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Schweitzer Basin v. Schweitzer Fire Dist. Appellant's Brief Dckt. 44249

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IN THE SUPREME COURT OF THE STATE OF IDAHO

SCHWEITZER BASIN WATER
COMPANY,

Petitioner / Respondent

v.

SCHWEITZER FIRE DISTRICT,

Respondent / Appellant

Supreme Court Docket No. 44249
Bonner County Docket No. CV-2015-0000434

APPELLANT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER

HONORABLE JUDGE BUCHANAN DISTRICT JUDGE

ANGELA R. MARSHALL

Marshall Law Office

PO Box 1133

1315 Hwy 2, Suite 3

Sandpoint, ID 83864

Stephen F. Smith, Attorney at Law

102 Superior Street

PO Box C

Sandpoint, ID 83864

Attorney for Petitioner/Respondent

LAWRENCE G. WASDEN

Attorney General

BRETT T. DELAGE, ISB #3628

Division Chief, Consumer Protection

Judy Geier, ISB #6559

John Keenan, ISB 3873

Deputy Attorneys General

Idaho Dept. of Insurance

PO Box 83720

Boise, ID 83720-0043

Attorney for Amicus Curiae

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

ISSUES ON APPEAL

STATEMENT OF THE CASE1

ARGUMENT4

I. The District Court erred in granting Petitioner’s Writ of Prohibition.....4

 A. SBWC failed to show SFD did not have jurisdiction to order SBWC to comply with the International Fire Code.....4

 B. SBWC had an adequate remedy at law through the administrative process and judicial review.6

II. The District Court erred in the award of attorney fees and costs to SWBC8

 A SFD actions were reasonable interpretation of the International Fire Code and Idaho Law.....8

 B. Attorney’s fees should not have been awarded outside the case at hand.....13

III. Attorney Fees on Appeal This Court should award reasonable attorney fees and costs to SFD.....14

CONCLUSION 18

**TABLE OF CASES AND
AUTHORITIES**

Cases

Bopp v. City of Sandpoint, 110 Idaho 488, 490, 716 P.2d 1260, 1262 (1986).....5

Bower v. Morden, 126 Idaho 215, 218, 880 P.2d 245, 248 (1994).....5

Crooks v. Maynard, 112 Idaho 312, 319, 732 P.2d 281, 288 (1.....5

Freiburghas v. Freiburghas, 100 Idaho 730, 731, 604 P.2d 1209, 1210 (1980).....5

Fischer v. City of Ketchum, 141 Idaho 349, 109 P.3d 1091.....9, 10

Henry vs. Ysursa, 148 Idaho 913 (2008).....5, 6

Mauer v. Mitchell, 53 Cal. 289, 292 (1878).....5

Payette River Property Owners Assoc. 976 P.2d at 483.....8, 9

Ralph Naylor Farms, LLC. V. Latah County, 144 Idaho 806, 172 P.3d 1081 (2007)....11

Stein v. Morrison, 9 Idaho 426, 455, 75P.2d 281, 288 (1987).....5

Urrutia v. Blaine County, 134 Idaho 353, 361, 2 P.3d 738,746 (2000).....9

Wasden v. State Board of Land Commisioners, 150 Idaho 547 (2010).....4,10

Statutes

Idaho Code§ 41-253 to 41-269..... 4

Idaho Code§ 41-260 2, 7, 8

Idaho Code § 12-117.....8, 9, 14

Idaho Code§ 12-121.....8

Idaho Court Rules

Idaho Rule of Civil Procedure 74(b).....2

ISSUES ON APPEAL

1. Did the District Court erred in granting Petitioner's Writ of Prohibition?
 - a. SBWC failed to show SFD did not have jurisdiction to order SBWC to comply with the International Fire Code.
 - b. SBWC had an adequate remedy at law through the administrative process and judicial review.

2. Did the District Court erred in the award of attorney fees and costs to SWBC?
 - a. SFD actions were reasonable interpretation of the International Fire Code and Idaho Law.
 - b. Attorney's fees should not have been awarded outside the case at hand.

3. Should Appellant be awarded Attorney fees and costs pursuant to I.C. 12 - 117?
 - a. The attorney fees should be awarded to SFD upon the reversal of the District Court's decision.

STATEMENT OF THE CASE AND PROCEDURAL ISSUES

This case was brought before this Court by a Petition for Declaratory Ruling, Petition for a Preemptory Writ, and a Petition for Alternative Writ by The Schweitzer Basin Water Company (SBWC), through their attorney of record, Stephen Smith,¹ against the Schweitzer Fire District (SFD) on March 19, 2015 without notice of SFD. An Order for Issuance of Alternative Writ of Prohibition was issued and received by counsel for SFD on March 20, 2015.² An Order to Show Cause Hearing was set for March 25, 2015. On March 23, 2015, SFD also filed a Motion to Dismiss which was not heard during the March 25, 2015 hearing (see Motion to Dismiss).³

For many years, SBWC and SFD had been discussing the water system, owned and managed by the SBWC since 1989.⁴ Both parties agree that the dispute was in existence since at least 1996.⁵ After discussions were not productive, the SFD decided to seek counsel and to pursue a remedy through administrative channels. The SFD was seeking to improve the safety of their residents at Schweitzer by enforcing the International Fire Code that was adopted by the State of Idaho in 1982. An Order to Repair and Remedy was sent to the SBWC on May 3, 2014.⁶ SBWC requested a contested case hearing pursuant to I.C. 41-260, which was set for hearing but

¹ R.p.2

² ibid

³ ibid

⁴ R.p.101 Aff of M. Bailey

⁵ R.p.163 Memorandum Decision

⁶ R.pp.25-26 Order demanding Repair..

later continued by the SBWC.⁷ A hearing was finally set for March 20, 2015.⁸ On the afternoon prior to the hearing date the SBWC petitioned the District Court for relief and for the writs as mentioned above.⁹

An Order to Show Cause (OSC) date was set within five days and was not in compliance with the ten days' notice required prior to the OSC hearing.¹⁰ On the date of the OSC hearing the SFD hand delivered a Motion to Dismiss predicated on the argument that the writ was improper.¹¹ The Motion to Dismiss was not heard that day. The alternative writ of prohibition was left in place. The parties then entered into mediation with Judge Steve Verby. Mediation was on-going until September 2015 and the proceedings were stayed until mediation was completed. A status conference was ultimately set for December 9, 2015 and a renewed Motion to Dismiss was set and noticed for that same time.¹² The SBWC added its own motion later and the hearings were scheduled to allow time for both parties' motions. On that date, the Judge issued an Order Denying the Motion to Dismiss without hearing witnesses or evidence and later issued a written order on December 10, 2015¹³. Immediately prior to the hearing and the Judge's ruling on the Motion to Dismiss, the SFD entered it's Answer to the Petition for Writ of Prohibition, specifically

⁷ R.pp.21-24 S. Smith response ltr

⁸ R.pp.50-51

⁹ R.p.2 Repository

¹⁰ R.p.2. see also IRCP74

¹¹ R.p.348-351 Motion to Dismiss

¹² R.p.4 Motion to Dismiss

¹³ R.p.138-140 Order denying,,

denying the lack of jurisdiction and the lack of remedy as stated by the Company's Petition¹⁴.

On January 20, 2016, a hearing on the Writ of Prohibition took place at the Bonner County Courthouse. The result of the hearing was the lower court's Memorandum Decision Granting Writ of Prohibition dated January 22, 2016.¹⁵ Thereafter a contested motion for attorney fees and costs culminating with the lower court ordered attorney fees, costs and expenses on March 29, 2016.¹⁶ A Motion to Reconsider was filed by SBWC contesting their lay persons' time and expenses which was subsequently denied.¹⁷

¹⁴ R.p.4 Repository

¹⁵ R.p.162-170 Memorandum Decision

¹⁶ R.p.273-277 Order Awarding Attorney..

¹⁷ R.p.320-327 Memorandum Decision and Order

ARGUMENT

- I. The District Court erred in granting Petitioner's Writ of Prohibition.
 - A. SBWC failed to show SFD did not have jurisdiction to order SBWC to comply with the International Fire Code.

Despite the lengthy dealings between the parties and long history this case is a fairly straightforward issue for this Court to decide. This case falls within the parameters outlined by this Court in *Wasden v State Board of Land Commissions*, 150 Idaho 547 (2010). In *Wasden*, this Court rejected the Attorney's General's argument a writ of prohibition was necessary due to the Board of Lands arguably acting unconstitutionally and outside their mandates. This Court made it clear there is a two prong threshold to meet the requirements for the extraordinary remedy of a writ of prohibition. The first prong, jurisdiction was not addressed as the Court held that the Attorney General could not demonstrate he lacked an adequate remedy at law. SBWC has the burden of proof in this matter. It was not SFD's burden to prove jurisdiction to the lower court.

On the first issue of jurisdiction, the express authority was given to the District by IDAPA, the Statutes of Idaho, and the International Fire Code adopted by the State of Idaho. This is conceded by the SBWC's affiant Mark Larsen with regards to I.C. 41-253 through 41-269 and also administrative hearings.¹⁸

¹⁸ See R p.124 et seq

Prohibition is not concerned with the correctness of substantive acts and/or decisions - prohibition is exclusively concerned with proper exercises of jurisdiction. *See generally* *Freiburghaus v. Freiburghaus*, 100 Idaho 730, 731, 604 P.2d 1209, 1210 (1980) (“The writ of prohibition tests only jurisdiction”) (citations omitted). Within the context of prohibition, the word “jurisdiction” has a narrow meaning, referring primarily to the “power or authority conferred by law.” *See Henry vs Ysursa*, 148 Idaho 913 (2008)(citing *Crooks v. Maynard*, 112 Idaho 312, 319, 732 P.2d 281, 288 (1987)) (Where administrative orders were within the “power and authority” of the administrative district judge, a writ of prohibition would not issue); *See also Stein v. Morrison*, 9 Idaho 426, 455, 75 P. 246, 256 (1904) (quoting and citing with approval *Maurer v. Mitchell*, 53 Cal. 289, 292 (1878)) (“The word jurisdiction, when used in connection with prohibition, would be at once understood as being employed in the sense of the legal power or authority ‘to hear and determine cases’ ”).

Prohibition is primarily concerned with jurisdiction. *See also Bower v. Morden*, 126 Idaho 215, 218, 880 P.2d 245, 248 (1994) (“This Court has consistently held that ‘writs of mandate (and their counterpart, prohibition) will not issue to compel the performance of a purely discretionary function”) (quoting *Bopp v. City of Sandpoint*, 110 Idaho 488, 490, 716 P.2d 1260, 1262 (1986).

The language contained in Idaho Code and IDAPA grants express authority to SFD to enforce all aspects of the International Fire Code, including the enforcement of fire flows. Recall also that jurisdiction has been defined by this Court as the “power or authority *conferred by law*.”

(emphasis added)” *See Ysursa, supra*¹⁹.

- B. SBWC had an adequate remedy at law through the administrative process and judicial review.

The inquiry doesn’t end with the determination of jurisdiction. Simply put, even if SFD has exceeded its jurisdiction as the opposing party states there is still one more hurdle that must be met by the SBWC. To be entitled to a writ of prohibition a party must also prove that he or she does not have an adequate alternative remedy available in the ordinary course of law. Therefore, even if the SBWC prevails on the issue of jurisdiction, they cannot meet their burden regarding the adequacy of available remedies. Accordingly, notwithstanding jurisdictional analysis, the lower court’s decision should be reversed as the issue of an adequate remedy at law was not addressed.²⁰ As stated, whether or not prohibition is granted hinges on the adequacy of the legal remedies available to the party seeking prohibition. More specifically, even though a Court or agency is proceeding without or in excess of its jurisdiction, prohibition will not lie so long as there is a plain, speedy, and adequate remedy available in the ordinary course of law. *See Wasden*.

The Court wisely disfavors these type writs as it is not difficult to envision smart litigants trying to circumvent administrative processes by simply filing a writ in district court. Developers who may not like requirements imposed by a City Planning Commission and City Council could simply bypass the city altogether. The Supreme Court has been wise not only in issuance of writs

¹⁹ The Amicus Brief filed by the Attorney General contains a thorough analysis of the issue of jurisdiction.

²⁰ See R p167

of mandate/prohibition, but also in land use and administrative law to set forth a policy whereby all administrative remedies must be exhausted before the doors of the courthouse may be opened.

In the matter at hand this could not be clearer. In addition, SBWC has the ability to argue this matter on the merits to the hearing board first. If one of the parties is not satisfied with the decision, it may be appealed to the State Fire Marshal²¹. If one of the parties is still not satisfied, a petition for judicial review may be filed. At that time the district court will have a **Record** (emphasis added) upon which to make a reasoned decision. Obviously the various rules and regulations pertaining to fire flows are complicated and more easily handled by experts or trained professionals. It is far more logical for a special hearing board to sort through the history of this case and the specific case facts. Idaho Code spells out the appeal process in IC 41-260. It states:

41-260. APPEAL FROM ORDER OF REMEDY OR REMOVAL — APPEAL FROM LOCAL APPEAL DECISION. If an order to remedy or remove, or a local appeal decision regarding the interpretation of the International Fire Code or rules of the state fire marshal, is made by the deputies or assistants of the state fire marshal, such owner or occupant who receives the order, or a party aggrieved by a local appeal decision, may, within twenty (20) days after receipt of service of such order or local appeal decision, appeal to the state fire marshal, who shall within ten (10) days, review such order or local appeal decision and if affirmed, file his decision thereon, and unless by his authority the order or local appeal decision is revoked or modified it shall remain in full force and be complied with within the time fixed in said order, local appeal decision, or decision of the state fire marshal.

Provided, however, that any such owner, occupant or party who feels himself aggrieved by any such order or local appeal decision, or affirming of such order or local appeal decision, may within thirty (30) days after the making or affirming of any such order or local appeal decision by the state fire marshal, appeal such order or local appeal decision to the district court having jurisdiction of the property.

²¹ R.p.126, See also IC41-260

While there are additional rules found in IDAPA governing contested hearings, timing, composition of hearing boards, etc., IC 41-260 demonstrates clearly there is a plain, simple, speedy remedy at law available for an aggrieved party who has been ordered by a fire district to comply with minimum fire flow standards. Interestingly, the time periods mandated under IC 41-260 are certainly much more speedy than the circuitous route using the writ of prohibition.

II. The District Court erred in the award of attorney fees and costs.

A SFD actions were a reasonable interpretation of the International Fire Code and Idaho Law.

Idaho Code Sections 12-121 and 12-117 form the basis for an award of attorney fees against a governmental entity. Attorney fees may be awarded under Idaho Code Section 12-121 if the court finds the actions were defended frivolously, reasonably, or without foundation. In addition, Idaho Code 12-117 provides “unless otherwise provided by statute, in any administrative or civil judicial proceeding involving as adverse parties a state agency, a city, a county, or other taxing district and a person, the court shall award the prevailing party reasonable attorney’s fees, witness fees and reasonable expenses, if the court finds the party against whom the judgment is rendered acted without some reasonable basis in fact or law.”

This Court has declined to award attorney fees, despite the government's erroneous interpretation of a statute or ordinance. In *Payette River Property Owners Assoc*, the Court stated

that the Valley County Board of Commissioners erroneously interpreted its ordinance, but nevertheless “acted in a way that fairly and reasonably addressed the issue.” Further, the Court quoted from the district court's decision, which stated that the “literal language of § 4.02.03(6) (of the Valley County Zoning Ordinance) is unambiguous and does not need interpretation or construction.” *Id.* at 557, 976 P.2d at 483. The Court stated that to adopt the Board's interpretation would require a “stretch of logic unsupported by any section [of] the Ordinance.” *Id.* Despite the Board's erroneous interpretation of its unambiguous ordinance, this Court held “that the district court did not err by denying the Association's request for attorney fees under I.C. § 12-117.” *Id.* at 558, 976 P.2d at 484; *see also Urrutia v. Blaine County*, 134 Idaho 353, 361, 2 P.3d 738, 746(2000) (“Although the Board erred in retroactively applying the 1994 comprehensive plan to the Urrutias [*sic*] subdivision application, the Board did not act without a reasonable basis in fact or law. The Board acted in a way that fairly and reasonably addressed the district judge's instructions on remand.”).

In *Fischer v City of Ketchum*, 141 Idaho 349, 109 P.3d 1091 (2005), the Supreme Court overturned the City of Ketchum's approval of a conditional use permit, stating that the city “wholly ignored the provision of its avalanche zone district ordinance requiring the certification by an Idaho licensed engineer ‘prior to the granting of a conditional use permit.’ ” *Fischer*, 141 Idaho at 356, 109 P.3d at 1098. The Court also stated that the city's Planning and Zoning Commission “ignored the plain language of the ordinance” in approving the conditional use permit application. *Id.* Based upon this foundation, the Court ordered the city to pay attorney fees. *See id.* However,

the Court found that the “City wholly ignored the provision of its avalanche zone district ordinance requiring the certification by an Idaho licensed engineer ‘prior to the granting of a conditional use permit’ ” and that the City Planning and Zoning Commission “ignored the plain language of the ordinance.” *Id.*

This matter is distinguishable from the Fischer case in that here there is no controlling ordinance or statute preventing the actions of the SFD. In fact, the International Fire Code gives wide authority to fire districts for the protection of human life, structures and premises. This is addressed throughout the amicus brief filed by the Attorney General’s Office. The IFC deals with many elements of the protection of life and property including the storage of flammable and hazardous materials which can be located outside the building or structure. Additionally an appendix of the IFC directly addresses hydrants and fire flow²². It was certainly reasonable SFD to fight this petition given the expressed language of the IFC, lack of direct negative case law, positive case law including, perhaps most importantly, *Wasden v Board of Lands*. Additionally SBWC bore the burden of proof showing no jurisdiction and no adequate remedy at law as explained earlier. Had SFD simply conceded there is no jurisdiction it essentially would be a message to the home owners of Schweitzer that there is no fire protection available. The argument made at various times by SBWC that homeowners should be responsible for maintaining adequate fire flows is disingenuous. The SBWC is a public entity and is responsible for the integrity of the system including adequate water pressure for fire suppression.

²² See AG Amicus Brief Exhibit B

In *Ralph Naylor Farms, LLC v. Latah County*, 144 Idaho 806, 172 P.3d 1081 (2007), the Court looked at an ordinance Latah County had erroneously adopted. The Court reasoned that Latah County's actions, while erroneous, were reasonable because provisions of Local Land Use Planning Act as well as Latah County's Comprehensive Plan gave the county authority over much of the same material that was eventually deemed to be pre-empted by state law.

In the matter at hand, SFD reasonably relied on strong case law concerning writs of mandate/prohibition being extraordinary remedies and not to be granted lightly by courts. The district court ruled SFD lacked jurisdiction over the plaintiff's water system. Even assuming *arguendo* the lower court was correct in this interpretation, jurisdiction is an issue which could have been addressed through the administrative process. Administrative hearing boards act in a *quasi-judicial* fashion and an agency must establish whether or not the agency has jurisdiction over the applicant, subject property, and case in general. Stated more succinctly, prohibition is not concerned with the question of whether or not a substantive decision was, in fact, correct - prohibition focuses solely on the issue of whether or not the decision in question could even be made in the first place.

Contrary to the affidavit by Mr. Larson there has been an enormous amount of building on Schweitzer in the past twenty years.^{23, 24} Issues such as fire protection were addressed for the conditional use permits, building location permits, site plans, etc. of the various developments. SFD would have had direct input on issues such as road slopes, turn arounds, fire suppression for all conditional use permits and subdivision plats. SBWC's argument that the IFC applies solely to buildings is overly narrow and in fact, not reasonable. Further the communication between SFD and SBWC found throughout the Record through the years does not show a pattern of abuse of the District. It shows a tacit acknowledgment of the company that this water system not only acted as drinking water system but as the fire suppression system as well. Frankly, if SBWC didn't want the system to be used for fire suppression they shouldn't have allowed hydrants to be installed and development should not have occurred without an alternative fire suppression network. The lower court's decision calls into question whether SFD is now even able to provide fire suppression through existing hydrants using SBWC water.

The SWBC's argument that the system is grandfathered actually helps the SFD's position that jurisdiction exists and/or SFD's interpretation was reasonable.²⁵ If this is truly SBWC's argument is this not conceding jurisdiction. The Amicus brief presented by the Attorney General addresses this issue in greater detail.²⁶

²³ R.p.127 Affidavit of Mark Larson.

²⁴ R.p.439 Affidavit of Spencer Newton

²⁵ R.p.127 Affidavit of Mark Larson

²⁶ Amicus Brief, p16

Clearly SFD's interpretation of Idaho Statutes when read *in pari materia* combined with the International Fire Code and the mandate that Fire Districts protect life and property was reasonable and the lower court's granting of attorney fees pursuant to I.C. 12-117 should be overturned.

B. The attorneys fees are unreasonable because they may only be granted for this case.

Attorney fees were granted commencing with a June 25, 2013, invoice.²⁷ The vast majority of the fees granted by the district court pre-date the filing of this case in 2015.²⁸ This case is the writ of prohibition- it is not any of the prior negotiations, hearings, etc. SBWC simply cannot bootstrap attorney fees from the past into this litigation. If SWBC believed the company was improperly being harassed by SFD, it should have filed a tort claim or a writ of prohibition years ago. There must be a direct nexus between the attorney fees sought and the litigation where they are awarded.

During the pendency of this litigation fees were awarded for thousands of dollars for communication with the Department of Environmental Quality (DEQ) and the deputy attorney general for the DEQ. This is irrelevant to the issue of jurisdiction of the fire district over fire flows. The district has never been concerned with the quality of the drinking water. No threat

²⁷ See R p234

²⁸ See R p2

has ever been made by the fire district concerning water quality. The fire district has solely confined negotiations with the company on the issue of fire flows and fire suppression.

Additionally fees were awarded for the time in mediation. Mediation costs including attorney time and preparation should be borne by the respective parties. This is an extraordinary amount of money being sought for one legal issue.

III. Attorneys Fees on Appeal

The SFD is requesting attorney's fees on appeal pursuant to I.C. 12-117. The fire district is a governmental entity and was seeking to enforce the IFC, a main function of fire districts. SBWC acted without a reasonable basis of fact and law by filing this writ of prohibition. There was an adequate remedy at law through the administrative hearing process. SBWC requested an administrative hearing ²⁹ and then took an end run around the process and filed the writ with the district court. Had SBWC continued with the administrative process the company had layers of due process, the first an appeal to the state fire marshal and then judicial review to the district court.

²⁹ See R p31

CONCLUSION

The lower court erred in granting a writ of prohibition on the basis SFD lacked jurisdiction over SBWC. The IFC should be construed liberally in conjunction with the statutory scheme creating fire districts as well as the adoption by the State of Idaho of the IFC. Writs of Prohibition have not been favored by this Court and for good reason. SFD respectfully requests this Court to reverse the lower court's decision and grant attorney fees and costs on appeal to SFD.

Dated this 1 of April, 2017.

Angela R. Marshall

Angela R. Marshall

Attorney for the Respondent/Appellant

34.1 CERTIFICATION

The undersigned does hereby certify that the electronic brief admitted is in compliance with all of the requirements set out in I.A.R. 34.1, and that an electronic copy was served on each party at the following email addresses:

Judy Geier

Judy.geier@doi.idaho.gov

Stephen F. Smith

steve@stevesmithlaw.com

Dated and certified this 3rd day of April, 2017.

Angela Marshall