

8-23-2010

Bagley v. Thomason Augmentation Record Dckt. 37487

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In the Supreme Court of the State of Idaho

JOHN BAGLEY and TERRENCE BAGLEY,)

Defendants-Counterdefendants-)
Respondents,)

v.)

BYRON T. THOMASON and MARILYNN)
THOMASON, husband and wife.)

Defendants-Counterclaimants-)
Appellants.)

JOHN BAGLEY, an individual, and)
TERRANCE BAGLEY, an individual,)

Plaintiffs-Counterdefendants-)
Respondents,)

v.)

BYRON T. THOMASON and MARILYNN)
THOMASON, husband and wife,)

Defendants-Counterclaimants-)
Appellants,)

and)

LIBERTY PARK IRRIGATION COMPANY,)
an Idaho corporation,)

Defendant-Counterclaimant.)

ORDER GRANTING MOTION TO
AUGMENT

Supreme Court Docket No. 36041-2009
Madison County District Court No.
2008-359

AUGMENTATION RECORD

Supreme Court Docket No. 37487-2010
Madison County District Court No.
2009-88

Ref. No. 10-377

A MOTION TO AUGMENT COURT RECORDS with attachments was filed in Supreme Court Docket No. 37487-2010 by Appellants Byron T. Thomason and Marilyn Thomason on August 10, 2010, requesting this Court for an order augmenting the appellate record with copies of the documents attached to this Motion. Thereafter, this Court issued an Order on August 18, 2010, consolidating Supreme Court Docket Nos. 36041-2009 and 37487-2010 for all purposes under Docket No. 36041-2009. Therefore, good cause appearing,

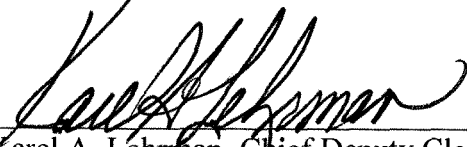
ORDER GRANTING MOTION TO AUGMENT – Docket Nos. 36041-2009/37487-2010

IT HEREBY IS ORDERED that the augmentation record in these consolidated appeals shall include the documents listed below, copies of which accompanied Appellants Byron T. Thomason and Marilyn's Thomason's 8-10-10 Motion to Augment Court Records:

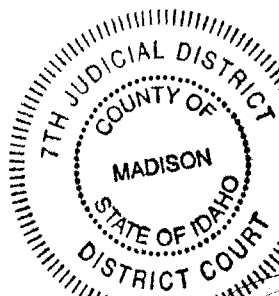
1. Order Granting in Part Plaintiffs' Request for Attorney Fees and Costs, file stamped May 26, 2010;
2. Final Judgment, file stamped May 26, 2010; and
3. District Court Register of Actions in Madison County Case No. CV-2009-0088.

DATED this 23rd day of August 2010.

By Order of the Supreme Court


Karel A. Lehrman, Chief Deputy Clerk for
Stephen W. Kenyon, Clerk

cc: Byron T. Thomason and Marilyn Thomason, *pro se*
Counsel of Record



CERTIFICATE
I HEREBY CERTIFY THE
FOREGOING INSTRUMENT
TO BE A TRUE AND COR-
RECT COPY OF THE ORIG-
INAL ON FILE IN MY
OFFICE.

DATED 7-29-10
Marilyn R. Rasmussen
Madison County Clerk,
Auditor and Recorder.

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF MADISON
By [Signature]
Deputy

FILED IN CHAMBERS AT BLACKFOOT,
BINGHAM COUNTY, IDAHO

11 May 26, 2010

AT 2:44pm

[Signature]
DARREN B. SIMPSON
DISTRICT JUDGE

JOHN BAGLEY and
TERRANCE BAGLEY,

Plaintiffs,

vs.

LIBERTY PARK IRRIGATION
COMPANY, an Idaho corporation,
BYRON THOMASON, and MARILYNN
THOMASON,

Defendants.

CASE NO. CV-2009-88

ORDER GRANTING IN PART
PLAINTIFFS' REQUEST FOR
ATTORNEY FEES AND COSTS

I. STATEMENT OF THE CASE

This declaratory judgment and interference with contract case concluded on February 18, 2010 when summary judgment was entered in favor of Plaintiffs John and Terrance Bagley (hereinafter the "Bagleys").¹ Now, the Bagleys request attorney fees and costs against Defendants Byron Thomason and Marilynn Thomason, husband and wife (hereinafter the

¹ See: Order on Motion for Summary Judgment, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed February 18, 2010) (hereinafter the "Summary Judgment Order"). See also: Amended Order on Motion for Summary Judgment, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed May 25, 2010).

Ex A.1-11

"Thomasons").² The Thomasons objected to the Bagleys' Memorandum.³ The Bagleys' attorney fee and cost request against the Thomasons was heard on April 16, 2010.⁴

Having reviewed the Bagleys' Memorandum, the Thomasons' Objection, the Bagleys' supporting memorandum of law,⁵ the Thomasons' renewed objection,⁶ and the record in this case, the Bagleys' request for attorney fees shall be granted in part.

II. ISSUES

The Bagleys seek attorney fees under Idaho Code § 12-121 and claim that the Thomasons defended this case frivolously.⁷ The Thomasons counter that (1) the Bagleys lack standing to sue under Idaho Code § 55-601;⁸ and (2) this Court lacks subject matter jurisdiction.⁹

Based upon the parties' arguments, this Court must decide the following issues:

- (1) Did the Thomasons defend this lawsuit frivolously, unreasonably or without foundation?
- (2) If so, what attorney fees and costs are the Bagleys entitled to recover?

² Plaintiffs' Memorandum of Costs and Attorney Fees and Affidavit of Counsel, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed February 22, 2010) (hereinafter "**Bagleys' Memorandum**").

³ Couterplaintffs [sic] Joint Objection to Attorney Fees, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed March 2, 2010) (hereinafter the "**Thomasons' Objection**").

⁴ Court Minutes, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed April 16, 2010).

⁵ Plaintiff's [sic] Memorandum of Law re: Attorney Fees and Costs, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed March 30, 2010) (hereinafter "**Bagleys' Supporting Brief**").

⁶ Appellants' Joint Renewed Objection on Memorandum of Law re: Attorney Fees and Costs for Fraud, I.R.C.P. Rule 60(b)(6) Including District Courts Lacks [sic] of Subject Matter Jurisdiction in CV-2008-359 and CV-2009-88, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed April 16, 2010) (hereinafter "**Thomasons' Renewed Objection**").

⁷ Bagleys' Memorandum, at p. 2.

⁸ Thomasons' Objection, at p. 1.

⁹ Thomasons' Renewed Objection, at pp. 1-7.

III. FINDINGS OF FACT

1. The Thomasons, acting *pro se*, have argued throughout this lawsuit that the judgment in a separate matter, *Bagley v. Thomason*, Madison County case no. CV-2008-359 (a quiet title action), is illegal and that the Bagleys, by filing this lawsuit, attempted to induce Defendant Liberty Park Irrigation Company, an Idaho corporation (hereinafter "Liberty Park") to commit fraud.¹⁰

2. The Thomasons, in response to Liberty Park's request to interplead the water shares, at issue in this litigation, into the registry of the Court, claimed this Court lacked personal jurisdiction under 28 United States Code § 2361 and Federal Rule of Civil Procedure 4(k)(1).¹¹ This Court ruled that the United States Code and the Federal Rules of Civil Procedure did not apply to this lawsuit.¹²

3. The Thomasons now claim this Court lacks subject matter jurisdiction, based upon Idaho Code § 55-601.¹³

¹⁰ See: Motion to Consolidate with Defendants' Affidavits and Exhibit, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed March 2, 2009) (hereinafter the "**Thomasons' Motion to Consolidate**"); Supporting Brief to the Defendants, Byron Thomason and Marilyn Thomason's Motion for the Disqualification of the Presiding District Judge I.R.C.P. Rules 40(d) and Due Process, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed May 13, 2009), at p. 2; Defendants, Byron Thomason and Marilyn Thomason's Objections to Defendant, Liberty Park Irrigation Company Interpleader and Injunction Pleading I.R.C.P. Rules 20 and F.R.C.P. Rule 20, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed June 1, 2009), at p. 3 (hereinafter the "**Thomasons' Objection to Interpleader**"); Defendants' Joint Notice of Lack of Subject Matter Jurisdiction due to Plaintiffs' Lack of Standing, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed February 9, 2010)

¹¹ Thomasons' Objection to Interpleader, at p. 4.

¹² Order Denying Interpleader, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed September 18, 2009) (hereinafter the "**Order Denying Interpleader**"), at p. 4.

¹³ Thomasons' Objection, at p. 1.

IV. APPLICABLE PRINCIPLES OF LAW

1. Idaho Code § 55-601 requires that the name of a grantee of real estate, together with his mailing address, appear on an instrument which conveys real estate.

2. Under Idaho Code § 12-121, attorney fees "may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation."¹⁴ When deciding whether attorney fees should be awarded under Idaho Code § 12-121, the entire course of the litigation must be taken into account and if there is at least one legitimate issue presented, attorney fees may not be awarded even though the losing party has asserted other factual or legal claims that are frivolous, unreasonable, or without foundation.¹⁵ Attorney fees are not appropriate under Idaho Code § 12-121 and Idaho Rule of Civil Procedure 54(e) unless *all claims* brought are frivolous and without foundation."¹⁶

3. The decision whether an action was brought, pursued, or defended frivolously, unreasonably, or without foundation rests in this Court's discretion.¹⁷

4. A court's discretion is examined under a three part test: (a) whether the court correctly perceived the issue as one of discretion; (b) whether the court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the

¹⁴ I.R.C.P. 54(e)(1).

¹⁵ *Michalk v. Michalk*, 148 Idaho 224, ___, 220 P.3d 580, 591 (2009).

¹⁶ *Bingham v. Montane Resource Associates*, 133 Idaho 420, 427, 987 P.2d 1035, 1042 (1999).

¹⁷ *Puckett v. Verska*, 144 Idaho 161, 170, 158 P.3d 937, 946 (2007).

consideration of an award; and (c) whether the court reached its decision by an exercise of reason.¹⁸

5. The factors considered in determining an award of attorney fees, as set forth in Idaho Rule of Civil Procedure 54(e)(3), include:

- (a) the time and labor required;
- (b) the novelty and difficulty of the questions;
- (c) the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law;
- (d) the prevailing charges for like work;
- (e) whether the fee is fixed or contingent;
- (f) the time limitations imposed by the client or the circumstances of the case;
- (g) the amount involved and the results obtained;
- (h) the undesirability of the case;
- (i) the nature and length of the professional relationship with the client;
- (j) awards in similar cases;
- (k) the reasonable cost of automated legal research, if the court finds it was reasonably necessary in preparing a party's case; and
- (l) any other factor which the court deems appropriate in the particular case.¹⁹

¹⁸ *Sun Valley Shopping Center v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

6. A prevailing party to a lawsuit is entitled to recover its costs.²⁰ Idaho Rule of Civil Procedure 54(d)(1)(C) sets out those costs which the prevailing party may recover as a matter of right.

7. Idaho Rule of Civil Procedure 54(d)(1)(D) provides that additional cost items, not enumerated in subsection (d)(1)(C), may be awarded at this Court's discretion upon a showing that such costs were necessary and exceptional, and reasonably incurred.²¹ The Idaho Supreme Court defines "exceptional" under Idaho Rule of Civil Procedure 54(d)(1)(D) as those costs incurred because the nature of the case itself is exceptional.²²

V. ANALYSIS

A. The Thomasons defended this Lawsuit Frivolously, Unreasonably and Without Foundation.

From the outset, the Thomasons have, within their responsive pleadings in this case, contested the judgment issued in *Bagley v. Thomason*, Madison County case no. CV-2008-359, wherein this Court, the honorable Brent J. Moss presiding, quieted title to certain property in favor of the Bagleys.²³ Although the Thomasons moved to consolidate Madison County case no.

¹⁹ Idaho Rule of Civil Procedure 54(e)(3).

²⁰ Idaho Rule of Civil Procedure 54(d)(1).

²¹ Idaho Rule of Civil Procedure 54(d)(1)(D).

²² *Hayden Lake Fire Protection District v. Alcorn*, 141 Idaho 307, 314, 109 P.3d 161, 168 (2005).

²³ See: Defendants', Byron Thomason and Marilyn Thomason First Response, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed March 2, 2008), at Exhibit B.

CV-2008-359 with this lawsuit,²⁴ their motion to consolidate was denied for the reason that CV-2008-359 was closed.²⁵

In their Objection to Interpleader, the Thomasons premised their jurisdiction argument upon 28 United States Code § 1335(a)(1) (defining the requirements for a federal court's diversity jurisdiction over parties).²⁶ This Court denied the Thomasons' challenge to its jurisdiction.²⁷

The Bagleys filed for summary judgment.²⁸ In a document entitled "Defendants' Joint Notice of Lack of Subject Matter Jurisdiction Due to Plaintiffs' Lack of Standing," the Thomasons claimed this Court lacked subject matter jurisdiction in both this case and CV-2008-359, and based their claim upon Idaho Code § 55-601.²⁹ The Thomasons did not respond to the substance of the Bagley's summary judgment motion, and alerted the Court that they would not attend the hearing thereon.³⁰ Summary judgment was granted in favor of the Bagleys.³¹

Idaho Code § 55-601 does not deprive this Court of jurisdiction over the issues raised by the Bagleys, nor does it deprive the Bagleys of standing to pursue recovery of the water shares to the land they recovered in Madison County case no. CV-2008-359. At best, Idaho Code § 55-

²⁴ See: Thomasons' Motion to Consolidate.

²⁵ See: Memorandum, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed April 14, 2009); Order Denying Motion to Consolidate, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed May 25, 2010 *nunc pro tunc* April 14, 2009).

²⁶ Thomasons' Objection to Interpleader, at p. 2, ¶ 3.

²⁷ Order Denying Interpleader.

²⁸ Plaintiffs' Motion for Summary Judgment, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed January 13, 2010).

²⁹ Defendants' joint Notice of Lack of Subject Matter Jurisdiction Due to Plaintiffs' Lack of Standing, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed February 9, 2010).

³⁰ See: Facsimile Letter from Marilyn Thomason, dated February 17, 2010, *Bagley v. Liberty Park Irrigation Company*, Madison County case no. CV-2009-88 (filed February 17, 2010).

³¹ See: Summary Judgment Order.

601 might apply to the quiet title issue(s) raised in case no. CV-2008-359, but has no bearing whatsoever in this case. Case no. CV-2008-359 was the proper forum to raise the issue of the deed. Whether or not the issue was raised in that case is not before this Court, and this Court is bound to apply the judgment issued by Judge Moss in case no. CV-2008-359.

The Thomasons are untrained in the law and are apparently grasping at what they believe aids their particular position in this case. It has long been held in Idaho, however, that pro se litigants are held to the same standard as an attorney.³² The Thomasons' status as pro-se litigants does not afford them special consideration.

The Thomasons' shifting bases for their claims of lack of standing and lack of subject matter jurisdiction, together with the utter lack of validity of any of their arguments as to standing and jurisdiction, convince this Court that the Thomasons have defended this matter frivolously, unreasonably, and without foundation. For these reasons, the Bagleys may recover their attorney fees from the Thomasons under Idaho Code § 12-121.

B. The Bagleys are Entitled to the Majority of their Claimed Fees.

The Thomasons' posed no objection to particular fees claimed by the Bagleys.³³ Taking the factors listed in Idaho Rule of Civil Procedure 54(e)(3) into consideration, this Court finds that the Bagleys' attorneys performed professionally in this case. The fee rates charged, \$225.00 per hour for Lance J. Schuster, and \$175.00 per hour for Blair J. Grover and John M. Avondet,³⁴

³² *Huff v. Singleton*, 143 Idaho 498, 500, 148 P.3d 1244, 1246 (2006); *Everhart v. Washington County Road and Bridge Department*, 130 Idaho 273, 275, 939 P.2d 849, 851 (1997); *Schneider v. Curry*, 106 Idaho 264, 267, 678 P.2d 56, 59 (Ct. App. 1984).

³³ See: Thomasons' Objection; Thomasons' Renewed Objection.

³⁴ See: Bagleys' Memorandum, at p. 2.

are commensurate with the attorney fees charged in southeast Idaho. Paralegal fees in the amount of \$85.00 per hour are also reasonable and fall within the range of paralegal fees charged in southeast Idaho. The total amount of attorney and paralegal fees charged, \$11,931.50 is reasonable for the amount of time and legal skill necessary for the prosecution of this case.

The first three entries on the Bagleys' attorneys' billing summary, however, do not list the work completed for the time billed. Specifically, entry no. 835, in the amount of \$42.50; no. 836, in the amount of \$3,375.00; and no. 837, in the amount of \$391.00; fail to record the work necessary for the time billed. These entries shall not be credited to the Bagleys, as the Court is unable to ascertain the reasonableness of the fees charged. Accordingly, entries 835, 836, and 837 shall be subtracted from the total fee charged by counsel for the Bagleys.

Based upon the foregoing, the Bagleys shall have and recover attorney fees in the amount of \$8,123.00 ($\$11,931.50 - \$42.50 - \$3,375.00 - \$391.00 = \$8,123.00$).

C. The Bagleys have Not Claimed Costs as a Matter of Right and Shall Not Recover their Requested Discretionary Costs.

The Bagleys are the prevailing party, having succeeded entirely on their declaratory judgment claim against the Thomasons. The Thomasons raised no counterclaims against the Bagleys, and did not succeed upon any defense raised against the Bagleys. (The Bagleys requested dismissal of their interference with contract claim.)³⁵

³⁵ See: Summary Judgment Order, at p. 2.

The only costs requested by the Bagleys are travel fees for Lance J. Schuster and legal research fees.³⁶ Lawyer travel fees and research fees are not enumerated in Idaho Rule of Civil Procedure 54(d)(1)(C), and therefore fall under discretionary costs.³⁷

Travel expenses and legal research costs are the ordinary and expected costs of litigation. The Bagleys have not argued or shown that any of their claimed discretionary costs were exceptional. Therefore, the Bagleys shall not recover discretionary costs.

VI. CONCLUSIONS OF LAW

(1) The Thomasons defended this lawsuit frivolously, unreasonably and without foundation.

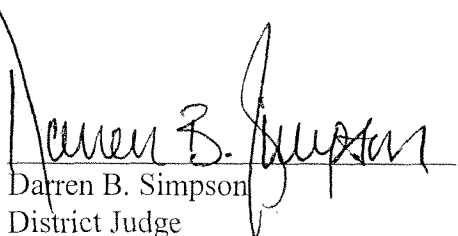
(2) The Bagleys are entitled to recover attorney fees in the amount of \$8,123.00.

VII. ORDER

The Bagleys' request for attorney fees and costs is **granted in part**. The Bagleys shall have and recover from the Thomasons in the amount of \$8,123.00.

IT IS SO ORDERED.

DATED this 26th day of May 2010.


Darren B. Simpson
District Judge

³⁶ See: Bagleys' Memorandum, at attachment, p. 2.

³⁷ Idaho Rule of Civil Procedure 54(d)(1)(D).

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on May 26, 2012 I served a true copy of the foregoing Order Granting in Part Plaintiffs' Request for Attorney Fees and Costs on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Blair J. Grover, Esq.
Lance J. Schuster, Esq.
BEARD ST. CLAIR GAFFNEY
PA
2105 Coronado Street
Idaho Falls, ID 83404



U.S. Mail



Courthouse Box



Facsimile

Jerry R. Rigby, Esq.
RIGBY, ANDRUS & RIGBY,
Chartered
Attorneys at Law
25 North Second East
Rexburg, ID 83440



U.S. Mail



Courthouse Box



Facsimile

Mr. Byron Thomason
Ms. Marilyn Thomason
485 N. 2nd E. (105-273)
Rexburg, ID 83440



U.S. Mail



Courthouse Box



Facsimile

MARILYN RASMUSSEN, Madison County Clerk

(SEAL)

By:

Julene K. Freeman
for Deputy Clerk

FILED IN CHAMBERS AT BLACKFOOT,
BINGHAM COUNTY, IDAHO

May 26, 2010
AT *12:45pm*

Darren B. Simpson
DARREN B. SIMPSON
DISTRICT JUDGE

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF MADISON

JOHN BAGLEY and
TERRANCE BAGLEY,

Plaintiffs,

vs.

LIBERTY PARK IRRIGATION
COMPANY, an Idaho corporation,
BYRON THOMASON, and MARILYNN
THOMASON,

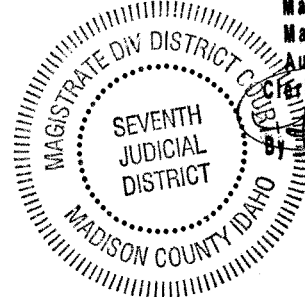
Defendants.

CASE NO. CV-2009-88

FINAL JUDGMENT

CERTIFICATE
I HEREBY CERTIFY THE
FOREGOING INSTRUMENT
TO BE A TRUE AND COR-
RECT COPY OF THE ORIG-
INAL ON FILE IN MY
OFFICE.

DATED *7-29-2010*
Marilyn R. Rasmussen
Madison County Clerk,
Auditor and Recorder,
Clerk of the District Court
By *[Signature]*
Deputy



This Court, having entered summary judgment in favor of Plaintiffs John and Terrance Bagley (hereinafter the "Bagleys"), and having granted attorney fees to the Bagleys, finds that entry of the judgment in this matter is appropriate. Accordingly,

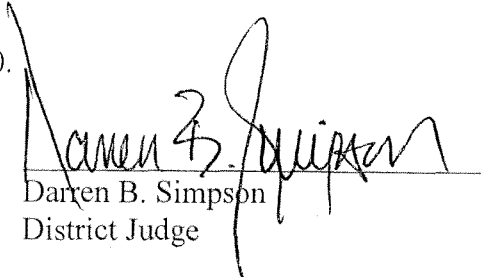
IT IS ORDERED that Bagleys are awarded 52 shares of water in Liberty Park Irrigation Company. The Bagleys shall take nothing by their interference with contract claim, having voluntarily dismissed that claim.

Ex B.1-3

Furthermore, the Bagleys shall have and recover from Defendants Byron Thomason and Marilyn Thomason attorney fees in the amount of \$8,123.00.

IT IS SO ORDERED.

DATED this 26TH day of May 2010.



Darren B. Simpson
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on May 26, 2010 I served a true copy of the foregoing Final Judgment on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Blair J. Grover, Esq.
Lance J. Schuster, Esq.
BEARD ST. CLAIR GAFFNEY
PA
2105 Coronado Street
Idaho Falls, ID 83404



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Jerry R. Rigby, Esq.
RIGBY, ANDRUS & RIGBY,
Chartered
Attorneys at Law
25 North Second East
Rexburg, ID 83440



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Courthouse Box



Facsimile

Mr. Byron Thomason
Ms. Marilynn Thomason
485 N. 2nd E. (105-273)
Rexburg, ID 83440



U.S. Mail



Courthouse Box



Facsimile

MARILYN RASMUSSEN, Madison County Clerk

(SEAL)

By:

Jaime Greenman
Deputy Clerk

CERTIFICATE
I HEREBY CERTIFY THE
FOREGOING INSTRUMENT
TO BE A TRUE AND COR-
RECT COPY OF THE ORIG-
INAL ON FILE IN MY
OFFICE.

DATED

7-29-10

Marilyn R. Rasmussen

Madison County Clerk,

Auditor and Recorder.

Clerk of the District Court

By:

[Signature]
Deputy

FINAL JUDGMENT

B. 3-3

Date: 7/29/2010

Seventh Judicial District Court - Madison County

User: JEN

Time: 01:10 PM

ROA Report

Page 1 of 6

Case: CV-2009-0000088 Current Judge: Darren B Simpson

John Bagley, etal. vs. Liberty Park Irrigation Company, etal.

John Bagley, Terrance Bagley vs. Liberty Park Irrigation Company, Byron T Thomason, Marilyn Lynn Thomason

Date	Code	User	Judge
1/30/2009	NCOC	JEN	New Case Filed - Other Claims
	APER	JEN	Plaintiff: Bagley, John Appearance Lance J Schuster
	APER	JEN	Plaintiff: Bagley, Terrance Appearance Lance J Schuster
		JEN	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: Schuster, Lance J (attorney for Bagley, John) Receipt number: 0015172 Dated: 2/2/2009 Amount: \$88.00 (Check) For: Bagley, John (plaintiff)
	SMIS	JEN	Summons Issued (Marilynn Thomason)
	SMIS	JEN	Summons Issued (Byron Thomason)
	SMIS	JEN	Summons Issued (Liberty Park Irrigation Company)
3/2/2009	HRSC	KRIS	Hearing Scheduled (Motion 04/13/2009 10:00 AM)
		KRIS	Filing: I7 - All Other Cases Paid by: Thomason, Marilyn Lynn (defendant) Receipt number: 0015783 Dated: 3/2/2009 Amount: \$58.00 (Check) For: Thomason, Marilyn Lynn (defendant)
	NOTH	GWEN	Notice Of Hearing
	MOTN	GWEN	Motion to Consolidate with Defendant's Affidavits and Exhibit
	MISC	GWEN	Defendant's Byron Thomason and Marilyn Thomason First Response
4/6/2009	OBJC	GWEN	Plaintiff's Objection to Thomason's Motion to Consolidate
4/10/2009	CONT	ANGIE	Continued (Motion 04/14/2009 10:00 AM)
4/14/2009	MINE	ANGIE	Minute Entry Hearing type: Motion Hearing date: 4/14/2009 Time: 11:22 am Court reporter: David Marlow
4/27/2009	DISADM	ANGIE	Disqualification - Administration (batch process)
5/13/2009	HRSC	LORI	Hearing Scheduled (Motion 06/01/2009 10:00 AM) Motion to Disqualify
	NOTH	GWEN	Notice Of Hearing
	BREF	GWEN	Supporting Brief to the Defendants', Byron Thomason and Marilyn Thomason's Motion for the Disqualification of the Presiding District Judge
	AFFD	GWEN	Supporting Affidavits Defendants Byron Thomason and Marilyn Thomason on their Motion to Disqualify the new District Judge
	MOTN	GWEN	Motion by the Defendants, Byron Thomason and Marilyn Thomason's Motion for the Disqualification of the Presiding District Judge

Ex C. 1-6

Date: 7/29/2010

Seventh Judicial District Court - Madison County

User: JEN

Time: 01:10 PM

ROA Report

Page 2 of 6

Case: CV-2009-0000088 Current Judge: Darren B Simpson

John Bagley, etal. vs. Liberty Park Irrigation Company, etal.

John Bagley, Terrance Bagley vs. Liberty Park Irrigation Company, Byron T Thomason, Marilyn Lynn Thomason

Date	Code	User	Judge
5/28/2009	APER	GWEN	Defendant: Liberty Park Irrigation Company Appearance Jerry R Rigby
		GWEN	Filing: 17 - All Other Cases Paid by: Rigby, Jerry R (attorney for Liberty Park Irrigation Company) Receipt number: 0017793 Dated: 5/28/2009 Amount: \$58.00 (Check) For: Liberty Park Irrigation Company (defendant)
6/1/2009	OBJC	LORI	Defendants, Byron Thomason and Marilyn Thomason's Objections to Defendant, Liberty Park Irrigation Company Interpleader and Injunction Pleading IRCP Rules 20 and FRCP Rule 20
	OBJC	KRIS	Defendants, Byron Thomason and Marilyn Thomason's Objections to Defendant, Liberty Park Irrigation Company Interpleader and Injunction Pleading IRCP Rules 20 and FRCP Rule 20
	ORDR	JEN	Order Of Disqualification
6/18/2009	MISC	GWEN	Plaintiff's Notice of Non-Objection to defendant, Liberty Park Irrigation Company's, Petition for Interpleader
7/22/2009	DISADM	KRIS	Disqualification - Administration
	HRSC	KRIS	Hearing Scheduled (Hearing 08/13/2009 10:00 AM)
7/24/2009	NOTH	KRIS	Notice Of Hearing
8/13/2009	OASI	GWEN	Order Of Assignment
	MINE	ANGIE	Minute Entry Hearing type: Hearing Hearing date: 8/13/2009 Time: 10:13 am Courtroom: Brent J. Moss District Court Court reporter: Sandra Beebe Minutes Clerk: Angie Wood Tape Number: Party: John Bagley, Attorney: Lance Schuster Party: Liberty Park Irrigation Company, Attorney: Jerry Rigby
8/17/2009	MINE	ANGIE	Minute Entry Hearing type: Hearing Hearing date: 8/13/2009 Time: 11:53 am Courtroom: Brent J. Moss District Court Court reporter: Minutes Clerk: Angie Wood Tape Number:
8/19/2009	NSRV	GWEN	Notice Of Service
8/31/2009	MOTN	ANGIE	Motion to Dismiss Lack of Standing, Lack of Jurisdiction

2-1

Date: 7/29/2010

Seventh Judicial District Court - Madison County

User: JEN

Time: 01:10 PM

ROA Report

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Case: CV-2009-0000088 Current Judge: Darren B Simpson

John Bagley, etal. vs. Liberty Park Irrigation Company, etal.

John Bagley, Terrance Bagley vs. Liberty Park Irrigation Company, Byron T Thomason, Marilynn Lynn Thomason

Date	Code	User	Judge
8/31/2009	AFFD	ANGIE	Affidavit of Nicholas Thomason Regarding Watershares in Libery Park Irrigation Co. Darren B Simpson
9/18/2009	ORDR	GWEN	Order Denying Interpleader Darren B Simpson
9/24/2009	NSRV	GWEN	Notice Of Service Darren B Simpson
11/17/2009	NOTH	GWEN	Notice Of Hearing(Will be held in Bingham County) Darren B Simpson
11/24/2009	MINE	GWEN	Minute Entry Darren B Simpson
12/23/2009	ORDR	GWEN	Court Trial Scheduling Order Darren B Simpson
12/28/2009	HRSC	GWEN	Hearing Scheduled (Pre-Trial 04/16/2010 09:00 AM) Darren B Simpson
	HRSC	GWEN	Hearing Scheduled (Court Trial 05/18/2010 09:00 AM) Darren B Simpson
	HRSC	GWEN	Hearing Scheduled (Status Conference 02/12/2010 01:00 PM) Darren B Simpson
1/11/2010	HRSC	GWEN	Hearing Scheduled (Motion 02/12/2010 01:00 PM) Motion for Summary Judgment Darren B Simpson
1/13/2010	MOTN	GWEN	Plaintiff's Motion for Summary Judgment Darren B Simpson
	BREF	GWEN	Brief in Support of Motion for Summary Judgment Darren B Simpson
	AFFD	GWEN	Affidavit of Terrnce Bagley Darren B Simpson
	NOTH	GWEN	Notice Of Hearing Darren B Simpson
1/28/2010	NOTH	GWEN	Amended Notice Of Hearing Darren B Simpson
2/9/2010		GWEN	Defendant's Joint Notice of lack of Subject matter Jurisdiction Due to Plaintiffs' Lack of Standing Darren B Simpson
2/11/2010	CONT	ANGIE	Continued (Status Conference 02/18/2010 03:30 PM) Darren B Simpson
	CONT	ANGIE	Continued (Motion 02/18/2010 03:30 PM) Motion for Summary Judgment Darren B Simpson
2/17/2010		GWEN	Plaintiff's Fact and Expert Witness List Darren B Simpson
		GWEN	Defendant's, Liberty park Irrigation Company, Disclosure of Witnesses Darren B Simpson
	LETT	ANGIE	Letter From L Thomason Dated 2-17-10 4:30 p.m. Darren B Simpson
2/18/2010	MINE	LORI	Minute Entry Hearing type: Motion Hearing date: 2/18/2010 Time: 3:43 pm Courtroom: Brent J. Moss District Court Court reporter: Minutes Clerk: Lori Ann Lewis Tape Number: Party: John Bagley, Attorney: Lance Schuster Party: Liberty Park Irrigation Company, Attorney: Jerry Rigby Party: Terrance Bagley, Attorney: Lance Schuster Darren B Simpson

C.3-1

Date: 7/29/2010

Seventh Judicial District Court - Madison County

User: JEN

Time: 01:10 PM

ROA Report

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Case: CV-2009-0000088 Current Judge: Darren B Simpson

John Bagley, etal. vs. Liberty Park Irrigation Company, etal.

*

John Bagley, Terrance Bagley vs. Liberty Park Irrigation Company, Byron T Thomason, Marilynn Lynn Thomason

Date	Code	User	Judge
2/18/2010	DCHH	ANGIE	Hearing result for Motion held on 02/18/2010 03:30 PM: District Court Hearing Held Court Reporter: Sandy Beebe Number of Transcript Pages for this hearing estimated: less than 100 pages
	CDIS	ANGIE	Civil Disposition entered for: Liberty Park Irrigation Company, Defendant; Thomason, Byron T, Defendant; Thomason, Marilynn Lynn, Defendant; Bagley, John, Plaintiff; Bagley, Terrance, Plaintiff. Filing date: 2/18/2010
	ORDR	ANGIE	Order On Motion for Summary Judgment
	JDMT	ANGIE	Judgment
	HRVC	ANGIE	Hearing result for Pre-Trial held on 04/16/2010 09:00 AM: Hearing Vacated
	HRVC	ANGIE	Hearing result for Court Trial held on 05/18/2010 09:00 AM: Hearing Vacated
	FJDE	ANGIE	Final Judgement, Order Or Decree Entered
	STAT	ANGIE	STATUS CHANGED: Closed
2/22/2010	MEMO	GWEN	Plaintiff's Memorandum of Costs and Attorney Fees and Affidavit of Counsel
3/2/2010		ANGIE	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Thomason, Marilynn Lynn (defendant) Receipt number: 0023469 Dated: 3/2/2010 Amount: \$101.00 (Cash) For: Thomason, Marilynn Lynn (defendant)
		GWEN	Counterplaintiffs Joint Objection to Attorney fees
		GWEN	Appellants' Second Joint Application to restrain, Stay and for an Injunction Against District Court's actions and Orders Issued in Violation of IC 55-601, IRCP Rule 12(g)(4) and IRCP Rules 13(b)(8); 13(b)(16) and 13 (f)(2)
3/8/2010	NOTH	GWEN	Notice Of Hearing
3/9/2010	HRSC	GWEN	Hearing Scheduled (Hearing 04/16/2010 09:30 AM) Memorandum of Costs and Attorney's Fees
	STAT	GWEN	STATUS CHANGED: Reopened
3/16/2010		GWEN	Supreme Court Due Dates
3/22/2010	REQT	GWEN	Request for Additional Transcript and Record
3/23/2010	CONT	GWEN	Continued (Hearing 04/16/2010 04:00 PM) Memorandum of Costs and Attorney's Fees
	NOTH	GWEN	Amended Notice Of Hearing
3/30/2010	MEMO	GWEN	Plaintiff's Memorandum of Law RE: Attorney Fees and Costs
4/6/2010		GWEN	Miscellaneous Payment: Personal Copy Fee Paid by: Thomason, Marilynn Lynn Receipt number: 0024185 Dated: 4/6/2010 Amount: \$.45 (Cash)

C.4-6

Date: 7/29/2010

Seventh Judicial District Court - Madison County

User: JEN

Time: 01:10 PM

ROA Report

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Case: CV-2009-0000088 Current Judge: Darren B Simpson

John Bagley, etal. vs. Liberty Park Irrigation Company, etal.

John Bagley, Terrance Bagley vs. Liberty Park Irrigation Company, Byron T Thomason, Marilynn Lynn Thomason

Date	Code	User	Judge
4/6/2010		GWEN	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Thomason, Marilynn Lynn Receipt number: 0024185 Dated: 4/6/2010 Amount: \$390.00 (Cash)
4/16/2010	MINE	ANGIE	Minute Entry Hearing type: Hearing Hearing date: 4/16/2010 Time: 3:59 pm Courtroom: Brent J. Moss District Court Court reporter: Minutes Clerk: Angie Wood Tape Number:
	MINE	ANGIE	Minute Entry Hearing type: Hearing Hearing date: 4/16/2010 Time: 3:59 pm Courtroom: Brent J. Moss District Court Court reporter: Minutes Clerk: Angie Wood Tape Number:
	MINE	ANGIE	Minute Entry Hearing type: Hearing Hearing date: 4/16/2010 Time: 4:06 pm Courtroom: Brent J. Moss District Court Court reporter: Minutes Clerk: Angie Wood Tape Number:
4/20/2010	TRAN	GWEN	Transcript Filed (Sent Appeal to Parties)
4/22/2010	MINE	ANGIE	Minute Entry Hearing type: Probation Violation Hearing Hearing date: 4/26/2010 Time: 10:56 am Courtroom: Brent J. Moss District Court Court reporter: David Marlow Minutes Clerk: Angie Wood Tape Number:
	ORDR	GWEN	Amended Order on Motin for Summary Judgment (received and faxed to Judge Simspon)
4/23/2010	LETT	GWEN	Letter from Supreme Court
4/29/2010		GWEN	Plaintiff's Proposed Findings of Fact and Conclusions of law
5/12/2010	MOTN	GWEN	Motion for Court Order Regarding Personal Property Under Levy and Sale

C.5-6

Date: 7/29/2010

Seventh Judicial District Court - Madison County

User: JEN

Time: 01:10 PM

ROA Report

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Case: CV-2009-0000088 Current Judge: Darren B Simpson

John Bagley, etal. vs. Liberty Park Irrigation Company, etal.

John Bagley, Terrance Bagley vs. Liberty Park Irrigation Company, Byron T Thomason, Marilynn Lynn Thomason

Date	Code	User	Judge
5/13/2010		GWEN	Appellants' Joint Ongoing Objection to memorandum of Law RE: Attorney Fees and Costs for Fraud IRCP Rule 60(b)(6) Including District Courts Lacks of Subject matter Jurisdiction in CV2008-359 and CV5009-88 and Attached Plaintiff's Proposed Findings of fact and Conclusions of Law dated April 28, 2010 and Sale Notice
5/17/2010	ORDR	GWEN	Order in RE: Property Levy and Sale
5/19/2010		GWEN	Sent to Supreme Court
	LETT	GWEN	Letter from Supreme Court
5/25/2010	ORDR	GWEN	Order denying Motion to Consolidate Nunc Pro Tunc 4/14/09
	ORDR	GWEN	Amended Order on Motion for Summary Judgment
5/26/2010	LETT	GWEN	Letter from Supreme Court
	JDMT	GWEN	Final Judgment
	ORDR	GWEN	Order Granting in Part Plaintiff's Request for Attorney Fees and Costs
5/27/2010		KRIS	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Rigby Andrus Receipt number: 0025436 Dated: 5/27/2010 Amount: \$1.00 (Cash)
6/1/2010	STAT	GWEN	STATUS CHANGED: closed
6/14/2010	WRIT	GWEN	Writ Issued
		GWEN	Miscellaneous Payment: Writs Of Execution Paid by: Thatcher Receipt number: 0025854 Dated: 6/14/2010 Amount: \$2.00 (Check)
6/28/2010	WRIT	GWEN	Writ Issued
		GWEN	Miscellaneous Payment: Writs Of Execution Paid by: Beard St Clair Receipt number: 0026208 Dated: 6/28/2010 Amount: \$2.00 (Check)
7/19/2010	WRRT	JEN	Writ Returned
7/22/2010		KRIS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Thomason, Marilynn Lynn Receipt number: 0026735 Dated: 7/22/2010 Amount: \$5.00 (Cash)
7/23/2010	LETT	GWEN	Letter on Motion to Augment

C. G. G

In the Supreme Court of the State of Idaho

JOHN BAGLEY, an individual, and
TERRANCE BAGLEY, an individual,

Plaintiffs-Counterdefendants-
Respondents,

v.

BYRON T. THOMASON and MARILYNN
THOMASON, husband and wife,

Defendants-Counterclaimants-
Appellants,

and

LIBERTY PARK IRRIGATION COMPANY,
an Idaho corporation,

Defendant-Counterclaimant.

ORDER GRANTING MOTION TO
AUGMENT THE RECORD

Supreme Court Docket No. 37487-2010
Madison County Docket No. 2009-88

A MOTION TO AUGMENT CLERK'S RECORD, a MEMORANDUM IN SUPPORT OF MOTION TO AUGMENT CLERK'S RECORD and an AFFIDAVIT OF COUNSEL were filed by counsel for Respondents on July 21, 2010. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondents' MOTION TO AUGMENT CLERK'S RECORD be, and hereby is, GRANTED and the augmentation record shall include the document listed below, file stamped copies of which accompanied this Motion:

1. Amended Order on Motion for Summary Judgment, file-stamped May 25, 2010.

DATED this 29th day of July 2010.

For the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record

ORDER GRANTING MOTION TO AUGMENT THE RECORD – Docket No. 37487-2010

7-29-10

CERTIFICATE FILED IN CHAMBERS AT BLACKFOOT,
I HEREBY CERTIFY THE BINGHAM COUNTY, IDAHO
FOREGOING INSTRUMENT May 25, 2010
TO BE A TRUE AND COR- 11:35
RECT COPY OF THE ORIAT
INAL ON FILE IN MY
OFFICE: 7-16-10
Dated 7-16-10
Marilyn R. Rasmussen
Madison County Clerk,
Auditor and Recorder.
Clerk of the District Court
By AWOOD
Deputy

Darren B. Simpson
DARREN B. SIMPSON
DISTRICT JUDGE

Blair J. Grover, ISB No. 1494
Lance J. Schuster, ISB No. 5404
Jarin O. Hammer, ISB No. 5408
BEARD ST. CLAIR GAFFNEY PA
2105 Coronado Street
Idaho Falls, Idaho 83404
Telephone: (208) 523-5171
Facsimile: (208) 529-9732

Attorney for Plaintiffs

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
MADISON COUNTY IDAHO**

JOHN BAGLEY and
TERRENCE BAGLEY,

Plaintiffs/Counterdefendants,

vs.

LIBERTY PARK IRRIGATION
COMPANY, an Idaho corporation,
BYRON THOMASON and MARILYNN
THOMASON, husband and wife,

Defendants/Counterclaimants.

Case No.: CV-09-88

AMENDED ORDER ON MOTION FOR
SUMMARY JUDGMENT

THIS CAUSE having come before the Court on Plaintiffs' Motion for Summary Judgment, and the Defendant, Liberty Park Irrigation Company, having failed to file an objection to the Motion or to otherwise oppose the entry of a judgment, and the Defendants, Byron and Marilynn Thomason, having filed a Defendants' Joint Notice of Lack of Subject Matter Jurisdiction Due to Plaintiff's Lack of Standing, but otherwise having failed to respond to the Motion for Summary Judgment filed by Plaintiffs, and additionally having failed to file any affidavits in opposition to the Motion for Summary

EXHIBIT

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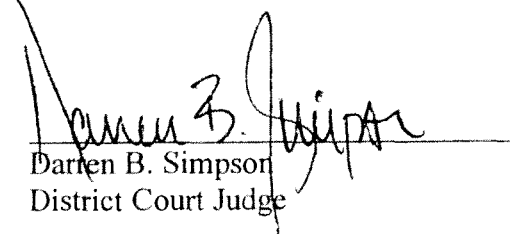
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Judgment, and the Court having considered the arguments of counsel and good cause appearing:

IT IS HEREBY ORDERED AND DECREED:

1. Plaintiffs' motion for summary judgment is hereby granted and the Plaintiffs are awarded 52 shares of water in Liberty Park Irrigation Company.
2. Plaintiffs' remaining claims for interference with contract is dismissed at the request of the Plaintiffs.
3. This order resolves all issues, grants all relief to which the Plaintiffs are entitled other than attorney fees and costs, and brings an end to this lawsuit.

DATED: ^{May}~~April~~ 23, 2010.


Darren B. Simpson
District Court Judge

CERTIFICATE OF ENTRY

I certify pursuant to Idaho Rule of Civil Procedure 77(d) that a copy of the Amended Order on Motion for Summary Judgment was served on ~~April~~ ^{May 25}, 2010,

upon the following as indicated below:

Byron and Marilynn Thomason
485 N 2nd E (105-273)
Rexburg, ID 83440

☒ U.S. Mail ☐ Hand-Delivered ☐ Facsimile

Jerry Rigby
Rigby Andrus Rigby
25 North 2nd East
Rexburg, ID 83440
Fax: 356-0768

☒ U.S. Mail ☐ Hand-Delivered ☐ Facsimile

Lance J. Schuster
Beard St. Clair Gaffney PA
2105 Coronado Street
Idaho Falls, ID 83404
Fax: 529-9732

☒ U.S. Mail ☐ Hand-Delivered ☐ Facsimile

CLERK OF THE COURT


Deputy Clerk