

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 97-60611
Summary Calendar

FAYE THOMLEY, Individually and as Administratrix of the Estate of
CHARLEY W. THOMLEY, deceased; DANA THOMLEY and RHONDA THOMLEY
Patterson,

Plaintiffs - Appellants,

VERSUS

MACK TRUCK, INC.,

Defendant - Appellee.

Appeal from the United States District Court
For the Southern District of Mississippi
(3:94-CV-716 BrN)

October 26, 1998

Before DAVIS, DUHÉ and PARKER, Circuit Judges.

PER CURIAM:*

This appeal is before the Court on the sole issue of whether the district court abused its discretion in awarding costs to the prevailing party. We modify and affirm.

The defendant Mack Truck, Inc. moved for judgment as a matter of law after plaintiffs presented their case-in-chief. The district court granted the motion and taxed costs of \$11,112.79 against the plaintiffs pursuant to Federal Rule of Civil Procedure

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

54(d).² Plaintiffs challenge the award.

The district judge has discretion in awarding costs, and "we will not overturn his decision unless a clear abuse thereof is shown." Nissho-Iwai Co., Ltd. v. Occidental Crude Sales, 729 F.2d 1530, 1551 (5th Cir. 1984) (quoting Kinnear-Weed Corp. v. Humble Oil & Refining, 441 F.2d 631, 637 (5th Cir.), cert. denied, 404 U.S. 941, 92 S.Ct. 285, 30 L.Ed.2d 255 (1971)). After carefully reviewing the record in this case, we find no abuse of discretion, with one minor modification. The defendant conceded that the trial court "taxe[d] costs [\$96.68] associated with the deposition of Frank Bridges to Thomley on 2 occasions." Because this cost was taxed twice, the award of \$11,112.79 should be reduced by \$96.68. Except for this modification, the order of the district court is affirmed.

AFFIRMED AND MODIFIED.

² Rule 54(d) provides: "Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs...."