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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
SEP 19 2011	
By _____	Clerk Deputy Clerk

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	)	ORDER CONTINUING MOTION TO
	)	SET ASIDE PARTIAL DECREE AND
Case No. 39576	)	DENYING FEES
	)	
_____	)	SUBCASE NO.: 22-13212

I. PROCEDURAL BACKGROUND

The claimant of this water right, Michael Reid, filed a *Motion to Set Aside Verdict*, seeking (1) to have the court set aside the *Partial Decree* to allow for a global settlement and (2) to again challenge the priority date. The Objectors agreed to set aside the *Partial Decree* to allow for a global settlement. However, the Objectors explained that challenging the priority was not part of the settlement agreement. Objectors asked for attorney fees incurred as a result of having to defend against claimant's *Motion to Set Aside Verdict*.

A. Summary Judgment

A *Partial Decree* was issued on this subcase after a trial on the merits. The trial focused on several disputed elements including the priority date. Prior to trial, the issue was decided in part on summary judgment. The *Order on Summary Judgment* (Sept. 21, 2009) held that there was no genuine issue of material fact as to whether the priority date was 1904. The summary judgment decision was based on the prior *Rexburg Decree* which determined the water right had a 1904 priority. The claimant wanted an earlier priority of 1901.

B. Trial

A trial was held in the SRBA to determine the elements of this water right. The claimant, Michael Reid, asserted that the *Rexburg Decree* erred in deciding the priority date was 1904. Mr. Reid argued that his predecessor had filed a homestead application on May 23, 1901 and should have been awarded a priority date of 1901. He asked this court to correct the *Rexburg Decree* holding that priority date was 1904. This Special Master addressed priority in *Findings of Fact*

and Conclusions of Law and Request for IDWR to Calculate Acreage and Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law.

Mr. Reid asserted that his water right was derived from J.J. Miller's water right in the *Rexburg Decree*. The Objectors argued that water was not used on Mr. Reid's property until 1969, and that Mr. Reid was entitled to a 1969 date, not the 1904 priority date from J.J. Miller's *Rexburg Decree*. The court rejected the 1969 argument. The court held that Mr. Reid's right was derived from J.J. Miller's right in the *Rexburg Decree*. However, the Court rejected Mr. Reid's argument that he was entitled to an earlier priority date.

The *Order on Summary Judgment* held that allowing a claimant to reopen an old decree to present evidence of earlier use than was decreed nearly 100 years ago would undermine the principles of *res judicata*, the Idaho Supreme Court's ruling in *State v. Hagerman Water Right Owners*, and law of the case in the SRBA. Therefore, the *Order on Summary Judgment* declined to allow the priority issue to be reopened.

Special Master's Report and Recommendation at 12.

Thus, after the trial, the court reiterated its summary judgment determination and declined to reopen the issue on priority date.

C. Motions to Alter or Amend

After the *Special Master's Report and Recommendation* was issued, the claimant and the objectors filed motions to alter or amend. Mr. Reid again argued that this right should have a 1901 priority. The *Order on Motions to Alter or Amend* again rejected the argument, explaining the significance of prior decrees, the law of the case, and the difference between clerical errors which can be corrected under I.R.C.P. 60(a) and legal or factual errors which may not be corrected under Rule 60(a). The *Order* explained the difference between clerical errors, such as a blunder in execution in a legal description, and legal errors which involve a legal decision or judgment. This court reasoned that nothing in the record showed that the *Rexburg Decree* determination of a 1904 priority was a clerical error. *Order on Motions to Alter or Amend* at 4-5. No challenges were filed, and an *Order of Partial Decree* was issued October 18, 2010. No appeal was filed.

D. Post-Trial Settlement

After the trial, IDWR determined that Mr. Reid's subcase was closely related to other claims from Paradise Springs. As a result, the parties met to negotiate a global settlement of all

related subcases. A settlement has reportedly been reached which includes an agreement to allow Mr. Reid a greater quantity for this right than determined at trial. Mr. Reid asked the court to set aside the *Partial Decree* to accommodate the global settlement. Mr. Reid's *Motion* also asked for reconsideration of the priority date issue which is not part of the global settlement. In addition, the Objectors Mahogany Ranch Holdings, Cedron Irrigation, Teton Rainbow Ranch Inc., Trees Inc., and Wally Rothgeb Jr. asked for attorney fees on the priority date issue. Mr. Reid agreed to pay attorney fees on the priority issue. A hearing was held on July 6, 2011. The parties did not present the proposed settlement, but they agreed to provide the proposed language at a continued hearing. The court continued the hearings on the settlement.

II. ATTORNEY FEES

The Objectors requested an award of sanctions and attorney fees pursuant to I.R.C.P. 11(a)(1), 54(e)(1), 54(d)(1) and I.C. §§12-120, 12-121, and 12-123. No Memorandum of Costs and Fees was submitted. Mr. Reid agreed that the Objectors could recover their attorney fees, and he stipulated on the record to pay reasonable attorney fees.

A. Memorandum of Costs

Idaho's Rules of Civil Procedure require that parties to civil actions who claim or object to an award of costs must act in a timely manner:

At any time after . . . a decision of the court, any party who claims costs may file and serve on adverse parties a memorandum of costs, itemizing each claimed expense, but such memorandum of costs may not be filed later than fourteen (14) days after entry of judgment. . . . Failure to file such memorandum of costs within the period prescribed by this rule shall be a waiver of the right of costs.

I.R.C.P. 54(d)(5).

Any party may object to the claimed costs of another party set forth in a memorandum of costs by filing and serving on adverse parties a motion to disallow part or all of such costs within fourteen (14) days of service of the memorandum of cost. . . . Failure to timely object to the items in the memorandum of costs shall constitute a waiver of all objections to the costs claimed.

I.R.C.P. 54(d)(6)

B. Attorney Fees Not Warranted

The Idaho Supreme Court analyzed the awarding of attorney fees under I.R.C.P. 54(e) and I.C. § 12-121 in *Walker v. Boozer*, 140 ID 451, 95 P.3d 69 (2004). In that case, the court

reversed an award of attorney fees, holding that the appeal was not frivolous or without foundation. The court held, pursuant to I.R.C.P. 54(e)(1), that attorney fees may be granted under I.C. § 12-121 only when a court finds that the *case* was brought, pursued or defended frivolously, unreasonably or without foundation.” The court went on to explain that a court must look at the entire case, not a single motion. “The denial of a motion does not fall within the scope of the authority cited by the district court because a single motion does not comprise an entire case. In other words, I.C. § 12-121 applies to cases as a whole and not to individual motions.” *Id.*

In this case, the Objectors argued only that part of Mr. Reid’s *Motion* was brought without foundation. This court finds the issue on priority date to be without foundation since the issue was disposed of on summary judgment, at trial, on a *Motion to Alter or Amend* and in the *Partial Decree* which was not appealed. Nevertheless, the priority issue was just one portion of the case, and just one part of the *Motion to Alter or Amend*. Therefore, the argument on the priority is not enough to show that Mr. Reid’s *case* was brought, pursued or defended frivolously, unreasonably or without foundation. Therefore, the request for attorney fees is **denied**. The *Motion to Set Aside Partial Decree* to incorporate a global settlement is **continued**.

Please be advised that Special Master Brigitte Bilyeu has set the following date in the above subcase:

September 21, 2011

10:30 am

Status Conference / Continued Motion

Location: Snake River Basin Adjudication

253 3rd Ave. North

Twin Falls, Idaho 83301

Parties may participate by telephone for the Status Conference by dialing 1-215-446-0193 and when prompted enter participant code 926509. Any questions regarding telephone participation, please contact the Clerk’s office at (208) 736-3011.

Dated: September 19, 2011.



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER CONTINUING MOTION TO SET ASIDE PARTIAL DECREE AND DENYING FEES was mailed on September 19, 2011, with sufficient first-class postage to the following:

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