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Opinion No. 01-082

Authority of civil court trial judges to include the expense of jury members' meals in the assessment of discretionary costs

QUESTION

May jurors' meal expenses in civil cases be assessed as discretionary costs by the trial court?

OPINION

No, jurors' meal expenses in civil cases may not be assessed as discretionary costs by the trial court.

ANALYSIS

Costs are set by rule and statute. Any conflicts between the Tennessee Rules of Civil Procedure and Tennessee statutes, "which cannot be harmoniously construed will be resolved in favor of the Tennessee Rules of Civil Procedure." *Mid-South Pavers v. Arnco Const., Inc.*, 771 S.W.2d 420, 422 (Tenn. App. 1989). Costs cannot be assessed except as authorized. Tenn. R. Civ. P. 54.04(2). Costs assessable by the trial judge in a civil case are "[d]iscretionary costs," which are those costs [that] are: "reasonable and necessary court reporter expenses for depositions or trials, reasonable and necessary expert witness fees for depositions and trials, and guardian ad litem fees; travel expenses are not allowable discretionary costs." Tenn. R. Civ. P. 54.04(2). Rule 54.04(2) does not provide for costs that are not in the express provisions of the law. The trial court in a civil action does not have authority to assess any other type of costs. *See Merritt v. Yates*, Davidson County, No. M1999-00775-COA-R3-CV (Tenn. Ct. App.filed October 10, 2000 at Nashville); *Reid v. State*, 9 S.W.3d 788, 795 (Tenn. Ct. App. 1999).

At common law, jurors were not entitled to compensation for their service as jurors. *Neely v.*

State, Tenn. 174, 4 Baxt. 174 (1874). Tenn. Code Ann. §22-4-101 provides that "[e]very regular juror . . . is entitled to receive at least ten dollars ($10.00) for each day's attendance." Further, Tenn. Code Ann. §22-4-102 provides that "[f]or boarding and lodging each jury, persons shall be allowed twenty-seven dollars ($27.00) per day." This would indicate that if, for some unlikely reason, a civil jury needed to be lodged, the jurors' lodging and meal costs would be paid by the court and could be included in the bill of costs prepared by the civil trial court clerk, as provided for in Tenn. R. Civ. P. 54.04(1). There is no provision for paying the jurors' meal costs in a civil case, if the jurors are not also lodged.

It is, therefore, the opinion of this Office that a civil trial court has no the authority to assess jurors' meals as discretionary costs.

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