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DEPT. OF WATER RESOURCES

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

MAY 27 2025

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) Subcase Nos. 95-16445 & 95-18409
Case No. 49576)
ORDER DENYING REQUEST FOR
ATTORNEY FEES AND COSTS
_____)

I.

BACKGROUND

On January 24, 2025, the Court entered a Memorandum Decision in the above-captioned subcases. The findings of fact set forth in the Memorandum Decision are incorporated herein. On that same date, the Court entered Partial Decrees for water right claim numbers 95-16445 and 95-18409 consistent with the Memorandum Decision. On February 20, 2025, Arthur and Katherine Gideon filed a Verified Petition for Costs and Attorney Fees. The Verified Petition seeks an award of \$112,771.00 in attorney fees and \$34.85 in costs, for a total award of \$112,805.85. Brian Farley subsequently filed a Motion to Disallow the Gideons' Verified Petition. A hearing on the Verified Petition and Motion to Disallow was held before the Court on April 18, 2025.

II.

ANALYSIS

A. Attorney fees.

The Gideons seek an award of attorney's fees under Idaho Code § 12-121. That section provides the Court may award reasonable attorney's fees to the prevailing party when the case was brought, pursued or defended frivolously. I.C. § 12-121. The Gideons also seek an award of attorney's fees under Section 29 of the parties' RE-21 Real Estate Purchase and Sale Agreement, dated April 28, 2019, which provides as follows:

SCANNED

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ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

Purchase and Sale Agreement, §29.

Both Idaho Code § 12-121 and Section 29 of the Purchase and Sale Agreement permit an award of attorney fees to the prevailing party. In determining whether a party to an action is a prevailing party, Idaho Rule of Civil Procedure 54(d)(1)(B) directs that the trial court "consider the final judgment or result of the action in relation to the relief sought by the respective parties." The determination of who is a prevailing party is committed to the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. *Bream v. Benscoter*, 139 Idaho 364, 368, 79 P.3d 723, 727 (2003). Furthermore, a trial court need not find a prevailing party in every action; rather, it has the discretion to determine that there is no overall prevailing party. *Costa v. Borges*, 145 Idaho 353, 359, 179 P.3d 316, 322 (2008).

In these subcases, the Court in an exercise of its discretion finds that there is no overall prevailing party. Subcase numbers 95-16445 and 95-18409 were consolidated into this single proceeding by order of the Court on July 11, 2023. A review of this proceeding in its entirety reveals that the Gideons prevailed in part and that Farley prevailed in part.

i. Subcase no. 95-18409.

The Gideons' claim in subcase number 95-18409 sought .04 cfs of groundwater from the Lower Well for domestic and stockwater purposes. The Director filed his recommendation for the claim on May 22, 2023. He recommended the claim be decreed with a quantity of .02 cfs, along with the following combined use remark: "Right Nos. 95-16445 and 95-18409 are limited to a total combined diversion rate of .02 cfs." He also recommended the following place of use: T52N R03W S09 SENW in Kootenai County. Objections to the recommendation were filed by both parties. Neither party prevailed on their objections.

The Gideons objected to the recommended quantity of .02 cfs, asserting that they should be decreed the claimed quantity of .04 cfs. They also objected to the recommended place of use, asserting the recommended place of use should be expanded to include T52N R03W BM S09 NESW in Kootenai County. Ultimately, water right 95-18409 was decreed with the recommended quantity of .02 cfs. That .02 cfs is also subject to a combined use remark stating

that “Right Nos. 95-16445 and 95-18409 are limited to a total combined diversion rate of .02 cfs.” CSRBA Subcase No. 95-18409, Partial Decree (January 24, 2025). Likewise, the water right was decreed with the recommended place of use, and does not include the expanded place of use sought by the Gideons. Thus, the Gideons did not prevail on their objection.

Farley also filed an objection to the recommendation, asserting the water right should not exist. Farley failed to prevail on this issue, as the Court ultimately issued a partial decree for the right. Therefore, Farley did not prevail on his objection. Therefore, the Court in an exercise of its discretion finds that there is no overall prevailing party in the subcase number 95-18409 portion of this proceeding. It follows the Gideons’ requests for an award of attorney fees under Idaho Code § 12-121 and Section 29 of the Purchase and Sale Agreement must be denied.

ii. Subcase no. 95-16445.

Farley’s amended claim in subcase number 95-16445 sought .02 cfs of groundwater from the Lower Well for stockwater purposes. The Director recommended the claim be decreed to Farley with the place of use and purpose of use described in the amended claim. The Gideons filed an objection asserting that the water right should be decreed in their names, as opposed to Farley. They also objected that the purpose of use should include domestic use and that the place of use should include Parcel I. Ultimately, water right 95-16445 was (1) decreed in Farley’s name, (2) does not include domestic use as an authorized purpose of use, and (3) does not include Parcel I as an authorized place of use. Therefore, the Gideons did not prevail on their objection. Therefore, the Court in an exercise of its discretion finds the Gideons are not a prevailing party in the subcase number 95-16445 portion of this proceeding. It follows the Gideons’ requests for an award for attorney fees under Idaho Code § 12-121 and Section 29 of the Purchase and Sale Agreement must be denied.

B. Costs.

The Gideons seek an award of costs under Idaho Rule of Civil Procedure 54(d) and Section 29 of the Purchase and Sale Agreement. Both Rule 54(d) and Section 29 of the Purchase and Sale Agreement permit an award of costs to the prevailing party. For the reasons set forth in the preceding section, the Court in an exercise of its discretion finds that there is no overall

prevailing party in this proceeding. Therefore, the Gideons' request for an award of costs must be denied.

III.
ORDER

Therefore, IT IS ORDERED that the Gideons' request for attorney fees and costs is hereby denied.

IT IS SO ORDERED.

DATED: May 27, 2025



ERIC J. WILDMAN

Presiding Judge

Coeur d'Alene-Spokane River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING REQUEST FOR ATTORNEY FEES AND COSTS was mailed on May 27, 2025, with sufficient first-class postage to the following:

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