

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

**AMERICAN ASSOCIATION OF
PEOPLE WITH DISABILITIES; DANIEL
W. O'CONNOR; KENT BELL; and
BETH BOWEN,**

Plaintiffs, on behalf of
themselves and others
similarly situated.

v.

CASE NO. 3:01-cv-1275-J-25HTS

KURT S. BROWNING, as Secretary of State
for the State of Florida; **AMY TUCK**,
as Director, Division of Elections; **JERRY
HOLLAND**, as Supervisor of Elections in
Duval County, Florida,

Defendants.

ORDER

THIS CAUSE is before the Court on Defendants' Motion Requesting That the District Court Stay Further Action Until the Court of Appeals Enters Final Order in the Pending Interlocutory Appeal (Dkt. 293); Plaintiffs' opposition thereto (Dkt. 313); Defendant Holland's Motion to Vacate Amended Order and Judgment Entered on September 20, 2007. Order Entered on March 24, 2004, Judgment Entered on March 26, 2004, and For Dismissal of Case (Dkt. 315); Plaintiffs' opposition thereto (Dkt. 325); Defendants Browning and Tuck's Second Amended Motion for Taxation of Costs (Dkt. 296); Plaintiffs' Motion for Taxation of Costs (Dkt. 314); Defendant's opposition thereto (Dkt. 329); Plaintiffs' Supplemental Motion for Attorneys' Fees, Costs, and Non-Taxable Litigation Expenses (Dkt. 330); and Unopposed Motion to Supplement (Dkt. 333). Upon due consideration, the Court finds as follows:

A. Motion to Vacate and Dismiss (Dkt. 315)

Defendant argues that the Eleventh Circuit Court of Appeals has declared “that the ‘case’ (not the ‘appeal’) is moot,” and therefore, the judgment and all related operative orders must be vacated and the case dismissed. However, as Plaintiffs state, only the issue of injunctive relief was before the Eleventh Circuit. *See* Order (Dkt. 254); *see also Pitney Bowes, Inc. v. Mestre*, 701 F.2d 1365, 1375 (11th Cir. 1983) (“Where the appellant notices the appeal of a specified judgment or a part thereof, however, this court has no jurisdiction to review other judgments or issues . . .”). This action has been pending for several years, the Court has entered multiple Orders, a trial was held, and the Court entered a Judgment. The Judgment in this action included injunctive relief, and the issue of injunctive relief was the only issue reviewed on appeal to the Eleventh Circuit.

In its Order, the Court of Appeals did not provide directions to vacate the Judgment in this action. *But cf. Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta*, 219 F.3d 1301, 1309-10 (11th Cir. 2000) (“When a case has become moot, we do not consider the merits presented, but instead *vacate* the judgments below *with directions* to dismiss even if a controversy did exist at the time the district court rendered its decision.”) (emphases added). Absent clarification from the Eleventh Circuit, this Court finds insufficient grounds to vacate the entire Final Judgment in this action.¹ The issues of fees and costs remain for the Court’s determination. Defendant’s motion to vacate is due to be denied.

B. Motion to Stay (Dkt. 293)

Further, Defendant requests that the Court stay this action until the Court of Appeals enters

¹ The parties have not briefed whether only the portion of the judgment relating to injunctive relief should be vacated. Whereas the Defendants are seeking clarification from the Court of Appeals regarding the scope of its Order, the Court will not address the issue here.

an Order on its Motion Requesting Addition of Directions to District Court. Defendant cites no authority to support a stay in this action, but he relies solely on the Court's discretion. This Court recognizes that the Eleventh Circuit's ruling on Defendant's motion may impact what this Court is required to do in the future. Evening assuming *arguendo* that the Eleventh Circuit rules that the entire action is moot, such ruling does not necessarily preclude a determination as to fees and costs. *See Doe v. Marshall*, 622 F.2d 118, 120 (5th Cir. 1980)² ("[A] determination of mootness neither precludes nor is precluded by an award of attorneys' fees. The attorneys' fees question turns instead on a wholly independent consideration: whether plaintiff is a 'prevailing party.' . . . We therefore vacate the preliminary injunction as moot, and remand the case to the district court for a determination of appropriate attorneys' fees."); *see also Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 609 (2001) ("If . . . the plaintiff later procures an enforceable judgment, the court may of course award attorney's fees."). Defendant's motion to stay is due to be denied.

C. Motions for Costs and Fees

Plaintiffs filed no opposition to the Defendants Browning and Tuck's Second Amended Motion for Taxation of Costs, and on October 10, 2007, the Clerk of the Court entered a Bill of Costs taxing costs against Plaintiffs and in favor of Defendants Browning and Tuck. (*See* Dkt. 322.) Therefore, the motion is due to be denied as moot.

Plaintiffs have filed a motion to tax costs against Defendant Holland. Defendant opposes Plaintiffs' motion to tax costs arguing that mootness precludes the entry of an assessment of costs.

² In *Bonner v. City of Prichard*, the Eleventh Circuit adopted as precedent the decisions of the Fifth Circuit rendered prior to October 1, 1981. 661 F.2d 1206, 1207 (11th Cir. 1981).

or alternatively, Plaintiffs' costs are excessive. In the interest of judicial economy, the Court will consider Plaintiffs' motion to tax costs with Plaintiffs' motion for attorneys' fees. (*See* Pls.' Suppl. Mot. (Dkt. 330) at 24 ("[T]o the extent that any of the taxable costs sought by [Plaintiff] in its motion for taxable costs . . . are deemed non-taxable under 28 U.S.C. § 1920, such costs should be recoverable as non-taxable costs against Defendant.")) Plaintiffs' unopposed motion to supplement their motion for attorneys' fees (Dkt. 333) is due to be granted. However, Plaintiffs' motion for attorneys' fees, costs, and non-taxable litigation expenses (Dkt. 330) is not ripe for consideration: Defendant's response is due January 14, 2008. (*See* Order (Dkt. 335).)

Therefore, it is **ORDERED**:

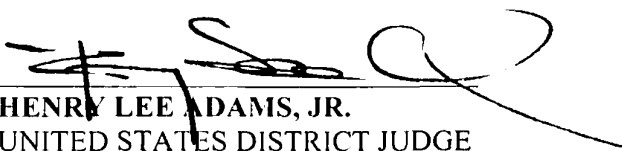
1. Defendant's Motion Requesting That the District Court Stay Further Action Until the Court of Appeals Enters Final Order in the Pending Interlocutory Appeal (Dkt. 293) is **DENIED**.

2. Defendant's Motion to Vacate Amended Order and Judgment Entered on September 20, 2007, Order Entered on March 24, 2004, Judgment Entered on March 26, 2004, and For Dismissal of Case (Dkt. 315) is **DENIED**.

3. Defendants Browning and Tuck's Second Amended Motion for Taxation of Costs (Dkt. 296) is **DENIED as moot**.

4. Unopposed Motion to Supplement (Dkt. 333) is **GRANTED**.

DONE AND ORDERED in Chambers this 3 day of December, 2007.


HENRY LEE ADAMS, JR.
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record