



circumstances exist here to make an award of fees and costs unjust.

**FURTHER FINDS** that, at the Court's request, the Debtor filed a Bill of Costs. He is seeking an award based on: (1) copying costs; (2) postage costs; (3) parking fees and mileage at the Internal Revenue Service rate for his trips from Fort Collins to the Bankruptcy Court in connection with this case; (4) attorney's fees for initial consultation with an attorney, for which he has attached an invoice from his attorney; and (5) charges for his time at his hourly rate of \$43.67 (based on his substantiated year-to-date earnings, for his time spent conducting his own legal research, typing his pleadings, photocopying, traveling to and attending court hearings, and preparing his defense.) These "costs" aggregate \$2,296.20.

**FURTHER FINDS** that Plaintiff objects to all but \$28.44 (representing postage and photocopy charges.) The Objection is two-fold: (a) attorneys' fees may not be awarded absent a prayer for relief in the answer requesting the same, as required by Bankruptcy Rule 7008(b); and (b) only those types of costs enumerated in 28 U.S.C. § 1920 may be awarded.

**FURTHER FINDS** that Plaintiff has provided this Court with no precedent to indicate that Bankruptcy Rule 7008(b) applies to Section 523(d) awards. This Court is persuaded by the reasoning set forth in *In re Williamson*, 181 B.R. 403, 409 (Bankr. W.D. Mo. 1995) (citations omitted), which held that:

Section 523(d) was enacted to discourage frivolous objections to discharge of consumer debts incurred for expenses reasonably necessary to debtor's support. Congress was justifiably concerned that creditors would be able to use the threat of a section 523 nondischargeability proceeding to extract settlements from debtors whose debts would be dischargeable if litigated. The only way to prevent creditors from obtaining leverage over debtors by first filing a suit, and considering its merits later, is to require the creditor to pay the costs, including reasonable attorney's fees, incurred by a debtor who must defend against a frivolous suit....

The language is mandatory, so creditors are on notice of its potential applicability. There is no basis for departing from the plain language of the statute by requiring that the debtor pray for such relief prior to trial.

**FURTHER FINDS** that there is a split of authority as to what costs may be assessed in connection with a Section 523(d) award. For example, in *In re Mull*, 122 B.R. 763 (Bankr. W.D. Okla. 1991), the court awarded the debtor's request for photocopies, mileage, tolls and parking fees. In *In re Vazquez*, 221 B.R. 222 (Bankr. N.D. Ill. 1998), the court refused to award the debtor lost wages, but did award punitive damages against the creditor in the amount of \$10,000. In *In re Williamson, supra*, the court compensated the debtor at his regular hourly rate for the time he spent defending against the action. The Court acknowledges that the *Williamson* court appears to stand alone in allowing lost wages or other compensation for the debtor's time spent on defense. Nevertheless, this Court agrees with the *Williamson* court's reasoning in granting this award:

Where, as here, the debtor is not represented, he is similarly entitled to recover the costs incurred in preparing his own defense. Otherwise, creditors would bear no risk in bringing unjustified suits against the most vulnerable debtors, those without counsel.

*Id.* at 409. For these reasons, it is hereby

**ORDERED** that, within twenty days of this Order, Plaintiff shall pay Defendant costs in the aggregate amount of \$ 986.51, representing \$12.42 for postage, \$14.49 for photocopies, \$336.00 for attorney's fees, \$524.04 for 12 hours of the 37.50 hours spent by Debtor, \$85.56 of the \$243.64 claimed for mileage (which represents only the mileage for trips to court to attend hearings), and \$14.00 of the \$28.00 claimed for parking fees (representing the two trips to attend court hearings.)

DATED this \_\_\_\_\_ day of July, 2002.

BY THE COURT:

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Elizabeth E. Brown  
United States Bankruptcy Judge

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