

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2022 CA 1136

JAMES BULLMAN, KIRK GREEN, STEPHEN HANDWERK, DARRYL
MALEK-WILEY, AMBER ROBINSON, AND POOJA PRAZID

VERSUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA
SECRETARY OF STATE

consolidated with

2022 CA 1137

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE LOUISIANA STATE CONFERENCE, POWER
COALITION FOR EQUITY AND JUSTICE, DOROTHY NAIRNE, EDWIN
RENE' SOULE', ALICE WASHINGTON AND CLEE EARNEST LOWE

VERSUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA
SECRETARY OF STATE

Judgment Rendered: APR 14 2023

On appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number C716690 c/w C716837

Honorable Donald R. Johnson, Judge Presiding

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Wolfe, J. dissents with reasons

*Miller, J. concurs &
assigns reasons*

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* * * * *

BEFORE: GUIDRY, C.J., WOLFE, AND MILLER, JJ.

GUIDRY, C.J.

The defendant appeals a judgment of the trial court assessing costs. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On March 10, 2022, James Bullman, Kirk Green, Stephen Handwerk, Darryl Malek-Wiley, Amber Robinson, and Pooja Prazid (the Bullman plaintiffs) filed suit against the defendant herein, R. Kyle Ardoin, in his official capacity as Secretary of State for the State of Louisiana. The plaintiffs contended that Louisiana's congressional districts were malapportioned, unconstitutional, and required redrawing.¹ The Secretary of State, in response, filed exceptions pleading the objections of lack of subject matter jurisdiction, prematurity, no cause of action, and no right of action.² The Secretary of State also filed an answer to the petition on March 31, 2022.

Thereafter, on April 1, 2022, the plaintiffs moved to voluntarily dismiss their claims against the Secretary of State, without prejudice, and with each party to bear its own costs.³ After a hearing, the trial court dismissed the claims against the Secretary without prejudice. A judgment in favor of the plaintiffs, granting the motion to dismiss without prejudice and ordering each party to pay its own costs, was signed on May 5, 2022. The Secretary now appeals, arguing that the trial

¹ Plaintiffs-intervenors, Michael Mislove, Lisa J. Fauci, Robert Lipton, and Nicholas Mattei (the Math/Science plaintiffs), intervened in this suit. Additionally, the National Association for the Advancement of Colored People Louisiana State Conference, the Power Coalition for Equity and Justice, Dorothy Nairne, Edwin Rene' Soule', Alice Washington, and Clee Earnest Lowe (the NAACP plaintiffs) filed suit against the Secretary of State, contending the same. This suit and the NAACP suit were consolidated on March 22, 2022. Thereafter, Clay Schexnayder, in his official capacity as the Speaker of the Louisiana House of Representatives, and Patrick Page Cortez, in his official capacity as the President of the Louisiana Senate, filed petitions to intervene in the consolidated matter alongside the defendant. Jeff Landry, in his official capacity as Attorney General and chief legal officer of the State of Louisiana, also intervened alongside the defendant.

² There were no rulings on these pleadings.

³ The Secretary of State objected to the request for a dismissal without prejudice as well as the request for each party to bear its own costs.

court erred in not requiring the plaintiffs to bear all costs in their voluntary dismissal.

DISCUSSION

The defendant argues that the judgments herein, which granted the plaintiffs' motion for a dismissal without prejudice, failed to assess all costs against the plaintiffs. Respectively, La. C.C.P. art. 1671 provides, in pertinent part, "A judgment dismissing an action without prejudice shall be rendered upon application of the plaintiff and upon his payment of all costs" Louisiana Code of Civil Procedure article 1920 states, in pertinent part, "Except as otherwise provided by law, the court may render judgment for costs, or any part thereof, against any party, as it may consider equitable."

The general rule is that the plaintiff, and not the defendant, is responsible for the payment of all costs upon a voluntary dismissal. See Taylor v. Zeno, 595 So. 2d 1210, 1211 (La. App. 3d Cir. 1992); see also Shaw Group, Inc. v. McCall, 17-1188 (La. App. 1st Cir. 9/6/17), 2017 WL 3888829, writ denied, 17-2049 (La. 1/29/18), 233 So. 3d 610. Article 1671, however, does not mandate that the plaintiff pay all costs whenever a voluntary dismissal without prejudice is granted. See Speaks v. New York Life Insurance Company, 96-2483, p. 5 (La. App. 4th Cir. 4/30/97), 693 So. 2d 340, 343, writ denied, 97-1516 (La. 9/26/97), 701 So. 2d 987.

In the present matter, after the Louisiana Legislature adopted a new congressional redistricting plan, the Governor vetoed that plan, and the plaintiffs filed suit contending that "[the trial court] must intervene to ensure Plaintiffs and other voters do not suffer unconstitutional vote dilution." An expedited scheduling conference was requested by the plaintiffs, with the trial court ordering a status conference "on the Court's motion on a weekly basis" The trial court also ordered the parties to submit their findings of fact, conclusions of law, and proposed judgments by March 25, 2022. The Legislature, however, voted to

override the Governor's veto, on March 30, 2022, thereby enacting Louisiana's new congressional districts and making this matter moot.

According to the plaintiffs, at the time of filing suit, the legislative process had reached an "impasse" and the Legislature had not overridden a gubernatorial veto in nearly 30 years. The defendant, however, contended that the plaintiffs' lawsuit was both premature and speculative, and that the Legislature was never at an impasse.

According to the trial court, this litigation was brought in good faith. Moreover, as expressed by the trial court concerning the assessment of court costs, "Louisiana very seldom has faced this issue of impasse litigation." The trial court noted that it wanted the perspective of the intervenors and "to consider whether or not the Governor wanted to express [a] position by way of intervention."⁴ The trial court also noted that the pleadings and the directions given to the litigants by the court had to be taken into account.

The trial court apparently found, given the facts and circumstances unique to this case, compelling reasons to deviate from the general rule under La. C.C.P. art. 1671. Having reviewed the record, we find no abuse in the trial court's discretion. We therefore find no merit in the assignment of error.

CONCLUSION

For the above and foregoing reasons, the trial court's May 5, 2022 judgment in favor of James Bullman, Kirk Green, Stephen Handwerk, Darryl Malek-Wiley, Amber Robinson, and Pooja Prazid (the Bullman plaintiffs) is affirmed. All costs

⁴ We note that the intervenors Clay Schexnayder and Patrick Page Cortez filed exceptions to the plaintiffs' petitions. We also note that the Bullman plaintiffs filed a "statement" regarding the Governor's status as an indispensable party to this litigation.

of this appeal in the amount of \$6,806.87 are assessed to the defendant/appellant, R. Kyle Ardoin, in his official capacity as Louisiana Secretary of State.⁵

AFFIRMED.

⁵ 2022 CA 1136 c/w 2022 CA 1137, 2022 CA 1138 c/w 2022 CA 1139, and 2022 CA 1140 c/w 2022 CA 1141 were consolidated for consideration by this court on February 23, 2023.

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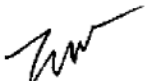
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WOLFE, J., dissenting.

I interpret La. Code Civ. P. art. 1671 to incorporate the general rule and accepted practice that the plaintiffs, not the defendants, are responsible for the payment of all costs upon granting the plaintiffs' motion for voluntary dismissal. See Shaw Group, Inc. v. McCall, 2017-1188 (La. App. 1st Cir. 9/6/17), 2017 WL 3888829, *1 (unpublished writ action); Taylor v. Zeno, 595 So.2d 1210 (La. App. 3d Cir. 1992). The plaintiffs in this suit admittedly filed suit prematurely; therefore, they should bear the burden of the costs associated with the voluntary dismissal of their suit. I find no basis for assessing costs to the defendants where there has been no ruling against them.

JAMES BULLMAN, ET AL.

STATE OF LOUISIANA


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 **MILLER, J., concurring.**

I agree with the majority opinion herein affirming the judgment of the trial court. The trial court has great discretion in matters relating to the assessment of costs. Williams v. Leeper, 2021-1177 (La. App. 1st Cir. 4/8/22), 341 So. 3d 850, 856. On review, a trial court's assessment of costs can be reversed on appeal only upon an abuse of that discretion. Wendelboe v. Exxon Shipping Co., 2008-1846 (La. App. 1st Cir. 2/13/09), 6 So. 3d 882, 890. Louisiana Code of Civil Procedure article 1671 does indicate the general rule and accepted practice that the plaintiff, and not the defendant, is responsible for the payment of all costs upon a voluntary dismissal. Taylor v. Zeno, 595 So. 2d 1210, 1211 (La. App. 3rd Cir. 1992). However, considering the number of parties involved, the assorted interventions, the voluminous filings herein, the fact that plaintiffs moved for voluntary dismissal the day after the Secretary answered the petition, and that the duration of this litigation was roughly two weeks, I find no abuse of discretion in the manner with which the trial court assessed costs. See La. C.C.P. art. 1920. The order casting each party with its own court costs is a practical application of La. C.C.P. art. 1920.