

ONEWEST BANK FSB

v.

ARLENE L. BOWLES et al.

Submitted on Briefs June 30, 2011

Decided July 7, 2011

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

#### MEMORANDUM OF DECISION

Arlene L. Bowles and Jodd P. Bowles appeal from the District Court's (Lewiston, *French, J.*) dismissal of OneWest Bank FSB's complaint for foreclosure without prejudice upon OneWest Bank's motion for voluntary dismissal pursuant to M.R. Civ. P. 41(a)(2). Contrary to the Bowleses' contention, the court did not abuse its discretion in permitting the voluntary dismissal without prejudice. *See Doe v. Urohealth Sys.*, 216 F.3d 157, 160-61 (1st Cir. 2000) ("An abuse of discretion is found only where the defendant would suffer plain legal prejudice as a result of a dismissal without prejudice, as opposed to facing the mere prospect of a second lawsuit." (quotation marks omitted)). Although the Bowles may have been entitled to certain costs following the dismissal, the record is devoid of any evidence that the Bowles asked for these costs or provided material from which the court could calculate costs. *See TD Banknorth, N.A. v. Hawkins*, 2010 ME 104, ¶ 24, 5 A.3d 1042, 1049 (holding that a defendant waived any right to an award of costs by failing to file an affidavit from which costs could be calculated after the plaintiff's claim was voluntarily dismissed).

The entry is:

Judgment affirmed.

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Lewiston District Court docket number RE-2009-291  
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