UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Stephen Scaer et al.,
Plaintiffs

v. Case No. 24-cv-0277-LM-TSM

Nashua, NH, City of, et al.
Defendants

ORDER

Plaintiffs Stephen Scaer and Bethany R. Scaer, having prevailed in an interlocutory appeal and having entered into an agreement for the entry of judgment, now seek taxation of costs incurred in this court and in the court of appeals. For the reasons stated below, certain costs are added to the mandate of the court of appeals and others are added to the judgment in this court, with the result that all of the costs sought by the plaintiffs are awarded to them.

I. PROCEDURAL HISTORY

On December 29, 2025, the plaintiffs filed a bill of costs in the appellate court. Scaer et al. v. City of Nashua, NH, No. 25-1356, Docket.

On March 13, 2026, the Clerk of the Court of Appeals taxed these costs in favor of the plaintiffs and directed: "Pursuant to Fed. R. App. P. 39(d)(3), the district court is directed to add this taxation of costs to the mandate issued on January 13, 2026." Id., Order Granting Bill of Costs (Doc. No. 67).

After further litigation, the City made an offer of judgment under Federal Rule of Civil Procedure 68. On May 7, 2026, the plaintiffs filed a Notice of Acceptance of Defendant's Rule 68 Offer of Judgment. (Doc. No. 59). The plaintiffs' Notice of Acceptance describes the agreement as including "various costs and interest accrued," id. at 1; the Offer of Judgment as drafted includes an award of costs "equal to the amounts incurred by filing the complaint and appellate brief, together with interest at the rate set forth at RSA 336." Id. at 4. On May 21, 2026, the undersigned Clerk of Court entered judgment in accordance with, among other things, the endorsed order of May 18, 2026. (Doc. No. 60).

The plaintiffs filed a bill of costs on May 28, 2026 (Doc. No. 62). No defendant has filed an objection. Subsequently, the plaintiffs moved for an award of attorney fees, which is presently being litigated before the court. The bill of costs has now been presented to the undersigned Clerk of Court for resolution. Fed. R. Civ. P. 54(d); LR 54.1.

II. STATUTORY FRAMEWORK

"Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party." Fed. R. Civ. P. 54(d)(1). As a preliminary matter, I find that the plaintiffs are the prevailing parties for purposes of taxation of costs incurred in this court. While the City has objected to the plaintiffs' motion for attorney fees and has argued that the court should not award fees, it appears not to dispute that the plaintiffs are the prevailing parties. (Doc. No. 64-1 at 4-5). As discussed in more detail below, costs incurred in the court of appeals are apportioned to the plaintiffs pursuant to Federal Rule of Appellate Procedure 39.

The following categories of costs are authorized under 28 U.S.C. § 1920: "(1) Fees of the clerk and marshal; (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case; (3) Fees and disbursements for printing and witnesses; (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case; (5) Docket fees under section 1923 of [title 28]; (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of [title 28]."

"It is not entirely clear which party bears the burden in a request for costs. In general, the party seeking to recover costs bears the burden of showing that the amounts sought are necessary and reasonable." Mr. & Mrs. S. v. Timberlane Reg'l Sch. Dist., 03-cv-260-JD, 2004 WL 502614, at *8 (D.N.H. Mar. 15, 2004). "However, a presumption exists in favor of awarding costs to a prevailing party, requiring the non-prevailing party to overcome that presumption to avoid an award." Id. A helpful rubric endorsed by another court is that "once a non-prevailing party has raised specific objections to a bill of costs, the prevailing party must make some showing to establish that its costs are necessary and reasonable. Hillman v. Berkshire Med. Ctr., Inc., 876 F. Supp. 2d 122, 124 (D. Mass. 2012).

III. ANALYSIS OF TAXABILITY

The costs sought to be taxed fall into three categories, which I review seriatim.

A. FEES OF THE CLERK

When the plaintiffs filed their complaint, they were required to pay a fee of $405.00. As a fee of the clerk, the filing fee is taxable under 28 U.S.C. § 1920(1). $405.00 is taxed to the plaintiff for the removal fee.

B. COSTS ON APPEAL TAXED BY THE CIRCUIT CLERK

The taxation of costs on appeal is governed by Federal Rule of Appellate Procedure 39. Certain costs on appeal are taxable in the court of appeals. Fed. R. App. P. 39(e)(1). As noted above, the mandate of the court of appeals issued on January 13, 2026, and the circuit clerk entered an order on March 13, 2026, taxing certain costs to the plaintiffs and directing the district clerk to add these costs to the mandate. "If the mandate issues before costs are finally determined, the district clerk must—upon the circuit clerk's request, add the statement of costs, or any amendment of it, to the mandate." Fed. R. App. P. 39(e)(3)(C).

C. COSTS ON APPEAL TAXED BY THE DISTRICT CLERK

The default rule when a judgment is reversed is that costs are allocated against the appellee. Fed. R. App. P. 39(a)(3). In this case, the law does not provide otherwise, the parties have not agreed to a different allocation of costs, and the court of appeals has not ordered otherwise. Indeed, the circuit clerk has taxed certain costs against the appellee. Therefore, there is no basis for the undersigned clerk to depart from this allocation, and the remaining costs on appeal will be taxed against the appellant. Certain "costs on appeal are taxable in the district court for the benefit of the party entitled to costs . . . ." Fed. R. App. P. 39(f). Among these costs is "the reporter's transcript, if needed to determine the appeal . . . ." Fed. R. App. P. 39(f)(2). The plaintiffs seek to shift the cost of purchasing the transcript of the preliminary injunction in the amount of $167.20. This cost is supported by the court reporter's invoice.

When taxing appellate costs, "the district court's responsibility is not ministerial." City of San Antonio, Texas v. Hotels.com, L.P., 593 U.S. 330, 343, (2021). "[T]he district court will consider whether the costs were 'necessarily' incurred, [28 U.S.C.] § 1924, to the extent that the costs in question are taxable only if they were needed for the appeal or to stay the district court's judgment pending appeal. See [former] Rule 39(e)(2) (cost of reporter's transcript taxable only 'if needed to determine the appeal')." Id.

Here, plaintiffs' counsel aver that the transcript was "necessarily obtained for use during the appeal." (Doc. No. 62-1 at 1). I accept counsels' representation, given the procedural posture, and tax the costs of this transcript.

IV. CONCLUSION

Pursuant to Fed. R. App. P. 39(e)(3)(C) and upon the request of the Clerk of the Court of Appeals issued March 13, 2026, $897.30 is hereby added to the mandate issued on January 13, 2026. Pursuant to Fed. R. App. P. 39(f), the costs of the reporter's transcript ($167.20) shall be added to the judgment along with the filing fee ($405.00). In sum, the total cost of $1,469.50, including the costs taxed by the Clerk of the Court of Appeals and those taxed by the undersigned, shall be added to the judgment issued in this case.

SO ORDERED.

July 10, 2026

/s/ Tracy A. Uhrin
Tracy A. Uhrin
Clerk of Court

cc: Counsel of Record