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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - CSRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
AUG 24 2020	
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 CSRBA

Case No. 49576

) Subcase No. 95-17352
)
) ORDER DENYING MOTION TO SET
) ASIDE
)
) ORDER DENYING LATE OBJECTION
)
)
)
)

I.

BACKGROUND

On August 4, 2017, the Robert and Jan Stuppy Family Trust ("Trust") filed a claim for water right 95-17352 in the Coeur d'Alene-Spokane River Basin Adjudication ("CSRBA"). The claim sought the right to use .02 cfs from an unnamed stream in Kootenai County for year-round stockwatering purposes. The claim was based on beneficial use and sought a priority date of December 31, 2000.

On August 2, 2018, the Director of the Idaho Department of Water Resources issued his *Director's Report for Basin 95 Part 1, Water Rights*. The *Director's Report* contained a recommendation that the water right be decreed to the Trust. No objection was filed to the recommendation by any party. On November 8, 2019, the Court entered a *Partial Decree* for the water right authorizing the Trust to use .02 cfs from an unnamed stream for year-round stockwatering purposes pursuant to a December 31, 2000, priority date. The *Partial Decree* was certified by the Court as a final judgment under Idaho Rule of Civil Procedure 54(b). No appeal was taken from entry of the *Partial Decree*, and the time for doing so has expired.

On April 29, 2020, Debbie and Jake Berreth ("movants") filed a *Motion to Set Aside the Partial Decree* under Idaho Rule of Civil Procedure 60(b), along with a late objection to the Director's recommendation. In their objection, the movants asserts the claim should be

disallowed on the grounds the water right does not exist. The Trust opposes the *Motion*. A hearing on the *Motion* was held on August 18, 2020.

II. ANALYSIS

A. *Motion to Set Aside.*

The movants seek relief from the *Partial Decree* under Idaho Rules of Civil Procedure 60(b)(1)(2) & (3). The decision to grant or deny a request for relief from an order or judgment under Rule 60(b) is committed to the sound discretion of the trial court. *Waller v. State, Dept. of Health and Welfare*, 146 Idaho 234, 237–38, 192 P.3d 1058, 1061–62 (2008).

i. Rule 60(b)(1).

Rule 60(b)(1) applies in cases of “mistake, inadvertence, surprise, or excusable neglect.” There was no mistake, inadvertence, surprise, or excusable neglect in the processing of this claim. The Trust timely filed the claim as required by Idaho Code § 42-1409. After investigating the claim, the Director filed a *Director’s Report* recommending that a decree issue for the claim. The *Director’s Report* was filed, and a *Notice of Filing of the Director’s Report* was served, in accordance with Idaho Code § 42-1410(6). Any party to the CSRBA who wished to object to the Director’s recommendation was required to do so on or before April 30, 2019. I.C. § 42-1412(1); *Notice of Filing Director’s Report for Basin 95, Part 1, Water Rights*, Twin Falls County Case No. 49576 (*In Re CSRBA*) (August 2, 2018). Neither the movants, nor any party to the CSRBA, filed an objection. When no objections were filed, following a hearing on the uncontested claim, the Court entered a *Partial Decree* for the claim as required by Idaho Code §§ 42-1411(4) and 42-4212(7). Thus, the claim was processed and decreed in compliance with the adjudication statutes and without mistake, inadvertence, surprise, or neglect.

Despite the fact the claim followed the statutory process, the movants argue they were surprised by the Trust’s claim and complain they did not have notice of the proceedings on that claim. Any lack of notice in this case is a result of the movants’ own inaction. It is undisputed that neither the movants nor their predecessors timely filed any claims to water rights in the

CSRBA.¹ As such, the movants were not parties to the CSRBA at the time those claims timely filed in Basin 95 – including the Trust’s claim – were processed by the Court. Had the movants timely filed a claim, they would have been served by mail with a copy of the Director’s *Notice of Filing Director’s Report for Basin 95, Part 1, Water Rights*, along with instructions on how to object to the Director’s recommendation for the above-captioned water right should they so desire. I.C. § 42-1411(6). The movants did eventually file a water right claim in the CSRBA. However, they did so on August 17, 2020, well after the deadline for filing claims in Basin 95 had passed, and well after claims timely filed in Basin 95 had been processed and decreed by the Court.² They cannot now complain they were surprised by the Court’s proceedings on the Trust’s claim as a result of their own failure to timely participate in the adjudication. In an exercise of discretion, the Court finds the movants’ request to set aside the *Partial Decree* under Rule 60(b)(1) must be denied.

ii. Rule 60(b)(2).

Rule 60(b)(2) applies in cases of “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” The Idaho Supreme Court has directed that under the rule, “a motion for newly discovered evidence will not be granted if the evidence was not in existence at the time of trial.” *Vanderwal v. Albar, Inc.*, 154 Idaho 816, 823, 303 P.3d 175, 182 (2013). Further that “facts which occur subsequent to trial are not considered newly discovered evidence.” *Id.*

The movants provide very little evidence in support of their request to set aside the *Partial Decree* under Rule 60(b)(2). They submit only the *Affidavit of Teresa Balderrama*. In reviewing the *Affidavit*, the Court finds the majority of factual allegations set forth therein to be

¹ In the CSRBA, all claimants of water rights within the Coeur d’Alene-Spokane River Basin water system were statutorily required to timely assert their claims in the adjudication. I.C. § 42-1409(4). The movants received service by mail of the filing requirements in the CSRBA. *Affidavit of Service of Commencement Notice – Kootenai County*, Twin Falls County Case No. 49576, Attachment D, p.10 (Oct. 1, 2009).

² Once a *Director’s Report* for a reporting area has been filed by the Director, a water user must receive leave from the Court to file a late claim to a water right in the CSRBA. *Amended CSRBA Administrative Order 1, Rules of Procedure*, Section 4.d.(3)(b), Twin Falls County Case 49576 (March 5, 2015). The *Director’s Report* for Basin 95, Part 1 was filed on August 2, 2018. The movants’ *Motion to File a Late Notice of Claim* in Basin 95, filed on August 17, 2020, is presently pending before the Court unresolved. A hearing on the *Motion* is set for November 17, 2020.

wholly irrelevant to determining whether the *Partial Decree* should be set aside or whether a stockwater right has been established under Idaho law.³ The *Balderrama Affidavit* does contain an allegation that in the winter 2018 Robert Stuppy diverted water in a manner that resulted in flooding on neighboring property. This allegation does not address the issue presently before the Court (i.e., whether a valid stockwater right was established under Idaho law so as to be entitled to *Partial Decree* in the CSRBA). At best, it speaks to the proper use and administration of the right, which are issues not before the Court in this proceeding. Furthermore, there is no showing by the movants that this allegation, which occurred in 2018, could not have been discovered in time to timely raise it in this proceeding.

The movants additionally argue that Robert Stuppy and/or the Trust have initiated a separate civil suit against them in Kootenai County, which they characterize as an attempt to “use the water right offensively” to seek an injunction against them. However, since evidence of the separate civil matter was not in existence at the time the *Partial Decree* was entered by this Court, it does not satisfy Rule 60(b)(2). *Vanderwal*, 154 Idaho at 823, 303 P.3d at 182. Additionally, the subsequent civil suit is irrelevant to the pertinent issue of whether a valid stockwater right was established under Idaho law in this case. In an exercise of discretion, the Court finds the movants’ request to set aside the *Partial Decree* under Rule 60(b)(2) must be denied.

iii. Rule 60(b)(3).

Rule 60(b)(3) applies in cases of fraud. The movants assert the Trust acquired this water right after making fraudulent misrepresentations to the Court. In its claim, the Trust describes its water use as providing stockwater for up to “48 head of cattle.” The movants assert this statement is fraudulent because the Trust does not own any cattle and thus cannot claim a stockwater right. In making this argument, the movants confuse the law.

In reviewing the record, the Court finds that the uncontroverted evidence supports a finding that a stockwater right was established in this case. Watering livestock is a beneficial use of water under Idaho law. *Joyce Livestock Co. v. U.S.*, 144 Idaho 1, 8, 56 P.3d 502, 509 (2007).

³ For instance, the *Affidavit* sets forth facts of various disputes between Balderrama and Robert Stuppy regarding property lines, dogs, vehicle noise, waterfowl, improper dumping of commercial yard waste, etc... The portions of the *Affidavit* setting forth these disputes have no relevance to whether the *Partial Decree* should be set aside or to whether the above-captioned water right has been established under Idaho law.

A stockwater right arises simply by watering livestock from natural sources on the range they use for forage. *Id.* The stock waterer need not have even intended to appropriate a stockwater right at the time the livestock were being watered. *Id.* Here, the evidence is uncontroverted that stock have historically grazed and watered on the subject property. Indeed, Balderrama admits she grazed her own cattle on the subject property in 2017. Therefore, a stockwater right was established in this case under Idaho law. It follows there is no merit to the movants' position that the stockwater claim should be disallowed on the grounds it does not exist. It also follows there has been no showing of fraud by the Trust in asserting the existence of a stockwater right in this case.

Given that a stockwater right exists under Idaho law, it is of significance to this Court that the Trust is the only party to have claimed it in the CSRBA. If the movants, their predecessors, or any other water user wished to assert a competing claim of ownership to the stockwater right, they were required to raise that issue in the CSRBA by timely filing a claim for the right. I.C. § 42-1409(4). However, no other water user has asserted ownership of this water right by filing a claim to it in the CSRBA. The Trust's assertion of ownership of the stockwater right was thus uncontested.

Last, the movants' assertion that the Trust cannot claim this stockwater right because it does not own cattle is not an accurate statement of the law. A landowner can own a water right obtained by an appropriator using the land with the landowner's permission where the appropriator acts as an agent of the landowner in obtaining the water right. *Joyce Livestock Co. v. U.S.*, 144 Idaho 1, 18, 156 P.3d 502, 519 (2007). Here, the Trust's claim asserts this stockwater right arose on December 31, 2000. The Director in investigating the claim agreed, and issued a *Director's Report* recommending the right with a December 31, 2000, priority date. The *Director's Report* constitutes prima facie evidence of the nature and extent of the water right. I.C. § 42-1411(4).

If the movants disagree with the *Director's Report*, they had "the burden of going forward with the evidence to rebut the director's report as to all issues raised by the objection." I.C. § 42-1411(4). In this case, the movants have failed to carry their burden. The only evidence they provide related to stockwater use on the subject property relates to 2017. At that point, according to the claim and to the *Director's Report*, the stockwater right had already been established for 17 years. The movants place no evidence before the Court regarding any time

period prior to 2017 and thus have failed to carry their burden to rebut the prima facie evidence the right was established in 2000. Nor have they shown they were in a position to have knowledge of what water use occurred on the subject property prior to 2017, or of the nature of any agreement regarding water use between landowner and appropriator. For the foregoing reasons, and in an exercise of discretion, the Court finds the movants' request to set aside the *Partial Decree* under Rule 60(b)(3) must be denied.

B. Late Objection.

The movants seek to file a late objection to the Director's recommendation for the stockwater right.⁴ Late objections are reviewed under the criteria of Idaho Rule of Civil Procedure 55(c). *Amended CSRBA Administrative Order 1, Rules of Procedure*, Section 4.d.(5)(a), Twin Falls County Case 49576 (March 5, 2015). Under Rule 55(c), a late objection may be permitted for good cause shown. The primary considerations in determining good cause are: (1) whether the failure to timely file was willful; (2) whether a meritorious position has been presented; and (3) whether allowing the late objection would prejudice the opponent. *McFarland v. Curtis*, 123 Idaho 931, 936, 854 P.2d 274, 279 (Ct. App. 1993). The decision to grant or deny a late objection rests with the sound discretion of the trial court. *Cf. Meyers v. Hansen*, 148 Idaho 283, 287, 221 P.3d 81, 85 (2009) (providing that the decision to grant or deny a motion for relief under Rule 55(c) is left to the sound discretion of the trial court).

In this case, the Court finds the movants have failed to set forth a meritorious position in support of their late objection. The late objection asserts the stockwater right should be disallowed on the ground it does not exist. However, for the reasons set forth in Section II.A.iii of this *Order*, the Court finds the uncontroverted evidence supports a finding that a stockwater right was established in this case through beneficial use. Therefore, in an exercise of discretion, the Court will deny the late objection.

⁴ The deadline to timely file an objection to the recommendation for this claim was April 30, 2019. I.C. § 42-1412(1); *Notice of Filing Director's Report for Basin 95, Part 1, Water Rights*, Twin Falls County Case No. 49576 (*In Re CSRBA*) (August 2, 2018).

III.

ORDER

Therefore, IT IS ORDERED that the movants' *Motion to Set Aside the Partial Decree* issued for the above-captioned water right is hereby denied.

IT IS FURTHER ORDERED that the movants' late objection is hereby denied.

DATED: August 24, 2020



ERIC J. WITZMAN

Presiding Judge

Coeur d'Alene-Spokane River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION TO SET ASIDE; ORDER DENYING LATE OBJECTION was mailed on August 24, 2020, with sufficient first-class postage to the following:

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