

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JAN 24 2022

By _____ Clerk

Deputy Clerk

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attorney fees in the amount of \$83,094.08, for services rendered by Schroeder Law Officers, P.C. The Mountain Home Irrigation District opposes the attorney fees requests. A hearing on attorney fees was held before the Court on January 18, 2022.

II. ANALYSIS

Weitz' requests for attorney fees are made pursuant to Idaho Rule of Civil Procedure 54(e) and Idaho Code §§ 12-117(1-2), 12-120(1-3), 12-121, and 12-123. Idaho Code §§ 12-117(1-2), 12-120(1-3), 12-121 allow for an award of attorney fees to a prevailing party. Idaho Code § 12-123 allows for an award of attorney fees to any party to an action adversely affected by frivolous conduct.

To determine who is a prevailing party, an analysis of the entire litigation is necessary. *Michalk v. Michalk*, 148 Idaho 224, 235, 220 P.3d 580, 591 (2009). This is because "the prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis." *AgStar Financial Services, ACA v. Northwest Sand & Gravel, Inc.*, 161 Idaho 801, 807, 391 P.3d 1271, 1277 (2017). In this case, only two of the four claims raised by the parties have been resolved. Weitz asserts prevailing party status based on those two claims. However, Weitz' assertion in this respect is based on a claim-by-claim analysis. It is not based on an analysis of the entire litigation, which is yet to be concluded. Therefore, it is premature to examine prevailing party status.

That the Court entered a *Partial Judgment* does not alter this analysis. When the Court entered its *Order*, it did not originally certify it as a final judgment. It was the parties who subsequently filed a stipulation requesting the Court to do so. It was their desire to appeal the two claims addressed by the *Order* prior to litigating the remaining claims. As a courtesy to the parties, the Court entered a Rule 54(b) *Partial Judgment* based on their stipulation.² However, it is undisputed that two claims remain unresolved despite entry of the *Partial Judgment* and that the entire litigation is not complete.

Even if it were appropriate to evaluate prevailing party status, the Court would conclude that neither party has prevailed in full. The Court held the Mountain Home Irrigation District

² A *Notice of Appeal* from the Court's Rule 54(b) *Partial Judgment* was filed by the Mountain Home Irrigation District on June 30, 2021. The appeal was subsequently dismissed by the Idaho Supreme Court.

gained legal title to what was water right 61-248 by claiming that water right in the Snake River Basin Adjudication. *Order*, p.10. While the Court found Weitz holds a beneficial interest in water right 61-10419, it found that interest “is not a particularized interest,” but rather, “an interest held in common with the other shareholders within the boundaries of the District.”³ *Id.* It further found that “the place of use element set forth in the partial decree includes, but is not limited to, Weitz’ parcel of land” but rather “encompasses the entire district.”⁴ *Id.* at 11. Therefore, absent any analysis of the 1923 contract, the beneficial use interest Weitz holds in water right 61-10419 is limited, and is no different than any other shareholder in the District. In this respect, the Court finds that neither party prevailed in full.

Last, the Court does not find that Weitz was adversely affected by frivolous conduct. The partial decree issued for water right 61-10419 in the SRBA was decreed in the name of the Mountain Home Irrigation District. Unlike in the *Pioneer* case, the decree did not include a remark clarifying the issue of ownership. Moreover, the decreed place of use for the water right encompasses the entire boundary of the district. It was neither frivolous nor unreasonable for the Mountain Home Irrigation District to file a declaratory judgment concerning ownership under the partial decree. The Court therefore finds the Mountain Home Irrigation District presented a legitimate question for this Court to address.

For these reasons, the Court holds that an award of attorney fees under Idaho Code §§ 12-117(1-2), 12-120(1-3), 12-121, and 12-123 is not warranted.

³ The Court’s finding in this respect was made “[a]bsent any analysis of the contractual rights and obligations of the parties under the 1923 contract.” *Order*, p.10.

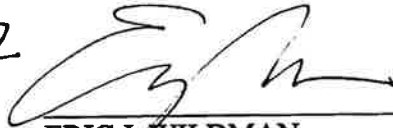
⁴ In making this finding the Court noted that “[t]he fact that Weitz’ beneficial interest in the right is not particularized does not resolve the issue of whether the District has an obligation to deliver water to Weitz pursuant to the 1923 contract as has occurred historically.” *Order*, p.11. The Court did not address that issue because “[t]he contractual rights and obligations of the parties under the 1923 contract is not an issue to be decided by this Court.” *Id.*

III.

ORDER

For the reasons set forth above, IT IS ORDERED that Weitz' requests for attorney fees are hereby denied.

Dated January 24, 2022

A handwritten signature in black ink, appearing to read 'Eric J. Wildman', is written over a horizontal line.

ERIC J. WILDMAN

Presiding Judge

Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING REQUESTS FOR ATTORNEY FEES was mailed on January 24, 2022, with sufficient first-class postage to the following:

CHRIS M BROMLEY
380 S 4TH STREET STE 103
BOISE, ID 83702
Phone: 208-287-0991

VERNON K. SMITH JR.
1900 W MAIN ST
BOISE, ID 83702
Phone: 208-345-1125

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

MOUNTAIN HOME IRRIGATION DIST
VERIFIED PETITION FOR
DECLARATORY JUDGMENT