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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase 63-15369, 63-15370, 63-15371 and
	)	63-15372
Case No. 39576	)	
	)	ORDER DENYING MOTIONS TO SET
_____	)	ASIDE PARTIAL DECREES

I

PROCEDURAL BACKGROUND AND FACTS

1. At issue are water rights 63-15369, 63-15370, 63-15371 and 63-15372. *Partial Decrees* were previously issued for all four rights. The rights were initially reported as domestic rights in the *Basin 63 Director's Report For Domestic and Stockwater, Reporting Area 13*, filed on November 5, 1998. The purpose of use for 63-15369 was later corrected and recommended as "domestic-organization camp" pursuant to a subsequent administrative proceeding. None of the recommendations were contested.
2. Water right 63-15369 is a beneficial use right and was decreed on May 8, 2001, to claimant Bare Backers, Inc. ("Bare Backers"). The right was decreed a May 1, 1850, priority date; a rate of diversion of .04 cfs, 13,000 gallon/day limitation; a domestic organization camp purpose of use; and a year-round period of use.
3. Water right 63-15370 is also a beneficial use right and was decreed on December 30, 1999, to Boise Ridge Mining and Milling. The right was decreed a May 1, 1850, priority date; a rate of diversion of .04 cfs, 13,000 gallon/day limitation; a domestic one home purpose of use; and a year-round period of use.

4. Water right 63-15371 is a beneficial use right and was decreed on December 30, 1999, to Boise Ridge Mining and Milling. The right was decreed a May 1, 1850, priority date; a rate of diversion of .04 cfs, 13,000 gallon/day limitation; a domestic one home purpose of use; and a year-round period of use.

5. Water right 63-15372 is a beneficial use right and was decreed on December 30, 1999, to Boise Ridge Mining and Milling. The right was decreed a May 1, 1850, priority date; a rate of diversion of .04 cfs, 13,000 gallon/day limitation, a domestic one home purpose of use; and a year-round period of use.

6. According to a *Memorandum Report* prepared by the Idaho Department of Water Resources (IDWR), in conjunction with a complaint investigation, the property and appurtenant rights owned by Boise Ridge Mining and Milling were deeded to Bare Backers in 1994. Bare Backers uses the property and appurtenant water rights in conjunction with the operation of an organizational camp. The camp consists of 38 RV sites, a swimming pool, a shower facility and about 6100 square feet of irrigated lawn. The water rights are not used to supply potable water used in conjunction with the camp.

7. The source of the subject rights originates from two springs, an easterly spring and a westerly spring, which flow out of two old mine shafts and are tributary to Robie Creek. Approximately ninety percent of the water for the rights is supplied from the easterly spring. Two tanks are located at the pool site to supply the showers and the pool. One 5000 gallon tank and one 1000 gallon tank. The water for the supply tanks is supplied from the westerly spring.

8. On January 28, 2003, Allan Cafferty ("Cafferty") filed a *Standard Form 1 Objection* to each of the subject rights alleging that the priority date for each of the rights should be May 17, 1989, and that the purpose of use for the rights should be "recreational". Cafferty alleges that since 1991, when Bare Backers began diverting the water for its camp, that Cafferty's water supply has been insufficient to irrigate the entire 15 acres authorized by his water right. The Court treated Cafferty's objections as *Motions to Set Aside Partial Decrees*.

9. According to IDWR records, water right 63-3422 is a licensed irrigation right for 15 acres. The right is a surface irrigation right for .14 cfs with a July 10, 1964, priority date. The point of diversion is located on Robie Creek downstream from where the springs that supply the subject rights empty into Robie Creek. The source for the right is listed as Leigh Creek and Schoonover Creek tributary to Robie Creek. This right has not yet been decreed in the SRBA.

10. A hearing was held on the matter on April 10, 2003. The Court took the matter under advisement.

II

MATTER DEEMED FULLY SUBMITTED

The matter was heard on April 10, 2003. At the Court's request the parties were instructed to submit a copy of the July 23, 2001, report prepared by IDWR. The Court received the report on April 17, 2003. At the Court's request, the Court also received from IDWR copies of the claims filed by Bare Backers, which were received on May 28, 2003. Therefore, this matter is deemed fully submitted for decision the next business day, or May 29, 2003.

III

STANDARDS FOR SETTING ASIDE A PARTIAL DECREE

1. I.R.C.P. 60(b) standard.

In the SRBA, a motion to set aside a partial decree is treated the same as a motion to set aside a default judgment and is determined in accordance with the criteria set forth in I.R.C.P. 60(b). *AOI* § 14d ("Parties seeking to modify a partial decree shall comply with I.R.C.P. 60(a) or 60(b)). I.R.C.P. 60(b) permits a court to relieve a party from a final judgment, order, or proceeding for the following reasons:

1) mistake, inadvertence, surprise, or excusable neglect;

- 2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
- 3) fraud, misrepresentation or other misconduct of an adverse party;
- 4) the judgment is void;
- 5) the judgment has been satisfied, released or discharged; and
- 6) any other reason justifying relief from the operation of the judgment.

I.R.C.P. 60(b).

2. Meritorious defense standard.

In addition to satisfying one of the criteria set forth in I.R.C.P. 60(b), the movant must also allege facts, which if established, would constitute a meritorious defense. The legal standard of what must be shown to satisfy the meritorious defense requirement has been discussed several times by the Idaho Appellate Courts. *See McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (1993); *Hearst Corp. v. Keller*, 100 Idaho 10, 592 P.2d 66 (1979); *Thomas v. Stevens*, 78 Idaho 266 (1956). The meritorious defense standard requires that a movant:

- 1) allege facts,
- 2) which if established,
- 3) would constitute a defense to the action, and
- 4) the facts supporting the defense must be detailed.

The detailed factual requirement also goes beyond the mere general notice requirement that would ordinarily be sufficient if pled prior to default. *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981). The policy behind pleading a meritorious defense is founded on the doctrine that "it would be an idle exercise for a court to set aside a default judgment if there is in fact no justifiable controversy." *McFarland*, 123 Idaho at 934, 854 P.2d at 277 (quoting *Hearst Corp.*, 100 Idaho at 12, 592 P.2d at 68).

3. Time limitations under I.R.C.P. 60(b).

I.R.C.P. 60(b) also requires that a motion to set aside be made within a reasonable time and, for I.R.C.P. 60(b)(1), (2), (3) and (6), not more than six months after the judgment, order, or decree. The Idaho Supreme Court has held that the time limits in Rule 60(b) are mandatory, and

consequently, any attempt to modify or set aside a judgment or order pursuant to subdivisions (1), (2), (3), or (6) will not be allowed where the applicable time limit under the rule has clearly expired. *Gordon v. Gordon*, 118 Idaho 804, 800 P.2d 1018 (1990) (citing *Catledge v. Transport Tire Co.*, 107 Idaho 602, 691 P.2d 1217 (1984)). The time limit is also applied as a matter of course in the SRBA.

4. The same standards apply to *pro se* litigants.

The general rule in Idaho is that *pro se* litigants are held to the same standards and rules as those represented by attorneys. *Ade v. Batten*, 126 Idaho 114, 118, 878 P.2d 813, 817 (Ct. App. 1994) (citing *Golay v. Loomis*, 118 Idaho 387, 393, (1990); *Golden v. Condor, Inc. v. Bell*, 112 Idaho 1086, 739 P.2d 385 (1987)). In *Schraufnagel v. Quinowski*, 113 Idaho 753, 747 P.2d 775 (Ct. App. 1987), the Idaho Court of Appeals appeared to apply a more liberal standard under Rule 60(b) for a *pro se* litigant, but ultimately concluded:

What constitutes excusable neglect or just how a reasonable [sic] prudent person should act under similar circumstances are comparative terms and the decisions as to when a default and a default judgment may be set aside and answer permitted, may appear at times to be somewhat in conflict. . . . **Each case must be examined in light of the facts presented, and the circumstances surrounding the same.**

...

In doubtful cases, the general rule is to incline toward granting relief from the default and bring about a judgment on the merits.

Id. (quoting *Orange Transportation Co. v. Taylor*, 71 Idaho 275, 280-81, 230 P.2d 689, 692-93 (1951)). Accordingly, the standard is the same for *pro se* litigants as well as for those represented by counsel. Ultimately, each case rises and falls on its own particular set of circumstances. One of the factors to take into consideration is that the SRBA also presents its own unique circumstances in that a significant number of the parties to the SRBA appear *pro se*. To otherwise give special consideration to a *pro se* litigant in determining whether or not to set aside a partial decree seriously impairs the administration and progress of the SRBA. Ultimately, because of the monumental scope of the SRBA, if the SRBA is to be completed, there must be some semblance of finality for those water right claims that have been partially decreed, whether a *pro se* litigant is involved or not.

5. Consideration for deciding a case on the merits.

The standards for setting aside a default and setting aside a default judgment both take into account the preference for having a case decided on its merits. In making the determination, the Court must take into consideration that judgments by default are not favored and that the general rule in doubtful cases is to grant relief from the default in order to reach a judgment on the merits and that procedural rules other than those which are jurisdictional should be applied to promote disposition on the merits. *Reeves*, 102 Idaho at 272, 629 P.2d at 668 (citing *Hearst Corp. supra*). This is a factual determination and is discretionary with the Court. *Johnson*, 104 Idaho at 732, 662 P.2d at 1176.

The SRBA presents its own unique set of circumstances. In a non-SRBA case, the entry of a default or default judgment typically occurs when a party fails to take some required action. Although *AOI* incorporates the standards for setting aside a default and a default judgment and applies these standards by analogy, water right claims that proceed uncontested through the SRBA are not entirely analogous to a default situation. First, uncontested claims are prosecuted by claimants who are usually active in their subcase but face no objectors. Second, although uncontested, the claims are still in fact “decided on the merits.” Idaho’s statutory scheme for the SRBA, together with *AOI* procedure, set forth a comprehensive process for adjudicating both uncontested and contested state based claims. This process affords additional procedures and safeguards not otherwise present in non-SRBA cases.

To illustrate, a claim of a water right is filed in accordance with Idaho Code § 42-1409. IDWR then investigates the nature and extent of the claim. I.C. § 42-1410. The director then prepares and files a director’s report for the claim. I.C. § 42-1411. The director’s report constitutes prima facie evidence of the nature and extent of the water right. I.C. § 42-1411(4). Either the claimant or any other party to the SRBA can file objections and/or responses to objections to the director’s report. I.C. § 42-1412. The objecting party has the burden of going forward with evidence to rebut the director’s report as to all issues raised by the objection. I.C. § 42-1411(5).

Director’s reports that are uncontested are typically decreed as reported. I.C. § 42-1411(4). Although this is normally what occurs, the SRBA Court retains discretion to apply law to the facts and render its own conclusion regarding uncontested water rights. *State v. Higginson*, 128 Idaho 246, 258, 912 P.2d 614, 626 (1995). The district court can also delay

entry of a partial decree for the uncontested portions of the director's report if the court determines that the unobjected claim may be affected by the outcome of a pending contested matter. I.C. § 42-1412(7). Ultimately, the claim is subject to a final review by the court prior to the entry of the partial decree.

In sum, in the SRBA, "deciding a case on the merits" must be placed in the proper context.

IV

DECISION AND RULING

Cafferty's *Motions to Set Aside the Partial Decrees* for the four above-captioned rights are denied for the following reasons:

1. **The *Motions* are untimely.**

Partial Decrees were issued for each of the four rights on May 8, 2001. Cafferty filed *Standard Form 1 Objections* on January 28, 2003, well outside of the six month time limit. Cafferty does not allege which specific criteria under I.R.C.P. 60(b) he is relying nor does Cafferty allege a legal basis for excusing the six month time limit. From the face of pleadings, the Court also cannot find a legal basis for excusing the time limit.

2. **Cafferty has not alleged a meritorious defense.**

Even if the Court were to set aside the *Partial Decrees*, Cafferty also has not alleged a meritorious defense to support that the elements for the rights should be anything other than as decreed. The rights were decreed as recommended by IDWR. Cafferty alleges that the priority dates for the respective rights should be May 17, 1989, instead of May 1, 1850, but offers no explanation, argument or facts in support thereof. The record supports that the claims were originally established as beneficial use claims appurtenant to the property formerly owned by Boise Ridge Mining and Milling and purchased by Bare Backers.

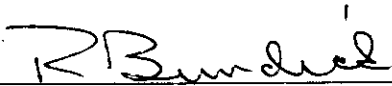
Cafferty also alleges that the purpose of use element for all four rights should be "recreational" instead of "domestic." The term "domestic" is a statutorily defined term which includes the purpose for which Bare Backers is using the water rights. I.C. § 42-111(1)(a) defines "domestic purpose" as "[t]he use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation

up to one-half acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day." All four rights are subject to the 13,000 gallon per day limitation and Bare Backers is using the subject rights in connection with an organizational camp all of which are consistent with the statutory definition. Furthermore, changing the purpose of use from domestic to recreation would not increase the supply of water to Cafferty's junior right.

For these reasons Cafferty's *Motions* are DENIED.

IT IS SO ORDERED.

Dated this 30th day of May, 2003.



ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING
MOTIONS TO SET ASIDE PARTIAL DECREES was mailed on May 30, 2003,
with sufficient first-class postage to the following:

BARE BACKERS INC
PO BOX 5781
BOISE, ID 83705
Phone: 208-322-6853

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

BOISE RIDGE MINING AND MILLING
105 WEST 41st
BOISE, ID 83714
Phone: 208-345-2655

ALLAN E CAFFERTY
2121 S EAGLESON
BOISE, ID 83705
Phone: 208-375-7924

A handwritten signature in black ink, appearing to read "Shelly Bawett", is written over a horizontal line. The signature is fluid and cursive.