2-5-2019

Action Collection Service Inc. v. Black Appellant's Reply Brief Dckt. 46116

IN THE SUPREME COURT OF THE STATE OF IDAHO

ACTION COLLECTION SERVICE, INC.
An Idaho Corporation
Plaintiff/Respondent

vs.

HARMONY L. BLACK (f/k/a McCULLOUGH,
an individual
Defendant/Appellant

SUPREME COURT No. 46116-2018
Canyon Co. Case No. CV 2012-3011

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the Third Judicial District for Canyon County
Honorable George D. Carey, District Judge presiding

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I
STATEMENT OF THE CASE

A. DISPUTED FACTS.

1. MISREPRESENTATIONS BY THE RESPONDENT.

While the Respondent would like to believe it prevailed, the recitation of the Statement of the Case in *Respondent's Brief* begins with an irrelevant segment of the long history of this case and then immediately tries to paint the Appellant as the party who "refused to sign a mutual settlement agreement" as the basis of justifying Respondent's dogged pursuit of the case it ultimately lost. Appellant was under no legal obligation to sign any settlement agreement and rightfully refused when the one presented to her included dismissal of her and her daughter's claims against third-parties.

Respondent's assertion pales when compared to the next paragraph of the *Brief*, Respondent states, incredibly, "the magistrate recused himself and the case was re-assigned to the district court based on Ms. Black's second counterclaim for damages which exceeded $10,000." *Id.*, at p.1. The record in this matter makes it abundantly clear that this matter was re-assigned four times which included other magistrates. R., Idaho Supreme Court #44466-2016, pp. 438-440, 453-456, 465-466; cf. pp.10-11; R., Idaho Supreme Court #46116-2018, pp. 19-20. Discussed *infra*, the omission of this salient fact is a contrivance by the Respondent to create an impression that the issue of the existence of a counterclaim somehow justifies application of the second sentence in I.R.C.P. 54(d)(1)(B). *Respondent's Brief*, p.3.

A. THERE WAS NO COUNTERCLAIM BY THE APPELLANT AFTER 2015.

The issue of the existence of a counterclaim by Appellant was raised by the Respondent in its *Motion for Clarification or in the Alternative Motion to Dismiss Counterclaim*, filed June 13, 2016. R., Idaho Supreme Court #44466-2016, pp. 486-499. This "issue" was not recognized

by the Appellant, as evidenced by the lack of Appellant's response to the motion, and was definitively put to rest by the district court in its *Memorandum and Order* dated June 28, 2016 where the court stated "[s]ince the latest answer filed by Ms. Black does not include a counterclaim, any counterclaim that Ms. Black may have presented in her earlier submission is no longer at issue before the court. . . . Consequently, there is no counterclaim in this case to be decided by the court." R., Idaho Supreme Court #44466-2016, p. 609; cf. pp. 604-611. The district court was referring to Appellant's *pro-se* pleading of May 2015 and answer filed July 30, 2015, where the court stated "[h]er answer denied the claims of Action Collection and asserted affirmative defenses, but it did not include a counterclaim." *Id.*, pp. 606-607.

In the Order portion of that *Memorandum and* Order, the district court stated "[i]t is hereby ordered as follows: . . . 2. [t]here is no counterclaim to be tried by the court in the current proceeding." R., Idaho Supreme Court #44466-2016, p. 610.

Very clearly, there was no counterclaim by the Appellant after July 30, 2015. Respondent asserts in its *Brief* the existence of counterclaims by the Appellant numerous times by stating "Ms. Black appealed and the judgment on ACS's claim was vacated on the grounds that the assignment to ACS by the Idaho Department of Juvenile Corrections was premature. **The judgments in favor of ACS on Ms. Black's counterclaims were not appeal** [sic] **and were not reversed.**" *Respondent's Brief*, p.2 [emphasis added]. The Respondent then recites the earlier history of this case prior to mid-2015 and again states "[j]udgment was entered in favor of Ms. Black on ACS's claims and **against Ms. Black on her counterclaims.**" *Id.*, p.2. [emphasis added].

Ms. Black has not asserted entitlement to attorney's fees prior to the involvement of her counsel. The intimation that there were counterclaims prior to July 30, 2015 is wholly irrelevant.

Further, Respondent argues that the district court considered 54(e)(3) factors "[n]amely, '[t]he amount involved was well under $10,000. The result of the case was twofold: that Ms. Black did not have a monetary judgment entered against her and that her counterclaim was dismissed.' " *Respondent's Brief*, p. 5, citing R., Supreme Court #46116-2018, p. 327 [actually page number 328]. Respondent's citation to the district court's Rule 54(e)(3) discussion points out a clearly erroneous statement by the district court which will be discussed *infra*.

Nonetheless, Respondent's unceasing references to counterclaims do not change the fact that no counterclaims existed during the portion of this litigation that is relevant to the instant appeal and the Appellant's claim for attorney's fees.

B. APPELLANT WAS AND IS THE SOLE PREVAILING PARTY

Despite Respondent's inartful attempts to assert that Appellant was only "a partially successful defendant", the record and the November 16, 2017 decision of the Idaho Court of Appeals makes it abundantly clear – Appellant was wholly and totally successful in defeating all of Respondent's claims. This fact was recognized by the district court after Remittitur in its *Memorandum and Order* dated April 20, 2018 where the court stated "[b]ased on the totality of the proceedings, this court concludes that Ms. Black is the prevailing party" and further stated "the court has found that overall Ms. Black was the prevailing party." R., Supreme Court #46116-2018, p.239 and p. 242, respectively. In its *Second Memorandum and Order* dated June 28, 2018, the court reaffirms Appellant was the prevailing party by stating again "[b]ased on the totality of the proceedings, this court concludes that Ms. Black is the prevailing party" and "the court has found that overall Ms. Black was the prevailing party." R., Supreme Court #46116-2018, p. 323 and p. 325, respectively.

Appellant was wholly successful in her defense and is the sole prevailing party.

B. APPLICABLE LAW

1. AS THE PREVAILING PARTY, APPELLANT IS ENTITLED TO COLLECT HER ATTORNEY'S FEES

The district court ruled that the Appellant was the prevailing party in this matter. R., Supreme Court #46116-2018, pp. 242 & 325. As the prevailing party under I.C. §12-120(1), Appellant is substantively entitled to "a reasonable amount to be fixed by the court as attorney's fees." Id. Procedurally, under IRCP 54(e)(1), Appellant is entitled to an "award [of] reasonable attorney fees, including paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract." Id.

"What constitutes a "reasonable" fee is a discretionary determination for the trial court, to be guided by the criteria of I.R.C.P. 54(e)(3)." *Daisy Mfg. Co., Inc. v. Paintball Sports, Inc.*, 134 Idaho 259, 263, 999 P.2d 914, 918 (Ct.App.2000), citing *Kelly v. Hodges,* 119 Idaho 872, 876, 811 P.2d 48, 52 (Ct.App.1991). See also *BECO Const. Co., Inc. v. J-U-B Engineers Inc.*, 149 Idaho 294, 298, 233 P.3d 1216, 1220 (2010).

"To properly exercise its discretion on a request for attorney fees, a trial court must, at a minimum, consider the twelve factors outlined in I.R.C.P. 54(e)(3). . . . These factors are: (A) The time and labor required. (B) The novelty and difficulty of the questions. (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law. (D) The prevailing charges for like work. (E) Whether the fee is fixed or contingent. (F) The time limitations imposed by the client or the circumstances of the case. (G) The amount involved and the results obtained. (H) The undesirability of the case. (I) The nature and length of the professional relationship with the client. (J) Awards in similar cases. (K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case. (L) Any other factor which the court deems appropriate in the particular case."

Medical Recovery Services, LLC, v. Jones, 145 Idaho 106, 110 175 P.3d 795, 799, (2007), citing *Boel v. Stewart Title Guar. Co.*, 137 Idaho 9, 16, 43 P.3d 768, 775 (2002), *Bldg. Concepts, Ltd. v. Pickering*, 114 Idaho 640, 645, 759 P.2d 931, 936 (Ct.App.1988), and *Nalen v. Jenkins*, 113 Idaho 79, 81, 741 P.2d 366, 368 (Ct.App.1987).

However, "[i]n assessing whether an award of attorney fees was an abuse of discretion, this Court applies a three-factor test: (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 to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason." *Medical Recovery Services, LLC, v. Jones,* 145 Idaho 106, 110 175 P.3d 795, 799, (2007), citing *Burns v. Baldwin,* 138 Idaho 480, 486–87, 65 P.3d 502, 508–09 (2003).

With regard to appealing the amount of an attorney's fee award, "[t]his Court previously addressed this issue when considering a prevailing party claiming attorney fees under a contractual provision. In *Lettunich,* this Court found that the prevailing party was entitled to an award of attorney fees incurred in "the continuation of the litigation in order to determine the amount that he is entitled to be awarded in attorney fees." 145 Idaho at 752, 185 P.3d at 264. We stated: 'Where he had a legal right to recover attorney fees as the prevailing party in the action, litigation over the amount of the attorney fee award is also part of the legal action for which he is entitled to an award of attorney fees.' *Id.* We can discern no principled basis for treating claims for attorney fees under I.C. § 12–120 in a different fashion." *BECO Const. Co., Inc. v. J-U-B Engineers Inc.*, 149 Idaho 294, 298 233 P.3d 1216, 1220 (2010).

The amount of what constitutes a reasonable attorney's fee must be arrived at by analysis of the factors and a reasoned decision. *Thomas v. Thomas*, 150 Idaho 636, 249 P.3d 829 (2011).

II
ARGUMENT

A. STANDARDS OF REVIEW

The standard of review on appeal is that, "[t]his Court applies an abuse of discretion standard when reviewing a district court's award of attorney fees, . . .". *Berkshire Investments, LLC v. Taylor*, 153 Idaho 73, 86, 278 P.3d 943, 956 (2012), citing *Taylor v. McNichols*, 149 Idaho 826, 848, 243 P.3d 642, 664 (2010).

"When reviewing an exercise of discretion on the part of a district court, this Court considers: '(1) whether the court correctly perceived that the issue was one of discretion; (2) whether the court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether it reached its decision by an exercise of reason.'" *Taylor v. McNichols*, Id., at 832, [citing *Spur Prod. Corp. v. Stoel Rives LLP*, 142 Idaho 41, 43, 122 P.3d 300, 302 (2005), (quoting *Estate of Becker v. Callahan*, 140 Idaho 522, 527, 96 P.3d 623, 628 (2004))]; see also *Sun Valley Shopping Center v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

"A trial court's findings of fact will not be set aside unless clearly erroneous." *BECO Const. Co., Inc. v. J-U-B Engineers Inc.*, 149 Idaho 294, 296, 233 P.3d 1216, 1218 (2010), citing *Bolger v. Lance*, 137 Idaho 792, 794, 53 P.3d 1211, 1213 (2002).

B. APPELLANT IS THE SOLE PREVAILING PARTY

The record in this case and the November 16, 2017 decision of the Idaho Court of Appeals makes it abundantly clear that Appellant was wholly and totally successful in defeating all of Respondent's claims. This fact was recognized by the district court after Remittitur in its *Memorandum and Order* dated April 20, 2018 where the court stated "[b]ased on the totality of the proceedings, this court concludes that Ms. Black is the prevailing party" and further stated

"the court has found that overall Ms. Black was the prevailing party." R., Supreme Court #46116-2018, p.239 and p. 242, respectively. In its *Second Memorandum and Order* dated June 28, 2018, the court reaffirms Appellant was the prevailing party by stating again "[b]ased on the totality of the proceedings, this court concludes that Ms. Black is the prevailing party" and "the court has found that overall Ms. Black was the prevailing party." R., Supreme Court #46116-2018, p. 323 and p. 325, respectively.

While the Respondent attempts to re-litigate the conclusion that the Appellant was the sole prevailing party, it is clear that as the prevailing party, Appellant is statutorily entitled to "a reasonable amount to be fixed by the court as attorney's fees" under I.C. §12-120(1) since the original amount in dispute was under $35,000.

C. APPELLANT IS ENTITLED TO THE ENTIRETY OF HER ATTORNEY'S FEES UNDER I.C. §12-120(1)

Under I.R.C.P. 54(e)(1), Appellant is entitled to an "award [of] reasonable attorney fees, including paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract." Appellant is entitled to the entirety of her attorney's fees since there she was the prevailing party and there was no finding by the district court that the requested fee was unreasonable.

While the Respondent cites several cases where an award was challenged for reasons of where an "attorney cannot spend his time extravagantly" or "apportion the attorney's fees between and among the parties" or in instances where there is a "partially prevailing party", none of these cases apply here as the fact patterns of those cases are not present in the instant case. Again, the district court did not question the amount of time submitted by Appellant's counsel in the Memorandum of Costs nor was Appellant a partially prevailing party. Appellant ultimately

prevailed on every claim made by the Respondent and the district court did not cite one claim where the Respondent prevailed.

Instead this is a clear case where the Appellant vigorously and rightfully defended herself from years of litigation and was then punished by the district court for doing so.

D. THE TRIAL COURT ERRED WHEN FINDING THE "COUNTERCLAIM WAS DISMISSED" AND USING THIS FINDING IS AN ABUSE OF DISCRETION.

As part of the district court's review of the Appellant's request for attorney's fees, the court concluded in its *Second Memorandum and Order* dated June 28, 2018, under the factor entitled "THE AMOUNT INVOLVED AND THE RESULTS OBTAINED" that "[t]he amount involved was well under $10,000. The result of the case was twofold: that Ms. Black did not have a monetary judgment entered against her and that her counterclaim was dismissed." R., Supreme Court #46116-2018, p. 328. This conclusion is erroneous.

In June of 2016, the district court had before it the Respondent's *Motion for Clarification or in the Alternative Motion to Dismiss Counterclaim*, filed June 13, 2016. R., Idaho Supreme Court #44466-2016, pp. 486-499. The Respondent's view regarding the existence of a counterclaim was not recognized by the Appellant, as evidenced by the lack of Appellant's response to the motion, and the issue was definitively put to rest by the district court in its *Memorandum and Order* dated June 28, 2016 where the court stated "[s]ince the latest answer filed by Ms. Black does not include a counterclaim, any counterclaim that Ms. Black may have presented in her earlier submission is no longer at issue before the court. . . . Consequently, there is no counterclaim in this case to be decided by the court." R., Idaho Supreme Court #44466-2016, p. 609; cf. pp. 604-611. The district court was referring to Appellant's *pro-se* pleading of May 2015 and answer filed July 30, 2015, where the court stated "[h]er answer denied the claims

of Action Collection and asserted affirmative defenses, but it did not include a counterclaim." *Id.*, pp. 606-607.

The court did not grant the motion because the court found there was no counterclaim. In the Order portion of that *Memorandum and Order*, the district court stated "[i]t is hereby ordered as follows: . . . 2. [t]here is no counterclaim to be tried by the court in the current proceeding." R., Idaho Supreme Court #44466-2016, p. 610.

Therefore the district court's later conclusion that the counterclaim was dismissed (as stated in its June 28, 2018 *Second Memorandum and Order*) is clearly erroneous. Because the district court stated this within the context of its Rule 54(e)(3) factor discussion, this error seemingly forms the basis for the drastic reduction in the amount of the award of attorney's fees since there is no analysis as to why the Appellant's requested attorney's fee was unreasonable. As such, this constitutes an abuse of discretion.

III
CONCLUSION

As the sole prevailing party in a matter where the amount in controversy was under $35,000, Appellant is statutorily entitled to an award of attorney's fees. The district court erred in its review of the Rule 54(e)(3) factors and failed to explain any rationale why the Appellant's request for attorney's fees was unreasonable. The district court's 94% reduction in the amount of attorney's fees should be reversed in favor of the Appellant and Appellant should be awarded all of her costs and requested attorney's fees.

DATED this 5th day of February 2019.

/s/ Thomas J. Katsilometes
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Attorney for Appellant