3-12-2009

Crump v. Bromley Respondent's Brief Dckt. 35666

IN THE SUPREME COURT OF THE STATE OF IDAHO

DOUG CRUMP and AMY CRUMP, husband and wife,

Plaintiffs/Appellants

v.

TED BROMLEY, dba RHINO LINING

Defendant/Respondent

Supreme Court Docket No. 35666

RESPONDENT'S BRIEF

Appeal from the District Court of the Seventh Judicial District for Bonneville County.
Honorable Joel E. Tingey, District Judge, presiding.

B.J. Driscoll, Esq., residing at Idaho Falls, Idaho, for Appellants.
Justin B. Oleson, residing at Blackfoot, Idaho, for Respondent.

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I. STATEMENT OF THE CASE

The Plaintiffs/Appellants in this matter, Doug and Amy Crump (hereafter "Crump"), appeal both the Magistrate and District Courts' exercise of discretion, in determining the Defendant Ted Bromley dba Rhino Lining (hereafter "Bromley") to be the prevailing party in the lawsuit at issue.

II. ISSUE ON APPEAL

A) Did both the Magistrate Court and District Court abuse their discretion in holding Bromley to be the prevailing party in the lawsuit at issue?

B) Did both the Magistrate Court and District Court abuse their discretion in considering Bromley's offer of judgment as a factor in reaching its determination of which party prevailed under I.R.C.P. 54(e)(3)?

III. STANDARD OF REVIEW

The determination of a prevailing party, is a matter of discretion and the Idaho Supreme Court reviews an appeal of this determination under an abuse of discretion standard. *Eighteen Mile Ranch v. Nord Excavation & Paving, Inc.*, 141 Idaho 716, 718-19, 117 P.3d 130, 132-33 (2005). Unless the Court deems that the lower court abused its discretion, the prevailing party determination will not be overturned. *Bybee v. Isaac*, __ Idaho __, 178 P.3d 616, 625 (2008).

IV. FACTS & PROCEDURAL HISTORY

Suit in this matter was filed on November 2, 2005, by Doug and Amy Crump ("Crump"). In their Complaint, Crump alleged damages in the amount of $2,820.00 for damage to a boat, and value for loss of use of said boat. On December 14, 2005, Bromley, through counsel, offered Crump $1,000.00 to settle this matter in full. (See Exhibit "3"*Affidavit of Justin Oleson* filed on April 27, 2007). Bromley stated that this offer of settlement was essentially a "nuisance" offer, as he believed

the claim to be defendable, but realized it would cost more money to defend than the claim itself was worth. *Id.* Crump refused the settlement offer, resulting in Bromley filing both an answer and counterclaim, as Crump had never paid for the work done on the boat. (Vol. I, p. 31, *Defendant's Answer to Plaintiff's Complaint and Counterclaim*,. Bromley requested damages in the amount of $400.00, for the unpaid work. *Id.* On the same day the Answer was filed, Bromley also filed an Offer of Judgment pursuant to I.R.C.P. 68 in the amount of $1,000.00.

The matter finally came to a head with both parties filing Motions for Summary Judgment. A hearing was held on November 21, 2006, with the Court denying each party's motion. However, the Court did rule that it would cost $600.00 to fix the damage to the Crump's boat, but made no finding as to whether Bromley was responsible for said damage.

After the Court's findings on the Motions for Summary Judgment, the parties entered into a stipulation, where Bromley agreed to the entry of a judgment in the amount of $200.00. (Vol. II, p. 131, *Stipulation for Judgment*). This represented the $600.00 repair value placed upon the boat by the Court, minus the $400.00 owed Bromley for the work done. The issue of attorney fees was reserved for further proceedings.

Both parties then moved for attorney fees and costs, claiming to be the prevailing party. Hearing on the cross motions was held on June 7, 2007. The Court, exercising its discretion, entered an Order finding Bromley to be the prevailing party pursuant to 54(d)(1)(B). (Vol. II, p. 159, *Memorandum Decision on Cross Motions for Attorneys Fees and Costs and Order*). After considering the factors set forth in I.R.C.P. 54(e)(3), and also the fact that Crump recovered less than Bromley's offer of judgment, the Court awarded Bromley $2,883.38 in fees and costs. *Id.*

Crump then filed a Motion to Reconsider. The Court, once again, found Bromley to be the

prevailing party, but reduced the total award of fees and costs to $1,200.00. (Vol. II, p. 176, *Memorandum Decision on Plaintiff's Motion for Reconsideration Regarding Attorney's Fees and Costs*). Crump then again appealed that decision to the District Court, regurgitating the same arguments as before. The District Court held that the Magistrate Court had correctly ruled Bromley to be a prevailing party as Crump had failed in defense of Bromley's counterclaim and Bromley had failed in part and prevailed in part in his defense of the Complaint. (Vol. II, p. 229).

Crump has now, for the third time, asked a Court to revisit the prevailing party determination, even though they recovered a fraction of the damages that they plead, and Bromley fully recovered on his counterclaim. Plaintiff is essentially arguing that as long as they recover a single dollar, they should be deemed a prevailing party, and be entitled to recover their attorney fees and costs.

V. ARGUMENT

A. The Court appropriately exercised its discretion in finding Bromley to be the prevailing party pursuant to Idaho law.

> **Prevailing Party**. In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

I.R.C.P. 54(d)(1)(B) "The prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis." *Eighteen Mile Ranch, LLC,*141 Idaho at 719. The determination whether a party is a prevailing party is committed to the discretion of the trial court and we review that determination for an abuse of discretion. *Id.* at 718-19. Abuse of discretion is determined by a three (3) part inquiry:

1. Did the Court correctly perceive the issue as one of discretion?

2. Did the Court act within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available?

3. Did the Court reach its decision through an exercise of reason?

Crown Point Dev., Inc. v. City of Sun Valley, 144 Idaho 72, 76, 156 P.3d 573 (2007).

Crump attempts to argue that they, rather than Bromley, were the prevailing party in the prior litigation. Essentially, Crump's argument is that they received a judgment of $200.00 and therefore, they not only "prevailed" on their lawsuit, but also successfully defended against Bromley's counterclaim. Clearly this argument fails to consider both the law and the facts at hand.

The Court recognized and applied the prevailing party analysis under I.R.C.P. 54(d)(1)(B) in its original Order regarding attorney fees. (Vol. II, p. 159, *Memorandum Decision on Cross Motions for Attorney Fees and Costs and Order*). In the Court's Decision on Reconsideration, the Court further clarified that it was looking at the case from an "overall view," rather than a claim-by-claim view. (Vol. II, p. 176). This was after recognizing that the determination of a prevailing party was an issue submitted to the Court's discretion. *Id.* at 177.

It is apparent when the three (3) part test for determining abuse of discretion is applied, that the lower courts both properly analyzed and determined the prevailing party issue. First, each court recognized the issue as one of discretion, and then held that due to the large discrepancy in the amount plead for and the amount recovered by Crump, the factors of 54(e)(3), and the fact the Crump recovered less than the offer of judgment, and viewing the case from an "overall prospective", Bromley was the prevailing party under the definition found at I.R.C.P. 54(d)(1)(B).

A determination clearly within the outer realms of each courts' discretion. Finally, each decision walked the parties through the basis for its decision, clearly indicating an exercise of reason. The courts both met all of the requirements in exercising its discretion, showing no abuse of said discretion, and requiring that the lower decisions be upheld.

B. Crump did not successfully defend Bromley's claim, as Bromley fully recovered the $400.00 in damages for which he plead.

Crump claim they should be the prevailing party as "they successfully avoided all liability...." (Page 6 *Appellant's Brief*). This is an obvious and intentional misstatement of the facts of the case.

After the cross motions for summary judgment, the Court held the cost to repair the boat at issue was $600.00. A fact which Crump has admitted. (Vol. II, p. 207, footnote 27 *Appellant's Brief, District Court*). After this determination by the Court, which did not address liability, the parties entered a stipulated judgment of $200.00. Again, by Crump's own admission, this amount constitutes the difference between the $600.00 amount to repair the boat, and the $400.00 plead in Bromley's Counterclaim. *Id.* Crump actually states that they were "Giving Bromley full credit of $400.00 for his claim...." *Id.* It is disingenuous for Crump to argue that they successfully defended Bromley's claim when he was given "full credit" for the amount sought in his Counterclaim. This argument defies common sense, as Bromley recovered the entire amount of damages he requested. This argument is further without merit, as it contravenes the facts of the case. Accordingly, the prior decisions from the lower courts must stand.

C. Pursuant to I.R.C.P. 54(e)(3), the Court clearly has the ability to consider Bromley's Offer of Judgment in its determination of both prevailing party and amount of attorney fees to be awarded.

Crump also argues that the lower courts somehow abused their discretion by discussing

Bromley's Offer of Judgment in reaching their prevailing party determination. Under I.R.C.P. 54(e)(3), in making a determination of the amount of attorney fees the court will award, a court is required to consider several factors. The Court may also consider "Any other factor which the court deems appropriate in the particular case." *Id.* at (l). The court is not required to consider any particular factors in determining the prevailing party, but must look the case as a whole. *See supra Eighteen Mile Ranch* at 719. Further, the Idaho Supreme Court has held that an offer of judgment is one factor which the court may consider in reaching a prevailing party determination. *Polk. v. Larrabee,* 135 Idaho 303, 313, 17 P.3d 247 (2000). So clearly the impact of an offer of judgment, and the subsequent amount of recovery, is a factor which the court is free to consider in making a prevailing party determination. Any argument to the contrary would contradict both the requirement of viewing the case as a whole, prior case law, and the factors which a court can consider in determining an award of attorney fees. Crumps argument is not supported by Idaho law, and clearly cannot support a conclusion that the Court's determination on this matter be overturned.

D. The lower court properly applied I.R.C.P. 68 by refusing to consider the "adjusted award" argument set forth by Crump.

On both the prior and present appeal, Crump claims error as the Court refused to consider the judgment amount, plus the attorney fees and costs accrued up to the point Bromley made his offer of judgment. (Page 12 *Appellant's Brief*). However, as the District Court pointed out, this argument ignores prior case law.

> The district court held and we agree, that the Rule 68(b) reference to the inclusion of "any attorney fees under Rule 54(e)(1) incurred before service of the offer of judgment" in computing the adjusted award applies only if attorney fees have been granted. The very term "adjusted award" implies that it includes only sums that have actually been awarded....

Payne v. Wallace, 136 Idaho 303, 32 P.3d 695 (Ct. App. 2001).

The holding in *Payne* clearly contradicts the claim set forth by Bromley that the "adjusted award" under I.R.C.P. 68 was improperly calculated. As is clear from this case, an adjusted award only comes into play when attorney fees are awarded. Bromley did not recover on their claim for attorney fees and therefore cannot claim entitlement to an adjusted award. Accordingly, the decision of the lower courts must be upheld.

VI. ATTORNEY FEES ON APPEAL

"Any party seeking attorney fees must assert such a claim as an issue presented on appeal in the first appellate brief filed by such party." I.A.R. 41(a). A party who was previously deemed to be a prevailing party at the trial court level, is entitled to additional attorney fees if this determination is upheld on appeal. *Eighteen Mile Ranch* at 721. On appeal, the mandatory fee provisions of I.C. § 12-120 govern as well. *Daisy Manufacturing Co., Inc. v. Paintball Sports, Inc.*,134 Idaho 259, 263, 999 P.2d 914 (Ct. App. 2000). Under I.C. § 12-121, a prevailing party may recover attorney fees at the Courts discretion. This section is limited by I.R.C.P. 54(e)(1) which allows for recovery of attorney fees to a prevailing party, but only under I.C. §12-121 when the court finds that "the case was brought, pursued or defended frivolously, unreasonably or without foundation." The same reasoning applies to an appeal which was brought frivolously, unreasonably or without foundation. *Sinclair & Co. v. Gurule*, 114 Idaho 362, 757 P.2d 225 (Ct. App. 1988). Further, a party who prevails on appeal is entitled to his costs, pursuant to I.C. §12-107 and I.R.C.P 54(d)(1).

As the Court is well aware, Bromley was deemed by both the magistrate and district Courts to be the prevailing party in this action. Both judges properly exercised their discretion and

reasoning in reaching a determination that complies with the controlling case law and rules. As such, Bromley is entitled to an award of attorney fees on appeal.

Further, Crump has now appealed for the second time, after bringing a motion to reconsider, a claim for attorney fees on an overall judgment of $200.00. The additional fees and costs which both parties have accrued due to the multiple appeals by Crump cannot be justified and are unreasonable. The continuous appeals and increasing of fees, is both unreasonable and frivolous, warranting an award of attorney fees under I.C. §12-121 as well.

VII. CONCLUSION

Bromley recovered the full amount of his counterclaim and was only liable for approximately seven percent (7%) of the amount Crump sought in their Complaint. Both the Magistrate and District Court applied their discretion in deeming Crump the prevailing party. Both decisions were based in reason, utilizing the factors and case law available. Any argument that either court acted outside the boundaries of its discretion or failed to exercise reason is without merit. Accordingly, the prior decision must be affirmed.

DATED AND SIGNED this 11 day of March, 2009.

BLASER, SORENSEN & OLESON, Chrt.

By: _____
JUSTIN B. OLESON
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of March, 2009, a true and correct copy of the foregoing RESPONDENT'S BRIEF was served by the method indicated below and addressed to each of the following:

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Idaho Falls, ID 83405-0731

[✓] U.S. Mail
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JUSTIN B. OLESON