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IN THE SUPREME COURT OF THE STATE OF IDAHO

ACTION COLLECTION SERVICE, INC.
an Idaho Corporation,

Plaintiff/ Respondent,

vs.

HARMONY L. BLACK fka
MCCULLOUGH,

Defendant/Appellant.

SUPREME COURT NO. 47864-2020
Canyon Co. Case No. CV 2012-3011

RESPONDENT'S BRIEF

Appeal from the District Court of the Third Judicial District
of the State of Idaho, In and For the County of Canyon

The Honorable George Carey, District Judge
Presiding

ATTORNEY FOR APPELLANT

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I.

STATEMENT OF THE CASE

Action Collection Service, Inc. (hereinafter “ACS”) commenced suit against Ms. Black (hereinafter “Black”) on March 29, 2012 for payment of \$4,465.00 claimed to be due the Idaho Department of Juvenile Corrections for the care and treatment of Black’s minor daughter. Black appeared pro se, denied ACS’s claim and asserted that ACS violated the Fair Debt Collection Practices Act. Judgment was entered against Black on all claims. Appeals ensued and the case was eventually remanded back to the magistrate for further proceedings. *See Action Collection Serv., Inc. v. McCullough (Black)*, Docket No. 41928 (Ct. App. Jan. 22, 2015) (unpublished).

On remand, summary judgment was again entered against Black on her Fair Debt Collection Practices Act counterclaim. R. Supreme Court #44466-2016, p. 244. Before trial, Black filed another counterclaim seeking damages in excess of \$10,000.00. She then retained counsel, who filed a written notice of appearance on January 21, 2016.¹ R. Supreme Court #44466-2016, p. 318. The parties attempted settlement and it appeared that an agreement for a mutual dismissal of all claims was reached, but the settlement foundered when Black refused to sign a mutual settlement agreement. R. Supreme Court #46116-2018, pp. 221-230. Trial began on February 19, 2016.

On the second day of trial, the magistrate recused himself from the case, and the matter was re-assigned to the district court based on Black’s second counterclaim for damages. Trial resumed on July 7 2016, and the district court thereafter entered judgment against Black on all

¹ As part of Black’s memorandum of costs and attorney’s fees, Mr. Katsilometes claims \$12,270.00 for time he allegedly incurred prior to his appearance in this case.

claims.² R. Supreme Court #44466-2016, p. 699. ACS sought an award of costs and attorney's fees. R. Supreme Court #44466-2016, p. 701-717. Black objected on the grounds that the costs and fees were unreasonable in light of the amount awarded ACS, and that ACS had not complied with Idaho Code Sections 12-120(1) or 12-120(3). R. Supreme Court #44466-2016, p. 730-734, 742-750. The district court awarded ACS costs as a matter of right and attorney's fees in the sum of \$3,500.00. R. Supreme Court #44466-2016, p. 755-763. Black appealed. The Court of Appeals vacated the judgment, concluding that there was no actionable debt against Black because the Idaho Department of Juvenile Corrections failed to follow the procedures set forth in Idaho Code Section 20-524. *Action Collection Service, Inc. v. Black*, 163 Idaho 268, 411 P.3d 312 (Ct. App. 2017).

Judgment was entered in favor of Black on ACS's claims and against Black on her counterclaims. R. Supreme Court #46116-2018, pp. 233-234. Black moved for an award of costs and attorney fees. Both parties submitted extensive briefing and argument, with the district court awarding Black costs and attorney's fees in the sum of \$4,501.00. R. Supreme Court #46116-2018, pp. 233-234. Black sought reconsideration of that award, and additional briefing and oral argument followed. The district court issued another written decision on June 28, 2018 confirming its original award of \$4,501.00. R. Supreme Court #46116-2018, pp. 247-257; 319-330. Black appealed the attorney fee award only, and the Court of Appeals ruled that the district court "correctly perceived the issue as discretionary and recognized the legal standards

² During the trial, Black filed an interlocutory appeal without approval from the trial court, which was dismissed by the Court on March 28, 2016. R. Supreme Court #44466-2016, pp. 373, 389, 461-463.

applicable to its decision,” but remanded the case back to the district court to articulate the reasons for the award of attorney’s fees. R. Supreme Court #47864-2020, pp 40-42.

The district court again took additional argument. Tr. Supreme Court #47864-2020. On August 27, 2019, the district court issued a written explanation of its fee award. R. Supreme Court #47864-2020, pp 46-54. Appeal was taken from that memorandum, but was eventually dismissed by this Court. R. Supreme Court #47864-2020, pp 55-57; 63-64. On January 23, 2020, judgment was again entered for Black, awarding costs and reasonable attorney’s fees in the sum of \$4,501.00. R. Supreme Court #47864-2020, p 68. Black again appeals the attorney fee award.

II.

ATTORNEY’S FEES ON APPEAL

ACS requests attorney’s fees on appeal. This request is based on Idaho Code Sections 12-120(1), 12-120(2), 12-120(3) and 12-121.

III.

ARGUMENT

A. The time and labor factor did not obligate the district court to award Black the entire amount of attorney’s fees requested.

Black contends that the district court was bound to award her the entire amount of attorney’s fees requested because she claims there was no challenge to or question raised by the district court about the number of hours claimed and that the district court did not provide an alternate or reduced hourly rate when setting the amount of attorney’s fees.

Rule 54(e)(8) requires that any claim for attorney fees be made pursuant to Rule 54(e) unless an applicable statute or contract provides otherwise.³ I.R.C.P. 54(e)(8). Rule 54(e)(3) sets forth the factors the court must consider in making an attorney fee award. I.R.C.P. 54(e)(3). “The time and labor actually required . . . is not the ‘be all, end all’ of the attorney fee question.” *Craft Wall of Idaho, Inc. v. Stonebreaker*, 108 Idaho 704, 705-706, 701 P.2d 324 (Ct. App. 1985). The trial court is permitted to examine the reasonableness of the time and labor expended by the attorney in relation to the claims for which he or she is entitled, and the court need not accept the figures advanced by the requesting attorney, and may consider the case and result as a whole to make a fee determination. *Id.* Moreover, simply because the trial court determines that a claimant is a prevailing party and therefore entitled to attorney’s fees, does not mean that the award must be in the full amount requested. A party may be a prevailing party, and therefore entitled to some attorney’s fees, but if the party did not entirely prevail on all the issues and claims, the trial court is permitted to apportion the attorney’s fees between and among the parties in a fair and equitable manner after considering all of the issues and claims involved and the resultant judgment or judgments obtained. I.R.C.P. 54(d)(1)(B); I.R.C.P. 54(e)(1); *Massey-Ferguson Credit Corp. v. Peterson*, 102 Idaho 111, 121, 626 P.2d 767 (1980); *see also*, *Beco Constr. Co. v. Harper Contr., Inc.*, 130 Idaho 4, 10-11, 936 P.2d 202 (Ct. App. 1997)(denying the claim that the attorney fee award was unreasonably low because the

³ Black argued to the district court earlier, that the Lodestar Method for evaluating the reasonableness of attorney’s fees was controlling. Nevertheless, Idaho law is clear on this subject, Rule 54(e) controls when the basis for the fee claim is a state statute. *Perkins v. U.S. Transformer West*, 132 Idaho 427, 974 P.2d 73 (1999)(rejecting the Lodestar Method and holding that the proper measure of attorney fees under a state statute is governed by Rule 54(e)(3)) , *overruled on other grounds by Poole v. Davis*, 153 Idaho 604, 288 P.3d 821 (2012).

reasonableness of the amount involves a discretionary determination by the trial court after considering all the factors in Rule 54(e)(3)). Thus, the reasonableness of an attorney fee award is based on the trial court's consideration of all the factors set forth in Rule 54(e)(3). *H2O Envtl., Inc. v. Farm Supply Distribs, Inc.*, 164 Idaho 295, 300, 429 P.3d 183, 188 (2018); *Sun Valley Potato Growers, Inc. v. Texas Refinery Corp.*, 139 Idaho 761, 769, 86 P.3d 475, 483 (2004).

Here, the district court properly recognized that I.R.C.P. 54(e)(3) controls the consideration of the attorney fee award. In fact, this Court, in the preceding appeal, held that the “district court’s decision reflects that it correctly perceived the issue [of attorney fees] as discretionary and recognized the legal standards applicable to its decision.” R. Supreme Court #47864-2020, p. 40. As such, Black’s focus on the time and labor alleged to have been spent in this case fails to account for or address the correct legal standard of evaluating fees for overall reasonableness in light of all the Rule 54(e)(3) factors. *H2O Envtl.*, 164 Idaho at 300, 429 P.3d at 188. Moreover, the “time and labor required” is not necessarily the time and labor spent, and this factor alone, is not dispositive of what a reasonable fee should be in a particular case. *Medical Recovery Servs., LLC v. Jones*, 145 Idaho 106, 110, 175 P.3d 795, 799 (Ct.App. 2007).

B. The district court did not abuse its discretion when it awarded Black, a partially successful party, a reduced sum of attorney’s fees.

In fixing the amount of attorney’s fees the court need not specifically address all of the factors contained in I.R.C.P. 54(e)(3) in writing, but the record should indicate that the court considered them all. *H2O Envtl., Inc.*, 164 Idaho at 299-300. Some of the information may come from the court’s knowledge and experience, while others may only come from the party requesting the fee. *Sun Valley Potatoes*, 139 Idaho at 769. The burden to provide the court

with all the necessary information to evaluate a fee request rests with the party claiming the fees.
Id.

“The amount of attorney’s fees to be awarded is a decision committed to the discretion of the trial court,” and will not be overturned absent a clear showing that the trial court abused its discretion. *H2O Envtl., Inc.*, 164 Idaho at 297-298. The abuse of discretion standard is not a re-measuring by the higher court, and the party claiming error carries the burden to show that the lower court failed to consider or apply the appropriate criteria. *Id.* at 299-300; *Medical Recovery Servs., LLC v. Merritt*, 163 Idaho 699, 704, 417 P.3d 1025, 1030 (Ct. App. 2018)(holding that it “is incumbent upon the appellant to demonstrate that the court failed to consider or apply the appropriate criteria”).

Black argues that the district court did not articulate its reasons for the amount of attorney’s fee it awarded. Similar arguments were recently considered in *Smith v. Glens Ferry Highway District*, Docket 46180 (April 28, 2020) and *Aspire Properties, LLC v. Howell*, Docket 46573 (Ct. App. April 8, 2020)(unpublished). In *Smith*, the Idaho Supreme Court held that:

An award of attorney fees that is inconsistent with other awards made *by the same trial court* appears arbitrary absent an explanation as to why the requested attorney fees were unreasonable *in this case*. Accordingly, we vacate the trial court’s award of attorney fees, and remained for reconsideration and explanation of why the trial court awarded higher hourly rates to less experienced counsel in similar cases.

Id. at 1166 (italics in original).

In *Aspire*, the prevailing party was also awarded a reduced sum of attorney’s fees. It was argued that “the district court ‘plucked the figure of \$7,500 out of thin air as a reasonable

attorney fee’ and ‘did not actually address any excessive hours spent on the case.’” *Aspire Properties, LLC*, Docket 46573 (Ct.App. April 8, 2020)(unpublished). The trial court’s comments were quoted in the opinion as follows:

The case was actively litigated and multiple motions were filed. All parties engaged in a short mediation and could not reach an agreement, which lead to trial. The matter was an action to collect on a breach of contract regarding a number of leases that were entered into by the parties and cannot be described as novel. Nor does it appear to the Court that litigation in this matter presented any other unusual difficulty to counsel. It was not a case that required unusual time or labor. The attorneys who appeared were skilled at the tasks required but the case did not require[] any particular legal expertise. The hourly rate is within the range in this area. The amount involved, although significant in the eyes of the parties, did not make this case particularly large.

Here, Aspire has asked for \$24,456.00 in attorney fees. The Court has carefully reviewed all factors identified in Rule 54(e)(3) and determines that the sum required by Aspire is unreasonable, and awards attorney fees in the amount of \$7,500.00. Such an award is reasonable for the litigation in this case, with an eye to the amount involved in the case, the result obtained, and prevailing charges for like work.

Id. In affirming the trial court’s award, the Court found that “the [trial] court in its written decision applied the correct legal standard and determined a fee award based on the exercise of reason.” *Id.* The Court did not explicitly address Aspire’s argument that the trial court failed to address any excessive hours spent on the case, but logic dictates that a line item by line item evaluation that addresses each fragment of time spent on the case was unnecessary. The “overarching legal standard is one of reasonableness.” *Id.*(citing to *H2O Envtl.*).

A similar result was reached in *Medical Recovery Servs., LLC v. Jones*, 145 Idaho 106, 110, 175 P.3d 795, 799 (Ct. App. 2007). There, the prevailing party challenged the trial court’s reduction of attorney’s fee by nearly 90% on the grounds “that the fee award was not derived by

an exercise of reason because the magistrate employed a predetermined formula . . . instead of considering the I.R.C.P. 54(e)(3) factors.” *Id.* at 115. The Court affirmed the trial court’s decision, stating as follows:

However, taking the magistrate's comments in their totality, it is evident that this was an assessment that encompassed an analysis of several Rule 54(e)(3) factors, including the relative simplicity of the issues, the requisite skill for collection services, the prevailing charges, awards in similar cases, the amount involved, and the results obtained. To support its determination, the court noted the customary practices of other judges in the locality with respect to fee awards in collection cases. The court also asked about the attorney's fee arrangement with M.R.S., but the attorney declined to give that information, so the court considered the one-third contingency fee agreements typically employed in such cases. The court also considered the relatively low principal amount involved, and the quick result obtained because the defendant admitted liability and quickly paid the underlying debt. It is therefore evident that the court did not disregard the factors of I.R.C.P. 54(e)(3) in favor of a predetermined formula.

In sum, M.R.S. has not shown that the magistrate court abused its discretion by violating governing legal standards or by failing to exercise reason in arriving at the award for attorney services at the conclusion of the May 22 hearing.

Id.

In this case, Black continues to assert that a sum in excess of \$62,000 is reasonable and that her attorney’s hourly rate and time allegedly spent should control the award.⁴ In support of this conclusion, Black argues that her attorney’s hourly rate and time were not challenged. The record reveals that ACS has long argued that the time spent in this case by Black’s attorney was excessive and that the hourly rate he claims is inconsistent for like work in the Canyon County

⁴ Black infers that the time her attorney allegedly spent in this case was for the entire five-years the matter was litigate and appealed, exclusive of the time spent on her counterclaim. While it is true that this matter was filed in March 2012, Mr. Katsilometes did not formally appear in the case until January 21, 2016, one month prior to the start of the trial in this case. R. Supreme Court #44466-2016, p. 318. It is this short window of time that Black seeks attorney’s fees in excess of \$62,000, while ignoring the fact that she was unsuccessful on two separate counterclaims, and previously argued that ACS’s attorney’s fees, which were substantially less in hourly rate and total amount, were unreasonable in amount and inappropriate given the amount involved.

community, and therefore her request was unreasonable in amount, especially in light of her unsuccessful counterclaims. R. Supreme Court #46116-2018, pp. 124-136. The district court knew of these arguments, had briefing and oral argument by both parties concerning those issues, and determined that it has never had a claim for such a high hourly rate.⁵ R. Supreme Court #47864-2020, pp. 50, 52; R. Supreme Court #46116-2018, p. 327. The district court also determined that Black's attorney "made no attempt to establish that the \$300.00 per hour rate he was claiming was the prevailing fee ordinarily charged" for similar work in the subject community. R. Supreme Court #47864-2020, pp. 52-53. Black's failure to establish the prevailing rate for like work in the subject community is not error of the district court. It was error of Black. *See Sun Valley Potatoes*, 139 Idaho 761, 769, 86 P.3d 475, 483 (2004). Therefore, Black failed to establish a critical element of her fee request. *Id.* Consequently, the district court's decision that there was no evidence by Black's attorney establishing the prevailing rate for like work, coupled with the fact that the district court has never had a claim for such a high hourly rate, evidences the district court's reasoning for the award in this case, and establishes a connection to the Rule 54(e)(3) factors.

In addressing the number of hours spent, the district court reasoned that it was:

not required to and should not act as an auditor or decide whether each line item in a claim for attorney fees was perfectly accurate. Its job, rather, was to assess the overall reasonableness of the claim, considering the factors outlined in IRCP 54(e)(3). [Thus] it should not become enmeshed in a meticulous analysis of every detailed facet of the professional representation [or] conduct a minute evaluation

⁵ In *Brinkman v. Aid Insurance Co.*, 115 Idaho 346, 766 P.2d 1227 (1988) the Court held that because the record establishes that several of the Rule 54(e)(3) factors were argued and briefed, the profile of the record provides enough information to presume that the trial judge considered the factors enumerated in the rule.

of each phase or category of counsel's work. . . . Rather is should review the overall conduct of the case and the manner in which the attorney discharged his or her professional responsibilities, [and] evaluate in a general way the professional methods used in processing the case.

R. Supreme Court #47864-2020, pp. 48-49. The court went on to find that “spending over 200 hours on this type of case was not an ‘efficient’ or ‘required’ use of attorney time.” R. Supreme Court #47864-2020, p. 52. The district court continued to connect the award of fees to the Rule 54(e)(3) factors by stating as follows:

a significant factor to consider, along with all the other factors outlined in I.R.C.P. 54(e)(3), is the amount involved and the results obtained. I.R.C.P. 54(e)(3)(G). In this case, the amount involved, even if Mr. Black had lost, was well under \$10,000.00. She was successful in defending against the claim asserted by Action. Nevertheless, she was totally unsuccessful in asserting her counterclaim against Action. The amount of attorney's fees claimed bears no reasonable relationship to the amount of potential liability faced by Black. The amount actually awarded, however, does bear a reasonable relationship to her potential liability.

Id.

The analysis in this case is analogous to the decisions affirmed in *Aspire, Medical Recovery Services, LLC v. Jones* and *Medical Recovery Servs., LLC v. Merritt*. In those cases, the trial courts explained that the award it made was reasonable for the subject litigation, with an eye to the amount involved in the case, and the results obtained. They did not employ a mechanical evaluation of each item of time spent on the case, nor did they offer a reduced or alternative hourly rate. This, the Court of Appeals opined, was sufficient to conclude that the trial courts acted within the outer bounds of its discretion, and that the trial courts' calculations were reached by an understanding of the legal principals involved and through an exercise of

reason. *Id.*; *Medical Recovery Servs., LLC v. Jones*, 145 Idaho at 115; *Medical Recovery Servs., LLC v. Merritt*, 163 Idaho at 705.

The district court's decision in this case was not arbitrary. The district court identified each of the factors to be considered as enumerated in Rule 54(e)(3), and explained the relationship between its award and the Rule 54(e)(3) factors. Black on the other hand failed to come forward with evidence establishing the prevailing rates for like work on similar cases within the subject community and did not present evidence that the trial court awarded larger amounts for similar cases. In fact, the evidence is to the contrary. ACS's fee award by this same trial judge was less than the amount awarded Black. R. Supreme Court #44466-2016, pp. 755-763. Moreover, Black's reliance on the time and labor alleged to have been spent in the case is insufficient. Black has not demonstrated "that the court failed to consider or apply the appropriate criteria." More importantly, taking the district court's comments in their totality, it is evident that the assessment encompassed an analysis of several Rule 54(e)(3) factors, including the relative simplicity of the issues, the requisite skill involved, the time required, the prevailing charges, the low amount involved, and the mixed results obtained. Therefore, unlike the trial court's in *Smith, H2O Envtl.*, and the others cited by Black, the district court here made a connection between the award and the Rule 54(e)(3) factors, and Black has failed to meet her burden of establishing error. *Clear v. Marvin*, 86 Idaho 87, 383 P.2d 346 (1963)(holding that error is never presumed on appeal and the burden of showing it is on the party alleging error). Consequently, the district court's reduction of the amount requested represents a reasoned analysis within the outer bounds of its discretion. *See Serrano v. Priest*, 20 Cal.3d 25, 49, 141

Cal.Rptr. 315 (1977)(finding that “[t]he experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong – meaning that it abused its discretion”).

C. Black has presented no argument supporting her claim for attorney’s fees on appeal.

Idaho Appellate Rule 35 requires that the Appellant’s brief contain and identify the issues on appeal, and support those issues with facts contained in the record and relevant legal authority. Idaho Appellate Rule 41(a) provides that any party seeking attorney’s fees on appeal must assert such a claim as an issue presented on appeal in the party’s first appellate brief as provided by I.A.R. 35(a)(5) and 35(b)(5). Failure to support an alleged error with argument, authority and reference to the record in the argument section of the initial brief, is deemed a waiver of the issue. I.A.R. 35(a)(6); *Bailey v. Bailey*, 153 Idaho 526, 532, 284 P.3d 970,976 (2012)(denying attorney fees on appeal, when the party failed to support the claim with argument and authority beyond citing to the statute); *Weaver v. Searle Bros.*, 131 Idaho 610, 616, 962 P.2d 381, 387 (1998).

In this case, Black has failed to present argument or authority in the argument sections of her brief concerning her costs and fee request on appeal. Black, at best, lists this issue of attorney’s fees on appeal, but does not support the issue with reference to facts properly within the record and legal authority in the argument section of her brief. Without argument or citation to relevant legal authority in the argument section of her brief, Black has waived her claim for

attorney's fees on appeal. *Weaver*, 131 Idaho at 616. Therefore, ACS respectfully requests that this Court deny Black's request for attorney's fees on appeal should she prevail.

D. ACS is entitled to attorney fees on appeal.

Attorney fees in Idaho are dependent upon a statute or rule permitting such an award. *Allison v. John M. Biggs, Inc.*, 121 Idaho 567, 568, 826 P.2d 916, 917 (1992). Attorney fees on appeal are similarly dependent upon rule or statute. *Id.*; I.A.R. 41.

Under Idaho Code Section 12-120(1), a prevailing party is entitled to a reasonable attorney's fee fixed by the court. To be awarded fees under this statute, the claim must be plead in an amount less than \$35,000 and the plaintiff must have given the defendant "written demand for the payment . . . 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." I.C. § 12-120(1).

Idaho Code Section 12-120(2) governs attorney's fees in counterclaim cases. I.C. § 12-120(2). It states: "subsection (1) of this section shall also apply to any counterclaims, cross-claims or third party claims which may be filed after the initiation of the original action. Except that a ten (10) day written demand letter shall not be required in the case of a counterclaim." I.C. § 12-120(2).

In this case, ACS made written demand on Black more than ten days prior to the filing of this lawsuit. The amount in controversy was alleged to be less than \$35,000.00 and Black made two separate counterclaims against ACS. R. Supreme Court #47864-2020, pp. 47-48. Judgment

was entered against Black on both of her counterclaims, and Black did not appeal those judgments. R. Supreme Court #44466-2016, p. 244; R. Supreme Court #46116-2018, pp. 233-234. Thus, ACS would be entitled to costs and attorney's fees on appeal should it prevail here. I.C. §§ 12-120(1) and (2); *Latham Motors, Inc. v. Phillips*, 123 Idaho 689, 697, 851 P.2d 985, 993 (Ct.App. 1989).

Idaho Code Section 12-120(3) provides that a prevailing party shall be allowed attorney's fees in any action to recover "on an open account, accounts stated, note, bill, negotiable instrument, guaranty, or contract relating to the . . . sale of goods . . . or services." I.C. § 12-120(3). In this case, claims were made for payment of a bill relating to goods and services.

Attorney's fees on appeal are likewise supported by Idaho Code Section 12-121. This appeal is nothing more than an attempt to second guess the district court's application of the Rule 54 factors in light of Black's partial success below, with hopes that this Court will increase the attorney fee award based on the application of a standard similar to the rejected Lodestar Method. *Perkins v. U.S. Transformer West*, 132 Idaho 427, 974 P.2d 73 (1999). Attorney's fees are appropriate under Idaho Code Section 12-121 when the claim is frivolous, without foundation or unreasonable. *In re SRBA Case No. 39576 Subcase No. 61-12301*, 163 Idaho 393, 398, 414 P.3d 215, 220 (2018)(awarding 12-121 attorney fees on appeal when the Holdens, through their attorney, Thomas J. Katsilometes, simply requested the Supreme Court to second guess the trial court). This same statutory authority extends to appeals. *Id.*

In this case, Black argues that the time and labor governs the evaluation of the attorney fee award and that the district court did not challenge the time spent or offer a reduced hourly

rate. The law in this area is clear. The time and labor required factor is just one factor to consider. I.R.C.P. 54(e)(3). It is not dispositive of the attorney fee question. Moreover, the record clearly establishes the district court's challenge to the reasonableness of the time and labor claimed. The district court stated that "spending over 200 hours on this type of case was not an 'efficient' or 'required' use of attorney time." R. Supreme Court #47864-2020, p. 52. It further found that Black failed to establish the prevailing rate for like work, and that it has never had a claim for such a high hourly rate. *Id.* at 50, 42. More importantly, this Court in the previous appeal ruled that the district court recognized the correct legal standards applicable to its decision. R. Supreme Court #47864-2020, p. 40. Thus, this Court could find that this appeal was pursued frivolously, unreasonably, and without foundation.

IV.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the District Court and award Respondent its costs and attorney's fees on appeal.

DATED this 18th day of December, 2020.

/s/ Shaun R. Bonney

By _____
Shaun R. Bonney, Of the Firm
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of December, 2020, I served a true and correct copy of the foregoing by delivering the same to each of the following, by the method indicated below, addressed as follows:

Thomas J. Katsilometes	<input type="checkbox"/>	U.S. Mail, postage prepaid
THOMAS J. KATSILOMETES, PLLC	<input type="checkbox"/>	Hand-Delivered
P.O. Box 777	<input type="checkbox"/>	Email
Boise, ID 83701	<input checked="" type="checkbox"/>	Electronic Mail (iCourt Filing)
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/s/ Shaun R. Bonney
Shaun R. Bonney