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LAW CLERK

IN THE
SUPREME COURT

OF THE
STATE OF IDAHO

v. 4 of 6

IN THE MATTER OF THE ESTATES OF
CAROL BAILEY and FRANCIS ANDREW
BAILEY, Deceased,

COPY

F. KIM BAILEY, Personal Representative of
THE ESTATES OF CAROL BAILEY and
FRANCIS ANDREW BAILEY

Plaintiff/Appellant

vs

KERRY BAILEY, KYLE BAILEY, and
TAMARA BAILEY SIPE,

Defendants/Respondent

Appealed from the District Court of the Seventh Judicial

District of the State of Idaho, in and for Bonneville County

vs. Jan J. Shindurling, District Judge

Reginald Reeves,

PO Box 1841, Idaho Falls, ID 83403

Attorney for Appellant

Michael Whyte

2635 Channing Way, Idaho Falls, ID 83404

Attorney for Respondent

Filed this _____ day of _____, 20____

Clerk

By _____ Deputy

VOLUME IV of IV

38760

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE ESTATES OF)
CAROL BAILEY and FRANCIS ANDREW)
BAILEY, Deceased,)

_____)
F. KIM BAILEY, Personal Representative of)
THE ESTATES OF CAROL BAILEY and)
FRANCIS ANDREW BAILEY,)

Plaintiff/Appellant.)

-vs.-)

KERRY BAILEY, KYLE BAILEY, and)
TAMARA BAILEY SIPE,)

Defendants-Respondents.)
_____)

Case No. CV-2006-6496
Docket No. 38760-2011

VOLUME IV of IV

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the
Seventh Judicial District of the State of Idaho,
in and for the County of Bonneville

HONORABLE JON J. SHINDURLING, District Judge.

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

IN THE MATTER OF THE ESTATES)
OF)
)
CAROL BAILEY and)
FRANCIS ANDREW BAILEY,)
)
Deceased.)
_____)

Case No. CV-06-6496

RESPONDENT'S BRIEF

Appeal from the Magistrate's Court of the
Seventh Judicial District of the State of Idaho
in and for Bonneville County
Honorable L. Mark Riddoch, Presiding

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STATEMENT OF THE CASE

Respondent concurs with Appellant's statement of the case

ISSUES PRESENTED ON APPEAL

The only additional issue to be discussed is the payment of attorney fees on appeal.

ARGUMENT

I. WHETHER THE COURT ERRED IN DETERMINING THAT TIME RECORDS FOR WORK PERFORMED ARE REQUIRED TO ESTABLISH WHETHER ATTORNEY FEES ARE REASONABLE

The awarding of attorney fees is a matter within the discretion of the trial court and should only be subject to reversal on appeal when there has been an abuse of that discretion. "An abuse of discretion standard requires this Court to inquire as to: (1) Whether the Trial Court correctly perceived the issue as one of discretion; (2) Whether the Trial Court acted within the outer boundaries of its discretion and consistently with the legal standards applicable with to the specific choices available to it; and (3) Whether the Trial Court reached its decision by and exercised of reason." *Farmers Insurance Exchange v. Tucker*, 142 Idaho 191, 193, 125 P.3d 1067 (2005); *Sun Valley Shopping Center, Inc. v. Idaho Power Company*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

In this case currently on appeal, after significant issues of contention and a trial between the personal representative and the other beneficiaries, the probate of this estate was in a position to attempt final accounting and closing. At this time, appellant filed the accounting reflecting attorney fees that had been paid, or are claimed to have been incurred. The basis for the claim for payment of fees is a retainer agreement entered into between the personal representative and his attorney at, or prior to the estate being opened in the underlying matter. In this retainer

agreement, the personal representative agreed to pay his attorney whatever the attorney deemed was a reasonable fee. As the trial court pointed out in its Order Denying Motion for Reconsideration, this agreement was between the personal representative and his attorney, but at no time was agreed to by the beneficiaries of the estate. The personal representative has paid his attorney, or seeks to pay his attorney from the estate proceeds. Although beneficiaries are not a party the retainer agreement any payments made from estate proceeds have a direct effect on all beneficiaries estate proceeds.

Appellant initially relies on I.R.C.P. 54(e)(1) for the basis that a court may award attorney fees based on contract. However, Rule 54(e)(1) states: "In any civil action the court may award reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B) when provided for by any statute or contract." Firstly, this statute applies when there is a contested action wherein the court has made a finding of a prevailing party. That is not the circumstance in this action. This is an ongoing estate for which attorney fees have been generated, some based on contested issues between the personal representative and the other beneficiaries and some not contested. The request for attorney fees is not based on a "prevailing party". Instead the request is part of the estate expenses. These fees are allowed so long as they are reasonable. If Rule 54(e)(1) applies in this circumstance, the fees still need to be reasonable. Nothing in that Rule allows a blanket award of fees without more proof or information as to the reasonableness. In this case, appellant did not provide any information to satisfy the court that the claimed fees were reasonable. Without providing this information, the trial court, in its discretion, could determine that there was insufficient information to award the payment of attorney fees.

Appellant further cites the court to I.R.C.P. 54(e)(8) to claim that the trial court erred in relying on the factors listed in I.R.C.P. 54(e)(3) to deny the claim for attorney fees. Rule 54(e)(8) states: “

The provisions of this Rule 54(e) relating to attorney fees shall be applicable to all claims for attorney fees made pursuant to section 12-121, Idaho Code, and to any claim for attorney fees made pursuant to any other statute, or pursuant to any contract, to the extent that the application of this Rule 54(e) to such a claim for attorney fees would not be inconsistent with such other statute or contract.

The language in Rule 54(e)(3) is not inconsistent with the retainer agreement between the personal representative and his attorney in that the retainer agreement discusses payment of fees that are reasonable. With this language, the court is allowed to determine the reasonableness of the claimed fees.

Secondly, the reliance on Rule 54(e)(8) is misplaced. This Rule applies to situations involving disputing parties who are involved in actions to enforce the terms of the contract between them. In those cases, there is additional language in the contract for the payment of attorney fees by the non-prevailing parties. Appellants cite *Zenner v. Holcomb*, 147 Idaho 444, 210 P.3d 552 (2009) as support for their position. However, the *Zenner* case involved a contract between the disputing parties. In that case, there was a contract between the parties that called for payment of “actual fees”. Based on the language in the contract entered into by the disputing parties, the appellate court held that the “reasonableness” criteria would be inconsistent and therefore the criteria of Rule 53(e)(3) was not applicable. In this current case, there is no contract between the disputing parties. The contract appellant wants to use to avoid the criteria of Rule 53(e)(3) is between the personal representative and his attorney, not between the personal representative’s attorney and the other beneficiaries. The respondents are not a party to this

retainer agreement. The retainer agreement may be binding and enforceable on the personal representative, but is not binding on, and cannot be used against the respondents. The trial court did not error in refusing to only rely on this retainer agreement between the personal representative and his attorney when reviewing whether to award the claimed attorney fees.

Because the underlying action is a probate of an estate, the trial court reviewed the probate code for direction in awarding attorney fees. The statute that applies for the payment of attorney fees in probate actions is Idaho Code §15-3-720.

“If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorney fees incurred.”

Appellant wants the court to blindly accept the appellant’s attorney’s own assessment as to the value for the services claimed to have been provided and whether that value is reasonable. If this were an issue just between the personal representative and his attorney, it might be acceptable to rely on a retainer agreement. However, in this case, the personal representative wants his attorney fees paid by the estate which will directly affect all beneficiaries. If the personal representative wants his attorney fees paid by the estate, the claim for those fees is subject to Idaho Code §15-3-720 and the court’s discretion to determine whether the claimed fees are reasonable. Rule 54(e)(3) is used by a court to assist it in determining the reasonableness of fees and involves a discretionary determination by the court. *Daisy Manufacturing Co. v. Paintball Sports, Inc.*, 134 Idaho 259, 262, 999 P.2d 914 (Ct. App 2000). "A court is permitted to examine the reasonableness of the time and labor expended by the attorney under I.R.C.P. 54(e)(3)(A) and need not blindly accept the figures advanced by the attorney...." *Id* at 262, citing

Craft Wall of Idaho, Inc. v. Stonebraker, 108 Idaho 704, 706, 701 P.2d 324, 326 (Ct.App.1985).

In this case, the trial court used its discretion to review the time and labor factor and found that appellant failed to provide sufficient information to award fees. The court did not abuse its discretion by not blindly accepting the requested attorney fees presented by personal representative's attorney. The trial court used this discretion to disallow the requested fees because there was no information to assist the trial court to find that the claimed fees were reasonable using the Rule 54(e)(3) factors.

In appellant's Memorandum of Costs, the request was for a review and award of fees under I.R.C.P. 54(e)(3)(A) – "The time and labor required." However, the court was not presented with any time information related to the services provided. If the court is to award attorney fees under Rule 54(e)(3), then it must have sufficient information at its disposal concerning the factors Rule 54(e)(3). Some of these factors can only be provided by the attorney.

We believe it is incumbent upon a party seeking attorney fees to present sufficient information for the court to consider factors as they specifically relate to the prevailing party or parties seeking fees. Streeter has failed to do this, therefore, we find no error in the denial of a fee award to Streeter.

Hackett v. Streeter, 109 Idaho 261, 264, 706 P.2d 1372 (Ct. App. 1985).

In this case, it was incumbent on appellant and appellant's attorney to present sufficient information for the court to consider the reasonableness of the fees claimed. Because that did not occur, the court could not enter a finding awarding the claimed fees. There was no error in denying the claimed fee.

**II. WHETHER THE COURT ERRED IN DETERMINING THAT IT CANNOT
DETERMINE IF ATTORNEY'S FEES ARE REASONABLE WITHOUT TIME
RECORDS FOR WORK PERFORMED**

The court did not err in determining that it could not determine the reasonableness of attorney fees without additional information than what was provided. As indicated earlier, Idaho Code §15-3-720, allows for reasonable attorney fees to be paid from the estate so long as a personal representative is defending claims on behalf of the estate. This is not a blanket allowance of fees claimed without supporting information. There must be sufficient information for the court to find the claimed fees are reasonable. In *Sun Valley Potato Growers, Inc. v. Texas Refinery Corp.*, 139 Idaho 761, 86 P.3d 475 (2004), the appellate court overturned a district court award of attorney fees because the district court was without sufficient information concerning the 54(e)(3) factors. In that case, Texas Refinery was precluded from an award of a specific amount of attorney fees because it chose not to provide time sheets to support the claimed fees. Because there was no underlying, supporting information for the claimed fees, the district court could not determine the reasonableness of the claimed fees.

In this case, appellant's attorney wants the court to rely solely on his claim that the fees are reasonable as satisfaction of the 54(e)(3) factors. The trial court determined that this claim was insufficient to satisfy the Rule 54(e)(3) factors and, following the holding in *Texas Refinery*, determined that it could not award the claimed fees.

Appellant requests the court to solely rely on Rule 54(e)(3)(L) to award fees. Rule 54(e)(3)(L) states the trial court may rely on "Any other factor which the court deems appropriate in the particular case." First of all, the use of this factor is still left to the discretion of the trial court in that it is left to the court to determine what is appropriate. In this case, the

trial court used its discretion to reject the information presented as not being appropriate. This was not error.

Secondly, the court cannot consider “any other factor” of Rule 54(e)(3)(L) to the exclusion of time and labor and the other factors.

Rule 54(e)(3) lists the factors which the district court “shall consider ... in determining the amount of such fees.” One factor is the “time and labor required.” The district court may also consider “[a]ny other factor ... appropriate in the particular case.” But the court may not focus upon such “other” factors to the exclusion of the “time and labor” and the remaining factors listed in the rule.

DeWils Interiors, Inc. v. Dines, 106 Idaho 288, 678 P.2d 80 (Ct. App. 1984); citing *Logosz v. Childers*, 105 Idaho 173, 667 P.2d 276 (Ct.App.1983).

The court in this matter cannot look to the retainer agreement between the personal representative and his attorney to the exclusion of all other factors. The trial court did not error in reviewing the Rule 54(e)(3) factors and finding the presentation of information insufficient to award attorney fees.

III. WHETHER THE COURT ERRED IN ORDERING PERSONAL REPRESENTATIVE’S COUNSEL TO SUBMIT TIME RECORDS FOR WORK PERFORMED DESPITE TERMS OF ATTORNEY-CLIENT CONTRACT WHICH DID NOT BASE FEES ON HOURLY BASIS

Appellant is without the ability to submit the information requested by the court because it cannot manufacture this information and stay in compliance with I.R.C.P. 8.4(c). This does not create error on the part of the trial court. As with the other two issues in this appeal, appellant chose not to retain information that would satisfy the Rule 54(e)(3) factors. The Court did not abuse its discretion in that it gave Appellant additional opportunities to provide more information

prior to denying the award of a fee. Appellant is unable to provide any additional information, and therefore the Court is unable to award fees as requested.

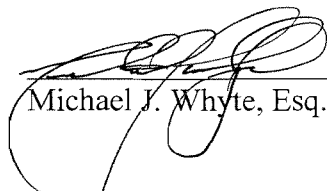
CONCLUSION

The court did not error in using its discretion when it denied the award of attorney fees because appellant failed to provide sufficient information required under Idaho Code §15-3-720 and I.R.C.P. 54(e)(3).

DATED this 4th day of June, 2010.

THOMSEN STEPHENS LAW OFFICES, PLLC

By:



Michael J. Whyte, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 4th day of June, 2010, I caused a true and correct copy of the foregoing **RESPONDENT'S BRIEF** to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

REGINALD R REEVES
690 CAMBRIDGE DRIVE
PO BOX 1841
IDAHO FALLS ID 83403
FAX: 522-2516

Mail
 Hand Delivery
 Facsimile

THOMSEN STEPHENS LAW OFFICES, PLLC

By:


Michael J. Whyte, Esq.

MJW:tlh
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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

IN THE MATTER OF THE ESTATE OF)
CAROL BAILEY, and)
FRANCIS ANDREW BAILEY,)
Deceased.)

Case No. CV-2006-6496

MINUTE ENTRY

10 AUG -3 10 10 08

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

On August 2, 2010, at 11:00 AM Oral Argument on Appeal came on for hearing before the Honorable Jon J. Shindurling, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Nancy Marlow, Court Reporter, and Ms. Grace Walters, Deputy Court Clerk, were present. Mr. Reginald Reeves appeared on behalf of the appellant. Mr. Michael Whyte appeared on behalf of the respondent.

Mr. Reeves presented argument on the appellant's opening argument and requested the case be remanded with the respondent to pay appellant's costs on appeal.

The Court clarified the Notice of Appeal is to the December 16, 2009 order.

Mr. Whyte presented the respondent's argument in opposition and requested the Court uphold the decision of the trial court.

Mr. Reeves rebutted the opposition argument.

The Court will take this matter under advisement.

Court was thus adjourned.



JON J. SHINDURLING
District Judge

c: Reginald Reeves
Michael Whyte

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

IN THE MATTER OF THE ESTATE OF
CAROL BAILEY AND FRANCIS
ANDREW BAILEY,

Deceased.

Case No. CV-2006-6496

ORDER ON PERSONAL
REPRESENTATIVE'S APPEAL OF
MAGISTRATE DECISION

10 OCT -1 PM 4:55

THE JUDICIAL DISTRICT COURT OF BONNEVILLE COUNTY, IDAHO

I.

FACTUAL AND PROCEDURAL BACKGROUND

Carol Bailey died on April 11, 1998. Decedent Francis A. Bailey died on September 22, 2006. Survivors and heirs of the couple were their children, F. Kim Bailey, Kerry L. Bailey, Kyle J. Bailey and Tamara Lee Bailey Sipe.

Prior to Francis Bailey's death, Kim Bailey resided in the Estate's home with Francis Bailey. Following the death of Francis Bailey, Kim Bailey filed a petition for informal probate of the Estate and was appointed as the personal representative. Pursuant to the wills of the decedents, the children were to share equally in the Estate with the exception of some specific bequeaths of some personal property. While there was some dispute among the heirs on how to liquidate the real property, the parties eventually entered into an agreement in April, 2008, whereby Kim purchased the property for \$129,000.

The other children continued to claim that Kim owed the Estate for the fair rental value of the real property for the time Kim lived on the property following Francis Bailey's death. A trial on the disputed issues was held in April 2008 and the magistrate entered its order in July 2008. Kim appealed that order to the district court, which, in a January 2009 order, remanded the case to the magistrate court to determine the proper rental value. The parties have continued to wrangle over various issues in the courts since that time.

In response to a request by the other heirs for a final accounting of the estate, the magistrate court issued an order on November 19, 2009, requiring Kim to provide documentation supporting his expenditures on the Estate's behalf, including a proper memorandum of costs from Kim's attorney. Throughout the settling of the Estate, Kim retained Reginald Reeves as his attorney. Mr. Reeves and Kim entered a contract, which stated that Kim, as the personal representative, would "pay all expenses incurred, together with a fee to be determined by you (Mr. Reeves), based upon what you believe the services to be reasonably worth, and not based upon an hourly basis". Mr. Reeves did not maintain a log of the legal work performed for Kim or the Estate.

Mr. Reeves filed a notice of inability to comply with the order, stating that he had worked on retainer and had not maintained time records of the work on behalf of Kim and the Estate. Following this response, the magistrate court issued an order denying Kim's motion to reconsider, and denied Kim's request for attorney's fees on December 16, 2009. The magistrate reasoned that without documentation of the legal work provided, it could not determine whether the attorney's fees were reasonable as required by I.C. § 15-3-720.

On January 26, 2010, Kim appealed the magistrate's November 19 and December 16, 2009 orders. Following briefing, this matter was called up for oral argument on August 2, 2010 before this court in its appellate capacity. The court took the appeal under advisement at that time and now

renders its decision. The order of the magistrate is confirmed.

II.

STANDARD OF REVIEW

Petitioner alleges a number of errors on the part of the magistrate. Before reaching those questions, it is necessary to identify which issues are properly before this court and what standard of review is to be applied. The notice of appeal was filed with the court on January 26, 2010. As this court noted at oral argument—and as counsel for Petitioner acknowledged—the notice of appeal only applies to the December 16, 2009 order, as more than forty days had passed from the time of the November 19, 2009 order before the notice of appeal was filed.

A motion for reconsideration may also toll the time to file a notice of appeal. *BHC Intermountain Hosp., Inc. v. Ada County*, 148 Idaho 294, 221 P.3d 520, 521 (2009). However, even allowing for the time between December 1, 2009 (when Petitioner apparently requested reconsideration) and December 16, 2009, more than the forty allowable days passed between November 19, 2009 and January 26, 2010. Therefore, the November 19, 2009 order is not before this court on appeal and will not be considered.

In the December 16, 2009 order, the magistrate court addressed two of the issues raised on appeal, and they are rightly before this court now. However, a motion for reconsideration is reviewed using an abuse of discretion standard. *Blackmore v. Re/Max Tri-Cities, LLC*, 237 P.3d 655, 660 (2010). An abuse of discretion does not exist if the trial court (1) recognizes the issue as one of discretion, (2) acts within the limits of discretion and consistently with the legal standards that apply, and (3) reaches the conclusion through an exercise of reason. *Roberts*, 138 Idaho at 403, 64 P.3d at 329 citing *Sun Valley Shopping Ctr. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

In reviewing factual findings of the magistrate, this court on appeal does not reweigh the evidence, but rather determines whether the evidence presented at trial was substantial and competent to sustain the magistrate's findings:

It is well established that appellate courts in Idaho do not reweigh evidence. See, e.g., *State v. Doe*, 143 Idaho 383, 388, 146 P.3d 649, 654 (2006). Instead, we defer to the trial court's unique ability to "accurately weigh the evidence and judge the demeanor of the witnesses" and take into account the trial court's "superior view of the entire situation." *Doe*, 133 Idaho at 809, 992 P.2d at 1209 (citations omitted).

State v. Doe, 144 Idaho 839, 172 P.3d 1114 (2007).

Where the magistrate's findings of fact are supported by substantial and competent evidence, even if the evidence is conflicting, the magistrate's decision will not be disturbed on appeal. *Stonecipher v. Stonecipher*, 131 Idaho 731, 734, 963 P.2d 1168, 1171 (1998).

Brinkmeyer v. Brinkmeyer, 135 Idaho 596, 21 P.3d 918, 920 (2001).

As to conclusions of law, the appellate court exercises free review over the trial judge's conclusions of law. *Opportunity, L.L.C. v. Ossewarde*, 136 Idaho 602, 605, 38 P.3d 1258, 1261 (2002).

III.

ISSUES ON APPEAL

Petitioner alleges error by the magistrate in its December 16, 2009 order. Petitioner asks this court to determine three issues:

1. Whether the court erred in determining that time records for work performed are required to establish whether attorney's fees are reasonable.
2. Whether the court erred in determining that it cannot determine if attorney's fees are reasonable without time records for performed.
3. Whether the court erred in ordering personal representative's counsel to submit time records

for work performed despite terms of attorney-client contract which did not base fees on hourly basis.

The first two issues were addressed in the December 16, 2009 order and are properly before this court. The third issue was not addressed in that order and is not properly before this court, as discussed above. However, it is unclear what possible effect an error on that issue would have on the question of attorney's fees.

IV.

ANALYSIS

The issues presented by Petitioner are functionally identical. In its order denying reconsideration, the magistrate court held that I.C. § 15-3-720 requires attorneys to show that attorney's fees are reasonable, and that Mr. Reeves had failed to do so by failing to provide time records of the work performed.

I.C. § 15-3-720 states:

If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorney's fees incurred.

The only issue to be reviewed, therefore, is whether the magistrate abused its discretion in holding that Petitioner did not satisfy the "reasonable" requirement of I.C. § 15-3-720 without presenting time records for Mr. Reeves' work.

Petitioner argues that requiring him to comply with I.R.C.P. 54(e) is inappropriate in this situation because the attorney's fees were set out in the contract between Petitioner and Mr. Reeves. Petitioner points to cases where Rule 54(e) was held inapplicable because it would interfere with contractual attorney's fees agreements. See *Zenner v. Holcomb*, 147 Idaho 444, 451 (2009), "The

contract provision does not contemplate the court's involvement in determining whether the fee is reasonable."

As Respondents note, *Zenner* involved a contract between the disputing parties. Here, the contract was not between Petitioner and Respondents, but between Petitioner and his attorney. In addition, in *Zenner*, the contract called for "actual" attorney's fees as opposed to the "reasonable" fees the petitioner sought. *Zenner*, 147 Idaho at 451. There is also nothing in *Zenner* to suggest that where a contract calls for actual fees the trial court is to blindly accept whatever unsubstantiated figure the prevailing party presents. *Zenner* is not applicable to this case.

"We believe it is incumbent upon a party seeking attorney fees to present sufficient information for the court to consider factors as they specifically relate to the *prevailing* party or parties seeking fees." *Sun Valley Potato Growers, Inc. v. Texas Refinery Corp.* 139 Idaho 761, 769, 86 P.3d 475, 483 (2004) (emphasis in original) See *Hackett v. Streeter*, 109 Idaho 261, 264, 706 P.2d 1372, 1375 (Ct.App.1985).

In essence, Petitioner's argument is that the fees charged by his attorney are reasonable simply because his attorney says so. There is no support for this argument in the rules, statutes, or case law

Respondents and the trial court acknowledge that Petitioner is entitled, under I.C. § 15-3-720, to reasonable attorney's fees. However, Petitioner did not present any evidence to show that his requested attorney's fees are reasonable.

Without any evidence supporting the contention that the requested attorney's fees were reasonable, the magistrate court had no option but to deny the request for fees. Though the Petitioner could have possibly shown that the fees were reasonable through some means other than time logs, no alternative means were presented. The Petitioner relied solely on the retainer agreement with Mr.

Reeves, which in turn relied solely on Mr. Reeves' judgment. The magistrate court did not abuse its discretion. The decision is confirmed.

V.

CONCLUSION AND ORDER

The order of the magistrate court denying Petitioner's motion for reconsideration is confirmed.

IT IS SO ORDERED.

Dated this 1st day of October, 2010.



Jeffrey J. Spindurling
District Judge

NOTICE OF ENTRY

I hereby certify that on this 1 day of October, 2010, the foregoing ORDER ON APPEAL was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

Reginald R. Reeves
CAMBRIDGE LAW CENTER
Box 1841
Idaho Falls, ID 83403

Michael J. Whyte
THOMSEN STEPHENS
2635 Channing Way
Idaho Falls, ID 83404

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By Grace Walter
Deputy Clerk

10 OCT -5 A9:42

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

IN THE MATTER OF THE ESTATE OF)
)
)
)
CAROL BAILEY and)
)
FRANCIS ANDREW BAILEY,)
)
Deceased.)
_____)

Case No. CV-2006-6496
ORDER DISMISSING
APPEAL AND REMANDING
CASE TO MAGISTRATE COURT

The Court having heard the issues on appeal in this case and having issued it's opinion and order on October 1, 2010,

IT IS HEREBY ORDERED that the magistrate's decision in this case be and the same is affirmed and the appeal is dismissed.

IT IS FURTHER ORDERED that the case is hereby remanded to Magistrate court for any further disposition.

SO ORDERED this 4th day of October 2010.



TOM J. SHINDURLING
DISTRICT JUDGE

AFFIDAVIT OF MAILING

I hereby certify that I mailed a true copy of the above entitled Order on this 6 day of October 2010, to the following:

Reginald Reeves
Box 1841
Idaho Falls, ID 83403

Michael Whyte
Courthouse Box

RONALD LONGMORE
Clerk of the District Court

By *Heidi Watson*
Deputy Clerk

BONNEVILLE COUNTY
OCT 13 AM 10:13

**DENMAN & REEVES
ATTORNEYS AND COUNSELLORS
CAMBRIDGE LAW CENTER
BOX 1841
IDAHO FALLS ID 83403
Telephone 522-2513
FAX 522-2516
Idaho State Bar No. 712**

**Attorneys for Appellant
By REGINALD R. REEVES, ESQ.
Our File 16338**

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR BONNEVILLE COUNTY**

///

| | | |
|--|----------------------------|---|
| In the Matter of the Estates of CAROL BAILEY and FRANCIS ANDREW BAILEY, Deceased. | } } } } } } | Case No. CV-06-6496 PETITION FOR REHEARING [IAR 42(a) & IRCP 83(x)] |
|--|----------------------------|---|

THE PERSONAL REPRESENTATIVE Herein hereby petitions the court for a rehearing of the order on appeal, and the order dismissing the appeal, entered herein on October 1, 2010, and October 4, 2010, respectively, upon grounds as follows:

a. Failure to consider the application of the provisions of IRCP 54(e)(3)(B), (C),(D), (F), (J), and (L).

b. Failure to consider the appeal from the court of November 19, 2009.

c. Failure to determine that the trial court erred in ordering personal representative's counsel to submit time records, in spite of the terms of the contract between the personal representative and such counsel.

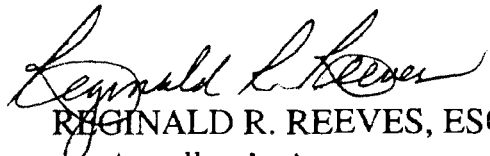
d. Affirming the trial court's order denying the motion for reconsideration.

e. Affirming the decision of the trial court.

f. Dismissing the appeal.

THIS PETITION Is based upon the record and file herein, and is submitted pursuant to IAR 42(a).

October 13, 2010


REGINALD R. REEVES, ESQ.
Appellant's Attorney
Cambridge Law Center
Idaho Falls, Idaho

CERTIFICATE OF SERVICE
[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served a copy of the foregoing upon the designated parties, by faxing a copy to their attorney, as follows:

RESPONDENTS

MICHAEL J. WHYTE, ESQ.
Fax 522.1277

October 13, 2010


M. BIRD

**DENMAN & REEVES
 ATTORNEYS AND COUNSELLORS
 CAMBRIDGE LAW CENTER
 BOX 1841
 IDAHO FALLS ID 83403
 Telephone 522-2513
 FAX 522-2516
 Idaho State Bar No. 712**

**Attorneys for Appellant
 By REGINALD R. REEVES, ESQ.
 Our File 16338**

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR BONNEVILLE COUNTY**

///

 In the Matter of the Estates of }
 }
 }
 CAROL BAILEY and }
 FRANCIS ANDREW BAILEY, }
 }
 _____ Deceased. }

Case No. CV-06-6496

MEMORANDUM IN SUPPORT OF
 PETITION FOR REHEARING
 [LAR 42(b)]

STATEMENT OF FACTS

Personal Representative appealed from the trial court orders dated November 19, 2009, and December 16, 2009. Following briefing and oral argument (on August 2, 2010), the district court, on October 1, 2010, entered its order on appeal, followed, on October 5, 2010, by its order dismissing appeal.

Appellees had made no objection to the timeliness of the appeal from such orders, but the district court, sua sponte, raised the issue and determined that

the notice was filed too late to perfect an appeal from the earlier order.

ARGUMENT

I

It is required, by IRCP 54 (e)(3)(A), that the court consider, inter alia, the time and labor required, in determining fees. Here, the trial court limited its inquiry to the time, not considering the labor required, despite the fact that a listing of all activities was provided. The district court affirmed, referring only to the failure to produce time records.

II

The trial court failed to consider the provisions of IRCP 54(e)(3), (C),(D), (J), and (L) - - but nevertheless, the district court affirmed.

Consideration should have been given to the labor required; the skill required; the experience and ability of the attorney; the prevailing charges for like work; awards in similar cases; and "other factors," notably the contract between the client and the attorney.

III

Following the ruling of the trial court, on November 19, 2009, personal representative timely filed a motion for reconsideration, which motion was denied, on December 16, 2009.

Despite the ruling of the Court of Appeals, in *Ade v. Batten*

(CA 1994), 126 Idaho 114, that a motion for reconsideration tolls the time to file a notice of appeal, the district court (orally and in writing) determined that the notice of appeal was not timely, to perfect an appeal from the underlying order. For the same holding , as in Ade, see Freeman v. State (CA 1992), 122 Idaho 627.

The notice of appeal , therefore, was timely filed, so as to perfect the appeal from both orders.

IV

The trial court should not have required an impossibility -- the submission of time records, after the fact, when it was made clear that no time records were maintained, and were expressly not required by the terms of the contract between the personal representative and his attorney.

V

The orders of the trial court should not have been affirmed.

VI

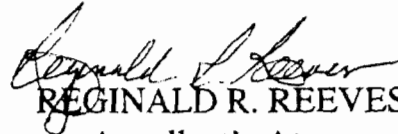
The notice of appeal having been timely filed, the appeal should not have been dismissed -- there having been no basis therefor.

CONCLUSION

The orders on appeal should be vacated, and the matter remanded, for consideration of all of the applicable factors set forth in IRCP 54(e)(3), and not

limiting such consideration to IRCP 54(e)(3)(A).

Respectfully submitted, this October 13, 2010.


 REGINALD R. REEVES, ESQ.
 Appellant's Attorney
 Cambridge Law Center
 Idaho Falls, Idaho

CERTIFICATE OF SERVICE
 [IRCP 5(f)]

I HEREBY CERTIFY That on this day I served a copy of the foregoing upon the designated parties, by faxing a copy to their attorney, as follows:

RESPONDENTS

MICHAEL J. WHYTE, ESQ.
 Fax 522.1277

October 13, 2010


 M. BIRD

BONNEVILLE COUNTY
CLERK
10 OCT 19 PM 4:20

Michael J. Whyte, Esq.
THOMSEN STEPHENS LAW OFFICES, PLLC
2635 Channing Way
Idaho Falls, ID 83404
Telephone (208) 522-1230
Fax (208) 522-1277
ISB # 4645

Attorneys for Kerry L. Bailey, Kyle Bailey, and Tamara Lee Bailey Sipe

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

| | | |
|------------------------------|---|----------------------------------|
| IN THE MATTER OF THE ESTATES |) | Case No. CV-06-6496 |
| OF |) | |
| |) | |
| CAROL BAILEY and |) | MEMORANDUM IN OPPOSITION TO |
| FRANCIS ANDREW BAILEY, |) | APPELLANT'S MOTION FOR REHEARING |
| |) | |
| Deceased. |) | |
| _____ |) | |

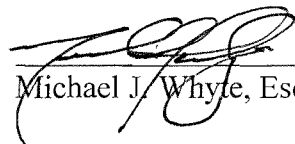
COMES NOW respondents, by and through their attorney of record, and file this Memorandum in Opposition to Appellants Motion for Rehearing.

Petitioner does not raise any new issues in his memorandum. All issues outlined in the Petition and Memorandum were issues which had been briefed by the parties in the initial appeal and addressed during oral argument. Respondents believe that in the initial hearing and decision the Court fully acknowledged all of the arguments raised in Petitioner's motion for rehearing and given all the factors chose to dismiss the appeal not based on the merits of the appeal. No additional information could be provided through the appeal process to change the outcome.

WHEREFORE, respondents move this Court to dismiss appellant's Petition for Rehearing.

DATED this 19 day of October, 2010

THOMSEN STEPHENS LAW OFFICES, PLLC

By: 
Michael J. Whyte, Esq.

CERTIFICATE OF SERVICE

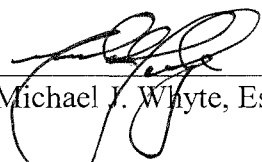
I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 19 day of October, 2010, I caused a true and correct copy of the foregoing **MEMORANDUM IN OPPOSITION TO APPELLANT'S MOTION FOR REHEARING** to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

REGINALD R REEVES
690 CAMBRIDGE DRIVE
PO BOX 1841
IDAHO FALLS ID 83403
FAX: 522-2516

Mail
 Hand Delivery
 Facsimile

THOMSEN STEPHENS LAW OFFICES, PLLC

By:



Michael J. Whyte, Esq.

MJW:tlh
J:\data\MJW\6186\PLEADINGS OURS\065 Memorandum.wpd

**DENMAN & REEVES
 ATTORNEYS AND COUNSELLORS
 CAMBRIDGE LAW CENTER
 BOX 1841
 IDAHO FALLS ID 83403
 TELEPHONE 522-2513
 FAX 522-2516
 IDAHO STATE BAR NO. 712**

BONNEVILLE COUNTY
 10 OCT 22 PM 3:19

**Attorneys for Personal Representative
 By REGINALD R. REEVES, ESQ.
 Our File 16338**

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR BONNEVILLE COUNTY**

///

| | | |
|--|----------------------------|---|
| In the Matter of the Estates of CAROL BAILEY and FRANCIS ANDREW BAILEY, Deceased. |)))))) | Civil No. CV-06-6496 MOTION TO STRIKE MEMORANDUM IN OPPOSITION [IAR 42(a)] |
|--|----------------------------|---|

APPELLANT Hereby moves the court for an order striking the Memorandum in Opposition to Motion for Rehearing, filed herein by appellee, upon the ground that the same is in violation of IAR 42(a), which provides the "No response to any petition for rehearing shall be made except upon the direction of the Court," and there has been no such direction.

THIS MOTION Is based upon the file herein, and is submitted without the need for oral argument thereon, appellant requesting fees, as sanctions,

pursuant to IRCP 11 (a)(1).

October 22, 2010


REGINALD R. REEVES, ESQ.
Personal Representative's Attorney
Cambridge Law Center
Idaho Falls, Idaho

CERTIFICATE OF SERVICE

[IRCP 5(D)]

I HEREBY CERTIFY That on this day I served the foregoing
upon the designated parties, by faxing copies as follows:

PETITIONERS

MICHAEL J. WHYTE, ESQ.

Fax 522-1277

October 22, 2010


M. BIRD

11 FEB -3 AM 1:51

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


IN THE MATTER OF THE ESTATE OF)
)
)
)
CAROL BAILEY and)
)
FRANCIS ANDREW BAILEY,)
)
Deceased.)
_____)

Case No. CV-2006-6496
ORDER DENYING PETITION
FOR REHEARING

The Personal Representative petitioned this Court for a rehearing of the order on appeal and the order dismissing the appeal on October 13, 2010. The memorandum accompanying the petition for rehearing does not present any new facts or bring to the Court's attention any reason to reconsider its previous order. The Court comes to this conclusion *sua sponte*, without referring to the Memorandum in Opposition to Appellant's Motion for Rehearing filed in violation of Idaho Appellate Rule 42(a).

IT IS HEREBY ORDERED that the Petition for Rehearing is DENIED.

SO ORDERED this 3 day of February, 2011.



JON J. SHINDURLING
DISTRICT JUDGE

AFFIDAVIT OF MAILING

I hereby certify that I mailed a true copy of the above entitled Order on this 3 day of February, 2011, to the following:

Reginald Reeves
Box 1841
Idaho Falls, ID 83403

Michael Whyte
Courthouse Box

Ronald Longmore
Clerk of the District Court
Bonnevill County, Idaho

by RLW
Deputy Clerk

DENMAN & REEVES
ATTORNEYS AND COUNSELLORS
CAMBRIDGE LAW CENTER
BOX 1841
IDAHO FALLS ID 83403
TELEPHONE 522-2513
FAX 522-2516
rrr@cybertran.com
IDAHO STATE BAR NO. 712

BONNEVILLE COUNTY
11 MAR 13 11:48

Attorneys for Personal Representative
By REGINALD R. REEVES, ESQ.
Our File 16338

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

///

| | | |
|---------------------------------|---|----------------------|
| In the Matter of the Estates of | } | Civil No. CV-06-6496 |
| | } | |
| CAROL BAILEY and | } | NOTICE OF APPEAL |
| FRANCIS ANDREW BAILEY, | } | [IAR 17] |
| Deceased, | } | |
| | } | }FEE CATEGORY: L(4) |
| KIM BAILEY, | } | }FEE: \$101 |
| Personal Representative, | } | |
| Appellant, | } | |
| v. | } | |
| | } | |
| KERRY BAILEY, KYLE BAILEY, and | } | |
| TAMARA BAILEY SIPE, | } | |
| Respondents. | } | |

TO: THE ABOVE NAMED RESPONDENTS AND THEIR ATTORNEYS,
THOMSEN STEPHENS, AND THE CLERK OF THE ABOVE-ENTITLED
COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant appeals against the above
named respondents to the Idaho Supreme Court, from the following:

- a. Order on Appeal, dated October 1, 2010 And
- b. Order of Remand.
- c. Order Denying Petition for Rehearing, dated October 13, 2010.

2. That the party has the right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(2) I.A.R.

3. The issues intended to be asserted in this appeal are whether the district court erred as follows:

- a. IN RULING THAT THE FIRST AND FINAL ACCOUNTING WAS INADEQUATE.
- b. IN DETERMINING THAT THE MEMORANDUM OF COSTS WAS INSUFFICIENT.
- c. IN RULING THAT THE MEMORANDUM OF COSTS WAS INSUFFICIENT, PARTICULARLY WHERE, ON SEPTEMBER 17, 2009, THE TRIAL COURT DENIED THE REQUEST OF RESPONDENTS FOR FURTHER ACCOUNTING OF THE ATTORNEY'S FEES.
- d. IN FAILING TO CONCLUDE THAT THE MEMORANDUM OF COSTS SHOULD HAVE BEEN CONSIDERED WITH REGARD TO IRCP 54(e)(3)(L).

- e. IN DENYING THE MOTION FOR RECONSIDERATION.
 - f. IN RULING THAT TIME SHEETS MUST BE PROVIDED, WHEN NONE WERE MAINTAINED, IN KEEPING WITH THE RETAINER AGREEMENT.
 - g. IN FAILING TO DETERMINE THAT THE RETAINER AGREEMENT WAS A CONTRACT; THAT THE BILLING WAS IN COMPLIANCE THEREWITH; AND THAT THE BILLING WAS NOT OBJECTED THERETO BY THE OBLIGATED PARTY -- THE PERSONAL REPRESENTATIVE.
 - h. IN FAILING TO DETERMINE THAT THE FEES CLAIMED WERE REASONABLE, IN VIEW OF THE DOCUMENTATION PROVIDED.
 - i. IN AFFIRMING THE DECISION OF THE TRIAL COURT DENYING APPELLANT'S MOTION FOR RECONSIDERATION.
 - j. IN DISMISSING THE APPEAL AND REMANDING THE CASE TO THE TRIAL COURT.
 - k. IN DENYING THE PETITION FOR REHEARING.
4. No order has been entered sealing all or any portion of the record.
5. A reporter's transcript is requested.


6. I certify:

(a) That a copy of this notice of appeal has been served on the reporter of whom a transcript has been requested, as named below, at the fax number set out below:

NANCY MARLOW
Fax 208.529.1300

(b). That service has been made upon all parties required to be served pursuant to Rule 20.

March 10, 2011


REGINALD R. REEVES, ESQ.
Appellant's Attorney
Cambridge Law Center
Idaho Falls, Idaho

CERTIFICATE OF SERVICE

[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served the foregoing upon the designated parties, by faxing ~~4~~ copies, as follows:

RESPONDENT

COURT

MICHAEL J. WHYTE, ESQ.
Fax 522-1277

HON. JON J. SHINDURLING
Fax 529-1300

March 15, 2011


M. BIRD

DENMAN & REEVES
 ATTORNEYS AND COUNSELLORS
 CAMBRIDGE LAW CENTER
 BOX 1841
 IDAHO FALLS ID 83403
 TELEPHONE 522-2513
 FAX 522-2516
 rrr@cybertran.com
 IDAHO STATE BAR NO. 712

2011 MAY 10 PM 1:54

CLERK OF DISTRICT COURT
 SEVENTH JUDICIAL DISTRICT
 BONNEVILLE COUNTY
 IDAHO

Attorneys for Personal Representative
 By REGINALD R. REEVES, ESQ.
 Our File 16338

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

///

| | |
|--|--|
| IN THE MATTER OF THE ESTATES OF CAROL BAILEY and FRANCIS ANDREW BAILEY, Deceased, | } Supreme Court Docket No.- 38760-2011 } Bonneville County Docket No. - CV-2006-6496 } |
| ----- | |
| F. KIM BAILEY, Personal Representative of THE ESTATES OF CAROL BAILEY and FRANCIS ANDREW BAILEY, | } AMENDED } NOTICE OF APPEARL } [IAR 17] } |
| Plaintiff- Appellant, | } |
| v. | } |
| KERRY BAILEY, KYLE BAILEY, and TAMARA BAILEY SIPE, | } Defendants-Respondents. } |

TO: THE ABOVE NAMED RESPONDENTS AND THEIR ATTORNEYS,
 THOMSEN STEPHENS, AND THE CLERK OF THE ABOVE-ENTITLED
 COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant appeals against the above
 named respondents to the Idaho Supreme Court, from the following:

AMENDED NOTICE OF APPEAL

847

- a. Order on Appeal, dated October 1, 2010 And
- b. Order of Remand.
- c. Order Denying Petition for Rehearing, dated October 13, 2010.

2. Appellant has the right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(2) I.A.R.

3. The issues intended to be asserted in this appeal are whether the district court erred as follows:

- a. IN RULING THAT THE FIRST AND FINAL ACCOUNTING WAS INADEQUATE.
- b. IN DETERMINING THAT THE MEMORANDUM OF COSTS WAS INSUFFICIENT.
- c. IN RULING THAT THE MEMORANDUM OF COSTS WAS INSUFFICIENT, PARTICULARLY WHERE, ON SEPTEMBER 17, 2009, THE TRIAL COURT DENIED THE REQUEST OF RESPONDENTS FOR FURTHER ACCOUNTING OF THE ATTORNEY'S FEES.
- d. IN FAILING TO CONCLUDE THAT THE MEMORANDUM OF COSTS SHOULD HAVE BEEN CONSIDERED WITH REGARD TO IRCP 54(e)(3)(L).

- e. IN DENYING THE MOTION FOR RECONSIDERATION.
- f. IN RULING THAT TIME SHEETS MUST BE PROVIDED, WHEN NONE WERE MAINTAINED, IN KEEPING WITH THE RETAINER AGREEMENT.
- g. IN FAILING TO DETERMINE THAT THE RETAINER AGREEMENT WAS A CONTRACT; THAT THE BILLING WAS IN COMPLIANCE THEREWITH; AND THAT THE BILLING WAS NOT OBJECTED THERETO BY THE OBLIGATED PARTY -- THE PERSONAL REPRESENTATIVE.
- h. IN FAILING TO DETERMINE THAT THE FEES CLAIMED WERE REASONABLE, IN VIEW OF THE DOCUMENTATION PROVIDED.
- i. IN AFFIRMING THE DECISION OF THE TRIAL COURT DENYING APPELLANT'S MOTION FOR RECONSIDERATION.
- j. IN DISMISSING THE APPEAL AND REMANDING THE CASE TO THE TRIAL COURT.
- k. IN DENYING THE PETITION FOR REHEARING.

4. No order has been entered sealing all or any portion of the

record.

5. (a). A reporter's transcript is requested.

(b). Appellant requests the preparation of the following portions of the reported transcript, in hard copy, of hearings as follows:

- January 27, 2007 Petition for Supervised Administration
- June 18, 2007 Motions to Enforce and for Sanctions and Protective Order
- August 15, 2001 Objection to Motion for Sanctions
- November 20, 2007 Status Conference and Motion to Strike Affidavit
- April 28, 2008 Court Trial
- October 9, 2008 Motion for Distribution
- January 7, 2009 Oral Argument on Appeal
- May 20, 2009 Motion to Strike
- August 31, 2009 Petition for Accounting
- October 21, 2009 Objection to Costs
- August 2, 2010 Oral Argument on Appeal

6. No additional documents are requested to be included in the clerk's record, in addition to those automatically included under IAR 28.

7. No exhibits are requested.

8. I certify:

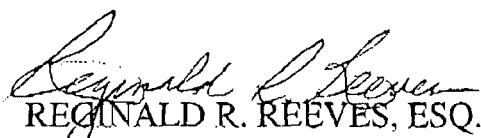
(a). That a copy of this amended notice of appeal has been served on the reporter of whom a transcript has been requested, as named below,

at the fax number set out below:

NANCY MARLOW
Fax 208.529.1300

(b). That service has been made upon all parties required to
be served pursuant to Rule 20.

May 9, 2011


REGINALD R. REEVES, ESQ.
Appellant's Attorney
Cambridge Law Center
Idaho Falls, Idaho

CERTIFICATE OF SERVICE

[IRCP 5(f)]

I HEREBY CERTIFY That on this day I served the foregoing

upon the designated parties, by faxing copies, as follows:

RESPONDENT

COURT

MICHAEL J. WHYTE, ESQ.
Fax 522-1277

HON. JON J. SHINDURLING
Fax 529-1300

May 10, 2011


M. BIRD

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

| | |
|---------------------------------|---|
| In the Matter of the Estates of |) |
| |) |
| CAROL BAILEY and |) |
| FRANCIS ANDREW BAILEY, |) |
| Deceased, |) |
| |) |
| KIM BAILEY, |) |
| Personal Representative/ |) |
| Appellant, |) |
| vs. |) |
| |) |
| KERRY BAILEY, KYLE BAILEY and |) |
| TAMARA BAILEY SIPE, |) |
| Respondents. |) |

**CLERK'S CERTIFICATE
OF APPEAL**

Case No. CV-2006-6496

Docket No.

RECEIVED
 DISTRICT COURT
 2011 MAY 17 A 9:32

| | |
|--|--|
| Appeal from: | Seventh Judicial District, Bonneville County |
| Honorable Jon J. Shindurling, District Judge, presiding. | |
| Case number from Court: | CV-2006-6496 |
| Order or Judgment appealed from: | Order on Personal Representative's Appeal of Magistrate Decision, entered on October 1, 2010; Order Dismissing Appeal and Remanding Case to Magistrate Court, entered on October 5, 2010; Order Denying Petition for Rehearing, entered on February 3, 2011. |
| Attorney for Appellant: | Reginald R. Reeves, Cambridge Law Center, Box 1841, Idaho Falls, ID 83403 |
| Attorney for Respondent: | Michael J. Whyte, 2635 Channing Way, Idaho Falls, ID 83404 |
| Appealed by: | Kim Bailey |
| Appealed against: | Kerry Bailey, Kyle Bailey and Tamara Bailey Sipe |
| Notice of Appeal Filed: | 03/15/11 |
| Appellate Fee Paid: | Yes |

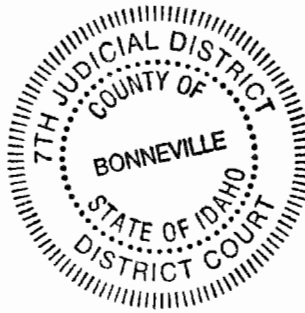
Was District Court Reporter's Transcript requested?

Yes – Not Specified

If so, name of reporter:

Nancy Marlow

Dated: May 11, 2011



RONALD LONGMORE
Clerk of the District Court

By: *RL*
Deputy Clerk

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

IN THE MATTER OF THE ESTATES OF)
 CAROL BAILEY and FRANCIS ANDREW)
 BAILEY, Deceased,)
 _____)
 F. KIM BAILEY, Personal Representative of)
 THE ESTATES OF CAROL BAILEY and)
 FRANCIS ANDREW BAILEY,)
)
 Plaintiff/Appellant.)
)
 -vs.-)
)
 KERRY BAILEY, KYLE BAILEY, and)
 TAMARA BAILEY SIPE,)
)
 Defendants-Respondents.)
 _____)

Case No. CV-2006-6496
 Docket No. 38760-2011

**CLERK'S CERTIFICATION
 OF EXHIBITS**

STATE OF IDAHO)
)
 County of Bonneville)

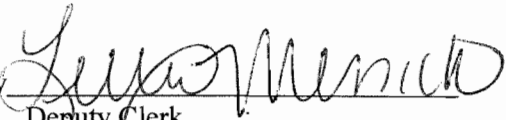
I, Ronald Longmore, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, do hereby certify that the foregoing Exhibits were marked for identification and offered in evidence, admitted, and used and considered by the Court in its determination: please see attached sheets (0 page).

NO EXHIBITS

And I further certify that all of said Exhibits are on file in my office and are part of this record on Appeal in this cause, and are hereby transmitted to the Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District Court
this 15th day of August, 2011.

RONALD LONGMORE
Clerk of the District Court

By 
Deputy Clerk

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

IN THE MATTER OF THE ESTATES OF)
 CAROL BAILEY and FRANCIS ANDREW)
 BAILEY, Deceased,)
 _____)
 F. KIM BAILEY, Personal Representative of)
 THE ESTATES OF CAROL BAILEY and)
 FRANCIS ANDREW BAILEY,)
)
 Plaintiff/Appellant.)
)
 -vs.-)
)
 KERRY BAILEY, KYLE BAILEY, and)
 TAMARA BAILEY SIPE,)
)
 Defendants-Respondents.)
 _____)

Case No. CV-2006-6496
 Docket No. 38760-2011

CLERK'S CERTIFICATE

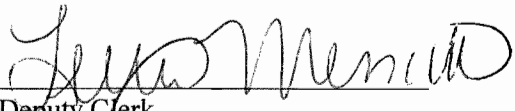
STATE OF IDAHO)
)
 County of Bonneville)

I, Ronald Longmore, Clerk of the District Court of the Seventh Judicial District, of the State of Idaho, in and for the County of Bonneville, do hereby certify that the above and foregoing Record in the above-entitled cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I do further certify that no exhibits were either offered or admitted in the above-entitled cause, that the Clerk's Record will be duly lodged with the Clerk of the Supreme Court, as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District Court
at Idaho Falls, Idaho, this 15 day of August, 2011.

RONALD LONGMORE
Clerk of the District Court

By: 
Deputy Clerk

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

IN THE MATTER OF THE ESTATES OF)
CAROL BAILEY and FRANCIS ANDREW)
BAILEY, Deceased,)

_____)
F. KIM BAILEY, Personal Representative of)
THE ESTATES OF CAROL BAILEY and)
FRANCIS ANDREW BAILEY,)

Plaintiff/Appellant.)

-vs.-)

KERRY BAILEY, KYLE BAILEY, and)
TAMARA BAILEY SIPE,)

Defendants-Respondents.)
_____)

Case No. CV-2006-6496
Docket No. 38760-2011

CERTIFICATE OF SERVICE

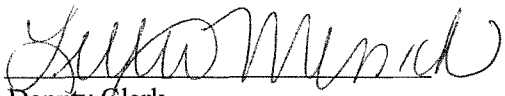
I HEREBY CERTIFY that on the ____ day of August, 2011, I served a copy of the Reporter's Transcript (if requested) and the Clerk's Record in the Appeal to the Supreme Court in the above entitled cause upon the following attorneys:

Reginald Reeves
PO Box 1841
Idaho Falls, ID 83403

Michael Whyte
2635 Channing Way
Idaho Falls, ID 83404

by depositing a copy of each thereof in the United States mail, postage prepaid, in an envelope addressed to said attorneys at the foregoing address, which is the last address of said attorneys known to me.

RONALD LONGMORE
Clerk of the District Court

By: 
Deputy Clerk