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IN THE SUPREME COURT OF THE STATE OF IDAHO

No. 39069

TERRENCE F. BAGLEY and JOHN KELLY BAGLEY
Plaintiffs/Counterdefendants/Respondents

v.

BYRON T. THOMASON and MARILYNN THOMASON
Defendants/Counterplaintiffs/Appellants

RESPONDENTS' BRIEF

Appeal from the District Court of the Seventh Judicial District
of the State of Idaho, in and for the County of Madison.
Honorable Darren B. Simpson, District Judge, presiding.

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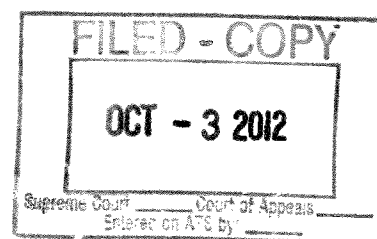


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I. STATEMENT OF THE CASE

A. Nature of the Case.

This case started as an action to quiet title to real property purchased in Madison County, Idaho. John Bagley and his brother, Terrence Bagley (collectively the Bagleys), purchased a small farm from Byron and Marilyn Thomason (Thomasons) for \$141,563.05. The parties signed an agreement for the purchase of the property and the Thomasons conveyed the property via Warranty Deed. Following the purchase and sale a dispute arose as to ownership of the property and the Bagleys filed an action to quiet title to the real property. The Thomasons previously appealed the district court's order quieting title in the Bagleys' name. That appeal, *Bagley v. Thomason*, 149 Idaho 799, 241 P.3d 972 (2010) (*Bagley I*), and a sister case pertaining to water rights, *Bagley v. Thomason*, 149 Idaho 806, 241 P.3d 979 (2010) (*Bagley II*), were consolidated by order of the Supreme Court and decided in October 2010. The Court remanded the matter for entry of a final judgment as to all remaining issues in *Bagley I*.

B. Course of Proceedings/Statement of Facts.

In *Bagley I*, the Idaho Supreme Court expressly ruled that the Bagleys had standing to pursue the quiet title action. *Bagley I*, 149 Idaho at 802, 241 P.3d at 975. The Court found that the district court ruled appropriately, and had jurisdiction to rule, on all issues raised by the Thomasons in *Bagley I*. *Id.* at 799-804, 241 P.3d at 972-977. The Court ruled that the district court should not have decided substantive issues once the case had been appealed. *Id.* at 804, 241 P.3d at 977 n.5.

When the case was remanded back to the district court, the Bagleys sought entry of a

final judgment. On March 4, 2011, the Bagleys filed a motion for judgment on the pleadings and for entry of final judgment along with briefing in support. (R Vol. II, pp. 334-42). While considering the Bagleys' motions, the district court stayed the proceedings and had a transcript of the hearing from March 9, 2009 prepared. (*Id.* at 355-60). On June 16, 2011, the district court granted the Bagleys' motion for judgment on the pleadings and for entry of final judgment. (*Id.* at 370-96). The district court also denied Thomasons' pending motions. (*Id.*) That same day, the district court entered a separate FINAL JUDGMENT, quieting title in the Bagleys and affirmed Judge Moss' prior award of fees and costs. (R Vol. III, pp. 397-400).

Being unwilling to accept the district court's findings, the Thomasons then filed a 470 page document entitled "Counterplaintiffs' Joint Brief, Affidavits Objecting to Court's June 16, 2011 Final Order and Objection to Courts Final Order 6/16/11 and Support for Motion to Reconsider IRCP Rule 11(a)(2)(B) or in the Alternative New Trial IRCP 59(b); 59(d); 59(e) No Rule 54(B) Certificate Has Been Issued." (R Vol. III, p. 401-R. Vol. IV, p. 871).

The Bagleys then filed a Motion for Sanctions pursuant to Idaho Rule of Civil Procedure 11(a)(1), including supporting briefing and affidavits. (R Vol. IV, pp. 872-945). The Thomasons continued to file various items with the district court. The district court ruled on Thomasons' Motion for Reconsideration on September 27, 2011. (R Vol. V, pp. 1146-1180). In the district court's order, the district court awarded the Bagleys their attorney fees "necessary to review and respond" to the Thomasons' Motion for Reconsideration. (*Id.*) In a separate order, the district court referred part of the Bagleys' motion for sanctions to the Administrative Judge, Jon J. Shindurling, for a determination whether the Thomasons should be deemed vexatious

litigants and further sanctioned. (*Id.* at pp. 1141-45). Judge Shindurling has not yet made any findings or issued an order on the request to deem the Thomasons vexatious litigants. The district court awarded the Bagleys \$5,997.50 as a sanction against Thomasons. (*Id.* at pp. 1230-31).

II. ADDITIONAL ISSUE PRESENTED ON APPEAL

Whether the Bagleys are entitled to attorney fees on appeal pursuant to Idaho Code §§ 12-121 & 12-123.

III. ATTORNEY FEES ON APPEAL

The Bagleys are entitled to attorney fees on appeal pursuant to Idaho Code § 12-121 and as the prevailing party under Rule 54 of the Idaho Rules of Civil Procedure. *See Tyler v. Keeney*, 128 Idaho 524, 915 P.2d 1382 (Ct. App. 1996); *see also* IDAHO CODE ANN. §12-121 (2012); IDAHO R. CIV. P. 54 (2012). The Thomasons' appeal is frivolous; therefore, attorney fees are awardable pursuant to Idaho Code §§ 12-121 and 12-123. *See* IDAHO CODE ANN. §§ 12-121 & 123. Idaho Appellate Rule 41 justifies the Bagleys' request for attorney fees on appeal and the Court may determine the amount awarded pursuant to this Rule. IDAHO APP. R. 41 (2012). This issue will be further addressed, *infra*.

IV. ARGUMENT

After spending nearly 37 pages of their brief on the factual history of the case, the Thomasons argue only four separate issues on appeal. All of the issues identified by the Thomasons were previously briefed, argued, and rejected by the Court in both *Bagley I* and *Bagley II*. The Thomasons do not identify a single error by the district court in the proceedings

following the Supreme Court's decisions in the prior appeals. The Thomasons are simply inviting the Court to revisit its prior decisions on appeal. The Court should decline to do so.

Additionally, and as noted in the prior appellate briefing, the Thomasons appear *pro se*. Litigants *pro se* are "held to the same standards and rules as those represented by attorneys." *Huff v. Singleton*, 143 Idaho 498, 500, 148 P.3d 1244, 1246 (2006). "Idaho Appellate Rule 35 requires parties to list and argue issues presented on appeal." (*Id.*) "When issues presented on appeal are not supported by propositions of law, citation to legal authority, or argument they will not be considered by [the] Court." (*Id.*) (citing *Langley v. State*, 126 Idaho 781, 784, 890 P.2d 732, 735 (1995)).

Appellate briefing is meant to be understood in order that the writer might persuade. *Liponis v. Bach*, 149 Idaho 372, 374, 234 P.3d 696, 698 (2010); *City of Kansas City, Inc. v. Hayward*, 954 S.W.2d 399, 401 (Mo. Ct. App. 1997). The Thomasons have briefed this case in a manner that is entirely incoherent and disconnected from the issues raised in the post-remand proceedings. Their briefing is "obscure and esoteric." (*See id.*) The Thomasons' briefing is rife with pseudo-legalese, rhetoric, and legal citations. The Court should not consider the Thomasons' arguments because they lack "coherence, citation to applicable authority, citations to the record, or comprehensible argument." *See Bach v. Bagley*, 229 P.3d 1146 (Idaho 2010).

A. The district court did not err in its orders.

1. Standard of Review.

Where a case is decided on a motion for judgment on the pleadings, for the purposes of appeal, the Court should accept the truth of appellants' allegations. *See, e.g., Jones v. St. Maries*,

727 P.2d 1161, 1162 (Idaho 1986) (citing *Davenport v. Burke*, 27 Idaho 464, 473, 149 P. 511, 515 (1915)). A motion for judgment on the pleadings under I.R.C.P. 12(c) is identical to the federal rule of the same number. The motion for judgment on the pleadings is also treated in the same way as a motion made under Rule 12(b)(6). *Tomlinson v. El Paso Corp.*, 653 F.3d 1281, 1285-86 (10th Cir. 2011). The standard of review for dismissal under 12(b)(6) is the same as the standard of review for a summary judgment. *Idaho Schs. For Equal Educ. Opportunity v. Evans*, 123 Idaho 573, 578, 850 P.2d 724, 728 (1993). Summary judgment is reviewed de novo. *Stonebrook Constr., LLC v. Chase Home Fin., LLC*, 277 P.3d 374, 376 (Idaho 2012).

2. The district court possessed subject matter jurisdiction.

In *Bagley II*, the Court expressly decided the subject matter jurisdiction issue. The Court noted, “Thomasons have not shown that the district court lacked jurisdiction.” *Bagley II*, 149 Idaho at 808, 241 P.3d at 981. The same is true in this appeal. The Thomasons have not explained or demonstrated that the district court lacked the subject matter jurisdiction to adjudicate real property disputes. The Thomasons raise no new issues in this appeal. The sole basis for their argument that the district court lacked jurisdiction is Idaho Code § 55-601, which the Court also rejected as a grounds for standing and, impliedly, subject matter jurisdiction. *Bagley I*, 149 Idaho at 802, 241 P.3d at 975.

Subject matter jurisdiction is the power to determine cases over a general type or class of dispute. *Bach v. Miller*, 144 Idaho 142, 145, 158 P.3d 305, 308 (2007) (citing *Boughton v. Price*, 70 Idaho 243, 249, 215 P.2d 286, 289 (1950)). As noted in *Bach*, “Article V, § 20 of the Idaho Constitution provides that the district court shall have original jurisdiction to hear all cases, both

at law and in equity.” (*Id.*) There can be no dispute that the district court possessed proper authority and jurisdiction to resolve a quiet title dispute pertaining to real property located within Idaho.

The district court had subject matter jurisdiction because Idaho Code §§ 6-401 & 418 authorize district courts to hear actions to quiet title and to regain possession of real property. *See* IDAHO CODE ANN. §§ 6-401, 418 (2012). Thus, the district court possessed subject matter jurisdiction to issue all of the findings, orders, and judgments in this case.

Additionally, this Court has already dealt with the arguments raised by the Thomasons about § 55-601. The Court found that the Thomasons failed to raise the issue of compliance with § 55-601 before the district court when the district court quieted title in the Bagleys. *Bagley I*, 149 Idaho at 802, 241 P.3d at 975. Because the Thomasons did not properly raise or preserve the § 55-601 issue before the district court and during the first appeal, they should not be permitted to raise it during this subsequent appeal. The Idaho Court of Appeals explained this principle in *Capps v. Wood*, 117 Idaho 614, 790 P.2d 395 (Ct. App. 1990). The Court stated:

[U]nder the “law of the case” principle, on a second or subsequent appeal the courts generally will not consider errors which arose prior to the first appeal and which might have been raised as issues in the earlier appeal. This approach discourages piecemeal appeals and is consistent with the broad scope of claim preclusion under the analogous doctrine of *res judicata*.

Id., 117 Idaho at 618, 790 P.2d at 399. *See also Jarman v. Hale*, 122 Idaho 952, 956, 842 P.2d 288, 292 (Ct. App. 1992).

3. The Bagleys possess standing to bring the underlying lawsuit.

This Court previously found that the Bagleys had standing to bring the quiet title action. *Bagley I*, 149 Idaho at 802, 241 P.3d at 975. The Court's findings in *Bagley I* are binding under the law of the case doctrine. The law of the case doctrine precludes relitigating issues in single cases and any subsequent proceedings after an appeal. See *Berkshire Invs., LLC v. Taylor*, 278 P.3d 943, 951 (Idaho 2012) (citing *Swanson v. Swanson*, 134 Idaho 512, 515, 5 P.3d 973, 976 (2000)). "The 'law of the case' doctrine provides that when 'the Supreme Court, in deciding a case presented states in its opinion a principle or rule of law necessary to the decision, such pronouncement becomes the law of the case, and must be adhered to throughout its subsequent progress, both in the trial court and upon subsequent appeal.'" *Spur Prods. Corp. v. Stoel Rives LLP*, 153 P.3d 1158, 1162 (Idaho 2007) (citing *Swanson*, 134 Idaho at 515, 5 P.3d at 976). Thus, the Court's prior ruling on the issue of standing is binding and the Thomasons provide no coherent argument or authority otherwise.

4. The district court did not abuse its discretion.

It is unclear from the Thomasons' briefing "how" the district court abused its discretion. The argument seems to suggest that the district court's refusal to dismiss the action because it lacked subject matter jurisdiction constituted an abuse of discretion. However, as noted, *supra*, the district court had subject matter jurisdiction to adjudicate the case. Idaho's statutes conferred jurisdiction on the district court and this Court held that jurisdiction exists in this case in *Bagley I*. Thus to the extent the Thomasons' arguments are construed within the context of jurisdiction and standing the arguments have already been addressed and should be rejected.

The Thomasons also do not raise any specific arguments about the attorney fee awards. The Thomasons challenged the interlocutory fee award in prior appeal and this Court rejected their arguments. *Bagley I*, 149 Idaho at 803-04, 241 P.3d at 976-77. In their appellant brief, the Thomasons identify no specific error committed by the district court in reaching any of the attorney fee awards in this case. The appellate courts of the State of Idaho have routinely declined to search an appellate record for unspecified errors. *In Re Clark*, 283 P.3d 96, 103 (Idaho July 6, 2012); *Bach v. Bagley*, 148 Idaho 784, 790, 229 P.3d 1146, 1152 (2010); *Idaho Dep't of Health & Welfare v. Doe*, 150 Idaho 103, 113, 244 P.3d 247, 257 (Ct. App. 2010). Idaho appellate courts require argument and a specific assignment of error under the Idaho Appellate Rules in order for an issue to be preserved and deemed properly brought before the Court. *See Suitts v. Nix*, 141 Idaho 706, 708, 117 P.3d 120, 122 (2005). Whether the district court abused its discretion in awarding the Bagleys fees has not been specifically raised or articulated by the Thomasons in their appellate briefing. Therefore, the Court should decline to hear any argument on the attorney fee issue by the Thomasons.

The Thomasons argue that the district court abused its discretion in failing to weigh conflicting evidence, including the original documents and the reconveyance agreement. However, the Thomasons never explain those documents' relevance to the Bagleys' motion for judgment on the pleadings. The Thomasons offer no rationale, no authority, and no argument that explains why those documents should have been sufficient to overcome the Bagleys' motion for judgment on the pleadings. The Thomasons' arguments focus on the quiet title issue and not the dismissal of the counterclaims. The failure to support of proposition with argument or

authority is fatal to that proposition on appeal. *See Hurtado v. Land O'Lakes, Inc.*, 278 P.3d 415, 420 (Idaho May 29, 2012) (citing *Gem State Ins. Co. v. Hutchison*, 145 Idaho 10, 16, 175 P.3d 172, 178 (2007)). As a result of the Thomasons' failure to properly raise the issue of judgment on the pleadings to this Court, their appeal should be denied and the Court should find that the district court did not abuse its discretion in granting the Bagleys' judgment on the pleadings.

5. There is no evidence of fraud.

The Thomasons never presented the district court with any evidence of fraud by the Bagleys, Bagleys' counsel, or any other individual or entity involved in this case. The Thomasons' claims of fraud are spurious. The Thomasons raised the issue of fraud in *Bagley I* and *Bagley II*. These issues, having previously been raised, are not properly before the Court. There was no explanation ever offered to the district court by the Thomasons how or why the Bagleys were engaging in fraud upon the district court in connection with the request for judgment on the pleadings. The district court's findings that there was an absence of evidence of fraudulent conduct and that the claims by the Thomasons were meritless have not been properly preserved or challenged on appeal. The Court should deny the Thomasons' appeal to the extent that they seek relief based upon fraudulent conduct.

6. The Thomasons' Equal Protection argument fails.

The Thomasons make conclusory statements that they were somehow denied equal protection under the laws of the United States of America. However, as with all other positions taken by the Thomasons on appeal, the Thomasons utterly failed to support their conclusory statements with authority or argument. They cite some cases for generic legal propositions as

opposed to anything remotely applicable to this case. The Thomasons have not identified that they are members of a suspect or quasi-suspect class. They have not shown that the laws of which they complain violate the principles of equal protection or that they have any discriminatory impact on the Thomasons. The Thomasons had access to the courts, appeared in those courts, and have presented arguments. They have not been deprived of any equal protection under the laws of the United States of America.

The Thomasons' only argument that remotely supports their conclusory statements about equal protection is that the district court violated equal protection by "not dismissing the [Bagleys'] case and voiding any and all relief to the [Bagleys]." (Appellant Br. at 42). However, this asserted error does not rise to the level of violating equal protection. In fact, after the case was remanded the Thomasons never requested dismissal of the Bagleys' lawsuit. The Thomasons objected to the Bagleys' motions, it is true; however, they never affirmatively requested that the district court dismiss the quiet title action. And even if they had made such a request, the Thomasons do not present the Court with any authority remotely suggesting that the failure to dismiss a case violates equal protection. Equal protection is designed to prevent discrimination in the nations' laws. The Thomasons never raise any argument or authority identifying how the current laws discriminate against the Thomasons in any way. Therefore, the Court should reject the arguments pertaining to equal protection.

B. The Bagleys are entitled to attorney fees under Idaho Code § 12-121.

The Thomasons' appeal is frivolous. There are no fairly debatable issues presented to the Court. The Thomasons focus on issues resolved in the prior appeal and never assign error to the

district court's decision to grant the Bagleys' motion for judgment on the pleadings and enter a final judgment. The Thomasons failure to articulate any justifiable basis for the appeal should leave the Court with an abiding belief that the appeal is frivolous, lacks merit, and is intended solely to harass the Bagleys.

Idaho Code § 12-121 provides:

In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties, provided that this section shall not alter, repeal or amend any statute which otherwise provides for the award of attorney's fees. The term "party" or "parties" is defined to include any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

IDAHO CODE ANN. § 12-121 (2012). The Court has previously held that under § 12-121, a party is entitled to attorney's fees "if the appeal was brought or defended frivolously, unreasonably, and without foundation." *Kelley v. Yadon*, 150 Idaho 334, 338, 247 P.3d 199, 203 (2011) (citing *Crowley v. Critchfield*, 145 Idaho 509, 514, 181 P.3d 435, 440 (2007)). The Court has stated that attorney fees on appeal are awarded under this statute when the Court is "left with an abiding belief that the appeal was brought, pursued, or defended frivolously, unreasonably, or without foundation." *Schmechel v. Dillé*, 148 Idaho 176, 188, 219 P.3d 1192, 1204 (2009) (citing *Burns v. Baldwin*, 138 Idaho 480, 487, 65 P.3d 502, 509 (2003)). Further, the party seeking fees must "support the claim with argument as well as authority." *Evans v. Saylor*, 151 Idaho 223, 228, 254 P.3d 1219, 1224 (2011) (citing *Crump v. Bromley*, 148 Idaho 172, 176, 219 P.3d 1188, 1192 (2009)). Thus, a prevailing party that properly supports its request with both authority and argument may be awarded attorney fees when the appeal is frivolous, unreasonable, or without foundation.

Here, the Bagleys prevailed in all of the proceedings before the district court. They acquired

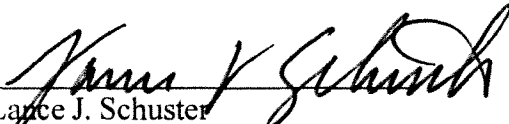
all of the relief that they sought from the district court. The Thomasons received no relief and their counterclaims were all dismissed. The Thomasons have not supported their appeal with any coherent arguments or authority that would tend to suggest a legitimate basis for the appeal. In the absence of authority or argument, the Court should be left with an abiding belief in the frivolity of the Thomasons' appeal. The Court should, therefore, rule in the Bagleys' favor and deny all of the relief sought on appeal by the Thomasons. In the even that the Court rules in the Bagleys' favor, it should award the Bagleys' their attorney fees based on § 12-121.

Section 12-121 is specifically designed to compensate parties who are dragged into the legal process by another party where there is no fair or reasonable dispute. This appeal is just such a case where this Court has already resolved the issues being argued by the Thomasons. Asking this Court to "second guess" the decision of the lower court without more justifies an award of attorney fees under § 12-121. That is precisely what the Thomasons are asking this Court to do along with revisiting the Court's prior decisions in *Bagley I & II*. "Normally, this Court will award attorney fees pursuant to I.C. § 12-121 if the appeal merely invites the Court to reweigh the evidence or second guess the lower court, or if the appeal was brought or defended frivolously, unreasonably, or without foundation." *Ketterling v. Burger King Corp.*, 272 P.3d 527, 534 (Idaho 2012). The Thomasons appeal is frivolous and attorney fees should be awarded to the Bagleys based on Idaho Code § 12-121.

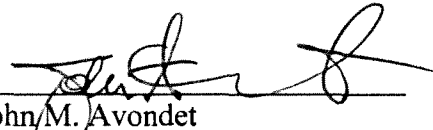
V. CONCLUSION

The district court's orders should be affirmed. The Bagleys should be awarded their attorney fees and costs on appeal.

DATED: October 2, 2012.


Lance J. Schuster
Of Beard St. Clair Gaffney PA
Attorneys for the Respondents

DATED: October 2, 2012.

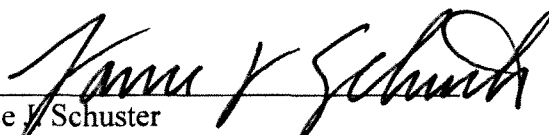

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CERTIFICATE OF MAILING

I certify that two copies of the foregoing document, were mailed on October 2, 2012, to the following individuals via U.S. Mail.

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