

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

DISTRICT COURT - SRBA

Fifth Judicial District
County of Teton Falls - State of Idaho

JUL 13 2012

IN RE SRBA

CASE NUMBER 39576

PETITION FOR
RECONSIDERATION
WATER RIGHT NOS.: 22-
13212, -11639 and -13853

Clerk
Deputy Clerk

INTRODUCTION

Subcases surrounding Paradise Springs had been settled at a settlement conference held in the late fall of 2010. Participants moved slowly but surely towards achieving what was agreed upon at that settlement conference. In accordance with the settlement agreement, I made a motion to set aside the partial decree concerning this right so that it would comply with what we had settled on. What the settlement agreement stated was that I was to increase my rate of diversion on this right by 0.36 cfs to 0.52 cfs. The additional 0.36 cfs was to be subordinate to specific rights held by Cedron Irrigation and Teton Rainbow ranch, Mr. Budge's clients. Also agreed upon but somehow not written in to the agreement was that I would make a motion that my 6/1/1904 priority date was a mistake and should have been 5/23/1901. A court can correct a mistake at any time, and I felt that the court had not addressed my theory that the priority date issue had been the same mistake as the POU issue with the Miller decree; which was, that the court in Rexburg had not looked at Mr. Miller's Notice of Claim filed 5/23/1901, which had his correct POU on it and had his correct priority date. This now is in dispute. Although both Mr. Harris and Mr. Budge remember that this is the conversation we were having just before we came to a final agreement, neither remember agreeing to this provision. This provision was the only reason I agreed not to pursue my claim with 22-11639. At that time, I told Mr. Budge that I would pay for the "couple hours" he would have to spend defending against the motion, because he stated that he didn't want his clients to pay for his time on that issue. I asked him how much he thought that would be, and he replied that since he had to be at the hearing anyway, it probably wouldn't take him more than "5 minutes" extra to quash my renewed motion. I told him again that I would feel fine paying him for a couple hours work if I could get the Special Master to address my theory,

whether or not she agreed with it. He was extremely confident of prevailing on this issue and he agreed to let me do this, at which time we returned to the meeting room with the others and Mr. Budge prepared the settlement agreement form. Almost a year later, in late September, 2011, I received the SF-5 concerning right 22-13212, my right that had been decided upon at trial. It was incorrect in that the subordination clause included every right in the State instead of just the rights of Mr. Budge's clients. I contacted the State AG's office to inquire how this might have happened. Mrs. Courtney stated that she had prepared the form according to her "recollection." She stated that she would prepare it with the correct subordination clause if Mr. Budge agreed. I called Mr. Budge and asked him if he remembered the subordination clause the way I did and he said that he did remember it as being just to include his clients and that we could fix it. This was the last I heard from Mr. Budge prior to the hearing concerning setting aside the partial decree of 22-13212. The day before that hearing, having not heard anything from Mr. Budge, I sent out an email stating that I was dissolving the settlement agreement because it was not in accordance with what I had agreed to and had signed. At that time I looked for my copy of the settlement agreement but could not find it; I realized that Mr. Budge had typed up the agreement and although he promised to make copies and forward those copies to the state and me, he had not done this. Mrs. Courtney had prepared the SF-5 from memory because Mr. Budge had not forwarded her the actual signed agreement. I had no signed agreement to prove what I had signed because Mr. Budge had not forwarded this to me either. I request that Mr. Budge do what he said he would and forward that agreement to us, preferably in an unaltered condition from what I signed. Mr. Budge claimed to remember almost nothing of this a year later at the hearing to set aside the partial decree. He did not remember that I had offered to pay for his time for the priority defense. He instead spent some amount of time asking the court for fees due to the res judicata nature of my motion concerning the priority date. Instead of billing a couple hours which would have been within reason, he asserted that he had spent about 9 hours, including a 2 hour conference and a rewrite of his motion, which was roughly 100 times that amount of time he said it would take him at the settlement conference. After I dissolved the settlement agreement due to Mr. Budge's inability to execute it properly, I contacted other participants to see if they wanted to go through with the agreement. Rex and Don Miller also were less than satisfied with the agreement and I subsequently filed some more motions that Mr. Budge and recently SM Bilyeu found to be deficient and therefore sanctionable. I do not agree with their point of view.

Standard of Review

SM Bilyeu asserted in her Memorandum Decision and Order on Attorney Fees that there are 2 standards of review for Rule 11. The first, which nobody has asserted, is if I were to have made these motions with the intent to harass, unnecessarily delay or to cause expense. Since no one asserted that I had done anything to violate this part of the rules, SM Bilyeu continued on to another portion of Rule 11 that has to do with whether or not I filed motions without performing a reasonable investigation into the facts or the law. I disagree that I failed to perform adequate or reasonable legal or factual work on any of the motions I filed considering the circumstances. In fact, I continue to perform better than the average *pro se* participant in the SRBA, although it is clear I am not perfect either. Mr. Budge and Mrs. Courtney are not perfect in this case either, and their actions are the only reason I had to file any of these motions. In fact, Mr. Budge has only himself to blame for having to write any responses to my motions, for if he had forwarded the settlement agreement to Mrs. Courtney, she would have been able to prepare the SF-5 correctly and there would have been no reason to dissolve the settlement agreement in the first place, and then no reason for any motions.

22-13212

Mr Budge has asserted that there was no agreement that I could raise the priority date issue again as part of the settlement. Both he and Mr. Harris agreed on the record that this was a topic of conversation and that I had requested this as part of the settlement agreement. I remember shaking Mr. Budge's hand after he said that I could re raise the priority issue; otherwise, there would have been no settlement. He said on the record he thought I was just going to ask SM Bilyeu off the record why she didn't recognize the mistake, regardless of *res judicata*. There lies the problem, a fine line between what Mr. Budge and I left the settlement conference believing, each of us thinking something different. He thought I was talking about off the record, and I thought I was talking about on the record. I made the priority argument with Mr. Budge's full knowledge and I had offered to pay him for the time that it took him to defend that portion of the motion. I realized that I well might not prevail, but it was important to me to have SM Bilyeu rule concerning my mistake theory and not just *res judicata*. When I dissolved the settlement agreement, this included my offer to pay for Mr. Budge's time, and I withdrew the Motion to Set Aside -13212 before the hearing began, and gave Mr. Budge and Mrs. Courtney a full day's notice. Again, I dissolved the agreement based on Mr. Budge's declination to abide by what

we had signed, and he is therefore responsible for his actions. No hearing was held on the Motion to Set Aside for -13212 and I did not ever raise the priority issue in open court.

In her order, SM Bilyeu states that I did not argue that the fees were unreasonable, but I clearly on this issue argued many times that the fees were unreasonable and Mr. Budge provided for this record emails where I argued that his fees were unreasonable. He had told me that it wouldn't take more than an extra 5 minutes to argue against the priority date issue, which was a slight exaggeration, but closer to the truth than his point of view on what the bill should be. Since I never got to argue this point, I should not be held responsible for any of his cost, considering the motion was withdrawn prior to the hearing and considering Mr. Budge could have saved the settlement agreement with 3 mouse clicks. If he had changed the subordination clause to match the settlement I signed, none of this would have been necessary. Considering the circumstances, I owe him nothing regarding this right.

22-13853

As the settlement dissolved further, I understood that Rex Miller was not happy with the settlement agreement either. Rex had not been a party to that agreement and he wanted the water the Fred Miller's took from him back, just like me. When I asserted as an objector that Rex needed to have his claim amended, the court asked to have him file and amended notice of claim prior to the hearing. I then tried to contact Rex at Triple Ell trucking where he had worked for 15 years or more, at the phone number I usually reached him at. I reached a recording several times, and apparently Triple Ell went under around the same time we were trying to amend these claims. As a result, Rex and I showed up in SRBA court in Twin Falls without an amended notice of claim. Mr. Budge objected to this, upon which SM Bilyeu told Mr. Budge that she could take that information on the record orally and declined Mr. Budge's objection. This is materially important because I was sitting right there and I know of no difference between my status as a *pro se* participant and Rex Miller's status as a *pro se* participant in the SRBA. SM Bilyeu stated in open court that Rex didn't need an amended notice of claim because she could take that information orally right then and there, overruling Mr. Budge's objection. The Motion was denied without prejudice because at that time, Rex was not able to state the exact rate of flow he wanted to amend his claim to. After the hearing, he contacted Michael Holliday to ask for help but soon after that had a stroke which has left him without the ability to represent himself. I don't think he

has been out of bed since then. This was an act of God that I had no control over, but the fact he was not able to finish what we started does not mean it was not grounded in law or facts. A new settlement agreement that we pounded out allows Rex's wife to file this document for him, showing that in fact, all parties know that the motion to amend his claims was grounded in facts and law. This motion was reasonable considering the circumstances. I owe Mr. Budge nothing on this motion and I deny again that my actions were anything but reasonable under the circumstances.

22-11639

SM Bilyeu's order states that I sought a quantity and priority date never claimed and therefore it was a violation of Rule 11. Now we have to go back to when SM Bilyeu told Rex Miller that he didn't need to have filed an amended notice of claim because she could take that orally. I orally amended my pleadings in February and subsequently at another later status conference to include that I thought the priority date should be 5/23/1901. In my Motion to Alter or Amend, I wrote in the brief the exact elements that needed to be modified and how, namely that the priority date needed to be 6/1/1904 and the rate should be 0.54 cfs.. So I didn't file an amended notice of claim; why would I, when Sm Bilyeu can take this information orally and had no problem doing that for Rex Miller, even overruling Mr. Budge's objections? I learn SRBA and court rules many ways, including reading and including listening to the Special Master. I learned from her at the Rex Miller hearing that filing an amended notice of claim was a formality that need not be addressed if you can do so orally. I went one step beyond this by putting the amendments I wanted in writing, in the Motion, and mailing these to the parties involved. Although there was no Amended Notice of Claim form, all of the elements I wished to change were stated clearly in my Motion and orally at the hearing.

Proof of Payment

If the order were to stand in any way or part, then I require more evidence than a log sheet with notes of 'hours to bill.' In this day and age, it should be no problem for Mr. Budge to produce the invoices he sent to his clients regarding the actions he took and to produce cancelled checks or other good evidence that the invoices, if they exist, were paid. I do not believe Mr. Budge ever invoiced his clients for the amounts he alleges, and if he did, I don't believe they were paid. If either or both are true, it lends credibility to my idea that the amounts are unreasonable. If neither can be produced, then even if I am found to have acted unreasonably, I owe nothing to Mr. Budge

because nothing was billed or paid, and therefore there were no attorney's fees associated with these subcases.

CONCLUSIONS

Under the circumstances, I acted reasonably and all of my Motions were well grounded in fact and law. As a *pro se* participant, I deserve a little latitude as far as specific procedures, such as the filing of an Amended Notice of Claim, especially when such has been pardoned for Rex Miller right in front of me. Mr. Budge could have avoided all of these costs by simply adhering to the settlement agreement as we agreed to it. I have rights that I exercised without impropriety, and I owe nothing to anyone for doing this.

email - TS Budge
copy - EDWA depository

MLT
Michael L Reid

7/9/2012