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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JUN 29 2012	
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	)	MEMORANDUM DECISION AND
	)	ORDER ON ATTORNEY FEES
Case No. 39576	)	
	)	WATER RIGHT NOS.: 22-11639,
	)	22-13212 and 22-13853
_____	)	

I. PROCEDURAL HISTORY

These water rights (22-13212, 22-11639, and 22-13853) were claimed from Paradise Springs in Teton County, Idaho. The Idaho Department of Water Resources filed *Director's Reports* for these water rights. *Objections* were filed. Michael Reid was a party in each subcase as either a Claimant or an Objector. The other parties included Cedron Irrigation, LLC, Cedron Cemetery District, Mahogany Ranch Holding, Teton Rainbow Ranches, Inc., Trees, Inc., Wally Rothgeb Jr. and Al Shiver (hereafter "Objectors.")

Subcase 22-13212 was claimed by Michael Reid based on J.J. Miller's water right from the *Rexburg Decree*. An *Order on Summary Judgment* held that Mr. Reid could not pursue a 1901 priority date because the *Rexburg Decree* decided priority was 1904. The subcase went to trial. The 1901 priority date was asserted by Mr. Reid at trial. A *Special Master's Report and Recommendation* issued, which upheld the 1904 priority date from the *Rexburg Decree*. A *Motion to Alter or Amend* was then filed by Mr. Reid. The court issued an *Order on Motions to Alter or Amend* again upholding the 1904 priority. The Objectors seek to recover attorney fees for responding to the priority date argument in the *Motion to Set Aside Verdict* subsequently filed in subcase 22-13212 on May 4, 2011.

Subcase 22-13853 was claimed by Rex and Chester Miller. Michael Reid filed an *Objection* in that subcase. However, Mr. Reid filed a *Motion to File Amended Notice of Claim*.

Mr. Reid was not the claimant. At the hearing on the *Motion to File Amended Notice of Claim*, Rex Miller indicated that he wanted to amend this claim. Neither Mr. Miller nor Mr. Reid filed an *Amended Notice of Claim* for the court or parties to evaluate. At the hearing, Mr. Miller did not know how the acreage or diversion rate should be changed. The court denied the motion **without prejudice**.

The court set a hearing for a renewed *Motion to Amend Claim*. However, Mr. Miller did not file a *Motion to Amend Claim* and did not attend the subsequent hearing because he suffered a stroke. The court set another deadline and hearing date. Mr. Miller did not attend the later hearings, and no one came forward on his behalf. The *Motion for Amended Claim* was denied by the court. The Objectors seek attorney fees for responding to the motion.

Subcase 22-11639 was claimed by Michael Reid and Joy and Stephen Reid. A *Partial Decree* was issued November 24, 2008. A *Motion to Set Aside Partial Decree* was filed February 18, 2009. The parties then reported a settlement had been reached on 22-11639. When settlement documents were not forthcoming, the court issued an *Order to Show Cause*. Finally, a *Special Master's Report and Recommendation* issued which held the parties to the agreement which was placed on the record. Mr. Reid filed a *Notice of Appeal* which was treated as a *Motion to Alter or Amend*. The *Notice of Appeal/Motion to Alter or Amend* asked that Subcase 22-11639 be recommended with .54 cfs and a priority date of 6/1/1904. *Notice of Appeal* at 1.

The Objectors seek attorney fees for responding to the *Notice of Appeal/Motion to Alter or Amend* because Mr. Reid sought a quantity and priority date which had never been claimed.

II. STANDARD OF REVIEW

A. Attorney Fees Under Rule 11

Previously this court declined to award attorney fees under I.C. §§ 12-120, 12-121, and 12-123. The court noted at that time, however, that Mr. Reid had agreed on the record to pay the Objectors' attorney fees on the priority issue.

The *Motion* for attorney fees was renewed by the Objectors under I.R.C.P. 11 (a)(1). Rule 11(a)(1) allows sanctions to be imposed upon a party who signs a pleading, motion, or other paper which violates its requirements. *Stevens v. Fleming*, 116 Idaho 523, 532, 777 P.2d 1196, 1205 (1989). Rule 11 requires that the pleading or motion be well grounded in fact, warranted by existing

law or a good faith argument for the extension of existing law, and not interposed for any improper purpose, such as to harass or cause unnecessary delay.

A party is required to inquire into both the facts and the law prior to filing a document. *Sun Valley*, 119 Idaho at 95, 803 P.2d at 1001; *Stevens*, 116 Idaho at 532, 777 P.2d at 1205. The inquiry is required to be “reasonable under the circumstances” under Rule 11. Under the “reasonableness under the circumstances” standard, the focus is whether the party conducted a “proper investigation upon reasonable inquiry” into the facts and legal theories of the case. *Hanf v. Syringa Realty, Inc.*, 120 Idaho 364, 369, 816 P.2d 320, 325 (1991).

If a motion is signed in violation of this rule, the court shall impose an appropriate sanction. In this case, the Objectors assert that several motions were filed in violation of Rule 11. The Objectors ask for attorney fees in the amount of \$3500 as a sanction.

III. ANALYSIS

A. Attorney Fees Under I.R.C.P. 11

Idaho Rule of Civil Procedure 11(a)(1) requires that pleadings, motions, and other papers be filed only after reasonable inquiry. Rule 11 requires that the person filing such pleadings, motions and papers has reasonably inquired into the facts and the law or has good faith arguments for the extension, modification, or reversal of existing law.

The Objectors did not assert that Mr. Reid’s actions were conducted for improper purposes such as to harass or cause unnecessary delay or expense. Accordingly, the court finds that Mr. Reid did not act for improper purposes under Rule 11.

The next question is whether Mr. Reid filed motions without performing a reasonable investigation into the facts or law.

B. Motions Filed

Subcase 22-13212: Michael Reid claimed this right from J.J. Miller’s water right from the *Rexburg Decree*. An *Order on Summary Judgment* held that Mr. Reid could not pursue a 1901 priority date because the *Rexburg Decree* had decided priority was 1904. Mr. Reid continued to pursue the 1901 priority date at trial. The *Special Master’s Report and Recommendation* addressed the issue, upholding the 1904 priority. Mr. Reid filed a *Motion to Alter or Amend*, raising the 1901 priority date again. The *Order on Motions to Alter or Amend* again upheld the 1904 priority from the *Rexburg Decree*. A *Partial Decree* issued for 22-13212 which upheld the

1904 priority. The *Partial Decree* was not appealed. Subsequently, the parties worked out a tentative global settlement of all subcases in Paradise Springs. As a result, Mr. Reid filed a *Motion to Set Aside the Verdict* asking the court to set aside the *Partial Decree* to incorporate the elements agreed on during settlement for several rights. However, Mr. Reid renewed his argument on the 1901 priority. The settlement did not allow for relitigation of the priority date.

The Objectors argue that Mr. Reid's attempt to resurrect the 1901 priority date in the *Motion to Set Aside the Verdict* violated Rule 11. This court concurs. The argument regarding the 1901 priority date was decided and became law of the case with the *Order on Summary Judgment*. No facts or well-grounded argument for reversing that decision were ever presented.

Furthermore, a *Partial Decree* issued upholding the 1904 priority, and Mr. Reid did not appeal that decision. The parties agreed to set aside the *Partial Decree* to accommodate the settlement, but that agreement did not include a change to the priority. Consequently, the *Motion to Set Aside the Verdict* violated Rule 11.

Subcase 22-13853 was claimed by Rex and Chester Miller. Michael Reid was not a claimant, but was an Objector in that subcase. Nevertheless, Mr. Reid filed a *Motion to File Amended Notice of Claim*. At the hearing on the *Motion to File Amended Notice of Claim*, Rex Miller appeared and stated that he did want to amend his claim. However neither Mr. Miller nor Mr. Reid filed an attached *Amended Notice of Claim* for the court or parties to evaluate. During the hearing, the claimant could not explain how he wanted to amend his claim. The *Motion* was denied. Because the *Motion to File Amended Notice of Claim* was not supported by any facts and was not supported by an assertion of how the elements were to be amended, the *Motion* violated Rule 11.

Subcase 22-11639 was claimed by Michael Reid and Joy and Stephen Reid. A *Partial Decree* was issued November 24, 2008. However, a *Motion to Set Aside Partial Decree* was filed February 18, 2009. After lengthy litigation, the parties reached an agreement as to the elements of 22-11639. The court held an *Order to Show Cause* hearing, and then held the parties to the agreement previously placed on the record. Mr. Reid then filed a *Notice of Appeal* which the court treated as a *Motion to Alter or Amend*. The *Notice of Appeal/Motion to Alter or Amend* asked for more quantity and an earlier priority date than had been claimed. The Objectors asked for attorney fees because the quantity and priority date sought were never claimed. The court

concur that a *Motion to Alter or Amend* which sought a priority date and quantity never claimed or asserted in a late claim, under these facts is a violation of Rule 11.

IV. ORDER

The movants prevail in their request for attorney fees as a sanction under Rule 11(a)(1). The *Motion to Set Aside Verdict* in Subcase 22-13212, the *Motion to File Amended Notice of Claim* in Subcase 22-13853, and the *Notice of Appeal/Motion to Alter or Amend* in subcase 22-11639 were not well grounded in fact or warranted by existing law or a good faith argument on the law.

As a consequence, the Court awards the movants attorney fees in the amount of \$3,500 as requested. The court notes that Mr. Reid did not argue that the attorney fees were unreasonable. The court finds that the fees requested were reasonable.

Based on the foregoing analysis, it is hereby ORDERED that the *Motion for Attorney Fees* is **GRANTED**.

DATED: June 29, 2012.



BRIGITTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER ON ATTORNEY FEES was mailed on June 29, 2012, with sufficient first-class postage to the following:

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