

FILED

AUG 16 2007

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY 65 DEPUTY

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

Capitol Records, Inc., et al.,)
Plaintiffs,)

vs.)

Debbie Foster and Amanda Foster,)
Defendants.)

Case No. Civ. 04-1569-W

ORDER

Before the Court is the defendant Deborah Foster's Motion for Entry of Judgment (docket no. 246). Ms. Foster requests that the Court set forth its award of attorneys' fees as a separate document pursuant to Rule 58 of the Federal Rules of Civil Procedure.


On July 13, 2006, the Court, upon motion by the plaintiffs, ordered that the plaintiffs' claims against Ms. Foster be dismissed with prejudice. In addition, it found that the dismissal of the plaintiffs' claims against Ms. Foster effectively resolved the controversy in her favor and negated any justiciable case or controversy between the parties. The Court, therefore, ordered that Ms. Foster's counterclaim for a declaratory judgment of non-infringement be dismissed. Finally, the Court determined that Ms. Foster was the prevailing party in the action and was thus eligible for an award of attorneys' fees pursuant to the federal Copyright Act, 17 U.S.C. § 505. On February 6, 2007, the Court determined that Ms. Foster was entitled to an award under § 505 of the Copyright Act. On July 16, 2007, the Court ordered that Ms. Foster recover against the plaintiffs her attorneys' fees, including litigation expenses and costs, in the total amount of \$68,685.23. In accordance with Rule 58(a)(1) of the Federal Rules of Civil Procedure, no separate judgment was entered.

Although Rule 58 requires no separate judgment for an order disposing of a motion for attorneys' fees under Rule 54, it appears to permit a party to request a separate judgment in those instances where it is not otherwise required. See Fed.R.Civ.P. 58(d). The plaintiffs have stated that they have no objection to entry of a separate judgment pursuant to Rule 58(d).

In her reply to the plaintiffs' response to her motion, the defendant raises a number of issues not properly before the Court. The plaintiffs' have filed no motion for a stay of execution pending appeal such as would necessitate their posting of a supercedas bond. The relief requested by the defendant in her reply is, at best, premature. The sole issue properly before the Court is the defendant's unopposed request for entry of judgment. Having reviewed the parties' submissions, the Court finds that the request should be granted.

It is therefore ORDERED that the defendant Deborah Foster's Motion for Entry of Judgment be GRANTED. The Clerk of Court is directed to enter judgment forthwith on this Court's July 16, 2007 order granting the defendant an award of attorneys's fees (docket no. 245) pursuant to the Court's July 13, 2006 order dismissing the plaintiffs' claims against the defendant with prejudice (docket no. 125) and its February 6, 2007 order holding the defendant to be entitled to an award of fees (docket no. 161). Further, this judgment shall be docketed according to Rule 79 of the Federal Rules of Civil Procedure.

ENTERED this 16th day of August 2007.


LEE R. WEST
UNITED STATES DISTRICT JUDGE