8-6-2008

Bach v. Miller Respondent's Brief Dckt. 31716

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN N. BACH,

Plaintiff/Respondent.

Supreme Court Dkt 31716
(Teton CV 02-208)

v.

ALVA A. HARRIS, Individually & as SCONA, INC. a sham entity, JACK McLEAN, bob FITZGERALD, Individually & dba CACHE RANCH, OLE OLESON, and BLAKE LYLE, Individually & dba GRANDE TOWING, and dba GRANDE AUTO BODY & PAINT,

Defendants/Appellants.

R E S P O N D E N T 'S B R I E F

Appeal from the District Court, Seventh Judicial District, Teton County, Honorable Richard T. St. Clair, District Judge, Assigned

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For Respondent

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For Appellants
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I. MOTION TO DISMISS APPEAL-LACK OF COMPLIANCE OF I.A.R. RULES 11(a)(1),(7), 11.1, 14, 17, 35(a)(3)-(6)

APPELLANT'S Opening brief, a patchwork of failure, evasions and outright noncompliance of the aforesaid rules, does not specify who are all the appellants.still represented by ALVA A. HARRIS. Such information is not stated on the cover, nor Part A. Nature of the Case.

In Part B. COURSE OF PROCEEDINGS, page 1, last sentence, it's stated: "The appellants Alva Harris on his own behalf, and on behalf of Defendants Bob Fitzgerald, Ole Oleson and Blake Lyle submitted a Notice of Appearance on August 5, 2002." (R. Vol 1:16)

Missing through appellants' such brief, whoever they are, are defendants "SCONA, INC., and Idaho Corporation", "JACK LEE McLEAN" and"WAYNE DAWSON". Dawson was represented by Jared Harris. Jack McLean, died in Dec. 2003, but despite Alva Harris' misrepresentation that his daughter Lynn McLean, Manitoba, Canada, was appointed and sworn in as his estate's representative, such never occurred.

No probate/estate for Jack McLean deceased existed nor now exists, nor could it because of I.C. 15-3-108

Alva Harris further fails to correctly set forth all detailed and controlling facts, procedural/filing sequences and events, with supporting relevant case authorities or statutes. He seeks "the benefit of a genuine doubt", citing inaccurately and deceivingly Johnson v. Pioneer Title Co of Ada County, 104 Idaho 727. However, in Johnson, 102 Idaho at 731 it's stated: "whether to grant a motion to set aside a default judgment is committed to the sound discretion of the trial court, and ordinarily such decision will not be disturbed on appeal in the absence of an abuse of discretion. . ."

Appellants' Opening Brief omits specific filings, a two day OSC hearing of Aug. 13 and 15, 2002, wherein Respondent testified, had admitted exhibits and such testimony was required to be considered and applied, not restated, per Rule 65(a)(2). Alva Harris himself, was the attorney making two appearances for himself and the defendants then in the original complaint; he cross examined Respondent, made oral objections and motions. He knew that upon said two days of hearing Judge St. Clair issued a preliminary injunction. (Tr: 5-161; 476-744, 759-789, 112-1164) Alva Harris with Jared Harris were present at the hearing, Dec. 5, 2003, re damages sought/awarded against Wayne Dawson. (Tr: 1314-1363) Dawson has not appealled from the Amended Default Judgment against him of Feb. 23, 2004, but Respondent has, in Dkt 31717 re abuse of discretion, void and flagrantly illegal actions/decisions by Judge St. Clair as to grossly insufficient award of damages and monetary compensation to respondent.

Most relevant is that "a time notice of appeal is a jurisdictional requirement. I.A.R. 21." Johnson, supra, 731. A Notice of Appeal must state its from a Final Judgement and be timely within 42 days from entry thereof. Nowhere does Alva Harris state in such opening brief what final judgment and from which part/portion thereof, appellants, whoever they are appealled. In the "NATURE OF THE CASE", Alva Harris does stated, last two sentences: ". . the Trial Court entered Judgment against the defaulted Defendants. From those orders, Appellants Appeal." No cite/reference to any specific order, clerk or reporter's

transcripts on appeal is made or stated.

Appellants' third issue, i.e. the district court "erred when it imposed a monetary judgment that was based upon speculation", is based on solely page 6, mid paragraph: "there was no meaningful substantive testimony given. Plaintiff rested on his exhibits. See Clerk's Transcript at p. 1461-1464." This statement is wholly false, deceiving unstated and inaccurate.

Feb. 2, 2004, an evidentiary hearing was held before Judge St. Clair re damages and other relief to be awarded due t apellants entered defaults. The Court Reporter's transcript on Appeal reveals, pages 22-30 of Respondent's testimony on said date more, Alva Harris was permitted by Judge St. Clair to be present, present objections to Respondent's testimony and even to cross-examine him, all of which Respondent objected. (See V 6:874-77)

But Alva Harris told Judge St. Clair, he was "not going to call any wintess" nor would he call Mr. Fitzgerald or Mr. Lyle "who are sitting out here in the audience" nor did he want to "testify for Scona, Inc. or (him)self." "No, Your Honor, we're not calling any witnesses." (Tr. 35-39, Feb. 4, 2004)

Thus such Appellants' Opening Brief failures of required disclosures, statements and citing of relevant applicable authorities should be deemed a waiver thereof, of all issues raised and dismissal of the entire appellants' appeal. Haight v. Dale's Used Cars, Inc. 139 Idaho 853, 87 P.2d 962 (Ct. App.1991); East v. West One Bank, 120 Idaho 226, 815 P2d 35 (Ct. Appl 1991) cert. den. 504 U.S. 996, 112 S.Ct. 2948, 119 L.Ed.2d 571. Appellants, who bear the burden of showing all errors per I.A.R. Rule 35(a)(3)-(6) have abandoned any issues, arguments, etc. Idaho Power

Co. v. Cogereration, Inc.134 Idaho 738, 9 P.3d 1204 (2000)

II. RESPONDENT DISAGREES WITH APPELLANTS' STATEMENT OF THE CASE, NATURE OF CASE AND COURSE OF PROCEEDINGS. I.A.R. Rule 35(b)(3)

On July 23, 2002, Respondent filed his initial verified complaint and an affidavit seeking a restraining order, a hearing per an OSC for issuance of a preliminary injunction. Paragraphs 2-4 of said complaint set forth the criminal pursuits and damaging activing of all defendants, including Alva Harris, sued individually and dba Scona, Inc., a sham entity. Respondent's concluding sentences, par. 2, explicitly averred:

> "All of such criminal and tortious conduct/actions by said defendants are among only many of the overt and predicate acts, pursued by defendants in violation of the Idaho Racketeering Act, to physically and financially destroy plaintiff, his real and personal properties as to further steal and acquire illegally, said properties and investments from him. Plaintiff incorporates herein reasserts his counterclaims which were raised in TETON CV 01-59 but dismissed without prejudice by the Court therein. Defendants' said conduct toward plaintiff are done with actual malice, hate and intent to destroy, oppress and ruin plaintiff inall aspects of his being." (R. Vol:2)

Respondent sought in excess of $1,000,000.00 general damages and punitvie damages, exceeding $5,000,000.00 against each defendant. (R. Vol 1:3-4) His Affidavit filed therewith, per par. 2(as)-(g) detailed the specific thefts by all named defendants and their trespasses, July 16, 2002 through July 22, 2002. Judge Brent Moss disqualified himself as he'd heard many identical facts in Teton CV 01-59, brought by Alva Harris, representing Kathy Miller, who claims were dismissed with prejudice after a two day hearing in which only Respondent testified.

After Judge St. Clair issued a TRO and OSC against all defendants a hearing was held Aug. 13, and 15, 2002. Alva Harris filed two separate appearances, (R. Vol 1:14-19. Although Kathy

Miller was present throughout and represented by Alva Harris, who cross-eamined respondent, she did not testify. (R. Vol 1: 20-35, Minute Reports of 16 pages; and Tr. 5-161) Aug. 16, 2002, Judge St. Clair issued a written preliminary injunction, and also same date, Alva Harris was substituted out as Miller's counsel, by Galen Woelk.(R. Vol 1:36-44)

Sept. 2, 2002, the district court, SECOND ORDER, granted Miller's motion for a more definite statment, Rule 12(3). (Vol 1:50-51; respondent filed Sept. 27, 2002, a verified FIRST AMENDED COMPLAINT, 26 pages, plus five attached exhibits. (Vol 1:52-86) Paragrpah 5,c) thereof specifically incorporated the initial complaint, respondent's two days of Aug 13 and 15, 2002 testimonies per Rule 10(c) and 65(a)(2), (R. Vol 1:58)

Per paragraph 4 of said verified FIRST AMENDED COMPLAINT, respondent sought a jury trial in another county because "defendants, all/each of them, have prejudiced prospective jurors of Teton County, by defamatory/derogatory statements, criminal acts, intimidation, etc., . " (Vol 1:55) Alva Harris was the kingpin and among the leaders of such defendants criminal actions, along with Galen Woelk and Kathy Miller. (During the void/illegal jury trial of June 10-19, 2003, Alva Harris testified admitting his criminal acts, tactics and pursuits against respondent. (Tr 1012-1109

The Court also heard testimonies on Respondent's motion to hold Miller, Alva Harris, Fitzgerald and Lyle in contempt of the preliminary injunction. Such testimonies Oct 9 and Nov 2, 2002 were from Respondent, Miller Fitzgerald and Lyle, (Vol 1:155-158) As a result of said hearings the court modified the preliminary injunction in part, prohibiting Harris "from entering

on the 'Miller Access Parcel" or the "Targhee/Miller property' . ." (Vol 1:163) From Dec. 3, 2002 through all of 2003 Alva Harris and the appellants herein, became recalcitrant, obstreperous and failed to adhere to rules noticing hearings, etc, expecting the district court to cover for their deliberate oversights and failures. (R. Vol 2:145-259)

Feb. 11, 2003, respondent filed a memo of objections/opposition to Dawson's motion to set aside his default, entered due to Alva Harris' intentional delays and stumborness to act. (Vol 2:199-209. This motion gave specific facts/events notice to appellants herein, of the utter lack of merit to their mtion to set aside. (Vol 2:201-203. Attached thereto was a copy of Alva Harris' Jan 10, 2001 letter to Roger Wright, with his handwritten notes to Kathy Miller, incriminating both of them, Dawson, McLean and Liponis in the criminal acts set forth in the amended complaint. (Vol 2:207-208)

Earlier Jan 22, 2003 Alva Harris had filed without court permission or order an APPEARANCE and a Motion to Dismiss & Sanctions. (Vol 2:210-211) Harris sought to appear for Scona, Inc, Jack McLean and Targhee Powder Emporium, Inc., Ltd & Unltd.(Vol 2:210) Respondent filed a further brief to Dawson's motion to set aside default and disqualify Judge St. Clair (Vol 2:240-45) Respondents' par. 6 of said brief reminded the court and Harris:

> "6. Clearly, the Dawson's and all their counsel, Alva A. Harris, Galen Woelk and now Jared harris, gave sought to obstruct the processes of this Court, it's orders especially the Scheduling ORDER issued herein. . (delineation of cases by Alva Harris, see Vol 240-45)(The 3 actions mentioned are Teton CV 01-33, 01-205 and 01-265, two on appeal before this Court re Dismissal with Prejudice Order by Judge Shindirling due to Alva Harris' lack of diligent prosecution and also granting respondent's summary judgment motions against Harris,

his clients therein, Jack McLean, deceased, Mark Liponis, and Wayne Dawson.) (See also district court's EIGHTH ORDER, re "only Harris signed the offending motion. ." Vol 2:254. Respondent's motion to compel all appellants to provide full discovery per Rules 33 & 34, which Alva Harris stonewalled/ refused to do for himself and his clients was granted. V. 2:255-56)

The Court's NINTH ORDER, Mar. 7, 2003, denied DAWSON's motion. (V 1:260-63) Harris had direct notice and participation thereby of his utter failure, dilatory and specious excuses to not appear, file an answer and that respondent was pressing for entry of default and judgment against him and all appellants he represented. March 19, 2003 at 9:01a.m. respondent filed his APPLICATION and AFFIDAVIT FOR ENTRY OF DEFAULT JUDGMENT against Alva Harris and his stated clients.(V 2:323)

April 1, 2003 Alva Harris, filed a Notice of Appearance for defendants HILLS.(V. 2:323) The next day April 2, 2003 he filed for all his clients and self a MOTION TO SET ASIDE DEFAULT, of one page, stating: "This motion is based upon the documents and pleadings on file herein and attached hereto. Testimony is not necessary and the Court is requested to rule after hearing oral argument." (V 2:324)

Nothing was attached to said motion, no affidavit, no brief-NADA! No mention was made nor had it been of any mandatory counterclaims per Rule 13(a) which appellants intended to raise/plead. (At his testimony before the jury, Alva Harris bragged that such entry of default would not stand and it would be set aside. (Tr: 1089)

The ANSWER and DEMAND FOR JURY TRIAL, appellants purportedly filed March "19", 2003 (V 2 317-19) has 3 very questionable aspects/failures: 1) the date handwritten is March "19", 2) no time is written, nor initials of the Clerk filing such is thereon; and 3) the cert. of service states it was mailed "the 19th day of March, 2003" (V 2:317-19) Most deficient is such

contains no facts under any appellants' personal knowledge, and testimony of what meritorious defendses each had to each of the 12 counts.claims of respondent. The last of Harris' listed defenses reveals his literacy delusions of the serious averments and facts in respondent's pleading. (V 2:319)

Testimony by Geno Knight, before the jury, as to who caused an arson fire of respondents then being constructed barn and lodge buildings occurring in early morning hours, March 24, 2003, was that he overheard Lyle and Fitzgerald planning to torch said respondent's structures, to destroy them totally with respondent in them, killing him. (Tr 744-757) Another former Lyle employee filed May 16, 2003 an affidavitdetailing Lyle's hateful, criminal acts and abuse of the court's order/preliminary injucntion. (V 3:489-491)

The Court's THIRTEENTH ORDER, denied appellants' purported answer of Mar. 19, 2003, no hearing date noticedand motion inadequate. (V 3:445, 452) Before the jury trial commenced, respondent noticed for hearing first day thereof, an evidentiary hearing on damages, etc., to be awarded him against all appellants whose entry of defualts were of record. The district court would not allow such hearing until after the jury trial concluded. As stated, supra, Alva Harris testified before the jury, (Tr 1012-1109) wherein he said he'd filed his answer "in this case two hours after you entered a default." (Tr 1087). How did he know the defaults had been entered at 9:01 a.m., as his copy hadn't been received that date at all? No evidence even existed he filed anything that date re motion to set aside default at 11:01 a.m, or at all. Moreover, when he filed a Notice of Hearing and

Motion to Set Aside Default and Reinstate Answer, the date shown is May 29, "2002" not May 29, 2003, the hearing was noticed one day later, May 30, 2002, nor did he serve respondent. Only his affidavit was filed in support thereof and was devoid of any personal admissible testimony, documents or exhibits to show any credible defenses by any of his clients or himself. McFarland v. Curtis 123 Idaho 931, 854 P.2d 274,, esp 127 Idah at 933-34 and his failure to comply with IRCP, Rules 7-11, etc required such motion's denial. In the FIFTHEENTH ORDER, June 2, 2003, 8 days before start of jury trial, it denied such motion and efforts:

> "Their argument that 'good cause' is shown for setting aside a clerk's default under Rule 55(c) is without merit because they have shown no facts to support any 'meritorious defense.' McFarland v. Curtis. ." (V 4:563-64)

June 2, 2003 respondent filed his Trial BRIEF NO. 3 for Immediate Entry of Judgment Quieting Title solely to himself of all real parcels per SECOND through FOURTH COUNTS, reserving issue of all damages to be awarded him. (V 4:566-575) The Clerk's Record, entire Volume 5 and one half of Volume 6, sets forth the mockery of respondent's counts, claims and rights thereby not just by Alva Harris and appellants but Judge St. Clair. Dec. 5, 2003 a hearing re damages/relief to be award respondent against Dawson was heard, which per Jan. 20, 2004 motions to amended such default judgment was filed and still such Amended Default Judgment, Feb 24, 2004 was deficient as to damages, monetary relief awarded him. (V 7:1086-1099) This amended judgment failed to quiet title solely.

Even before Feb. 23, 2004, respondent, Feb. 3, 2004 filed a detailed and extensive affidavit re his testimony of damages, losses against appellants herein and Dawson. (V 7:1045-1056) Such affidavit was served upon appellants and was received in evidence

with all of respondent's testimonies since Aug 13, 2002 to and through September 10, 2004, during this hearing, Alva Harris was allowed to cross examine respondent. (Tr 1638-1711)

III. APPELLANTS HAVE SHOWN NEITHER GOOD CAUSE NOR ANY BASIS TO GRANT THEIR APPEAL ON THEIR 3 ISSUES, OR OTHERWISE.

The foregoing reveal the utter frivolousness, specious and without merit of appellants' appeal and issues therein. The answer to all three issues they raise is: "NO, NO and still NO." No factual, legal nor other basis exits for reducing further or eliminating the deminimus damages awarded respondent. Respondent's Appellant Opening Brief in DKt 31717 raises re issues as to the wholly inadequate damages, general, special and punitive awarded him by Judge St. Clair, pervasively biased and prejudiced against him and bent on protecting Alva Harris and all appellants herein. To the extent judicial notice and receipt of JOHN N. BACH's Opening Brief can be received and considered herein from DKt 31717, it is so requested.

IV. CONCLUSIONS: Alva Harris and all appellants' appeals should be stricken, denied and sanctions awarded against them.

DATED: August 5, 2008.

JOHN N. BACH, Respondent Pro SE

Certificate of service by Mail

I, the undersigned certify this Aug. 5, 2008, that I did serve, via U.S. Mail, in separate envelopes with Frist Class Postage:

1. Clerk, Idaho Supreme Court, P.O. Box 83720, Boise, ID 83720-0101, six(6) copies bound and one unbound copy of Respondent's Brief herein and 2 copies of same to:
2. Alva Harris, #479, Shelley, Idaho 83274;
3. Jared Harris, 66 W. Bridge St, Blackfoot, ID 83221;
4. Galen Woelk, 1472 N. 5th Street, Ste 201, Laramie, WY 82072;
5. David Shipman, #51219, Idaho Falls, ID 83405;
6. Jason Scott, #1617, Boise, ID 83701;
7. Greg Moeller, #250, Rexburg, ID 834440; and
8. A.T. Broughton, 1054 Rammel Mtn Rd, Tetonia, Id 83452.