

No. _____

In the Supreme Court of the United States

JOSHUA COLLETT,

Petitioner,

v.

WEYERHAEUSER COMPANY, THORNHILL FORESTRY SERVICE
INCORPORATED,

Respondent.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit*

APPENDIX TO PETITION FOR CERTIORARI

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United States Court of Appeals
for the Fifth Circuit

No. 25-30554
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 30, 2026

Lyle W. Cayce
Clerk

DOROTHY GAIL COLLETT,

Plaintiff,

versus

WEYERHAEUSER COMPANY,

Defendant,

JOSHUA D. COLLETT,

Plaintiff—Appellant,

versus

WEYERHAEUSER COMPANY; THORNHILL FORESTRY SERVICE,
INCORPORATED,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC Nos. 2:19-CV-11144,
2:19-CV-12252

Before KING, HAYNES, and HO, *Circuit Judges.*

Appendix A

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PER CURIAM:*

This case concerns the awarding of costs to prevailing defendants of significant financial resources where the plaintiffs are of limited resources. The district court granted summary judgment in favor of two defendants and awarded them costs. The plaintiffs filed a motion to reconsider the clerk of court's taxation of costs, arguing their indigency, which the district court denied. Plaintiff Joshua Collett now appeals that order. For the reasons below, we AFFIRM.

I. Background

In 2018, Weyerhaeuser Company ("Weyerhaeuser") hired a contractor, Thornhill Forestry Service, Inc. ("Thornhill"), to spray an herbicide on its property in Louisiana. The Collett family, including Dorothy Gail Collett and her son, Joshua Collett (collectively, the "Colletts"), lived across the street from a portion of the sprayed property.

The Colletts each filed separate suits in Louisiana state court against Weyerhaeuser and other named defendants, alleging chemical exposure and subsequent injuries. Weyerhaeuser removed both suits to federal district court under diversity jurisdiction, where they were consolidated. In the district court, both Dorothy Gail Collett and Joshua Collett amended their petitions to name Weyerhaeuser, Thornhill, and Lafayette Insurance Company ("Lafayette"), Thornhill's insurer, as defendants.

After years of litigation, including the district court's exclusion of medical causation testimony proffered by Dorothy Gail Collett, the district court granted summary judgment in favor of Weyerhaeuser, Thornhill, and

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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Lafayette. The district court entered a final judgment with prejudice and costs.

While Weyerhaeuser's and Thornhill's bills of costs were pending, Dorothy Gail Collett appealed the district court's exclusion of her expert testimony and the grant of summary judgment. We affirmed. *Collett v. Weyerhaeuser Co.*, No. 21-30449, 2022 WL 2387352, at *3 (5th Cir. July 1, 2022) (per curiam) (unpublished).

The district court used the clerk of court to handle bills of costs. After that appeal was complete, the clerk of court entered a ruling on the bills of costs, awarding \$24,341.85 to Weyerhaeuser and \$13,342.00 to Thornhill. The clerk of court filed memoranda explaining her reasoning for taxation of costs. The Colletts filed a "Motion to Review Costs Assessment and Plaintiffs' Indigency," arguing that they should not be obligated to reimburse defendants' costs due to their indigency. The district court treated the motion as a request for reconsideration and ordered the clerk of court to consider the motion's arguments, but the clerk reaffirmed her prior findings.

After the Colletts filed a second "Motion to Review Costs Assessment and Plaintiffs' Indigency," the district court ordered the Colletts to file a supplemental brief addressing the factors we enumerated in *Pacheco v. Mineta*, 448 F.3d 783 (5th Cir. 2006). The Colletts' supplemental brief cited, but did not further address, all of the *Pacheco* factors. It solely argued that the Colletts should not be taxed with costs because of their indigency. The district court entered a final order denying the Colletts' motion. In that order, the district court analyzed the *Pacheco* factors and determined that the Colletts had not overcome the Federal Rule of Civil Procedure 54(d)(1) presumption that costs are awarded to prevailing parties. Before us is Joshua Collett's appeal of the district court's order granting the taxation of costs.

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II. Jurisdiction & Standard of Review

The district court had diversity jurisdiction over this case under 28 U.S.C. § 1332(a). We have jurisdiction over this appeal under 28 U.S.C. § 1291 because the district court entered a final judgment and an order denying reconsideration of the taxation of costs.

We review a district court's award of costs to a prevailing party for abuse of discretion. *Edwards v. 4JLJ, L.L.C.*, 976 F.3d 463, 466 (5th Cir. 2020).

III. Discussion

Federal Rule of Civil Procedure 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.” FED. R. CIV. P. 54(d)(1). “There is a strong presumption under Rule 54(d)(1) that the prevailing party will be awarded costs.” *Cheatham v. Allstate Ins. Co.*, 465 F.3d 578, 586 (5th Cir. 2006). We have acknowledged various factors a party may demonstrate to overcome this presumption: “(1) the losing party’s limited financial resources; (2) misconduct by the prevailing party; (3) close and difficult legal issues presented; (4) substantial benefit conferred to the public; and (5) the prevailing party’s enormous financial resources.” *Pacheco*, 448 F.3d at 794.

The district court considered these factors. While acknowledging the Colletts’ “indigency and the relative wealth of Weyerhaeuser and Thornhill,” it found that there was no close legal question, no misconduct by Weyerhaeuser or Thornhill, and no substantial benefit conferred to the public by the matter. Because the district court could not “find a reason to penalize Defendants, even through *Pacheco*’s equitable considerations, [it] reluctantly den[ied] Plaintiffs’ motion.”

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The district court's conclusion was consistent with our precedent that a disparity in resources between the parties is not alone sufficient to overcome the Rule 54(d)(1) presumption. See *Moore v. CITGO Refin. and Chems. Co., L.P.*, 735 F.3d 309, 319–20 (5th Cir. 2013); *Smith v. Chrysler Grp., L.L.C.*, 909 F.3d 744, 753 (5th Cir. 2018). In *Moore*, the district court reduced costs awarded to the prevailing defendant based on “(1) a finding of plaintiffs’ good faith, (2) [the defendant’s] enormous wealth, and (3) Plaintiffs’ limited resources.” 735 F.3d at 319 (citation modified). We reversed, holding that the district court “erred as a matter of law in relying on [the defendant’s] ‘enormous wealth’—or the comparative wealth of the parties—as a basis for reducing the cost award.” *Id.* at 319–20. We rejected a “relative wealth” rationale, concluding that “the fact that the prevailing party is substantially more wealthy than the losing party is not a sufficient ground for denying or limiting costs to the prevailing party.” *Id.* at 320 (citation modified). We revisited this issue in *Smith*, holding that, even “assum[ing] that the plaintiffs brought suit in good faith” and recognizing that “their financial condition [wa]s dire,” “the district court was not required to deny [the prevailing defendant] its costs because of its comparative ability to more easily bear the costs.” 909 F.3d at 753.

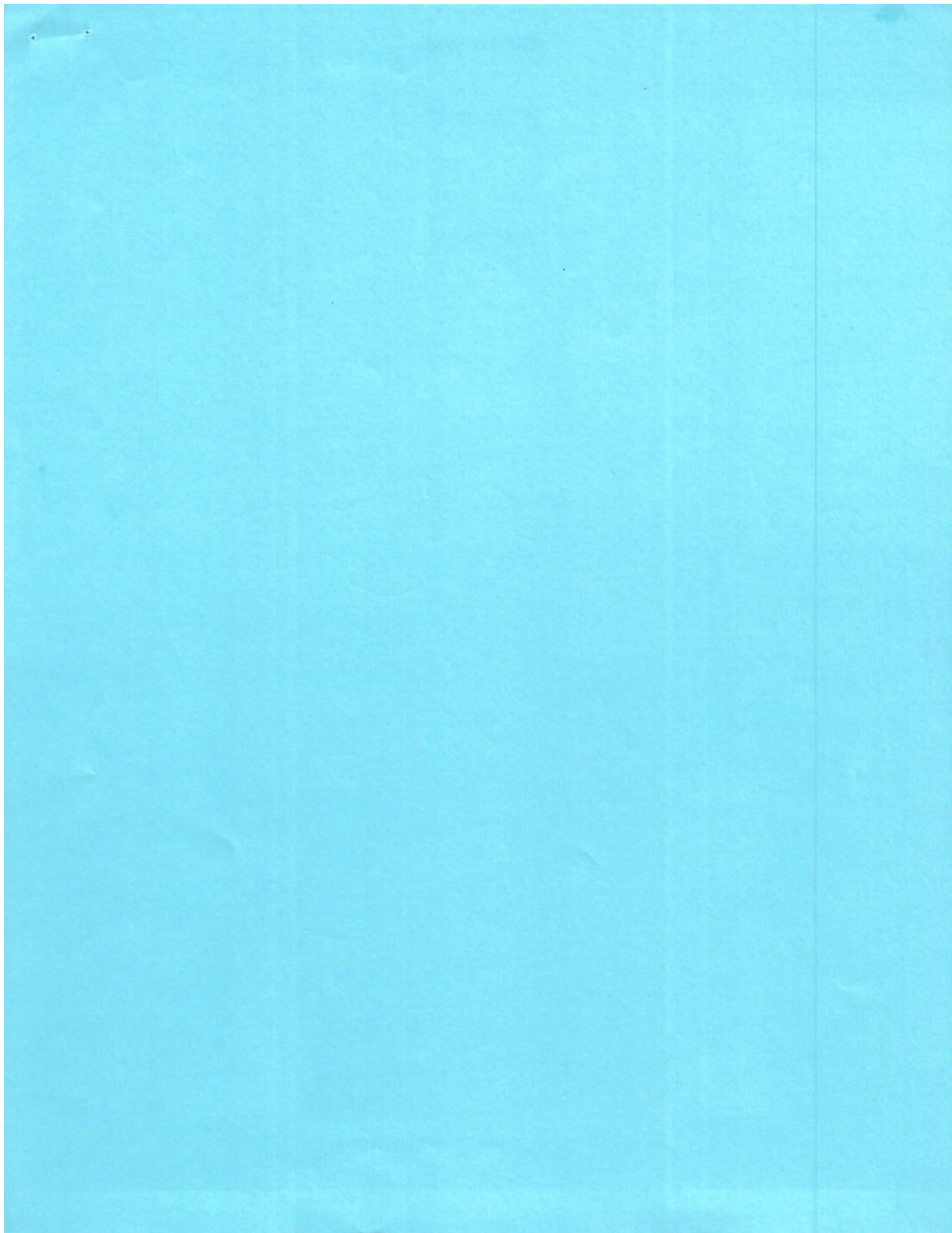
Joshua Collett does not argue on appeal that the other factors weigh in his favor. Instead, he quotes our conclusion in *Pacheco* that denial of costs should be made “on the basis of *both* the losing part[y]’s good faith *and* some other *one or more* of the factors.” 448 F.3d at 793 (final emphasis added). But our later cases make clear that the disparity in resources between the parties is not alone sufficient, as explained above.

Therefore, in analyzing the relevant factors and following our established precedent, the district court did not abuse its discretion in denying Joshua Collett’s motion to reconsider the clerk of court’s taxation of costs.

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IV. Conclusion

Accordingly, we AFFIRM.



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DOROTHY GAIL COLLETT	*	CIVIL ACTION NO. 19-11144
		c/w NO. 19-12252
VERSUS	*	
		JUDGE ELDON E. FALLON
WEYERHAEUSER COMPANY,	*	
THORNHILL FORESTRY SERVICE, INC.,	*	MAGISTRATE JUDGE
AND LAFAYETTE INSURANCE COMPANY	*	MICHAEL B. NORTH

* * * * *

ORDER & REASONS

Before the Court is a Motion to Review Costs Assessment and Plaintiffs' Indigency filed by Plaintiffs Dorothy Gail Collett and Joshua Collett. R. Doc. 234. Defendants Weyerhaeuser Company and Thornhill Forestry Service, Inc. each oppose the motion. R. Docs. 235, 236. Plaintiffs did not file replies. After a careful review of the briefing, the Clerk's prior decision, and the applicable law, the Court ordered Plaintiffs to file a supplemental brief addressing the five factors enumerated in *Pacheco v. Mineta*, 448 F.3d 783 (5th Cir. 2006). Plaintiffs filed their supplemental brief, to which Weyerhaeuser Company replied. R. Docs. 238, 239. The Court now rules as follows.

I. BACKGROUND & PRESENT MOTION

The Court assumes the parties are familiar with the background of this case and will not rehash the factual history detailed by this Court in its prior orders and reasons. *E.g.*, R. Docs. 169, 196, 208. Ultimately, this Court entered judgment in favor of Defendants Weyerhaeuser Company ("Weyerhaeuser"), Thornhill Forestry Service, Inc. ("Thornhill"), and Lafayette Insurance Company and against Plaintiffs Dorothy Gail Collett and Joshua Collett on June 28, 2021. R. Doc. 209. Thereafter, Weyerhaeuser and Thornhill filed bills of costs. R. Docs. 210, 216. The Clerk entered the bills of costs taxed against Plaintiffs on March 5, 2024. R. Docs. 226, 227.

Appendix B

25-30554.5230

This is the second Motion to Review Costs Assessment and Plaintiffs' Indigency considered in this case, more properly categorized as a request for reconsideration. *See* R. Docs. 228, 230, 231, 232, 233. The Court referred first motion for reconsideration of the costs award to the Clerk of Court, which the Clerk denied. R. Docs. 232, 233. Now, Plaintiffs file a motion identical in nearly all respects to its original motion. *Compare* R. Doc. 228-1 (original motion) *with* R. Doc. 234-1 (second motion that merely adds an additional conclusion paragraph on page 12).

Plaintiffs' motion implicitly asserts that the Clerk erred in denying reconsideration of the Court's assessment of costs onto Plaintiffs as the losing party. *See* R. Doc. 234-1. Advancing their original arguments, Plaintiffs again request the Court consider Plaintiffs' indigence. *Id.* at 4. Specifically, Plaintiffs resubmit that they "seek relief from the Court due to their indigency and inability to pay the sizable judgments for costs sought by defendants which corporations have enormous financial resources." *Id.* at 11. Weyerhaeuser and Thornhill oppose the motion. R. Docs. 235, 236. They each contend that Plaintiffs' second motion is no more than an identical appeal of the Clerk of Court's initial rulings and that the rulings were well-reasoned and thoroughly explained in two separate twenty-five-page briefs. R. Doc. 235 at 2-3; R. Doc. 236 at 1-2. Plaintiffs did not file reply briefs.

The Court then ordered Plaintiffs to file a supplemental brief addressing the five factors that courts in the Fifth Circuit consider when justifying withholding costs from the prevailing party. R. Doc. 237. Plaintiff filed a supplemental brief, and Weyerhaeuser filed an opposition. R. Docs. 238, 239.

II. LAW & ARGUMENT

Federal Rule of Civil Procedure 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.”¹ FED. R. CIV. P. 54(d)(1). This rule contains a strong presumption that the prevailing party will be awarded costs. *Schwarz v. Folloder*, 767 F.2d 125, 131 (5th Cir. 1985). The Fifth Circuit has described “the denial of costs as ‘in the nature of a penalty.’” *Pacheco v. Mineta*, 448 F.3d 783, 794 (5th Cir. 2006) (quoting *Schwarz*, 767 F.2d at 131). Review of the Clerk’s determination is proper because Rule 54(d) provides that on motion, and within seven days of the Clerk’s taxation of costs, district courts may review the Clerk’s actions. FED. R. CIV. P. 54(d).

The Fifth Circuit first enumerated five factors that courts consider when deciding whether to withhold costs from the prevailing party in *Pacheco v. Mineta*. 448 F.3d 783 (5th Cir. 2006). There, the court held that district courts in the Fifth Circuit abuse their discretion when they deny costs to the prevailing party *just* on the basis of plaintiff’s good faith in bringing the action. *Id.* at 795. The Circuit cited Wright & Miller’s *Federal Practice and Procedure* and explained the reasons invoked by other courts in withholding costs. *Id.* These reasons include (1) the losing party’s limited financial resources, (2) misconduct by the prevailing party, (3) legal issues that were close/difficult, (4) whether a substantial benefit would be conferred on the public, and (5) the prevailing party’s enormous financial resources. *Id.* at 794 (citing 10 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 2668, at 234 (1998)). The Circuit specified, however, that “every case cited by Wright and Miller for this proposition denies costs

¹ A list of taxable costs can be found at 28 U.S.C. § 1920.

on the basis of *both* the losing party's good faith *and* some other one or more of the factors listed above." *Id.*

Then, in *Moore v. CITGO Refining and Chemicals Company*, the Circuit found it "impermissible as a matter of law" to "reduc[e] or eliminat[e] a prevailing party's cost award based on its wealth—either relative or absolute." 735 F.3d 309, 320 (5th Cir. 2013). There, the court explained that the prevailing party "incurred a few thousand dollars per plaintiff in" costs, and the plaintiffs "were making in the neighborhood of \$100,000 per year." *Id.* As a result, the Circuit held that "it would have been reversible error for the district court to reduce the cost award based on a finding of 'limited resources.'" *Id.* It noted, however, that "[t]his conclusion regarding 'limited resources' has no bearing on whether a losing party who has demonstrated indigency may properly be excused from paying a prevailing party's costs or may properly be permitted to pay reduced costs." *Id.* at 320 n.9 (citing 10 JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 54.101[1] [B], AT 54–157 (3D ED. 2013)). Indeed, in that case, plaintiffs' counsel conceded at oral argument that the plaintiffs were not indigent, and the district court did not make a finding of indigency. *Id.*

Later, the Fifth Circuit more directly addressed indigent plaintiffs and held that the district court did not abuse its discretion in awarding costs to a defendant-corporation despite a plaintiff's notable financial struggles. *Smith v. Chrysler Grp., LLC*, 909 F.3d 744, 753 (5th Cir. 2018). In *Smith v. Chrysler Group*, the court assumed that the plaintiffs brought the suit in good faith and that their financial condition was dire, but still found that the district court "was not required to deny Chrysler its costs because of its comparative ability to more easily bear the costs." *Id.* The Fifth Circuit noted that the district court in *Smith* carefully walked through the five factors listed in *Pacheco* and found that the plaintiff did not overcome Rule 54(d)'s presumption that Chrysler

was entitled to costs. *Id.* While plaintiffs had shown their financial hardship, the Circuit noted that they did not show misconduct by Chrysler, that their suit presented close questions of law, nor that their case conferred a substantial benefit to the public. *Id.* Because three of the five factors weighed in favor of awarding costs, the district court granted, and the Fifth Circuit affirmed, the costs award to Chrysler. *Id.*

Here, Plaintiffs' supplemental brief does not walk through the five factors listed in *Pacheco* and instead argues solely that Plaintiffs should not be taxed with costs because of their indigency. R. Doc. 239. Plaintiffs are correct that *Moore* is not the most analogous case to their circumstances—*Smith* seems to be the most analogous case, and there, the Fifth Circuit affirmed a district judge's finding that plaintiff did not overcome Rule 54(d)'s presumption that the defendant-corporation was entitled to costs, even with the benefit of briefing on all five *Pacheco* factors. 909 F.3d at 753. Here, the Court similarly finds that Plaintiffs have not overcome the Rule 54(b) presumption that the prevailing party is entitled to costs.

First, this case ultimately did not present a close legal question. For example, in one of this Court's Order & Reasons, R. Doc. 208, we explained that "Louisiana law is well-settled that there must be something more than *fear of* exposure in chemical exposure cases." R. Doc. 208 at 14. This Court granted summary judgment in favor of Defendants, in part, because Plaintiffs did not produce evidence sufficient to sustain their claims, thus precluding this Court from assessing whether there *was* a close question of law. *Cf. I.F. v. Lewisville Indep. Sch. Dist.*, No. 14-359, 2017 WL 11630564, at *3 (E.D. Tex. May 4, 2017) (finding close and difficult legal issues because "Title IX is a complex area of the law" and the "multifarious theories of liability led to nuanced arguments by all the parties" which "was further evidenced by the extensive dispositive motions and the differing opinions of the judges assigned to th[e] matter").

Second, Plaintiffs did not suggest, and this Court did not perceive, that Defendants engaged in litigation misconduct so egregious as to warrant a denial of costs. *E.g. Robinson v. Cont'l Cas. Co.*, No. 17-508, 2022 WL 17882174, at *3 (E.D. Tex. July 13, 2022) (“Examples of misconduct that could warrant a denial of costs include refusing to produce documents during discovery, violating an order to compel, and misleading the plaintiff.”).

Finally, there is also no evidence that this matter would confer a substantial benefit to the public because, for example, “there [was] no evidence to support a claim that . . . spraying incidents caused any physical harm to Ms. Collett or Plaintiffs’ property” and the “act of spraying herbicide to maintain a commercial forest cannot be considered excessive or abusive conduct that surrounding neighbors ‘need not tolerate’ under” La. Civ. Code art. 667. R. Doc. 196 at 16; *c.f. I.F.*, 2017 WL 11630564, at *3 (finding a substantial public benefit conferred when case was not the first instance where parents sued school district for similar conduct, and news coverage garnered would encourage school to be “more cognizant of its duties under Title IX and other anti-discrimination statutes”); *Frischhertz v. SmithKline Beechan Corp.*, No. 10-2125, 2013 WL 3894021, at *4 (E.D. La. July 26, 2013) (explaining that “[t]here is a substantial benefit to the public in having close cases on issues of public safety such as the present case litigated”).

Overall, because “the denial of costs [i]s ‘in the nature of a penalty’” and the Court cannot find a reason to penalize Defendants, even through *Pacheco*’s equitable considerations, the Court must reluctantly deny Plaintiffs’ motion. *Pacheco v. Mineta*, 448 F.3d 783, 794 (5th Cir. 2006) (quoting *Schwarz*, 767 F.2d at 131). This Court, like the Clerk of Court, notes the difficult medical battles faced by Joshua and the impact of his declining health on the family business. *See* R. Doc. 233 at 5-6. The Fifth Circuit, however, clearly cautioned in *Moore* that district courts “err[] as a

matter of law in relying on [a defendant's] 'enormous wealth'—or the comparative wealth of the parties—as a basis for reducing the cost award." *Moore*, 735 F.3d at 319-20.

Unfortunately, Plaintiffs have not advanced any arguments for their entitlement to a reduction or elimination of the costs award based on any factors beyond their indigency and the relative wealth of Weyerhaeuser and Thornhill. *See generally* R. Doc. 239. As the Clerk concluded, under present Fifth Circuit law, this Court cannot deny or reduce the awarded Rule 54(d) costs based on Plaintiffs' indigency alone. R. Doc. 233 at 6 ("The undersigned . . . is firmly left with the conclusion that, while certainly compelling, the personal, financial, and medical circumstances of the plaintiffs are not factors upon which denial or reduction of Rule 54(d) costs in favor of wealthier defendants can be based under Fifth Circuit law."). Perhaps an appeal of this case will allow the Circuit to reconsider its present position and create a category of "special exceptions" for those cases in which their current rule produces such severe results. But this Court is bound by their current rule and must reluctantly deny Plaintiffs' motion.

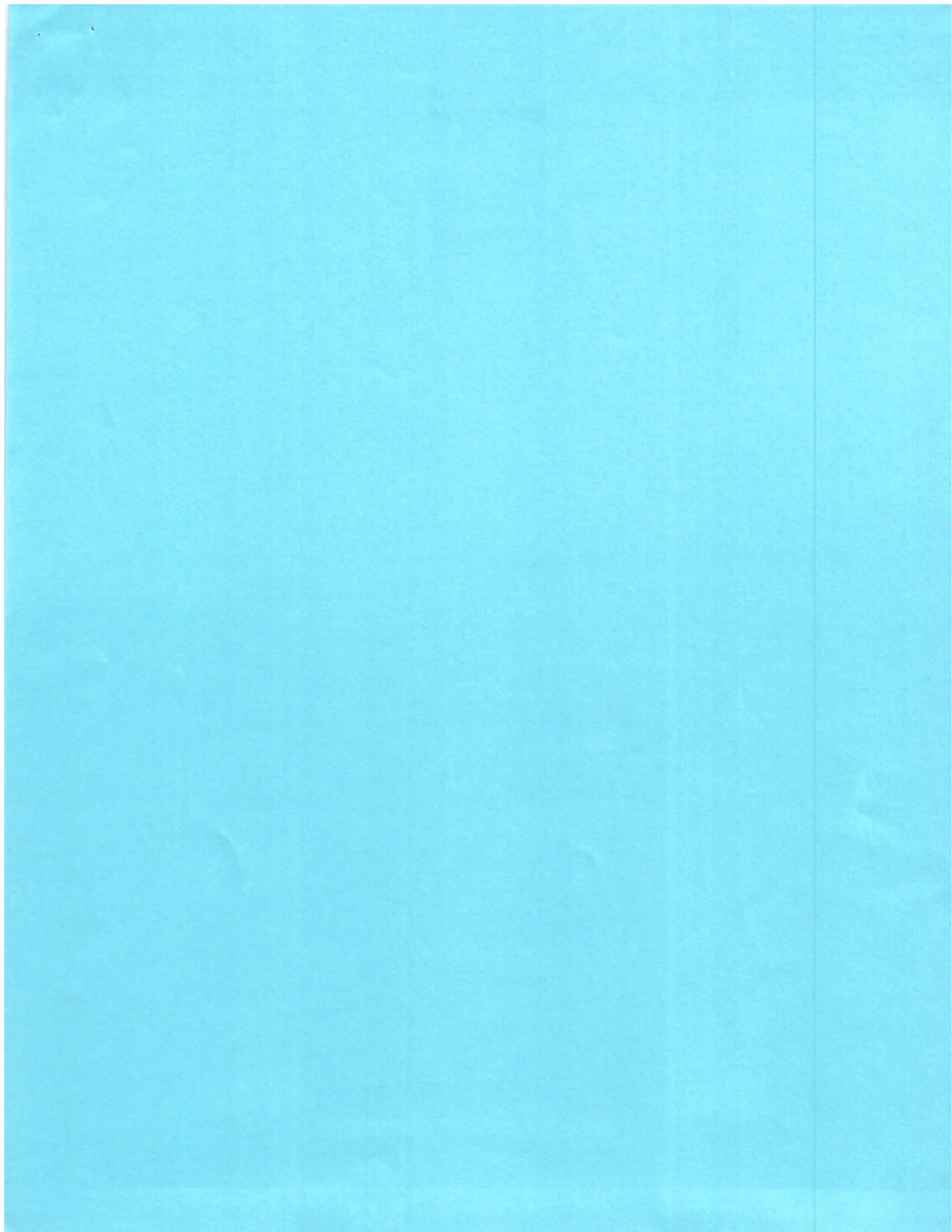
III. CONCLUSION

For the aforementioned reasons,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Review Costs Assessment and Plaintiffs' Indigency, R. Doc. 234, be **DENIED**.

New Orleans, Louisiana, this 26th day of August, 2025.


THE HONORABLE ELDON E. FALLON



**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

DOROTHY GAIL COLLETT

CIVIL ACTION

versus

No. 19-11144

**WEYERHAEUSER COMPANY,
THORNHILL FORESTRY SERVICE, INC.,
and LAFAYETTE INSURANCE COMPANY**

consolidated with

JOSHUA D. COLLETT

No. 19-12252

versus

**WEYERHAEUSER COMPANY,
THORNHILL FORESTRY SERVICE, INC.,
and LAFAYETTE INSURANCE COMPANY**

SECTION: L/5

**This document relates to:
Dorothy Gail Collett & Joshua Collett**

**CLERK'S RULING ON MOTION FOR
RECONSIDERATION OF TAXATION OF
RULE 54(d)(1) COSTS AGAINST PLAINTIFFS,
DOROTHY GAIL COLLETT AND JOSHUA COLLETT**

The Clerk taxed costs totaling \$24,341.85 under Federal Rule of Civil Procedure 54(d)(1) in favor of defendant Weyerhaeuser Company (hereinafter "Weyerco") against plaintiffs, Dorothy Gail Collett ("Gail") and Joshua D. Collett ("Joshua"), specifying that certain costs were taxed individually against Gail, certain costs were taxed individually against Joshua, and certain costs were taxed against them jointly and severally.¹ The Clerk also taxed costs totaling \$13,342.00 in favor of defendant Thornhill Forestry Service (Thornhill), again taxing some

¹ Doc. 226, Civil Action 19-11144. All subsequent record document references which are included herein are to Civil Action 19-11144 in these consolidated actions.

Appendix C

transcript costs individually against Gail, some individually against Joshua, and some to be owed jointly and severally.² The twenty-five page cost ruling was entered after the Clerk conferred with counsel regarding disputed issues, briefing was provided, and additional research was done by the Clerk.

Plaintiffs Gail and Joshua filed a joint motion to review costs assessment and plaintiffs' indigency, seeking review of the Clerk's 54(d)(1) costs ruling.³ Weyerco and Thornhill both filed responses in opposition to plaintiffs' joint motion for review.⁴ The Court ordered that the motion be treated as a request for reconsideration and that the arguments in the motion be considered by the Clerk.⁵

For the reasons discussed below, plaintiffs' motion for review, converted into a motion for reconsideration, of the costs ruling under Fed. R. Civ. P. 54(d)(1) is without merit. Plaintiffs do not demonstrate any factual or legal error in the Bill of Costs ruling and primarily seek reconsideration based on their indigency, an argument they did not formally pursue in their initial opposition memoranda to the defendants' bills of costs. The overarching grounds upon which they object to the Rule 54(d)(1) assessment of costs against them, that they were in good faith and that the "Colletts seek relief from the Court due to their indigency and inability to pay the sizeable judgments for costs by defendants which corporations have enormous financial resources",⁶ was squarely and unequivocally rejected as a matter of law by the Fifth Circuit in

²Doc. 227.

³Doc. 228.

⁴Docs. 230 (opposition by Weyerco) and 231 (opposition by Thornhill).

⁵Doc. 232.

⁶Doc. 228-1, p. 12.

Moore v. CITGO Refinishing and Chemicals Company, 735 F.3d 309 (5th Cir. 2013).

Recognizing that a district court is authorized to deny an award for costs, the court in *Pacheco v. Mineta*, 448 F.3d 783 (5th Cir. 2006), found that a district court's denial or reduction of Rule 54(d)(1) costs is reviewed for an abuse of discretion.⁷ *Pacheco* provided a list of reasons that might support denial or reduction of costs, but, according to *Moore*, the court "expressly declined to 'decide whether *any* of these is a sufficient reason to deny costs.'"⁸ When reviewing the district court's decision reducing Rule 54(d)(1) costs, *Moore* found that the district court "erred as a matter of law in relying on CITGO's 'enormous wealth'—or the comparative wealth of the parties—as a basis for reducing the cost award."⁹ The *Moore* court determined that "Congress did not intend Rule 54(d) to be swallowed by an 'enormous' or 'relative' wealth exception: As a practical matter, the approach adopted by the district court [in reducing the defendant's cost award due to plaintiffs' good faith, the defendant's enormous wealth, and the plaintiffs' limited resources] would be impermissibly punitive by preventing profitable corporations . . . from recovering costs when litigating against individuals acting in good faith."¹⁰ After detailed discussion and consideration of relevant caselaw from other appellate courts, the *Moore* court held that "[c]onsistent with the great weight of authority from the federal circuits, reducing or eliminating a prevailing party's cost award based on its wealth—either relative or absolute—is impermissible as a matter of law."¹¹ It reversed the district court's order reducing

⁷ 448 F.3d at 793.

⁸ *Moore*, 735 F.3d at 319 (quoting *Pacheco*, 448 F.3d at 794 n. 18).

⁹ 735 F.3d at 319-20.

¹⁰ *Id.* at 320.

¹¹ *Id.*

costs and rendered a cost award in favor of CITGO for \$53,065.72.¹²

The plaintiffs have not cited any case from the Fifth Circuit indicating that the district court has discretion to deny or reduce Rule 54(d)(1) costs based upon losing party's limited financial resources, combined with good faith and/or the defendant's substantial resources. Specifically, in confronting the argument that costs should be denied to plaintiff because of indigence, subsequent to *Moore*, the Fifth Circuit firmly stated that "we have never held that the 'limited resources' of the losing party provide a basis for denying the prevailing party its costs." *U.S. ex rel Long v. GSDMidea City, L.L.C.*, 807 F.3d 125, 129 (5th Cir. 2015)(citing *Moore*, 735 F.3d at 320). No Fifth Circuit case decided after *Moore* and *GSDMidea City*, or at least none cited by plaintiffs or discovered by the Clerk, has indicated retreat from the interpretation of Rule 54(d)(1) in these two decisions.

The plaintiffs do not distinguish either *Moore* or *GSDMidea City* in their attempt to have the district court eliminate or reduce the Rule 54(d)(1) award of costs to the defendants, but instead rely on two cases from other circuits. *Durrett v. Jenkins Brickyard*, 678 F.2d 911 (1982), is inapplicable as the case does not concern taxation of costs under Rule 54(d)(1), but instead is an appeal of denial of assessment of attorney's fees under Title IV of the Civil Rights Act.¹³ The Seventh Circuit case cited by plaintiffs, *Rivera v. City of Chicago*, 469 F.3d 631 (7th Cir. 2006), recognizes that in that circuit, the district court may consider the losing party's indigence in determining whether to award costs.¹⁴ Significantly, *Rivera* lists other circuits where indigence may be considered in determining Fed. R. Civ. P. 54(d) costs, but the Fifth

¹² *Id.*

¹³ 678 F.2d at 917.

¹⁴ 469 F.3d at 635.

Circuit is not among them.¹⁵ The *Rivera* decision is contrary to *Moore* and *GSDMidea City* and does not apply in the Fifth Circuit.

The Fifth Circuit considered the cost rulings of other circuits when deciding *Moore* and straightforwardly rejected comparison of the parties financial status as a basis for deciding Rule 54(d) costs.¹⁶ Instead of adopting financial ability to pay as a factor in reviewing cost awards, the *Moore* court relied specifically upon language in *Cherry v. Champion International Corporation*, 186 F.3d 442 (4th Cir. 1999), in rejecting such an approach. In *Cherry*, the court found that “the plain language of Rule 54(d) does not contemplate a court basing awards on a comparison of the parties’ financial strengths. To do so would not only undermine the presumption that Rule 54(d)(1) creates in prevailing parties favor, but it would also undermine the foundation of the legal system that justice is administered to all equally, regardless of wealth or status.”¹⁷

Plaintiffs’ arguments for reconsideration or review rely nearly entirely on (1) repeating at length the facts of the case and arguing that they were in good faith in bringing the case, (2) describing their most unfortunate medical conditions, particularly that of Joshua who is now a double amputee, and (3) describing the precipitous decline in their financial situations and personal lives since their complaints were filed and judgment was entered dismissing their claims. Accepting as true the factual statements outlining the unfortunate circumstances of Gail and Joshua, it cannot reasonably be disputed that the personal, medical, and financial challenges

¹⁵ *Id.*

¹⁶ See *Moore*, 735 F.3d at 320 and cases cited at n.7 (“At least four circuits have rejected a ‘relative wealth’ rationale and ‘[t]he fact that the prevailing party is substantially more wealthy than the losing party is not a sufficient ground for denying or limiting costs to the prevailing party.’”).

¹⁷ *Moore*, 735 F.3d at 320 (quoting *Cherry*, 186 F.3d at 448).

faced by the plaintiffs are substantial and crushing. The Rule 54(d)(1) taxation of costs against them will undoubtedly add to their burdens.

Plaintiffs have not demonstrated that Rule 54(d)(1) of the Federal Rules of Civil Procedure, as interpreted by the Fifth Circuit, particularly in *Moore* and *GSDMidea City*, provides discretion in these circumstances to deny or reduce costs to wealthier corporate prevailing parties because the plaintiffs are in extremely difficult financial circumstances. To be sure, any discretion to reduce or deny Rule 54(d) costs lies with the district court and not the clerk, but the rule allows for the clerk to tax costs, subject to review by the court. The undersigned has studied the facts and circumstances of this case in detail and also attempted to research exhaustively the issues raised by the parties, and is firmly left with the conclusion that, while certainly compelling, the personal, financial, and medical circumstances of the plaintiffs are not factors upon which denial or reduction of Rule 54(d) costs in favor of the wealthier defendants can be based under Fifth Circuit law. *See Smith v. Chrysler Group*, 909 F.3d 744 (5th Cir. 2018).¹⁸

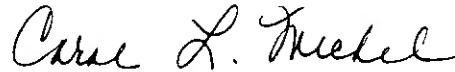
In addition, Plaintiffs also re-urge, without citation to authority, that the clerk erred in taxing some transcript costs because the transcripts were unnecessary, that video deposition transcript costs should not have been taxed along with written transcript costs, that the transcript costs were excessive, and Thornhill failed to share a copy of a transcript of an herbicide expert upon request. Plaintiffs provide no additional facts or law in support of these arguments, which have been considered and discussed in the clerk's taxation of cost ruling. Plaintiffs have

¹⁸ In *Smith*, the Fifth Circuit affirmed the taxation of \$29,412.29 in costs in favor of the prevailing party, Chrysler, and against losing parties, the widow and three children of the decedent and against whom summary judgment was entered. The *Smith* court found no error in the district court's decision declining to withhold costs solely on the basis of financial hardship, citing *Moore* and Rule 54(d). 909 F.3d at 753.

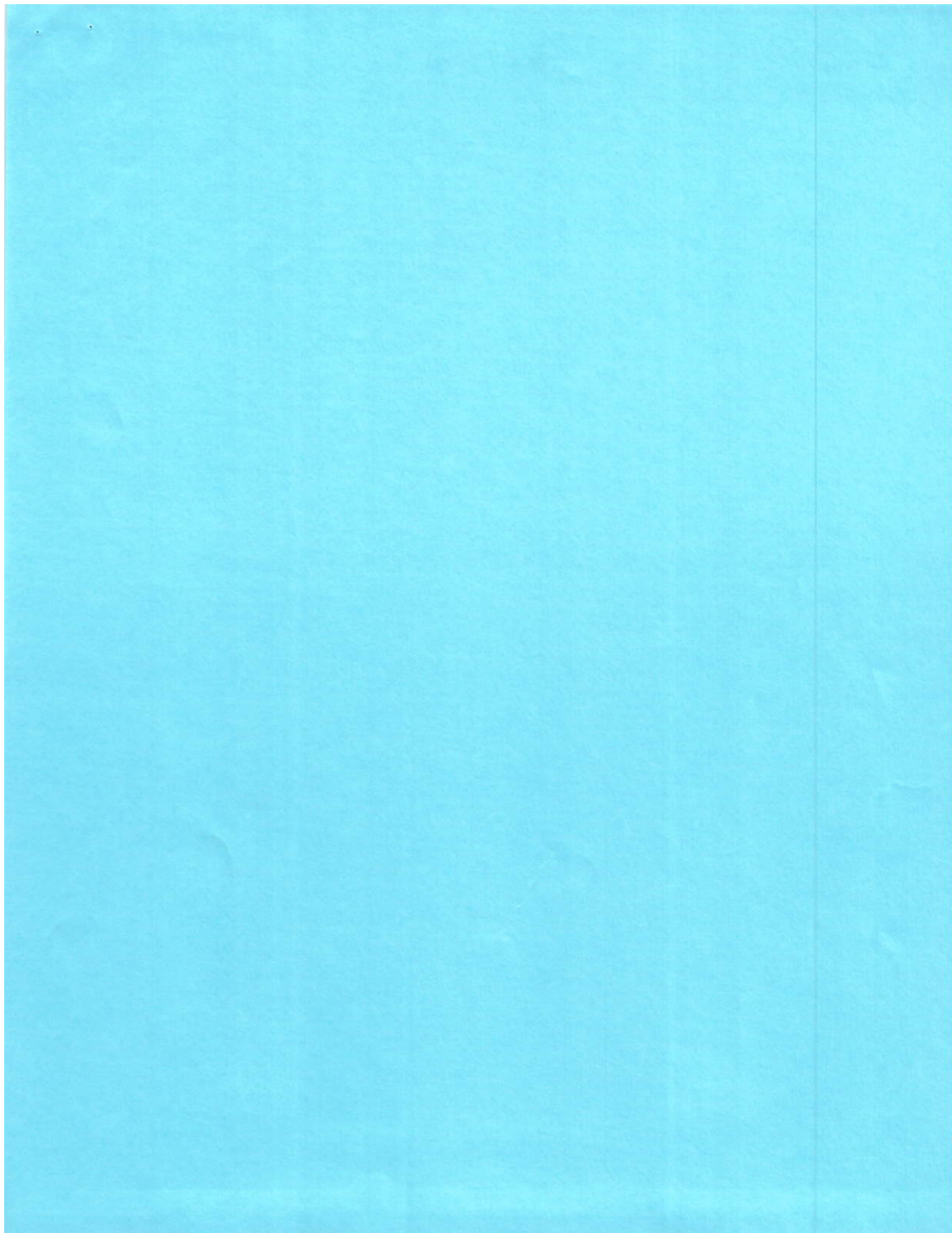
provided no legal or factual grounds for reconsideration on those issues.

For the reasons stated above, the motion of plaintiffs, Dorothy Gail Collette and Joshua Collet, to review costs assessment and plaintiffs' indigency, which the court directed be considered by the clerk as a motion for reconsideration, is **DENIED**.

New Orleans, Louisiana, this 21st day of March, 2025.



CAROL L. MICHEL
Clerk of Court



**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Joshua D. Collett, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Self-employment	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Income from real property (such as rental income)	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Interest and dividends	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Gifts	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Alimony	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Child Support	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Disability (such as social security, insurance payments)	\$ <u>1148.</u>	\$ _____	\$ _____	\$ _____
Unemployment payments	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Other (specify): <u>parents</u>	\$ <u>300.</u>	\$ _____	\$ _____	\$ _____
<u>(food and transportation)</u>				
Total monthly income:	\$ <u>1448</u>	\$ _____	\$ _____	\$ _____

Appendix D

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>N/A</u>	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
<u>N/A</u>	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>0</u>	\$ _____
Are real estate taxes included? ☐ Yes ☒ No		
Is property insurance included? ☐ Yes ☒ No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>280.</u>	\$ _____
Home maintenance (repairs and upkeep)	\$ <u>50.</u>	\$ _____
Food - <i>my parents usually provide meals</i>	\$ <u>150.</u>	\$ _____
Clothing	\$ <u>30.</u>	\$ _____
Laundry and dry-cleaning	\$ <u>0.</u>	\$ _____
Medical and dental expenses	\$ <u>50.</u>	\$ _____

D2

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ 50.00
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Capital One (checking)	\$ 50.00	\$
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☒ Home Value \$ 4000. (mobile home) ☐ Other real estate Value _____

☒ Motor Vehicle #1 Year, make & model 2006 Chevy Blazer ☐ Motor Vehicle #2 Year, make & model _____
Value \$ 1000 No tag/Not running Value _____

☒ Other assets Description 2 acres (legal owner) + buildings my parents' fixed up
Value \$ 60,000

D3

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>0.</u>	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>80.</u>	\$ _____
<i>internet & video games</i>		
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>220.</u>	\$ _____
Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ <u>0</u>	\$ _____
Installment payments		
Motor Vehicle	\$ <u>0</u>	\$ _____
Credit card(s)	\$ <u>0</u>	\$ _____
Department store(s)	\$ <u>0</u>	\$ _____
Other: _____	\$ <u>0</u>	\$ _____
Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ _____
Other (specify): <u>cell phone (Att)</u>	\$ <u>100.</u>	\$ _____
Total monthly expenses:	\$ <u>926.</u>	\$ _____

D4

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☐ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

My Affidavit and photographs from 2024 are attached, regarding my medical problems.

In 2026, I have passed out at home and been hospitalized several times, as a result.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 4, 2026

David C. Jones
Notary Public

D5

Joshua D. Callet
(Signature)



PARISH OF WASHINGTON

STATE OF LOUISIANA

AFFIDAVIT

BEFORE ME, the undersigned authority came and personally appeared

JOSHUA D. COLLETT

who after being duly sworn, did depose and state as follows:

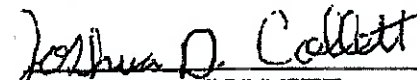
1. That his date of birth is June 1, 1982.
2. That his sole income is a monthly SSI check in the amount of \$943.00.
3. That his only possessions are a 2-acre piece of land with several small buildings that his parents put in his name about 30 years ago, a single wide mobile home that he inherited from his grandfather and an old pick-up truck with little value.
4. That in August, 2021, he developed a serious infection in his lower right leg which eventually led to the amputation of that limb below the knee.
5. That in July, 2022, a similar infection appeared in his left ankle and that his podiatrist entered that left ankle joint through three large incisions to clean out the infection, but a severe fracture of his left heel was discovered in the process.
6. That his doctors' efforts to cure that second infection failed and his lower left leg was amputated in December, 2022.
7. That, photographs of the prosthetics on his lower limbs are attached hereto.
8. That a similar infection appeared in his left wrist in 2023, which resulted in surgery. At this point, that infection has not reappeared.



D6

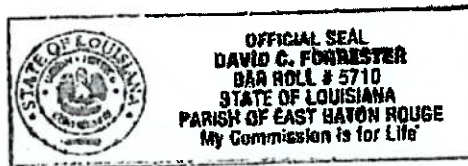
25-30554.5198

9. That in January, 2024, he was hospitalized in Covington with kidney stones, which is a lifelong chronic condition; and that during that hospitalization, the stump on his left leg burst open requiring extensive hospitalization and wound care.
10. That since that time, he has mostly been confined to a wheelchair.


JOSHUA D. COLLETT

Thus done and signed at Angie, Louisiana, this 10th day of March, 2024.


NOTARY PUBLIC



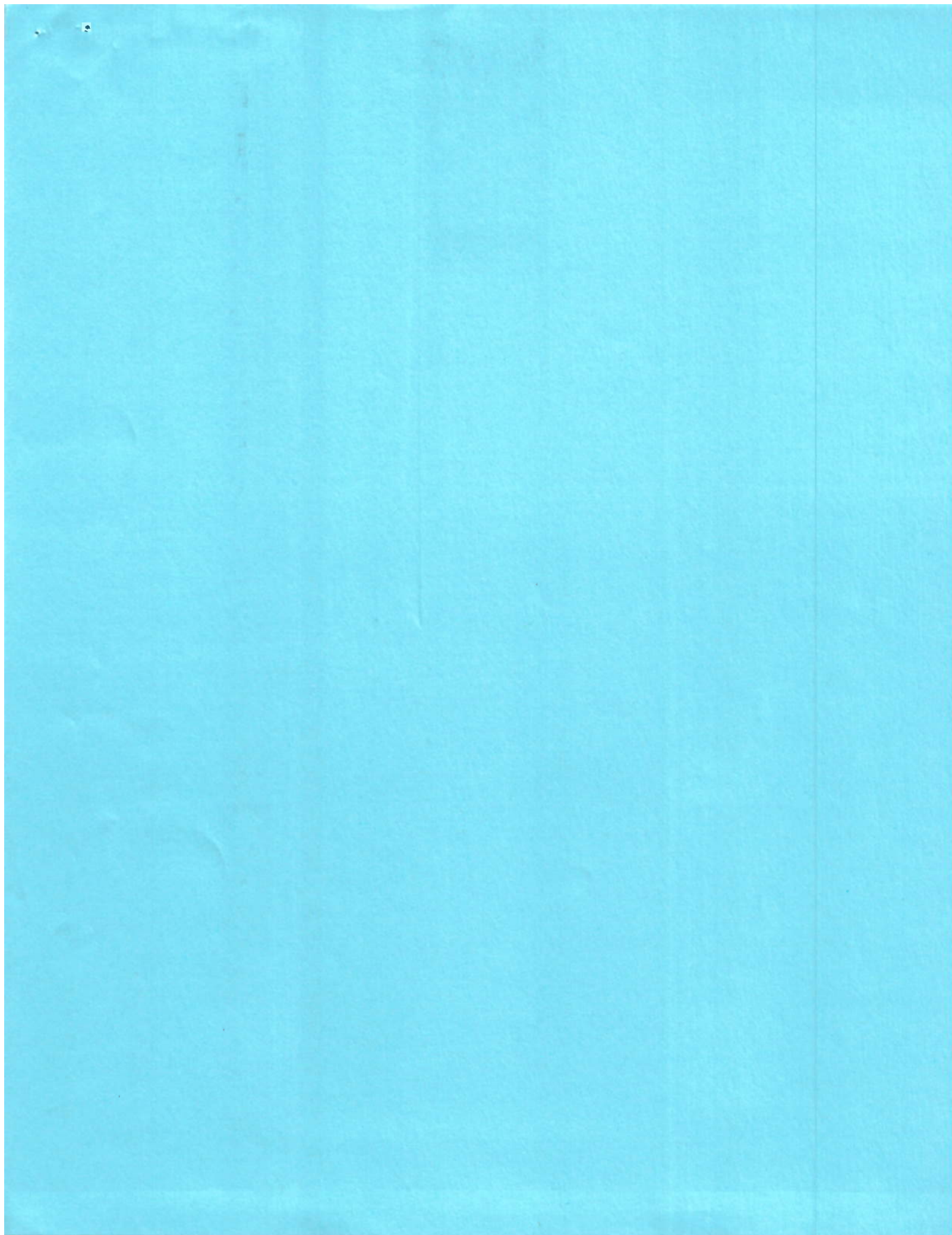
D7

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D8





UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DOROTHY GAIL COLLETT	*	CIVIL ACTION NO. 19-11144
		c/w NO. 19-12252
VERSUS	*	
		JUDGE ELDON E. FALLON
WEYERHAEUSER COMPANY,	*	
THORNHILL FORESTRY SERVICE, INC.,	*	MAGISTRATE JUDGE
AND LAFAYETTE INSURANCE COMPANY	*	MICHAEL B. NORTH

* * * * *

ORDER

Before the Court is a Motion to Proceed in Forma Pauperis filed by Plaintiff Joshua Collett. R. Doc. 242. Pursuant to Federal Rule of Appellate Procedure 24(a)(1), “a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court.” Fed. R. App. P. 24(a)(1). The motion must have an affidavit attached that “shows in detail prescribed by Form 4 of the Appendix of Forms the party’s inability to pay or to give security for fees and costs.” *Id.* at (a)(1)(A). Mr. Collett has attached a Form 4 Affidavit Accompanying Motion for Permission to Appeal in Forma Pauperis to his motion. R. Doc. 242-3. The affidavit must also state his entitlement to redress and the issues he plans to present on appeal. Fed. R. App. P. 24(a)(1)(B)–(C). The Court finds that his affidavit complies with all the requirements of Rule 24(a). Accordingly;

IT IS ORDERED that the motion is **GRANTED**. Plaintiff Joshua Collett may proceed on appeal in forma pauperis.

New Orleans, Louisiana, this 30th day of September, 2025.


THE HONORABLE ELDON E. FALLON

Appendix E