

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MARGIE E. ROBERTSON,)
)
 Plaintiff,)
)
 vs.) No. 03-2916MaV
)
 UT MEDICAL GROUP, INC., and)
 STEVEN H. BURKETT, individually,)
)
 Defendants.)

ORDER DENYING PLAINTIFF'S MOTION TO SET ASIDE ORDER AWARDING
SANCTIONS FOR PLAINTIFF'S FAILURE TO COMPLY
WITH DISCOVERY OBLIGATIONS
and
ORDER AWARDING ATTORNEY FEES AND EXPENSES TO DEFENDANT
FOR AMOUNTS INCURRED IN PREPARING AND FILING
THE MOTION TO COMPEL

Before the court is the July 30, 2004 motion of the plaintiff, Margie E. Robertson, to set aside the court's order of July 20, 2004, which granted the motion of the defendant U.T. Medical Group (UTMG) to compel Robertson to respond to its discovery requests and awarded UTMG its costs and attorneys fees in bringing the motion to compel. Robertson claims that the order should be set aside because she did not receive a copy of motion to compel or the court's order. The motion to set aside was referred to the United States Magistrate Judge for determination. For the reasons that follow, the motion is denied.

Robertson's assertions that she did not receive a copy of the motion and the court's order are not credible. Whitney Fogerty, attorney for UTMG, states in an affidavit that she mailed a copy of

the motion to compel to Robertson's address on file and that this was the same address to which she mailed a copy of her affidavit and which Robertson acknowledges receiving. In addition, the distribution list attached to the court's order indicates that a copy of the order was sent to Robertson's address on file with the clerk's office. Accordingly, Robertson's motion to set aside the court's July 20, 2004 order is denied.

In accordance with the court's July 20, 2004 order, the attorneys for UTMG have filed the affidavit of Whitney K. Fogerty. The affidavit sets forth fees of \$681.00 and expenses of \$13.60 incurred in seeking discovery and preparing and filing the motion to compel for a total amount of \$694.60. The court finds the services rendered and the total attorney fees and expenses to be reasonable.

Pursuant to Federal Rule of Civil Procedure 37(a)(4)(A), the plaintiff, Margie E. Robertson, is ordered to pay to the defendant, UTMG, the total sum of \$694.60, within thirty days of the date of this order, for attorney fees and expenses incurred in preparing the motion to compel for the reasons stated in the court's order of July 20, 2004.

IT IS SO ORDERED this 10th day of August, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE