

10-15-2012

# Advanced Med. v. Imaging Center of Idaho Respondent's Brief Dckt. 39753

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ADVANCED MEDICAL DIAGNOSTICS,  
LLC, a Delaware limited liability company,

Plaintiff/Appellant,

v.

IMAGING CENTER OF IDAHO, LLC, an  
Idaho limited liability company,

Defendant/Respondent.

Docket No. 39753-2012

**RESPONDENT'S BRIEF**

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Appeal from the District Court of the Third Judicial District of  
The State of Idaho, in and for the County of Canyon

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Honorable Juneal C. Kerrick

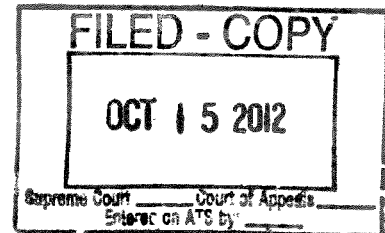
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## STATEMENT OF THE CASE

Responding party, Imaging Center of Idaho (“ICI”), generally concurs with appellant Advanced Medical Diagnostics (“AMD”)’s statement of the case. However, while AMD repeatedly mentions that ICI dismissed a claim for breach of contract prior to trial, it fails to mention that it dismissed or abandoned two causes of action.

AMD’s amended complaint contains causes of action for breach of contract, unjust enrichment, accounted stated, and reformation of contract (R., pp. 42-47). Neither the claim for ‘accounted stated’ nor the claim for ‘reformation of contract’ were presented to the jury (R., pp. 68-71).

## ARGUMENT

### **1. The District Court Acted Properly, And Within The Bounds Of Its Discretion, In Determining ICI Was The Prevailing Party.**

The determination of whether there is a prevailing party is an issue which is left to the sound discretion of the trial court. *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.* 141 Idaho 716, 117 P.3d 130 (2005) “Only in rare cases has this Court or the Court of Appeals reversed a trial court’s determination of which party prevailed.” *Shore v. Peterson*, 146 Idaho 903, 914, 204 P.3d 1114, 1125 (2009). The district court’s determination of who is a prevailing party will not be disturbed absent an abuse of discretion. *Trilogy Network Sys., Inc. v. Johnson*, 144 Idaho 844, 172 P.3d 1119 (2007). When examining whether a trial court abused its discretion, this Court considers whether the trial court: (1) perceived the issue as one of discretion; (2) acted within the outer boundaries of this discretion and consistently with the legal

standards applicable to the specific choices available to it; and (3) reached its decision by an exercise of reason.” *Shore v. Peterson*, 146 Idaho at 915 (2009).

It is well established that in determining which party prevailed where there are claims and counterclaims between opposing parties, the court determines who prevailed "in the action." The determination of whether there is a prevailing party is to be made by an examination of the “overall result” obtained by the parties, and **not** determined on a claim-by-claim analysis. *Shore v. Peterson*, 146 Idaho at 915, citing *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.* 141 Idaho at 719 (2005).

AMD never claimed to be a prevailing party in the district court, and cannot make that claim now. AMD’s claim that there should be no prevailing party is based on faulty argument and reasoning. As stated above, the determination of whether there is a prevailing party is determined by the “overall result” and not a claim-by-claim analysis. AMD argues that the district court should have determined the prevailing party based primarily on a tally of the jury’s answers to the questions on the special verdict form. AMD’s argument is without merit and lacks any legal foundation.

The district court properly determined ICI was the prevailing party and properly determined the amount of costs and fees awarded to ICI.

a. The trial court correctly perceived the issue as one of discretion.

The first issue in determining whether the district court properly determined whether ICI was the prevailing party is to consider whether the district court perceived the issue as one of discretion. In this case there is irrefutable evidence that the district court clearly perceived the issue of “prevailing party” as one of discretion. At the hearing on AMD’s motion to disallow

fees the court specifically stated:

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All right. Thank you. Counsel, of course, one of the options the court has in arriving at what is a matter of discretion is to make a determination that a party prevails in part, does not prevail in part. And so I, because I may be considering that as one of the alternatives.  
(Tr., p. 7, L. 20-25)

In the court's written order following the hearing on AMD's motion to disallow fees the court acknowledged that the issue of prevailing party was one of discretion. The court noted:

A trial court's determination regarding whether a party prevailed in an action is a matter of discretion. I.R.C.P. 54(d)(1)(B); *Shore v. Peterson*, 204 Idaho 1114, 1125, 204 P.3d 1114, 1125 (2009). In making a discretionary determination, this court must: (1) correctly perceives the issue as one of discretion; (2) acts within the outer boundaries of that discretion and consistently with the applicable legal standards; and (3) reaches its determination by an exercise of reason. *Id.* 146 Idaho at 915.  
(R., p. 155)

The district court accurately perceived the issue of determining whether there is a prevailing party as an issue within the court's discretion.

- b. The trial court acted within the outer boundaries of its discretion and consistently with the applicable legal standards.

The boundaries of the district court's discretion are set forth in Rule 54(d)(1)(B) of the Idaho Rules of Civil Procedure.

Rule 54(d)(1)(B) states:

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.

Pursuant to Rule 54(d)(1)(B), the boundaries to the district court's discretion are: (1) it "shall" consider the final judgment or result of the action; (2) determine whether a party

prevailed, or prevailed in part; (2) if a party prevailed in part and did not prevail in part the court “may” apportion costs and fees in an equitable manner.

In *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.* 141 Idaho at 719, the Idaho Supreme Court succinctly and concisely stated the applicable legal standard for determining a prevailing party in matters involving claims and counterclaims between the parties. The Court stated:

In determining which party prevailed in an action where there are claims and counterclaims between opposing parties, the court determines who prevailed ‘in the action.’ That is, the prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis.

In *Eighteen Mile Ranch* the defendant, Nord Excavating & Paving, Inc. avoided all liability as a defendant, but obtained less than a tenth of the damages it was seeking in its counterclaim. The trial court determined there was no prevailing party. The Idaho Supreme Court reversed the trial court, stating “the mere fact that a party is successful in asserting or defending a single claim does not mandate an award of fees to the prevailing party on that claim. The rule does not require that. . . . That is, the prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis” *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.* 141 Idaho 716, 719, 119 P.3d 130, 133 (2005).

In this matter, in making its determination of “prevailing party” the district court considered the final judgment. The court observed that the jury returned a verdict finding that ICI proved its affirmative defense of mutual mistake with respect to the agreement, AMD failed to prove ICI was unjustly enriched, and that ICI did not prove it was damaged in any amount by AMD’s misrepresentations (R., p. 153). The district court correctly concluded that the issue of “prevailing party” should be determined by the “overall result obtained in the action as whole.”



and that a claim-by-claim analysis was not necessary (R., pp. 155-156). The court further concluded that the “primary issue” of the lawsuit was “whether ICI was liable to AMD for damages for breach of the parties’ agreement for the provision of physician education and marketing services” (R., pp. 155-156). Ultimately, the district court determined that ICI was the prevailing party because it prevailed on the primary issue of the litigation (R., pp. 155-156).

In its appeal AMD argues that the trial court should have analyzed the prevailing party based on a tally of each question presented to the jury on the special verdict form. Such a micro-analysis is not required. Furthermore, AMD mischaracterizes both the claims and the outcomes in its opening brief. Contrary to AMD’s assertions, there were only three “claims” involved at the trial of this matter: (1) Was ICI liable to AMD for damages for breach of the agreement; (2) Was ICI unjustly enriched by AMD; (3) Was ICI damaged by AMD’s misrepresentations. The jury found that ICI proved an affirmative defense against AMD’s breach of contract claim, and that AMD did not prove ICI was unjustly enriched. The jury also found that ICI was damaged by AMD’s misrepresentations, but elected not to award damages to ICI. The jury found in ICI’s favor on all claims.

Admittedly, AMD avoided paying any damages on ICI’s counterclaim for fraud. Nonetheless, prevailing on a single claim “does not mandate an award of fees to the prevailing party on that claim.” *Chadderdon v. King*, 104 Idaho 406, 411659 P.2d 160 (App. 1983).

In *Chadderdon* the plaintiff filed a breach of contract action arising out of construction of a building, seeking nearly \$60,000 in damages. Approximately two years after the complaint was filed, the defendant filed a counterclaim to recover damages of \$9,588 representing the costs of additional work and material. The jury denied recovery to both parties. After judgment was entered the trial court awarded costs, including attorney’s fees, to the defendant. The trial court

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determined that the defendant prevailed on the “main issue of the case,” which was plaintiff’s breach of contract claim. The trial court’s award of costs and attorney’s fees was upheld on appeal.

As was the situation in *Chadderdon*, the main issue in this lawsuit was plaintiff’s breach of contract claim, and defendant’s affirmative defense of mutual mistake. AMD filed its complaint in December of 2009. (R., pp. 10) Trial was set for January 31, 2011 (R., p. 3). In December of 2010, defendant moved to amend its answer to assert an affirmative defense and counterclaim for fraud (R., p. 4). At the time of the hearing ICI expressed its willingness and preparedness to proceed with trial in January of 2011. (Tr. p., 3 L. 23 – p. 4, L. 12; Tr. p. 14, L. 25 – p. 13, L. 11). However, at plaintiff’s request, the court reset the trial date for June, 2011 (R., p. 5). ICI filed its amended answer and counterclaim on March 24, 2011, raising for the first time, and only 3 months before trial, the claim and affirmative defense of fraud (R., pp. 42-47).

In looking at the **result** of the trial, ICI came out far ahead of AMD. In September of 2010, approximately 4 months prior to the original trial date, AMD was seeking in excess of \$825,000 from ICI to settle this dispute (R., p. 148). At trial AMD was asking for damages of between \$710,500 and \$1,179,614 (R., p. 148). As a “result” of the trial ICI saved \$825,000. On the other hand, ICI was willing to pay plaintiff \$106,650 to settle this lawsuit (R., p. 146). By trying the case AMD lost at least \$106,650. In looking at the overall result of the action, ICI came out up to a million dollars ahead of AMD.

The district court summarized the result of this the case during the hearing on AMD’s motion for reconsideration:

Okay. Well, you know, my inclination is to stick with my original decision. I am going to go back over these specific things and consider them specifically, Mr. Ellis, because it is a significant amount of money.

But, you know, I still, in looking at this case, I'm inclined to say that this case was about a breach of contract where the plaintiffs - - the gravamen of this. Commercial Transaction. Plaintiff's asserted as a result of this contract that the defendants owed them a lot of money, and the defendants said they didn't owe it. And that's pretty simplistic and - - but really that's the overall result of this case.

The district court properly exercised its discretion in determining the prevailing party by considering the final judgment and the result of the action.

c. The trial court reached its decision by an exercise of reason.

In determining the issue of prevailing party the court first looked at the relief obtained by the parties. The court noted that the jury found the following: (1) ICI breached the parties' agreement; (2) ICI proved the affirmative defense of mutual mistake with respect to the agreement; (3) AMD failed to prove that ICI was unjustly enriched; (4) ICI did not prove that it was damaged in any amount by an intentional misrepresentation on the part of AMD (R., p. 153)

The district court then continued to analyze the "overall" outcome of the trial as opposed to conducting a claim-by-claim analysis (R., pp. 156). The court's decision to analyze the "prevailing party" issue on an "overall result" basis rather than a claim-by-claim basis is consistent with the Idaho Supreme Court's decisions in *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.* 141 Idaho 716.

The district court concluded that the primary issue in this case was whether ICI was liable to AMD for damages arising out of the breach of the parties' agreement, and that ICI prevailed on that issue. In exercising its discretion the court carefully considered the factual circumstances and legal principles of law, and did not arbitrarily disregard those facts or principles of justice. *Decker v. Homeguard Sys.*, 105 Idaho 158 (App. 1983). ICI prevailed on the main issue of lawsuit – liability under the contract – and avoided damages in excess of a million dollars. The

overall outcome of the litigation was far more favorable to ICI than to AMD. The district court's finding of prevailing party was determined by an exercise of reason.

AMD contends the district court did not reach the prevailing party determination by an exercise of reason, but instead concluded that ICI was the prevailing party simply by rejecting AMD's argument that there was no prevailing party. There is absolutely no support for such a contention. The basis of AMD's contention is a single line of the district court's order, which AMD takes out of context. In addressing the issue of "apportionment" (**not** in determining prevailing party) the district court contrasted this matter to *Schroeder v. Partin*, 151 Idaho 471 (2011), noting that the court did not determine that AMD and ICI prevailed in part. In further contrast to *Schroeder*, the court pointed out that AMD never even contended it was a prevailing party (R., p. 191)

AMD's position that the district court failed to exercise reason in reaching its determination of prevailing party is contrary to the evidence and the express language of the district court's order.

**2. The Trial Court Did Not Err In Denying AMD's Request To Apportion Fees And Costs.**

In determining that ICI was the prevailing party in this matter, the court acted within the parameters of its discretion and according to the appropriate legal standards. The apportionment of fees by the district court is a matter of discretion. *Schroeder v. Partin*, 151 Idaho 471, 259 P.3d 617 (2011). Rule 54(d)(1)(B) provides that the court, in its discretion, may apportion fees if it determines that a party prevailed in part and did not prevail in part.

a. Segregation of fees

There is no requirement for a prevailing party to "segregate" fees associated with the various claims when all claims contain an entitlement to attorney fees. In its opening brief AMD  
RESPONDENT'S BRIEF-8

states, “[w]here a plaintiff pleads multiple claims, some bearing attorney fee entitlement and other claims not so entitled, Idaho law is clear that any fees awarded must be limited to the prosecution or defense of those claims which carry a statutory entitlement to fees.” In support of its position AMD cites *Brooks v. Gigray Ranches, Inc.*, 128 Idaho 72, 910 P.2d 744 (1996), and *Willie v. Board of Trustees*, 138 Idaho 131, 59 P.3d 302 (2002).

AMD concedes that neither *Brooks* nor *Willie* stand for the proposition that segregation of fees is required when all the claims are entitled to attorney fees. AMD has no legal authority, and makes no legal argument, to support its contention that segregation of fees is required when all claims carry attorney fee entitlement.

b. Apportionment of Fees

The district court did not abuse its discretion in electing not to apportion attorney fees in this matter. Apportionment of fees is governed by Rule 54(d)(1)(B), which provides that the trial court may apportion the costs between and among the parties “upon so finding” that a party to the action prevailed in part and did not prevail in part. In cases such as the one at bar, where only one party is determined to be the prevailing party, and not to have prevailed in part and not prevailed in part, the court determines the reasonableness of the award of attorney fees by considering the factors set forth in Rule 54(e)(3). In this matter the court analyzed the reasonableness of attorney fees pursuant to Rule 54(e)(3) before making its award (R., pp. 156-158).

AMD asserts that when there are multiple prevailing parties the court has a duty to apportion fees. In this matter there was only one prevailing party, ICI. AMD never claimed to be a prevailing party. Furthermore, the court did not determine that ICI prevailed in part and did not prevail in part. Accordingly, there was no basis for apportionment.

### **ATTORNEY FEES ON APPEAL**

In the event ICI prevails on this appeal it is entitled to fees. When the issue on appeal concerns the entitlement to attorney fees on a litigated commercial transaction, Idaho Code § 12-120(3) is applicable. *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.* 141 Idaho 716, 721 119 P.3d 130 (2005). In this matter the district court noted that the primary issue in this litigation was whether ICI was liable to AMD for damages for breach of the parties agreement for the provision of physician education and marketing services, that the agreement was a commercial transaction, and that claims arose out of the same transaction (R., pp. 15158). Therefore, the party which prevails on appeal is entitled to an award of costs, including reasonable attorney fees.

### **CONCLUSION**

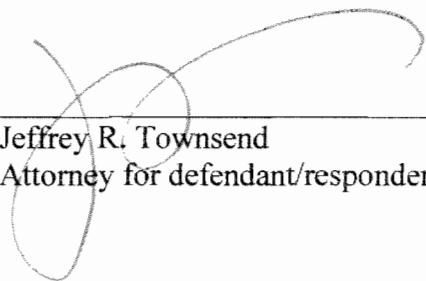
The district court acted within the boundaries of its discretion in determining ICI was the prevailing party and awarding costs and fees. The primary issue in this case was AMD's claim that ICI owed it approximately \$1,000,000 arising out of the breach of a commercial transaction. ICI defeated AMD's claim, and AMD obtained nothing as a result of this litigation. AMD's contention that the court abused its discretion because ICI did not prevail on "a majority of the questions on the jury verdict form" completely lacks any legal foundation, and is, in fact, contradictory to the legal standard that the district court is to determine the prevailing party by considering the "final judgment or result of the action," and that a claim-by-claim analysis is not required. The district court acted within the boundaries of its discretion and consistent with legal

standards in determining ICI was the prevailing party. This court should affirm the district court's order.

In the event ICI prevails on this appeal it is entitled to attorney fees on appeal pursuant to Idaho Code § 12-120(3).

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of October, 2012.

By:



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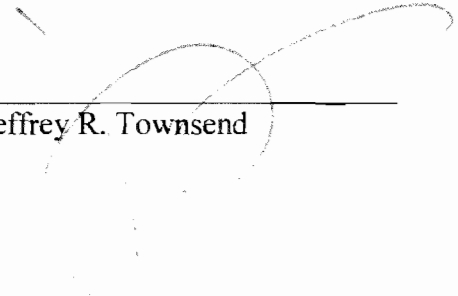
Jeffrey R. Townsend  
Attorney for defendant/respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15<sup>th</sup> day of October, 2012, I caused to be served a true and correct copy of the foregoing document, by method indicated below, and addressed to each of the following:

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\_\_\_\_\_  
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