

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DEBORAH R. DOLEN,

Plaintiff,

v.

CASE NO.: 8:09-cv-2120-T-23AEP

JULIE RYALS, et al.,

Defendants.

ORDER

The defendants move (Doc. 168) for \$218,189.10 in attorney fees and costs, which motion an order (Doc. 170) refers to Magistrate Judge Porcelli for a report and recommendation. Magistrate Judge Porcelli issues (Doc. 182) a report that recommends an award of \$6,300 in attorney fees to compensate the defendants for the plaintiff's vexatious multiplication of the proceedings. Each party submits objections. (Docs. 184, 185) Neither party responds to the objections of the other party.

The defendants object that the report never considers whether the plaintiff must pay attorney fees or costs under the Copyright Act, the Lanham Act, or Rule 68, Federal Rules of Civil Procedure. The report appears to conclude that, mainly because of the defendants' attorney's performance and behavior during the litigation,

an award of attorney fees or costs fails to further the interests of the Copyright Act. On that ground the district court declines to award attorney fees or costs under the Copyright Act. *Cf. Ronald Mayotte & Assocs. v. MGC Bldg. Co.*, 149 F.3d 1184 (6th Cir. 1998) (unpublished) (affirming the district court's denial of attorney fees under the Copyright Act "because the parties behaved so irresponsibly that the court was unable to calculate a reasonable fee"). The report appears also to conclude, correctly, that the plaintiff's actions, although vexatious, fail to display the malice or fraud that underlies an "exceptional case" warranting attorney fees under the Lanham Act. Because the plaintiff lost, the defendants cannot collect costs based on the plaintiff's rejecting Rule 68 offers of judgment. 13 Moore, *et al.*, MOORE'S FEDERAL PRACTICE § 68.06[2] (2011). The plaintiff's objections fail to persuade.

Each set of objections (Doc. 184, 185) is **OVERRULED**, the report and recommendation (Doc. 182) is **ADOPTED**, and the motion (Doc. 168) is **GRANTED IN PART**. The clerk is directed to enter a judgment for the defendants and against the plaintiff in the amount of **\$6,300**.

ORDERED in Tampa, Florida, on March 22, 2012.

Steven D. Merryday

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE