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IN THE IDAHO SUPREME COURT

ACTION COLLECTION SERVICE, INC.)	
An Idaho Corporation)	SUPREME COURT No. 47864-2020
Plaintiff/Respondent)	Canyon Co. Case No. CV 2012-3011
)	
vs.)	
)	APPELLANT'S BRIEF
HARMONY L. BLACK (f/k/a)	
McCULLOUGH,)	
an individual)	
)	
Defendant/Appellant)	
_____)	

APPELLANT'S BRIEF

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

ATTORNEY FOR APPELLANT

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I.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is an appeal from the District Court's *Articulation of reasons for decision concerning award of attorney's fees* (dated August 27, 2019), where, upon having its *Second Memorandum and Order* (dated June 28, 2018) regarding the Court's decision on its award of attorney's fees appealed and reviewed, the Idaho Court of Appeals again remanded the matter to the District Court to articulate its reasons for the reduced award of attorney's fees.

While this matter was originally filed in 2012 and had resulted in a partial victory for the Appellant *Pro Se* after appeal by the Respondent, the Appellant retained counsel during the remand in the District Court. Those proceedings resulted in a judgment in favor of the Respondent which was appealed by the Appellant and the District Court's decision was vacated on that second appeal. A third appeal ensued when the District Court awarded attorney's fees to the Appellant in the amount of \$4,000.00 after six years of litigation where the Appellant was unequivocally found to be the prevailing party and subsequently submitted a Memorandum of Costs and Attorney's Fees seeking her attorney's fees in the amount of \$62,190.00.

Appellant again contends in the instant appeal that the amount of the award of attorney's fees by the District Court constitutes a lack of exercise of sound discretion under IRCP 54 and I.C. §12-120(1) and is seeking reversal of the District Court or for a remand with specific instructions, for an award in the full amount of her attorney's fees.

B. COURSE OF PROCEEDINGS

On appeal to the Idaho Court of Appeals in the underlying matter of this case, Appellant Black was victorious in having the trial court judgment against her and in favor of the Respondent, Action Collection Service, Inc., vacated. The Opinion (#61) of the Idaho Court of

Appeals was rendered and published on November 16, 2017. While both parties pursued subsequent petitions for rehearing, each was denied and the decision of the Idaho Court of Appeals became final on February 28, 2018 when the Remittitur was submitted by the Clerk of the Idaho Supreme Court / Idaho Court of Appeals and said remittitur was transmitted to the District Court on the same day.

The District Court determined Appellant Black was the prevailing party under both Rule 54 of the Idaho Rules of Civil Procedure and I.C. § 12-120 and as such was entitled to recover her costs and attorney's fees pursuant to I.C. 12-120(1). Judgment was entered on April 20, 2018.

As the prevailing party and pursuant to the timelines specified in IRCP 54(d)(4), Appellant Black filed her Post Judgment Memorandum of Costs and Attorney's Fees.

The District Court issued an Order and its first Memorandum on April 20, 2018 and then issued its *Second Memorandum and Order* (dated June 28, 2018) addressing the award of attorney's fees. R. Pp. 236-246, and Pp. 319-330, respectively. Appellant timely appealed the reduced award of attorney's fees and the Idaho Court of Appeals vacated the District Court's attorney fee award and remanded the matter to the District Court with instructions to "articulate its reasons for limiting the attorney fee award in this case to \$4,000." *Action Collection Service, Inc. v. Black*, Idaho Court of Appeals #46116, filed May 31, 2019 (unpublished).

C. STATEMENT OF FACTS

This matter was initiated by Respondent Action when it asserted a claim for money allegedly owed to them by Appellant Black by first submitting a demand for payment of \$6,552.05 more than 10 days prior to the Respondent initiating litigation against Appellant Black and then arguing, variously, that the claimed amount was a past due account, a debt, an

obligation, and a commercial charge. Those claims were false, wrongfully asserted due to a non-existent, expired, or ambiguously written contract between Appellant and the Idaho Department of Juvenile Corrections. Appellant Black had to defend against these non-meritorious claims in order to reclaim moneys illegally garnished from her and a potential judgment against her. Ultimately, the Idaho Court of Appeals agreed with her that these amounts claimed by the Respondent lacked merit.

The defense of this case by Appellant Black was necessitated by Respondent's wrongful actions. Respondent's own claims for its attorney's fees eventually dwarfed the original \$7,024.73 sought in the original Complaint. The District Court had determined the amount claimed by Respondent was less than \$25,000. See I.C. §12-120(1) and April 20, 2018 Memorandum Decision and Order, R. P. at 6-7. As is reflected in the record, Respondent had submitted fee requests in the amounts of \$2,595.00 (August 10, 2012), \$19,600 (July 31, 2015), and \$45,815.00 (July 22, 2016). Respondent's ongoing pursuit of this "debt" presented an opportunity for a windfall for Respondent Action. However, a judgment of this magnitude would have been financially devastating for Appellant Black.

Appellant's attorney reasonably incurred approximately 207.3 hours of work in this matter excluding the additional hours separately billed for the prior appeal as this matter metastasized over the course of three years of protracted litigation. Eventually, the costs of defending this case became unsustainable for the Appellant. This necessitated research and frankly a bit of courage to assess and rely upon the likelihood of a recovery of attorney's fees from the Respondent to allow Appellant to not only defend herself, but to ultimately prevail in this matter.

Appellant now appeals again to validate her prior victory and to have this Court vindicate her right to collect the full amount of her attorney's fees.

II. ISSUES ON APPEAL

A. THE AMOUNT OF THE AWARD OF ATTORNEY’S FEES LACKS A SOUND EXERCISE OF DISCRETION BY THE DISTRICT COURT.

a. THE DISTRICT COURT FAILED AGAIN TO ARTICULATE A RATIONALE FOR ITS REDUCED AMOUNT OF THE ATTORNEY’S FEE AWARD .

In its *Articulation of reasons for decision concerning award of attorney’s fees* (dated August 27, 2019), the District Court stated that “the court of appeals recognized that the district court ‘correctly perceived the issue as discretionary and recognized the legal standards applicable to its decision.’ At p.6. What was missing, however, was a ‘clear explanation connecting the district court’s consideration of those factors with the amount of attorney fees awarded.’ At p.8.” The District Court then stated “[t]he court will now attempt to connect the award actually granted to the factors outlined in IRCP54(e)(3)” and proceeded to present its attempt.

b. THE AMOUNT OF THE AWARD OF ATTORNEY’S FEES SOUGHT BY APPELLANT IS REASONABLE.

This matter was litigated for over five years prior to Appellant submitting her Memorandum of Costs and Attorney’s Fees after the Judgment in her favor. The amount of requested attorney’s fees was based on her attorney’s detailed summary of accounts showing 207.3 hours at the date of submission of the Memorandum. There was no challenge to or question raised by the District Court as the number of hours claimed. The hourly fee claimed was \$300.00 and this too was not deemed excessive or unreasonable by the District Court, noting only that “[t]he court has no information on the going rate for litigators in the Third District in general; but this trial judge never previously has had a claim before him in the Third District for such a high hourly rate.”¹ R. P. 327.

¹ The Court notes this matter was a Magistrate Court matter until disqualification of several
4 | Appellant’s Brief

c. APPELLANT IS ENTITLED TO A FULL AWARD OF ATTORNEY’S FEES UNDER I.R.C.P. 54(E).

The District Court ruled that the Appellant was the prevailing party in this matter. R. 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(3)(1), Appellant is entitled to an “award 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.”

B. APPELLANT IS ENTITLED TO AN AWARD OF COSTS AND ATTORNEY’S FEES ON APPEAL UNDER I.A.R. 40 AND I.A.R. 41.

Appellant requests this Court to remand this matter to the District Court with specific instruction to make an award of Appellant’s attorney’s fees incurred in the District Court phase of this case pursuant to I.C. 12-120(1), since the original amount in dispute was under \$35,000. Appellant also requests this Court to issue an award of her attorney’s fees and costs incurred on appeal pursuant to I.C. § 12-120(1) and IAR 40 and 41, since the original amount in dispute was under \$35,000. *See Action* at R. Vol. 1 p. 10.

III. 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 this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by an exercise of reason.” *Lunneborg v. My Fun Life*, 163 Idaho 856 , at 863, 421 P.3d 187, at 194, I.S.C. #45200, at 13, (2018).

B. AS THE PREVAILING PARTY, APPELLANT IS ENTITLED TO REASONABLE ATTORNEY’S FEES.

i. There is no dispute that Appellant is the prevailing party.

Upon remand from the Idaho Court of Appeals, the District Court had determined that Appellant was the unequivocal prevailing party. R. Pp. 242, 325.

ii. Prevailing parties are entitled to reasonable attorney’s fees under I.C. §12-120(1).

Idaho Code Title 12 Section 120(1) (I.C. §12-120(1)) is the applicable statute authorizing the recovery of attorney’s fees in this matter. It provides:

In any action where the amount pleaded is thirty-five thousand dollars (\$35,000) or less, there shall be taxed and allowed to the prevailing party, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney’s fees. For the plaintiff to be awarded attorney’s fees, for the prosecution of the action, written demand for the payment of such claim must have been made on the defendant not less than ten (10) days before the commencement of the action; provided, that no attorney’s fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety-five percent (95%) of the amount awarded to the plaintiff.

Id.

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.*

The District Court recognized an award of Appellant Black’s attorney’s fees is mandated by I.C. §12-120(1), once the Court had determined Appellant Black was the prevailing party

judge, prior to senior status, was in the Fourth District.

pursuant to IRCP 54(d)(1)(B). *April 20, 2018 Memorandum Decision*. R. P. 242.

Procedurally, under IRCP 54(e)(1), Appellant is entitled to an “award 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.*

iii. The District Court did not find that Appellant’s requested amount for attorney’s fees was unreasonable.

This matter was litigated for over five years prior to Appellant submitting her Memorandum of Costs and Attorney’s Fees after the Judgment in her favor. The amount of requested attorney’s fees was based on her attorney’s detailed summary of accounts showing 207.3 hours at the date of submission of the Memorandum. There was no challenge to or question raised by the District Court as the number of hours claimed. The hourly fee claimed was \$300.00 and this too was not deemed excessive or unreasonable by the District Court, noting only that “[t]he court has no information on the going rate for litigators in the Third District in general; but this trial judge never previously has had a claim before him in the Third District for such a high hourly rate.”. R. P. 327

C. THE DISTRICT COURT FAILED AGAIN TO ARTICULATE ITS REASONING WHICH IS NOT A SOUND EXERCISE OF DISCRETION WHEN AWARDING ATTORNEY’S FEES

i. The District Court did not make a reasoned decision as required under *Smith* or *Uzzle*.

First, the District Court appears to take issue again with the \$300 hourly rate charged by Appellant’s counsel. It is certainly within the Court’s discretion to judge the reasonableness of this hourly rate. However, the Court does not provide an alternate or reduced rate by which Appellant and an appellate Court can judge the reasonableness of the reduction. The Court instead repeated that “[t]he court has no information on the going rate for litigators in the Third District in general”, yet it concluded that this rate was unreasonable. Clearly, making such a

conclusion without offering evidence of any example is not a reasoned decision.

In light of the 94% reduction to Appellant's fee request this Court has applied in making its award, is a reviewing court to conclude even first-year attorneys (which Appellant's counsel is not) are only entitled to bill at \$18/hour (6% of \$300/hour)? The lack of explanation on the hourly rate applied by the Court in reaching its \$4,000 award sends a chilling message to any attorney who might desire to represent someone of limited means based on an assessment that a mandatory fee shifting statute would provide compensation.

There is no legal support for what amounts to a 94% reduction in the amount of fees Appellant sought in her originally-filed Memorandum of Costs and Attorney's fees. *See* IRCP 54(d)(4).

"Thus, although the time and labor actually expended by an attorney is to be considered, it is also to be evaluated under a standard of reasonableness." *Medical Recovery Services, LLC, v. Jones*, 145 Idaho 106, 110 P.3d 795, 799, (2007), citing *Daisy Mfg. Co., Inc. v. Paintball Sports, Inc.*, 134 Idaho 259, 263, 999 P.2d 914, 918 (Ct.App.2000).

However, the District Court's *April 20, 2018 Memorandum Decision* appeared to deny Appellant the bulk of her attorney's fees (approximately 94% of Appellant's fees) without analysis of the several factors in IRCP 54(e). Instead, in its *Second Memorandum and Order* (dated June 28, 2018), the District Court made a rote recitation of the factors and then concluded, again without any explanation or analysis, that:

"From the factors outlined above the court concludes that it has sufficient information from which to reach a reasoned decision concerning an attorney's fee award. Considering all the factors, a reasonable attorney's fee to be awarded in favor of Ms. Black and against Action Collection is the amount of \$4,000.00. In reaching this conclusion, the court emphasizes that the amount to be awarded is the amount it feels is reasonable to assess against Action Collection in view of the factors outlined in IRCP 54(e)(3). It is not necessarily the amount that Ms. Black may be obligated to pay her attorney for all the services performed. IRCP 54(e)(7)."

Id., R. P. 329.

Inexplicably, the District Court “conclude[d]” it reached a “reasoned decision” without reference to any factor that was lacking, unreasonable, or construed against the Appellant or in favor of the Respondent. Nor did the District Court apply logic as to why the amount awarded of “\$4,000.00” was “reasonable”. There simply was no reasoning whatsoever by the District Court where instead it merely offered a conclusory statement after a seemingly arbitrary selection of a round number. Without analysis, perfunctorily stating that a conclusion is reasonable does not make it so.

Yet, this was repeated again in the District Court’s *Articulation of reasons for decision concerning award of attorney’s fees*, wherein the Court stated,

A person who has practiced law as long as Ms. Black’s attorney should have realized that spending over 200 hours on this type of case was not an “efficient” or “required” use of attorney time. If he wanted to spend that much time on this case that was his right, subject to ethical obligations owed to his client. It was not, however, reasonable to expect that the other side should pay for his time if it went beyond what was required in view of the amount involved.

This, simply, is not a reasoned basis for the reduction in the award. It instead seeks to impose a standard which implies that regardless of the merits of your case or the defense in your case, you must analyze whether you can expect the losing party should have to pay attorney’s fees, and guess what that amount might be. And, importantly, it simply ignores that the amount in controversy was dwarfed by the Respondent’s requested attorney’s fees when the District Court ruled in its favor.² The totality of this staggering amount is why Appellant’s vigorous defense

² Other than IRCP 54(e)(3)(G) (referring to the amount involved and the results obtained) the Rule contains no proportionality test. If this Court is of the opinion that proportionality is within the scope (3)(G) or the catchall provision of IRCP 54(e)(3)(L), then Appellant suggests the proper measure of proportionality is the fees claimed by Respondent throughout this litigation. As of its last submission on July 22, 2016, Respondent had claimed \$45,815 in fees. Since that time the litigation has continued for an additional 1 ½ years. Though Appellant was denied her fees on appeal, it is reasonable to infer Respondent incurred additional fees which it would have sought had Respondent prevailed in this action. Thus, it is entirely reasonable to conclude there is a direct proportionality in the liability Appellant would have been exposed to had she not prevailed due to the assistance of her counsel.

was necessary, and therefore quite reasonable under any standard. See *Smith v. Glenns Ferry Hwy Dist*, I.S.C. 46180 (2020), at 23-25, discussed *infra*.

Further, this sends another chilling message to defendants and their attorneys: the amount in controversy determines how vigorous a defense should be, and if anyone can prospectively ascertain the case will become time-consuming, you should forego any defense and simply cave in to the plaintiff's demands. Cf. *Williams v. Hollinshead*, I.S.C. #48053, (2020), at 21-22.

This really cannot be a reasonable exercise of discretion where people would necessarily be deprived of their day in court and, even worse, have to pay for "nuisance" lawsuits that would become tantamount to extortion.

A simpler, and more just, bright-line test can easily become the rule: If you are a defendant and you prevail on all claims and all issues, you should be entitled to attorney's fees as a matter of right in your case no matter the amount in controversy. Having such a rule would go a long ways towards eliminating pernicious, vexatious, extortive, and frivolous lawsuits when plaintiffs would then have to carefully and clearly present a meritorious claim or suit, or otherwise risk a very substantial loss.

Here, Appellant was fortunate to find legal counsel who would work behind the scenes to help keep her litigation costs down and successfully kept her out of "financial ruin." Appellant tried numerous times to settle this matter with Respondent, which would have left her responsible for her legal fees, yet Respondent pressed forward. This District Court's 94% reduction in Appellant's fees sends a strong message to attorney's who might be sympathetic to taking on an undesirable case, such as a defense of a debt collection, in the hope that they might recover their fees from the opposing party at the conclusion of the litigation.

In the instant case, Appellant Black did prevail but has been subjected to an unjust resolution due to the District Court's inability to recognize that she was forced into mounting a vigorous defense to vindicate her rights and that it was reasonable for her to do so.

The District Court failed to “connect[] the district court’s consideration of those factors with the amount of attorney fees awarded” as was specifically tasked by the Idaho Court of Appeals.

This repeated failure does not meet the standard articulated in *Smith v. Glenns Ferry Hwy Dist*, I.S.C. 46180 (2020), where the Idaho Supreme Court recently examined the reasonableness standard of attorney’s fees award reductions. In that case, the court stated, “

The trial court’s decision, even while purportedly considering I.R.C.P. 54(e)(3)(D) and (J), does not adequately explain why it chose to reduce the requested hourly rate from \$400 to \$325 given the legal experience of Smith’s counsel. The trial court spent four pages in analysis, examining the awards it had given in similar cases (all of which resulted in higher hourly rates) before simply stating that the hourly rate of \$400 was “not reasonable *in this case*.” (Italics added.) However, the trial court did not explain *why* it was unreasonable.

[Emphasis added, italics original.]

Id., at 25.

Here, the District Court again fails to address the all-important “*why*” it found Appellant’s attorney’s fee request unreasonable in terms of the hourly rate and the hours devoted to her defense. See also *Uzzle v. Estate of Hirning*, I.S.C. #47449, (2020), at 24.

Nor does the District Court’s decision meet the standard given in *Burns Concrete, Inc. v. Teton County*, I.S.C. #46827/47496, (2020). The Idaho Supreme Court articulated this standard yet again at the beginning of this month. It stated,

What is missing from the decisions, however, is the link between the factors set forth in Rule 54(e)(3) and the specific final awards that were made. Stated differently, the district court failed to “explain[] the relationship between the [district] court’s evaluation of the Idaho Rule of Civil Procedure 54(e)(3) factors and its decision regarding the amount to award for attorney[] fees.”

Id., at 24, citing *H2O Envtl., Inc. v. Farm Supply Distributors, Inc.*, 164 Idaho 295, 300, 429 P.3d 183, 188 (2018).

Again, here the District Court fails to rationally explain the connection that forms the basis of its decision. Cf. *Cazier Revocable Trust v. Cazier*, I.S.C. #46852, (2020), at 17-18.

- ii. This Court should reverse the District Court’s reduction in the amount of the attorney’s fee award or remand this case to the District Court with specific instructions to award the entire amount of attorney’s fees sought by Appellant with interest.**

In the interest of justice and because of the protracted nature and lengthy procedural history of this case, Appellant respectfully requests this Court simply reverse the District Court and award Appellant all of her attorney’s fees. Alternatively, Appellant respectfully requests that this matter be remanded to the District Court with specific instructions awarding all attorney’s fees and costs already claimed plus those costs and fees incurred for this appeal.

IV. CONCLUSION

Based on the foregoing, the District Court’s decision lacked an exercise of sound discretion and Appellant is entitled to her attorney’s fees as claimed. In the interest of justice and because of the protracted nature and lengthy procedural history of this case, Appellant respectfully requests this Court simply reverse the District Court and award Appellant all of her attorney’s fees. Alternatively, Appellant respectfully requests that this matter be remanded to the District Court with specific instructions awarding all attorney’s fees and costs already claimed plus those costs and fees incurred for this appeal.

RESPECTFULLY SUBMITTED this 20th day of November 2020.

By: s/ Thomas J. Katsilometes
THOMAS J. KATSILOMETES
Attorney for Appellant/Defendant