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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JUL 24 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	) Subcase Nos. 22-13212, 22-11639 and 22-
	) 13853
Case No. 39576	)
	) ORDER DENYING PETITION FOR
	) RECONSIDERATION
_____	)

I.

FACTUAL AND PROCEDURAL BACKGROUND

1. On June 29, 2012, the Special Master issued a *Memorandum Decision and Order on Attorney Fees* (“*Memorandum Decision*”) in the above-captioned subcases. The procedural background and facts set forth in that *Memorandum Decision* are incorporated herein by reference and will not be repeated.

2. In the *Memorandum Decision*, the Special Master determined to collectively award Cedron Irrigation, LLC, Teton Rainbow Ranches, Inc., Trees, Inc. and Al Shiver (collectively “Objectors”) attorney’s fees in the amount of \$3,500.00 as against Michael Reid (“Reid”). The Special Master found the award of attorney’s fees to be an appropriate sanction under Idaho Rule of Civil Procedure 11(a)(1) to cover the Objectors’ reasonable expenses incurred as a result of certain motions filed by Reid in violation of that Rule.

3. On July 10, 2012, this Court entered an *Order Re: Attorney’s Fees* wherein it reviewed the findings of fact and conclusions of law contained in the *Memorandum Decision* and adopted them as its own. Also on that date, the Court entered a *Judgment for Attorney’s Fees* collectively awarding the Objectors attorney’s fees in the amount of \$3,500.00.

4. On July 13, 2012, Reid filed a *Petition for Reconsideration*, asking that the imposition of sanctions be reconsidered and reversed.

II. HEARING

Reid has not requested oral argument on his *Petition for Reconsideration* and this Court, in its discretion under Idaho Rule of Civil Procedure 7(b)(3), determines that no hearing is necessary.

III. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 11(a)(2)(B) governs motions for reconsideration.¹ It provides that “a motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment, but not later than fourteen (14) days after entry of the final judgment.” In this case, Reid seeks reconsideration of the Special Master’s *Memorandum Decision*, the findings of fact and conclusions of law of which were adopted by *Order* of this Court dated July 10, 2012. A Rule 11(a)(2)(B) motion for reconsideration is addressed to the discretion of the court. *Jordan v. Beeks*, 135 Idaho 586, 592, 21 P.3d 908, 914 (2001).

IV. ANALYSIS

Idaho Rule of Civil Procedure 11(a)(1) permits sanctions, including reasonable attorney’s fee, to be imposed upon an individual who signs a pleading, motion, or other paper which violates Rule 11’s requirements. Among other things, the Rule requires that all pleadings, motions or other papers filed in a given proceeding be well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. I.R.C.P. 11(a)(1). An attorney is required to perform a prefiling inquiry into both the facts and the law involved to satisfy the affirmative duty imposed by the Rule. *Sun Valley Shopping Center, Inc. v. Idaho Power Co.*, 119 Idaho 87, 95, 803 P.2d 993, 1001 (1991). Reasonableness under the circumstances is the appropriate standard to apply under Rule 11. *Riggins v. Smith*, 126 Idaho 1017, 1021, 895 P.2d 1210, 1214 (1995). Under the reasonableness under the

¹ In his *Petition*, Reid does not cite the applicable rule or legal authority pursuant to which his *Petition* is filed. That said, the Court will treat the *Petition* as a Rule 11(a)(2)(B) motion for reconsideration.

circumstances standard, the appropriate focus of the trial court should be whether the attorney 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).

In the Special Master’s *Memorandum Decision* and in this Court’s subsequent *Order* adopting the findings of fact and conclusions of law contained therein, Rule 11(a)(1) sanctions were imposed against Reid as a result of the filing of the following three motions: (1) Reid’s *Motion to Set Aside Verdict* filed in subcase no. 22-13212 on May 4, 2011; (2) Reid’s *Notice of Appeal* filed in subcase no. 22-11639 on March 23, 2012; and (3) Reid’s *Motion to File Amended Notice of Claim* filed in subcase no. 22-13853 on October 24, 2011. The sanctions were imposed on the grounds that the *Motions* were not grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. In his *Petition*, Reid requests that this Court reconsider and reverse the sanctions with respect to all three *Motions*. Each will be addressed in turn.

A. 22-13212.

Reid first argues that the imposition of sanctions resulting from the filing of his *Motion to Set Aside Verdict* in subcase no. 22-13212 should be reversed. Among other things, he asserts that he performed an adequate inquiry into the facts and the law involved before filing the *Motion* to satisfy his Rule 11(a)(1) duty. He also contends that sanctions should not be imposed on the grounds that he voluntarily withdrew the *Motion* prior to its disposition.

The record in this case establishes that water right 22-13212 was claimed by Reid in the SRBA as a derivative of a previously decreed water right from the *Rexburg Decree*.² The water right from which Reid derives his SRBA claim was decreed in the *Rexburg Decree* with a June 1, 1904 priority date. In the SRBA, the Director of the Idaho Department of Water Resources recommended the right with a June 1, 1904 priority date based on and consistent with the prior decree.³ On July 24, 2007, Reid filed an *Objection* to the recommendation asserting among other things that the priority date should be May 23, 1901. Reid subsequently filed a *Motion for*

² *Rexburg Irrigation Co. v. Teton Irrigation Canal Co.* (6th Dist., Fremont County, Dec. 16, 1910). The previously decreed water right from which Reid derives water right claim 22-13212 is water right 22-405, decreed to J.J. Miller in the *Rexburg Decree*.

³ The Director’s recommendation for water right claim 22-13212 is located in his *Director’s Report, Reporting Area 17, IDWR Basin 22 Part 2, Irrigation and Other Uses*, filed on December 22, 2006.

Summary Judgment on the issue, arguing that May 23, 1901 is the correct priority date as a matter of law. The *Objectors* argued in response that Reid is precluded as a matter of law from seeking a priority date earlier than that decreed in the *Rexburg Decree*.

On September 21, 2009, the Special Master issued an *Order on Summary Judgment* denying Reid's *Motion for Summary Judgment* on the priority date issue:

The [Objectors] assert that this court cannot go behind the priority already determined by the *Rexburg Decree*. Given the facts asserted here, this Special Master agrees. Mr. Reid has an interesting argument about his predecessor's Homestead Applications. However, to allow a claimant to reopen a prior decree to present evidence of earlier use than was previously decreed completely undermines the principles of *res judicata* and the Idaho Supreme Court's ruling in *State v. Hagerman Water Right Owners*, as well as law-of-the-case in the SRBA. The determination of priority in the *Rexburg Decree* and the doctrine of *res judicata* dictate that the priority issue should not be reopened.

Order on Summary Judgment, p.8.

Following a trial on the remaining issues, the Special Master issued a *Special Master's Report and Recommendation*. Both Reid and the Objectors filed *Motions to Alter or Amend*.⁴ In his *Motion to Alter or Amend*, Reid again argued that the priority date for this water right should be May 23, 1901, raising the same arguments previously raised on summary judgment. The Special Master denied Reid's *Motion to Alter or Amend* with respect to the priority date element, citing the same grounds and legal authority referenced in the *Order on Summary Judgment*. *Order on Motions to Alter or Amend*, subcase no. 22-13212, et al. (October 1, 2010).

No challenges were filed to the Special Master's *Report and Recommendation* and/or *Order on Motions to Alter or Amend*, and on October 18, 2010, this Court issued a *Partial Decree* for water right claim 22-13212 with a June 1, 1904 priority date. The *Partial Decree* contained a Rule 54(b) Certificate and thus was deemed a final judgment. No appeal was timely pursued by any party. Thereafter various parties on the Paradise Springs source entered into settlement discussions to resolve certain pending and related subcases in the SRBA. The parties had worked out a tentative global settlement of all subcases on the Paradise Springs source and with respect to water right 22-13212 agreed to amend the *Partial Decree* to change the diversion

⁴ The Court notes that Reid's *Motion to Alter or Amend* was styled as a *Petition for Reconsideration*. However, the Special Master treated the *Petition for Reconsideration* as a *Motion to Alter or Amend* pursuant to SRBA *Administrative Order 1, Rules of Procedure*, § 13.a.

rate. The settlement did not however contemplate or include a change to the priority date element of water right claim 22-13212.

Notwithstanding, on May 4, 2011, Reid filed a *Motion to Set Aside Verdict* to modify the *Partial Decree* with respect to the flow rate, but again also argued at length that the priority date should be changed to May 23, 1901. Reid's priority date argument in this respect was made notwithstanding the Court's prior rulings on this issue and explanation of the controlling Idaho Supreme Court law and SRBA law of the case.⁵ While Reid subsequently withdrew his *Motion to Set Aside Verdict*, it was not until after Objectors' counsel had drafted and filed a *Response* in opposition to the *Motion*, attended a hearing on the *Motion*, and argued for the third time in this proceeding why the earlier priority date sought by Reid was improper as a matter of law. It was the Objectors' defense of this attempt to argue a previously resolved priority date issue that Rule 11(a)(1) sanctions were sought against Reid.

Given that Reid's *Motion to Set Aside Verdict* was simply another attempt to re-raise and re-argue an issue already decided by the Court, the Special Master did not err in finding that the *Motion* was filed in violation of Rule 11(a)(1). Reid had his chance to make his priority date arguments on summary judgment, and subsequently on his *Motion to Alter or Amend*. His arguments were considered by the Court and ultimately determined to fail as a matter of law. Had Reid wished to pursue his priority date arguments further, he was required to timely file a notice of appeal following entry of the *Partial Decree* (i.e., final judgment). He did not. Rather, he improperly tried to re-raise the issue more than six month after the entry of the *Partial Decree* via his *Motion to Set Aside Verdict*.⁶ Under the circumstances, the filing of a *Motion to Set Aside Verdict* was not warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law and the imposition of Rule 11(a)(1) sanctions were appropriate as a result.

The Court further notes that Reid's *Petition for Reconsideration* is unavailing on the alternative grounds that Reid fails to cite any legal authority in support of his arguments. Reid also fails to present any new or additional affidavits or other facts in support of his arguments.

⁵ As a general rule, a party to a prior adjudication may not go behind the resulting decree and relitigate issues in the SRBA that were already finally decided in the prior adjudication. I.C. §§ 42-1420(1) & 42-1401A(8) ; *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 947 P.2d 409 (1997); *Order of Recommitment to Special Master for Specific Findings*, subcase nos. 74-1080 and 74-15537 (Jan. 12, 2009).

⁶ The *Motion to Set Aside Verdict* for the limited purpose of amending the flow rate consistent with the global settlement agreement was proper.

See e.g., *Coeur d'Alene Mining Co. v. First Nat. Bank of North Idaho*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990) (holding that on reconsideration “[t]he burden is on the moving party to bring the trial court's attention to the new facts”). Therefore, the Court holds that Reid’s request that this Court reverse the imposition of sanctions resulting from the filing of his *Motion to Set Aside Verdict* in subcase 22-13212 is denied.

B. 22-11639.

Reid next argues that the imposition of sanctions resulting from the filing of his *Notice of Appeal* in subcase no. 22-11639 should be reversed. The record establishes that Reid’s *Notice of Claim* for water right 22-11639 sought a priority date of July 21, 1969. The Director recommended the right with the claimed priority date.⁷ No objections to the recommendation were filed, and on November 24, 2008, a *Partial Decree* was issued for the uncontested claim with the July 21, 1969 priority date. Reid subsequently filed a *Motion to Set Aside Partial Decree and Allow the Filing of a Late Objection* asserting that water right 22-11639 should not exist.

On March 16, 2012, the Special Master issued a *Report and Recommendation on Motion to Set Aside Partial Decree*. The Special Master’s *Report and Recommendation* recommended that 22-11639 be decreed with the claimed priority date. Thereafter, Reid filed a document styled *Notice of Appeal* on March 23, 2012. The Special Master treated the *Notice of Appeal* as a *Motion to Alter or Amend the Report and Recommendation*.⁸ Reid argued in his *Notice of Appeal* that the claim should be decreed with a June 1, 1904 priority date.

Reid’s attempt to assert a new and earlier priority date via a *Motion to Alter or Amend* is prohibited in the SRBA as a matter of law. As an initial matter, Reid’s *Motion to Alter or Amend* seeks a priority date that was never claimed, as Reid’s *Notice of Claim* asserted a July 21, 1969 priority date. Had Reid wished to claim an earlier priority, he was required to file a *Motion to File an Amended Notice of Claim* under AOl § 4.d.(2) via the use of a *Standard Form 4*. At no

⁷ The Director’s recommendation for water right claim 22-11639 is located in his *Director’s Report, Reporting Area 17, IDWR Basin 22 Part 2, Irrigation and Other Uses*, filed on December 22, 2006.

⁸ Reid’s attempt to file a *Notice of Appeal* was procedurally improper at the time. Therefore, the Special Master treated the *Notice of Appeal* as being filed pursuant to *SRBA Administrative Order 1, Rule of Procedures*, § 13.a, which provides that following the issuance of a Special Master’s *Recommendation*, “[a]ny party to the adjudication, including parties to the subcase, may file a *Motion to Alter or Amend* within 21 days from the date the *Special Master’s Recommendation* appears on the Docket Sheet.”

time did Reid file an *Amended Claim* seeking a June 1, 1904 priority date. The rules of procedure in the SRBA explicitly prohibit the use of any other form or procedure to amend a *Notice of Claim* once filed. See e.g., *AOI* § 4.d.(b) (providing, “[a] claimant **may not** amend a claim by filing an objection or a response”). Therefore, Reid had no grounds in law to attempt to amend the priority date of his water right claim via the use of a *Notice of Appeal / Motion to Alter or Amend*. On reconsideration, Reid cites no legal authority in support of his arguments on this issue, nor does he present any new or additional facts not already considered. Therefore, the Court holds that under the circumstances, the filing of the *Notice of Appeal* was not warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law and the imposition of Rule 11(a)(1) sanctions were appropriate as a result. It follows that Reid’s request that this Court reverse the imposition of sanctions resulting from the filing of his *Notice of Appeal* in subcase 22-11639 is denied.

C. 22-13853.

Reid next argues that the imposition of sanctions resulting from the filing of his *Motion to File Amended Notice of Claim* in subcase no. 22-13853 should be reversed. This Court disagrees. The record establishes that Reid was not the claimant of water right claim 22-13853.⁹ Rather, he was an Objector to that claim. Since he did not file the claim and was not the claimant, he had no legal authority to attempt to amend the claim by filing an *Amended Notice of Claim*. Moreover, even if Reid had the authority to file an *Amended Notice of Claim*, he failed to make the *Motion* pursuant to SRBA *Standard Form 4* as required by *AOI*, § 4.d.(2)(c), and did not attach a copy of the *Amended Notice of Claim* as required by *Standard Form 4*. As such, there was no *Amended Notice of Claim* in the record for the Court to factually evaluate. It follows that the *Motion* was not warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law and the imposition of Rule 11(a)(1) sanctions were appropriate as a result. The Court also notes again that Reid cites no legal authority in support of his arguments on this issue, nor does he present any new or additional facts not already considered. Therefore, the Court holds that Reid’s request that this Court reverse the imposition of sanctions resulting from the filing of his *Motion to File Amended Notice of Claim* in subcase 22-13853 is denied.

⁹ The claimant of water right 22-13853 is Rex Miller.

D. Pro se status.

Reid argues that sanctions are unwarranted in this matter because “[a]s a *pro se* participant, I deserve a little latitude as far as specific procedures” Reid’s assertion in this respect is contrary to Idaho Law. The Idaho Supreme Court has directed that “*Pro se* civil litigants are not accorded special latitude merely because they chose to proceed through litigation without the assistance of an attorney.” *Michalk v. Michalk*, 148 Idaho 224, 229, 220 P.3d 580, 585 (2009). Rather, “persons acting *pro se* are held to the same standards and rules as those represented by attorneys.” *Huff v. Singleton*, 143 Idaho 498, 500, 148 P.3d 1244, 1246 (2006). Therefore, the fact that Reid chose to participate in the above-captioned subcases *pro se* has no bearing or influence on whether \$3,500.00 in attorney fees is an appropriate Rule 11(a)(1) sanction under the circumstances.

E. Reasonableness of sanctions.

Last, Reid raises arguments pertaining to the reasonableness of the fees imposed as sanctions at various points in his *Petition for Reconsideration*. The Special Master found the fees to be a reasonable sanction under the circumstances and this Court adopted the Special Master’s findings. The record in this case establishes that following a hearing on the request for the imposition of Rule 11 sanctions, the Special Master requested that counsel for the Objectors submit a memorandum of fees pertaining to the work done in response to the *Motions* at issue here. As a result, on May 17, 2012, counsel for the Objectors filed a *Memorandum of Attorney Fees* as well as the *Affidavit of Thomas J. Budge*.¹⁰ The *Memorandum of Attorney Fees* contains detailed time records of the fees incurred by the Objectors, while the *Affidavit* contains among other things an overview of the time and labor required as well as the skill and hourly rate of counsel.

¹⁰ The Court notes that the award of attorney’s fees in this case was not made pursuant statute (i.e., Idaho Code §§ 12-121, 12-123, etc.) but rather as a sanction under Rule 11(a)(1). Although a memorandum of fees and costs were requested by the Special Master, the request was made to facilitate the determination of whether sanctions should be imposed in the form of attorney fees and to evaluate the reasonableness of those fees. Reid did not file any response to the *Memorandum of Attorney Fees* filed by counsel for the Objectors.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING PETITION FOR RECONSIDERATION was mailed on July 24, 2012, with sufficient first-class postage to the following:

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