

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

Case No. 501997CA005796 "DIV. AA"

NORTH FLORIDA WOMEN'S HEALTH  
AND COUNSELING SERVICES, INC.,

Plaintiff(s),

vs.

STATE OF FLORIDA, et al.,

Defendant(s).

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**FILED**  
2012 JUL 27 PM 12:43  
MARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
CIRCUIT CIVIL 5

**OMNIBUS ORDER ON PENDING MOTIONS**

This matter came before the Court on the following matters: (1) Supplemental Motion to Compel/Alternative Motion to Strike Pleadings, Witness and for Monetary Sanctions, dated 2-15-10; (2) Motion to Strike Untimely Identified Trial Witness and Exhibits and Award of Attorney Fee Sanctions, dated 2-22-10; (3) Notice of Violation of March 10, 2010 Discovery Order with Supplemental Motion to Compel and Request for Sanctions, dated 3-12-10; (4) Notice of Filing Motions for Attorney Fee Sanctions, dated 3/19/10; (5) Second Notice of Filing Motions for Attorney Fee Sanctions, dated 3/19/10; (6) Second Notice of Violation of March 10, 2010 Discovery Order; Request for Sanctions; Request for Show Cause Order Why Plaintiff Should Not Be Held in Contempt, dated 3/29/10; (7) Plaintiff's Motion for Attorney's Fees and Costs, dated 8/27/10; (8) Defendants' Motion to Tax Trial Costs, dated 9/2/10; (9) Defendants' Opposition to Plaintiff's Motion for Attorney Fees with Request for 57.105 Attorney Fee Sanctions, dated 9/2/10; (10) Notice of Filing Motions for Fla. Stat. 57.105 Attorney Fee

Sanctions, dated 9/23/10; and (11) Defendants' Notice of Filing Motion for Fla. Stat.

57.105 Attorney Fee Sanctions dated 2/3/12.

A hearing was conducted on all pending motions on July 20, 2012. The Court has reviewed the submissions of the parties, and has heard the argument of counsel. Upon consideration, the Court makes the following findings.

This case has a long history which need not be repeated here. On August 5, 2012, the Court concluded that there was no justiciable controversy essential for the issuance of a declaratory judgment and dismissed this case. The Court's dismissal was affirmed by the Fourth District Court of Appeal on November 9, 2011.

It is clear that most of the pending motions before the Court are moot and need not be addressed. At the hearing, only three matters were argued. The Defendant, State of Florida, seeks costs as the prevailing party. Defendant also continues to seek sanctions for the Plaintiff's failure to appear at a deposition scheduled during the course of the case.

Plaintiff, North Florida Women's Health and Counseling Services, Inc., seeks attorney's fees and costs as the prevailing party. Despite the dismissal of the declaratory judgment action and a decision by the Florida Supreme Court upholding a portion of the statute at issue as constitutional, Plaintiff asserts it prevailed because the Defendant ceased unlawful behavior.

The Court concludes that the Defendant's request for costs must be granted and the Plaintiff's request for fees and costs must be denied. Costs follow the judgment and here a defense judgment was ultimately entered. Plaintiff's argument that it prevailed is not supported by the record and there is no basis to award fees to the Plaintiff.

The Defendant's request for sanctions has some merit as the Plaintiff could not explain why no one appeared for a duly scheduled and confirmed deposition. Perhaps if the motion for sanctions was heard closer to the events at issue, the Court would be persuaded to grant relief. However, under the circumstances, the Court exercises its discretion to not award sanctions.

The Court has reviewed the costs requested by the Defendant. The costs are taxable and the costs incurred are reasonable. The Court will, therefore, tax costs in the amount requested, \$14,087.56.

Based on the foregoing, it is hereby,

**ORDERED AND ADJUDGED** that Defendants' Motion to Tax Trial Costs is GRANTED. Defendant is awarded costs of \$14,087.56 against Plaintiff North Florida Women's Health and Counseling Services, Inc., for which let execution issue. Plaintiff's Motion for Attorney's Fees and Costs is DENIED. Defendant's Motion for Sanctions for Failing to Attend Deposition is DENIED. All other pending motions not specifically addressed here are DENIED as moot.

**DONE AND ORDERED** in Chambers, at West Palm Beach, Palm Beach County, Florida this 26<sup>th</sup> day of July, 2012.

  
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JUDGE GLENN D. KELLEY  
CIRCUIT COURT JUDGE

Copies furnished to:

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