

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7433
Summary Calendar

INTERNATIONAL PAPER COMPANY,
BILL BRABSTON, AND VANCE BEST,

Defendants-Appellants,

v.

LANA KAY COOK,

Plaintiff-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(CA-S91-0027(P))

(January 27, 1993)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

This case comes before us on an appeal from the denial of appellants' motion for costs and attorneys' fees after plaintiff's case was dismissed with prejudice by the district court. In his order dismissing the motion, the judge failed to give any reason for his decision, a silence plainly at odds with the rule of Schwarz v. Folloder, 767 F.2d 125, 133 (5th Cir. 1985), holding that the trial court must ordinarily give reasons for denying

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

attorneys fees when confronted with a colorable claim to them.¹ Further, under Schwarz, a dismissal with prejudice renders the defendants prevailing parties and so entitles them to "enjoy a strong presumption that they will be awarded costs." Sheets v. Yamaha Motors Corp., 891 F.2d 533, 539 (5th Cir. 1990). The record appears to support appellants' claim regarding costs and, if their representations concerning the development of plaintiff's claim are correct, it goes a long way toward supporting an award of attorneys' fees. But we decline to second-guess the district court without being first informed of his reasoning.

The order denying attorneys' fees and costs is VACATED and REMANDED for further proceedings in accordance herewith.

¹ Contrary to appellee's view, Federal Deposit Insurance Corp. v. First State Bank of Abilene, 779 F.2d 242, 244 (5th Cir. 1985), does not modify Schwarz. The FDIC case is distinguishable on its facts, because the record raised no colorable claim for an award of attorneys' fees to the prevailing party.