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Alderson v. Bonner Appellant's Brief Dckt. 40756

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IN THE SUPREME COURT OF THE STATE OF IDAHO

KATIE ALDERSON, individually, and

KELLI ALDERSON, individually,

Plaintiffs –Respondents

v.

GARY LYNN BONNER,

Defendant -Appellant

Supreme Court No. 40756-2013

APPELLANT'S BRIEF

Appeal from the District Court of the
Third Judicial District for Canyon County.

HONORABLE THOMAS J. RYAN, District Judge presiding.

Gary Lynn Bonner
3512 E. Alexis Ct.
Nampa, Idaho 83686

Unrepresented litigant for Appellant

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McCurdy Law Office
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Boise, Idaho 83702

Attorney for Respondents.

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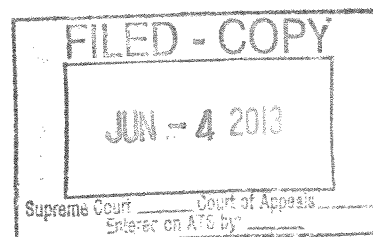


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I. STATEMENT OF THE CASE

1. Nature of case

Pursuant to a jury trial on February 4 through 6, 2004, a Judgment was ordered on February 24, 2004 on the verdict for the Plaintiffs Katie Alderson and Kelli Alderson against Gary Lynn Bonner in the amount of \$215,000.

Subsequently a hearing in this action was held on August 5, 2004, on Defendant's post trial motions, and an Amended Judgment was ordered on August 6, 2004, reducing the verdict for the Plaintiffs against Defendant Bonner to the amount of \$195,000 plus interest from February 26, 2004.

Next, an Appeal was filed in this action with the Supreme Court of the State of Idaho by the Defendant and decided by the Supreme Court's Opinion on April 5, 2006. The District Court's decision was modified and a Second Amended Judgment was ordered by the District Court on May 26, 2006, ordering a verdict for the Plaintiffs against Defendant Bonner in this case in the amount of \$55,000 plus interest from February 26, 2004.

No other Judgments in this case have been since May 26, 2006.

After more than six years from the final Second Amended Judgment was ordered by the Court, no actions had been taken by the Plaintiffs against Defendant Gary Lynn Bonner to enforce any of the Judgments ordered by the Court in this case.

Gary Lynn Bonner now comes before this court and alleges that as a matter of law he should be granted a relief from all the judgments in this case.

2. Course of proceedings

May 26, 2006; Final Judgment entered in case CV 2001-4852.

May 26, 2012; Six years after Final Judgment.

June 6, 2012; Defendant Gary Lynn Bonner filed a Motion for Relief from Final Judgment in case CV 2001-4852.

July 20, 2012; Third Judicial District Court Judge Thomas J. Ryan filed a Notice of Intent to Grant Motion for Relief from Judgment in case CV2001-4852.

August 9, 2012; Plaintiff's Attorney filed an Objection to Motion for Relief from Final judgment.

August 13, 2012; Defendant Gary Lynn Bonner filed the Defendant's Response to Plaintiff's Objection to Motion for Relief from Final Judgment.

August 14, 2012; Gary Lynn Bonner filed an Affidavit with the Court that he had never filed for bankruptcy, in conjunction with his Response to Plaintiff's Objection to Motion for Relief from Final Judgment Defendant.

August 16, 2012; Third Judicial District Court Judge Thomas J. Ryan filed a Notice of Hearing scheduled for October 18, 2012.

October 18, 2012; A Motion Hearing was held in the Third Judicial District Court before Judge Thomas J. Ryan. Neither Plaintiffs nor their Attorney were present.

October 28, 2012; Defendant Bonner sent a letter to the Court, *ex parte*, requesting a clarification of the outcome of the Hearing.

January 22, 2013; Third Judicial District Court Judge Thomas J. Ryan filed an Order Denying

Motion for Relief from Final Judgment in case CV2001-4852.

II. ISSUES PRESENTED ON APPEAL

1. Did the District Court abuse its discretion by denying Defendant's Motion by making a statutory interpretation inconsistent with settled law in Idaho?
2. Did the District Court abuse its discretion to modified Idaho Statutes §11-101, §11-105, §10-1110, and §10-1111 to allow for re-filing a judgment after five years?
3. Did the District Court's decision to allow for re-filing a judgment after five years make Idaho Statutes §11-101, §11-105, §10-1110, and §10-1111, ambiguous?
4. Did the District Court abuse its discretion by ruling without a supporting basis in law that a Judgment could be refilled at any point in the future?
5. Did the District Court error by not applying I.R.C.P. Rule 60(b) to grant Defendant's Motion?

III. ARGUMENT

A. THE DISTRICT COURT ABUSED ITS DISCRETION IN THE ORDER DENYING THE MOTION FOR RELIEF FROM FINAL JUDGMENT, BECAUSE THE COURT MADE A STATUTORY INTERPRETATION INCONSISTENT WITH THE CURRENT SETTLED LAW IN IDAHO.

The District Court's Order on January 22, 2013 denying Bonner's motion for relief from final judgment is in error because it sets a new precedent which would allow a judgment lien to be reestablished after it expires under Idaho Statutes §11-101, §11-105, §10-1110, and §10-1111, and therefore the decision fundamentally renders the previous meaning of these statutes

irrelevant. The statutes are quoted in the Order so I will not be redundant and repeat them.

In the Order the District Court made a ruling in the Order's Conclusion on page 4 that allows the Plaintiffs to "re-file a judgment lien which would establish their priority rights as of that date". The Court cited the statutes in the Order; however there is nothing in the statutes cited by the Court that allows a judgment lien to be re-filed after the five year limitation has expired unless it has been renewed prior to the five year limitation.

The District Court's conclusion is incorrect because in *Bach v. Dawson*, Docket 38380, 2012 Opinion No. 2, January 6, 2012, Judge Gutierrez wrote in Discussion part B: "In short, a civil judgment--whether or not a lien is actually recorded--will last for five years, at which time it expires, unless a party, before that expiration, makes a motion to renew and such motion is granted by the court." There is nothing in the *Bach* Opinion that states that a judgment or lien can be re-filed after it expires in five years as the Court's Order being appealed herein prescribes.

In the Order's conclusion the Court wrote; "While Plaintiff's priority rights are hindered by not executing on the judgment or having the lien renewed, the judgment is still outstanding." And; "Plaintiff's can re-file a judgment lien which would establish their priority rights as of that date." There is nothing in the Idaho Statutes that allows this interpretation of the law.

According to Judge Gutierrez's opinion in *Bach*, a party's rights are not just hindered, but they expire if the judgment is not executed or renewed within five years. Therefore, to allow a judgment to be re-filed at an unspecified time in the future is contrary to Idaho law.

The District Court has the authority under Rule 60(b) to grant relief from a judgment, however the Court does not have the authority to deny relief by broadening the meaning of the

statutes governing judgments as they have in the Order. "[t]he courts are not at liberty to say that any of the statutory requirements to perfect or continue a lien may be omitted." *Groth v. Ness*, 65 N.D. 580, 584, 260 N.W. 700, 701 (1935). "Where the Legislature has clearly prescribed what facts shall be set forth in the statement, the courts have no power to add to or subtract therefrom." *Id.*

The Idaho Rules of Civil Procedure Rule 60(b) states in part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:(4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

In *Bach v. Dawson* Judge Gutierrez stated that a judgment expires if not renewed within five years. And it follows that a judgment that has expired by law qualifies as reason (4) (5) or (6) under rule 60(b) and gives the District Court the authority to grant relief from that judgment.

Although the time periods for judgments vary from state to state, the laws governing how judgments are renewed or end are settled. "After (ten) years after the entry of a judgment that has not been renewed, or after (twenty) years after the entry of a judgment that has been renewed, the judgment must be canceled of record." See *Investors Title Ins. Co. v. Herzig*, 2011 ND 7, ¶ 11, 793 N.W.2d 371. In Idaho the time periods are different; however the legal interpretation that judgments are cancelled of record should be applied because nothing in the Idaho statutes precludes it. And again, if a judgment is cancelled then relief from that judgment should be granted under IRCP Rule 60(b) (4) (5) or (6).

The District Court should have granted Bonner's Motion for Relief from the Final Judgment by precedent because other Idaho Courts have granted relief from judgments when the time period has expired under the statutes. The District Court erred when it wrote in the conclusion of the Order, "There is nothing in the statutes or rules cited by the Defendant that affirmatively grants the Court the ability to grant a motion for relief from a valid final judgment." In *Allen F. Grazer v. Gordon A. Jones*, Docket No. 38852, Pocatello November 2012 Term, 2013 Opinion No. 15, January 29, 2013; the District Court granted summary judgment because a lien expired and the Appeals Court upheld the ruling, "The District Court properly granted Gordon's motion for summary judgment because (1) Grazer's judgment lien expired on July 7, 2010", V. Analysis, page 5. "We affirm the district court's decision because there was no genuine issue of material fact regarding whether Grazer could obtain any relief.", V. Analysis A., page 6. In Bonner's case, after more than six years from the date of entry of the judgment there are no material facts that the Plaintiffs could obtain relief and therefore Bonner's motion should have been granted pursuant to the above decisions. The District Court's decision that the judgment lien could be re-filed in the future is in error.

B. THE DISTRICT COURT ABUSED ITS DISCRETION AND AUTHORITY BECAUSE IT MODIFIED IDAHO STATUTES §11-101, §11-105, §10-1110, AND §10-1111, WHEN IT CONCLUDED IN THE ORDER JUDGMENT COULD BE RE-FILED, AND THIS INTERPRETATION AND/OR EXPANSION OF THE STATUTES IS UNREASONABLE.

In the Order Denying Defendant's Motion for Relief from Final Judgment the District

Court essentially enhanced Idaho Statutes §11-101, §11-105, §10-1110, and §10-1111 with a new provision that allows for re-filing a judgment lien after the five year limitation now imposed by those statutes. This expansion of the statutes is the basis for the Court's denial of Bonner's Motion. (see Order's Conclusion) Without this additional expansion, the statutes allow for relief from judgment liens after five years if the judgment lien is not renewed before the end of the five year period. And Rule 60(b) gives the Court the authority to grant relief.

C. THE DISTRICT COURT ABUSED ITS DISCRETION BECAUSE THE CONTENTS AND SPRIT OF THE ORDER DENYING MOTION FOR RELIEF FROM FINAL JUDGMENT MAKES IDAHO STATUTES §11-101, §11-105, §10-1110, AND §10-1111, AMBIGUOUS.

Prior to the District Court's ruling if a judgment for money or judgment lien was not executed or renewed within five years pursuant to Idaho Statutes §11-101, §11-105, §10-1110, and §10-1111, or no action was taken on the judgment within six years pursuant to I.C. § 5-215(1), then the judgment would have expired under those statutes. In the January 22, 2013 Order denying Bonner's motion, the District Court has ruled that the judgment can be re-filed in the future, which makes the above cited statutes ambiguous because they are no longer the determining fact as to when a judgment expires.

D. THE DISTRICT COURT ABUSED ITS DISCRETION AND AUTHORITY TO TOLL A JUDGMENT, WITHOUT ANY BASIS IN LAW, BY RULING THAT THE JUDGMENT COULD BE RE-FILED.

The District Court was in error to toll the judgment by ruling it could be re-filed in the

future and to cite the bankruptcy evidence in the Order which was proven false by the Defendant.

When the District Court ruled in the Order that the judgment could be re-filled, the Court fundamentally tolled the judgment without any basis in Idaho law. None of the statutes cited by the Court in the Order include a tolling provision. Furthermore, before the Order, the only apparent reference to tolling the judgment was set forth as a consequence of bankruptcy in the Plaintiff's objection to the Motion for Relief. However, Bonner never filed for bankruptcy and proved that fact with an affidavit and by filing a Motion to Hold Attorney William A. McCurdy in Contempt of Court for entering false facts. Nonetheless, the District Court referred to the Plaintiff's false claim of bankruptcy in the Order and essentially condoned the entry of false evidence by an attorney. (Hearing page 2, line 25 to page 3, line 3)

E. THE DISTRICT COURT ERRED BY NOT CONSIDERING OR APPLYING RULE 60(B) WHICH GIVES THE COURT THE ABILITY TO GRANT A MOTION FOR RELIEF FROM THE OPERATION OF A JUDGMENT.

In the Defendant's Motion for Relief from Final Judgment on page 3 Bonner specifically cited IRCP Rule 60(b) (4), (5), and (6) as authority for the Court to grant his motion. However, in the Order Denying Motion for Relief from Final Judgment the District Court wrote in its conclusion on page 4: "There is nothing in the statutes or rules cited by the Defendant that affirmatively grants the Court the ability to grant such a motion for relief from a valid final judgment." The Court also cited applicable statutes in the Order; however IRCP Rule 60(b) was noticeably absent.

In the Order's conclusion the Court stated they did not have the ability to grant such a

motion for relief from a valid final judgment. However, this judgment had expired pursuant to Judge Gutierrez's interpretation of the law in *Bach v. Dawson* and therefore it was no longer a valid judgment. Furthermore, there is no reference in Rule 60(b) to the term "valid" judgment or that such a judgment would be exempt from relief under Rule 60(b).

As previously stated herein in *Allen F. Grazer v. Gordon A. Jones*, Idaho Courts have granted relief from judgments because they have expired.

F. THE DISTRICT COURT ABUSED ITS DISCRETION BECAUSE ITS ACTIONS WERE INCONSISTENT.

The District Court had consistently demonstrated that relief from judgment was proper under the law by the Notice of Intent on July 20, 2012 and the Motion Hearing on October 18, 2012. The District Court issued a Notice of Intent to Grant Motion for Relief from Final Judgment on July 20, 2012. In that Notice the Court stated that "Good causing appearing," was the basis for granting the Defendant's motion. Between the issuance of this Notice and the Final Judgment no true evidence was entered by the Plaintiffs to change this decision. At the motion hearing on October 18, 2012 the Court asked Bonner what affirmative action he wanted the Court to take. (Motion Hearing page 1, line 20-21) By this question, clearly the Court was granting Bonner's motion. The Court went on to say that the judgment liens automatically expire after five years. (Motion Hearing page 2, line 1-20) However, in the final analysis instead of granting the motion and ending the matter, the Court predestined Bonner to return to the legal system for relief in the future. (Motion Hearing page 2, line 4-7) Then in sharp contrast the Court issued the Order denying Bonner's motion for relief and ruled that the Plaintiff's could re-file the

judgment in the future.

For an unexplained reason the Court changed its position from granting the motion for good cause to denying the motion. The Plaintiff's Objection filed August 9, 2012 entered a false fact that the Defendant had filed for bankruptcy and that should toll the timeline for seeking recovery under the judgment. However, Bonner filed an affidavit proving that he had never filed for bankruptcy. And because this was an outright attempt by Plaintiff's Attorney to influence the Court's decision with untrue facts, the Defendant filed a motion on Sept. 5, 2012 to hold Attorney McCurdy in contempt of court. Bonner withdrew this motion at the hearing on October 18, 2012 after he believed his motion for relief had been granted.

Notwithstanding that the bankruptcy fact was proven false, the Court still cited it in the Final Decision with a weak disclaimer that the Defendant had disputed it. Since no other facts were entered by the Plaintiffs to toll the judgment, on its face it appears that the District Court changed its intent to grant Bonner's motion based on the bankruptcy fact, albeit false, and subsequently tolled the judgment in the Order denying the Defendant's motion.

The District Court's final decision on Bonner's motion is inconsistent with the pleadings and law in this matter.

IV. CONCLUSION

For the reasons stated above, and the transcripts and files of this case, the Defendant Gary Lynn Bonner respectfully requests that this Court of Appeals: (1) Reverse the District Court's denial of Defendant Bonner's Motion for Relief from Final Judgment, and (2) uphold Idaho Statutes that a Judgment cannot be re-filed after it has expired under Idaho Statutes §11-101,

§11-105, §10-1110, and §10-1111.


DATED this 1st day of June 2013.


GARY LYNN BONNER
Unrepresented Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June 2013, I caused to be served 2 copies of a true and correct Appellant's Brief and exhibits by U.S. Mail, postpaid, addressed to the following:

William A. McCurdy
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Boise, Idaho 83702


Gary L. Bonner