

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARIA GREENLEE and)
JIMMY GREENLEE,)
)
Plaintiffs,)
)
vs.) Civil No. 09-cv-0351-MJR
)
UNITED STATES OF AMERICA,)
)
Defendant.)

ORDER

REAGAN, District Judge:

On October 15, 2007, Defendant filed Bill of Costs, seeking \$2,405.95 (Doc. 35). On October 27, 2010, Plaintiffs filed an objection to Defendant's Bill of Costs (Doc. 37). Therein, Plaintiffs state that they are of less than modest means and that they would suffer severe financial hardship if the Court allowed Defendant's petition.

Federal Rule of Civil Procedure 54(d)(1) provides that "costs - other than attorney's fees - should be allowed to the prevailing party." The Rule provides "a strong presumption that the prevailing party will recover costs...." *Weeks v. Samsung Heavy Indus. Co., Ltd.*, 126 F.3d 926, 945 (7th Cir. 1997). The losing party *may* overcome this presumption by a showing of indigency. *McGill v. Faulkner*, 18 F.3d 456, 459 (7th Cir.1994) (refusing to adopt *per se* rule that indigency alone overcomes the presumption in favor of awarding costs). However, "the losing party must demonstrate actual indigency, not merely limited financial resources, before a court may exercise its discretion in this manner." *Falcon v. City of Chicago*, 2000 WL 1231403, at *1 (N.D.Ill. 2000) (citing *Jansen v. Packaging Corp. of America*, 1997 WL 583063, at *1 (N.D.Ill. 1997)).

The Court cannot rely on a bald assertion that Plaintiffs are indigent but will consider Plaintiffs' financial resources if they are substantiated. Accordingly, the Court **DIRECTS** Plaintiffs - by **November 18, 2010** - to file *ex parte* and under seal - a copy of their 2009 tax return and a financial statement and affidavit. The Court recommends that Plaintiffs use the form provided at <http://www.ilsd.uscourts.gov/forms.html>, Motion and Affidavit to Proceed in District Court Without Prepaying Fees or Costs, or a similar form that provides the same information. Upon receiving these documents, the Court will undertake *in camera* review and on this basis will make its determination regarding cost-shifting.

IT IS SO ORDERED.

DATED this 28th day of October, 2010

s/Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge