOC." (*Id.* at 9).

Plaintiff asserts that it "carefully relied upon the actual record" in its Response to Defendant's Motion for Summary Judgment and "did not make any 'misrepresentations' to the Court[.]" (Doc. 102 at 7). Further, Plaintiff argues that "the testimony both during depositions and at trial and the medical records are explicit" regarding Complainant Kelley's anxiety. (*Id.*). In support of this argument, Plaintiff points to Kelley and her medical provider, Carla Johnson's, respective testimonies during depositions and at trial "about Kelley's inability to focus, sweaty palms, racing heart, feeling faint, tearfulness, feelings of stress, and inability to sleep." (*Id.*). Plaintiff also refers to trial and deposition testimony that details Kelley's symptoms "during episodes of anxiety," including restlessness and crying spells. (*Id.*).

On summary judgment, when considering whether Complainant Kelley's anxiety disorder "substantially limited one or more major life activities[,]" the Court took Kelley's medical records and testimony provided by Kelley and her medical provider into account and determined that "[t]he EEOC presented sufficient evidence . . . that Kelley's

ability to concentrate, think, sleep, or communicate was substantially limited compared to most people in the general population." (Doc. 53 at 14–15). Despite Defendant's argument that the fact that Kelley's anxiety substantially impaired a major life activity was not supported by any evidence, the Court considered the record and found that it did support a finding that Kelley's anxiety disorder "substantially limited major life activities[.]" (*Id.* at 14–16). Specifically, the Court considered Kelley's deposition testimony, during which she stated that "she suffers from anxiety attacks that cause fainting spells, inability to focus, sweaty palms, heart racing, and feeling faint and restless." (*Id.* at 15 (citing Doc. 32-4 at 25:1–13)). Carla Johnson, Kelley's healthcare provider, corroborated Kelley's account of her anxiety and described Kelley's symptoms, including "feeling stressed, being anxious, having crying spells, and not sleeping well." (*Id.* (citing Doc. 32-8 at 17:11–18:25, 24:11–25:7, 36:25–37:15, 48:9–24)). The Court considered the very evidence that Defendant contends is misleading and concluded that, "viewing the testimony regarding Kelley's anxiety disorder and Kelley's medical records in the light most favorable to the EEOC, the EEOC . . . established that Kelley's anxiety disorder was an impairment that substantially limited major life activities, rendering her a person with an actual disability." (*Id.* at 16). The evidence at trial was consistent—even if not ultimately persuasive. (*See* Doc. 96 at 7–9, 27–28; Doc. 97 at 21:11–21). The Court also notes that Defendant does not appear to argue that Kelley's medical provider misled the Court, and Johnson corroborated Kelley's account of her anxiety during her deposition. (*See* Doc. 98-1; Doc. 53 at 15 (citing Doc. 32-8 at 17:11–18:25, 24:11–25:7, 36:25–37:15, 48:9–24)).

Defendant also argues that Plaintiff "did not even show that Ms. Hampton, as the decision-maker, knew that Kelley had been diagnosed with general anxiety." (Doc. 98-1 at 10). At summary judgment, the Court found that Plaintiff "presented evidence that Hampton knew Kelley's May 4, 2016 leave request was for medical reasons and that she knew Kelley had anxiety." (Doc. 53 at 20). The evidence considered by the Court included Kelley's deposition testimony that she "verbally [told] Melissa [Hampton] and Carol [Pressley] that [she] had anxiety[.]" (Doc. 32-4 at 88:10–14; *see* Doc. 53 at 20).

The evidence considered by the Court also included Melissa Hampton's deposition testimony that Complainant Kelley communicated that she had requested medical leave. (Doc. 32-11 at 90:2–7; *see* Doc. 53 at 20). The Court found that this evidence, at the summary judgment stage, was "sufficient circumstantial evidence of a causal connection to permit a jury to find that the EEOC ha[d] established its *prima facie* retaliation case." (Doc. 53 at 20). Moreover, during trial, Kelley proffered an email from Ms. Hampton stating "just to confirm what we discussed this afternoon, at your request I will approve the week of April 5th through 10th as in personal medical leave." (Doc. 96 at 44). During cross examination by Defendant's Counsel, Plaintiff was not questioned about whether she had communicated her diagnosis to Ms. Hampton. (*See* Doc. 97 at 1–57). Further, Defendant's Counsel did not question Kelley with regard to Ms. Hampton's knowledge of her diagnosis on direct examination or redirect. (*See id.* at 59–66, 68–71). On cross examination by EEOC's Counsel, Kelley confirmed that she asked Hampton for "changes or assistance to do [her] job because of [her] disability." (Doc. 97 at 67:24–68:8).

"In the cases in which [the Eleventh Circuit] ha[s] sustained findings of frivolity, plaintiffs have typically failed to 'introduce *any* evidence to support their claims.'" *Cordoba*, 419 F.3d at 1176 (quoting *Sullivan*, 773 F.2d at 1189 (emphasis added)). Furthermore, albeit in consideration of Rule 11, the Eleventh Circuit has held that "[a] factual claim is frivolous when it has no reasonable factual basis [and] [a] legal claim is frivolous when it has no reasonable chance of succeeding." *Gulisano v. Burlington, Inc.*, 34 F.4th 935, 942 (11th Cir. 2022) (citing *Baker v. Alderman*, 158 F.3d 516, 524 (11th Cir. 1998). The Court further explained, "[w]hen the attorney's evidence is 'merely weak,' but supports a claim under existing law after a reasonable inquiry, sanctions are unwarranted." *Id.* Sanctions are, however, warranted "when the attorney exhibits 'a deliberate indifference to obvious facts." *Id.* Here while the jury did not credit Kelley's testimony, it was sufficient—on summary judgment where the Court was required to view the evidence in the light most favorable to Plaintiff—to establish that element of Plaintiff's *prima facie* case. It cannot be said, therefore, that Plaintiff failed to introduce any evidence to support the EEOC's argument that the decisionmaker, Hampton, was

aware that Plaintiff had general anxiety disorder. Defendant has not produced evidence that Kelley lied during her deposition or that Counsel for the EEOC was deliberately indifferent to an obvious fact. Thus, while evidence of Hampton's knowledge might have been weak, that does not mean that Counsel misrepresented the facts or that the Court was misled into finding that Plaintiff stated a *prima facie* case.

Next, as Defendant did not offer to settle, this factor does not "militiate[] against a determination of frivolity." *Quintana*, 414 F.3d at 1310 (citing *Bonner v. Mobile Energy Servs. Co.*, 246 F.3d 1303, 1305 (11th Cir. 2001) (per curiam)). While the lack of a settlement offer could arguably evidence Defendant's belief that Plaintiff's case is frivolous, standing alone, the lack of a settlement offer does not support a finding that Plaintiff's case actually was frivolous. Accordingly, the second factor is neutral. The third *Sullivan* factor, whether the case was dismissed prior to trial weighs against a finding of frivolity, as the case proceeded to a "full-blown trial on the merits" on both claims. *Beach Blitz Co.*, 13 F.4th at 1302 (quoting *Sullivan*, 773 F.2d at 1189); (*See* Docs. 53, 89–91, 93).

Finally, the fourth consideration, whether the case warranted close attention by the Court, also weighs against a finding of frivolity on both claims. The Eleventh Circuit has previously explained that a claim is "not so groundless . . . as to be frivolous" where "[t]here was sufficient support in [] prior caselaw for [plaintiff's] position." *Beach Blitz Co.*, 13 F.4th at 1304. The Eleventh Circuit has also considered whether parties have provided any cases to support their arguments and whether "it was . . . obvious from the beginning that [a plaintiff's] claims were entirely frivolous." *PBT Real Estate, LLC*, WL 5157999, at *3. Courts in this circuit have also found "that a claim warrant[s] close attention when it requires thoroughly assessing the adequacy of [the] [p]laintiff's evidence, or a trial on the merits." *Club Madonna, Inc. v. City of Miami Beach*, No. 16-25378-CIV-MORENO/GOODMAN, 2023 WL 3534077, at *9 (S.D. Fla. May 18, 2023) (second and third alterations in original) (internal quotation marks omitted) (collecting cases). This case warranted close enough attention by the Court for the Court to deny summary judgment, after which the case proceeded to a jury trial. Specifically, when

denying summary judgment, the Court thoroughly considered the applicable law and evidence, including the depositions of interested parties and Complainant's medical records. *See PBT Real Estate, LLC*, 2021 WL 5157999, at *2; *Beach Blitz Co.*, 13 F.4th 1304; (*See* Doc. 53). As three of the four factors considered support a finding that Plaintiff's discrimination and retaliation claims were not frivolous, Defendant is not entitled to attorney's fees under the ADA's fee-shifting provision.

II. Attorney's Fees Pursuant to Federal Rule of Civil Procedure 11(c)

Defendant next argues that Plaintiff, "by filing the lawsuit, blatantly violated Rule 11 and made a mockery of justice and abused the processes of this Court." (Doc. 98-1 at 7). Defendant requests that the Court impose sanctions pursuant to Federal Rule of Civil Procedure 11(c) "to include, but not necessarily be limited to, payment of all of the attorneys' fees and costs incurred" in defending against the lawsuit. (*Id.*). Plaintiff argues that "Defendant's request for sanctions under Rule 11 . . . does not comply with Rule 11." (Doc. 102 at 13).

Federal Rule of Civil Procedure 11(c)(2) provides that "[a] motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b)." Rule 11(c)(2) further requires that the motion "be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets." Additionally, "[u]nder Rule 11's safe harbor provision, a motion for sanctions must be served at least 21 days before final judgment, but it may be filed after final judgment[.]" *Huggins v. Lueder, Larkin & Hunter, LLC*, 39 F.4th 1342, 1349 (11th Cir. 2022).

Although Defendant refers to Plaintiff's procedural arguments as merely "technical[,]" the provisions set forth in Rule 11 are clear. (Doc. 103 at 5). First, "[n]ot only is the separate motion requirement unambiguously demanded by Rule 11(c)(2), but also by the case law." *Barnes v. Gulfstream Aerospace Corp.*, No. CV411-037, 2012 WL 463743, at *1 (S.D. Ga. Feb. 13, 2012) (collecting cases), *R&R adopted* 2012 WL 1028781 (S.D. Ga. Mar. 26, 2012); *see also Tidwell v. Krishna Q Inv., LLC*, 935 F. Supp.

2d 1354, 1361 n.10 (N.D. Ga. 2012) ("The Court also notes that Rule 11(c)(2) . . . requires a separate motion to be filed requesting sanctions. Separate motions were not filed here that would support an award of sanctions based on Rule 11." (citations omitted)). Here, Defendant's Motion for Sanctions under Rule 11 is combined with their Motion for Attorneys' Fees under several other provisions. (*See* Docs. 98, 98-1). Furthermore, "[t]he safe harbor provision requires the moving party to serve the motion for sanctions on the nonmoving party and give it 21 days to withdraw the offending pleading before filing the motion with the district court." *Gulisano*, 34 F.4th at 945 (citing Fed. R. Civ. P. 11(c)(2)). Although a district court may consider a Rule 11 motion that is filed after final judgment, "a motion for sanctions must be served at least 21 days before final judgment." *Huggins*, 39 F.4th at 1349. Plaintiff contends, and Defendant does not deny, that "Defendant did not serve a Rule 11 motion on the EEOC pursuant to Rule 5 or provide 21 days-notice prior to filing the Motion." (Doc. 102 at 13–14; *see* Doc. 103).

Defendant also requests that the Court "*sua sponte* impose sanctions pursuant to . . . Rule [11(c)]." (Doc. 98-1 at 7; *see* Doc. 103 at 6). Rule 11(c)(3) provides that "[o]n its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b)." Due to Defendant's failure to file a separate motion and properly serve Plaintiff with a Rule 11 Motion, Defendant's "request for the Court to impose sanctions *sua sponte* under (c)(3) amounts to an end run around the safe harbor requirements of (c)(2) for parties seeking sanctions[.]" *Hornsby v. Auto. Ins. Co. of Hartford*, No. 1:17-cv-04526, 2018 WL 6720425, at *6 (N.D. Ga. Oct. 17, 2018), *R&R adopted*, 2018 WL 6720409 (N.D. Ga. Nov. 6, 2018) (citation omitted) (collecting cases). As Defendant has not complied with the requirements of Rule 11, the Court similarly declines to impose sanctions under Rule 11(c)(3).

Moreover, even if Defendant had complied with the requirements of Rule 11 discussed above, Defendant has not established that Plaintiff's claims were objectively frivolous or that EEOC Counsel should have known they were frivolous. "When deciding

whether to impose sanctions under Rule 11, a district court must conduct a two-step inquiry, determining '(1) whether the party's claims are objectively frivolous; and (2) whether the person who signed the pleadings should have been aware that they were frivolous.'" *Gulisano*, 34 F.4th at 942 (quoting *Baker*, 158 F.3d at 524). As explained above,

> [a] factual claim is frivolous when it has no reasonable factual basis. A legal claim is frivolous when it has no reasonable chance of succeeding. When the attorney's evidence is "merely weak," but supports a claim under existing law after a reasonable inquiry, sanctions are unwarranted. Sanctions are warranted, however, when the attorney exhibits "a deliberate indifference to obvious facts.

Id. Accordingly, as discussed above, Plaintiff's claim may have been weak, but it was not frivolous; nor was Plaintiff's Counsel deliberately indifferent to obvious facts. Therefore, Rule 11 sanctions, including attorneys' fees, are not appropriate here.

III. Costs Pursuant to Federal Rule of Civil Procedure 54(d), and Local Rules 54.1, 54.2.1, and 54.2.2

In addition to attorney's fees, Defendant seeks costs pursuant to the favorable judgment, Local Rules 54.1, 54.2.1, 54.2.2, and Federal Rule of Civil Procedure 54(d).[1] (Doc. 98-1 at 1, 4). Plaintiff argues that "Defendant's Bill of Costs [s]hould be [d]enied in [p]art" because it includes impermissible expenses. (Doc. 102 at 3). In their Reply, Defendant provides no argument to the contrary. (*See* Doc. 103).

Federal Rule of Civil Procedure 54(d)(1) provides that "[u]nless a federal statute, these rules, or a court order provide otherwise, costs—other than attorney's fees—should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law." Local Rules 54.1, 54.2.1, and 54.2.2 similarly allow costs to be granted to the prevailing party. The Judgment

[1] Defendant initially filed the Bill of Costs and Exhibit in Support of the Bill of Costs with the Motion on November 22, 2022. (Docs. 98-5, 98-6). Defendant filed a "corrected" Bill of Costs and Exhibit in Support of the Bill of Costs on December 6, 2022. (Docs. 99, 99-1). Defendant also filed a second amended Bill of Costs and Exhibit in Support of the Bill of Costs on December 6, 2022. (Docs. 100, 100-1). For purposes of this Motion, the Court will consider the Bill of Costs and supporting Exhibit filed at Docs. 100 and 100-1.

entered by the Court further states that "Defendant shall . . . recover costs of this action." (Doc. 95). Accordingly, "[t]he presumption is in favor of awarding costs." *Arcadian Fertilizer, L.P. v. MPW Indus. Servs., Inc.*, 249 F.3d 1293, 1296 (11th Cir. 2001) (per curiam) (citing *Manor Healthcare Corp. v. Lomelo*, 929 F.2d 633, 639 (11th Cir. 1991).

Plaintiff first argues that the photocopying charges requested by Defendant should be denied because (1) "Defendant did not present required evidence regarding the documents copied including their use or intended use"; (2) "Defendant . . . did not offer any reason why all the photocopying expenses listed in the itemized bill of costs were necessary to the defense of the claims"; and (3) "Defendant does not say what was copied or why." (Doc. 102 at 3 (citations and internal quotation marks omitted)). In their Reply, Defendant does not make any argument to the contrary or provide any further information about the purpose or necessity of the photocopies. (*See* Doc. 103).

28 U.S.C. § 1920 provides a list of costs that a judge or clerk of court may tax, and includes "[f]ees and disbursements for printing and witnesses" and "[f]ees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case[.]" 28 U.S.C. § 1920(3)–(4). The Court notes that although Defendant listed expenses in both the "[f]ees for printed or electronically recorded transcripts necessarily obtained for use in the case" and "[f]ees and disbursements for printing" columns on the Bill of Costs form, Plaintiff appears to dispute "photocopying charges" included in Defendant's Exhibit "A" to the Bill of Costs. (*See* Doc. 100 at 1; Doc. 102 at 3; Doc. 100-1 at 13–20). The amount listed as the "[t]ransaction [l]isting [t]otal" at the end of the photocopying invoice, $3,957.60, aligns with the amount that Defendant listed in the column for "[f]ees and disbursements for printing" on the Bill of Costs Form. (*See* Doc. 100-1 at 20; Doc. 100 at 1). Although the invoice lists all of the costs as "photocopying," Defendant notably did not provide an amount in the column for "[f]ees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case." (*See* Doc. 100 at 1). Rather, a review of the "Expense Listing" provided in Defendant's Exhibit supporting the Bill of Costs shows that Defendant placed the costs for the invoiced

photocopying in the column for "[f]ees and disbursements for printing." (Doc. 100; Doc. 100-1 at 13–20).

In its Response, Plaintiff points to no authority "requiring a prevailing party to prove the necessity of each and every fee for which it seeks reimbursement pursuant to 28 U.S.C. § 1920[.]" (*See* Doc. 102 at 3); *Row Equip., Inc. v. Terex USA, LLC*, No. 5:16-cv-60, 2022 WL 152869, at *2 (S.D. Ga. Jan. 18, 2022). Rather, 28 U.S.C. § 1920, "by its clear language, only requires a showing of necessity relating to '[f]ees for printed or electronically recorded transcripts' and '[f]ees for exemplification and the costs of making copies of any materials.'" *Row Equipment, Inc.*, 2022 WL 152869, at *2 (quoting 28 U.S.C. § 1920(2) & (4)). Moreover, the column under which Defendant lists costs—"[f]ees and disbursements for printing"—falls under 28 U.S.C. § 1920(3), which does not include language of necessity. Accordingly, as Defendant is not required to explain the necessity for printing costs, Defendant is entitled to recover the $3,957.60 for printing fees.

Plaintiff also objects to "lunch at Subway restaurant on the first day of trial." (Doc. 102 at 3). Defendant, however, appears to have updated the Exhibit to the Bill of Costs to exclude the contested Subway lunch. (*See* Doc. 98-6; Doc. 100-1 at 1).

IV. Bill of Costs Calculation

In the Bill of Costs, Defendant requests a total of $7,991.51 itemized as follows:

Purpose	Amount	Total
Fees for service of summons and subpoena	$20.00	
Fees for printed or electronically recorded transcripts necessarily obtained for use in the case	$3,421.56	
Fees and disbursements for printing	$3,957.60	

Other costs[2]	$592.35	
		$7,991.51

Accordingly, pursuant to the analysis above, Defendant is entitled to recover **$7,991.51** in expenses, the full amount requested. (Doc. 100).

CONCLUSION

For the reasons set forth above, Defendant's Post-Trial Motion for Costs and Attorneys' Fees (Doc. 98) is **GRANTED in part** and **DENIED in part**. Plaintiff's Counsel is **ORDERED** to pay Defendant **$7,991.51** in expenses.

SO ORDERED, this 29th day of March, 2024.

/s/ Leslie A. Gardner
LESLIE A. GARDNER, JUDGE
UNITED STATES DISTRICT COURT

[2] A full itemized list of the "other costs" can be found at Defendant's Exhibit "A" to the Bill of Costs. (Doc. 100-1).