7-17-2017

Hull v. Giesler Respondent's Brief Dckt. 44562

IN THE SUPREME COURT OF THE STATE OF IDAHO

GREGORY HULL, Plaintiff/Counterdefendant– Appellant/Cross Respondent vs. RICHARD B. GIESLER and IDAHO TRUST DEEDS, LLC, Defendant/Counterclaimant– Respondents/Cross Appellants	)	Supreme Court Case No. 44562

RESPONDENTS/CROSS APPELLANTS' BRIEF

Appeal from the District Court of the Fifth Judicial District for Twin Falls County. Honorable Randy J. Stoker, District Judge presiding.

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A. Statement of Facts

The following is a summary of pertinent facts as set forth by this Court in *Hull v. Giesler*, 156 Idaho 765, 331 P.3d 507 (2014) ("Hull I"). In 2005, Richard Giesler ("Rick") began negotiations with Gregory Hull ("Hull") to purchase 147 acres of irrigated farmland (the "Property") from Hull. The parties entered into a Purchase and Sale Agreement for the Property wherein Hull agreed to sell to Idaho Trust Deeds, LLC ("Trust Deeds"), approximately 150 acres for $375,000. Giesler is the sole owner of Trust Deeds.[1] The purchase agreement provided that the purchase price included: all existing fixtures and fittings attached to the Property; all water systems, wells, spring water that are now on or used in connection with the Property; irrigation fixtures and equipment, and; any and all water, water rights, ditches, and ditch rights that are appurtenant and used in connection with the Property. Additionally, the purchase agreement included a merger clause.

Before closing of the sale of the Property, Hull and Giesler signed an addendum that extended the closing date, specified the Property was 147 acres, and reduced the purchase price to $367,500.00. Giesler thereafter paid $367,500.00 in cash at closing. Giesler borrowed $183,748.00 of that purchase price from D.L. Evans Bank in four loans (collectively, the "Bank Loans"). Those loans were to be paid over fifteen years and carried variable interest rates, with a total annual payment of $20,107.46 due April 20th of each year. Hull signed a warranty deed that conveyed the Property to Giesler.

Giesler planned to develop residential subdivisions on the Property. Sometime after closing, Giesler agreed to give Hull a contingent one-half interest in the future profits from the

[1] Rick and Trust Deeds are herein collectively referred to as "Giesler."

developed Property in exchange for Hull agreeing to timely make the payments due on the Bank Loans. Hull also stayed on the Property pursuant to an oral agreement to farm the undeveloped Property in exchange for rental payments to Giesler. Hull later sold his interest in one-half the profits of a certain 40 acres of the Property (which 40 acres are known as the Belmont/Emerald subdivision) to Giesler.

Following development of the Belmont/Emerald subdivision, the real estate market soured. Giesler platted part of the remaining 107 acres of the Property and drafted a subdivision plan. However, Giesler did not complete development the 107 acres at that time. In 2012, Giesler evicted Hull from the Property. Also in 2012, Hull removed all of Giesler's irrigation equipment from the Property. Since that time, Giesler has resumed development of subdivisions on the Property.

B. Course of Proceedings

Hull filed a *Verified Complaint* against Giesler on May 23, 2012, alleging 1) that he had an undivided one-half interest in the Property; 2) Giesler was only conveyed title to the Property to be held in trust; and 3) that Hull was wrongfully evicted from his farming operations on the Property pursuant to an oral lease agreement. (R. Hull I, pp. 6–14.) Hull requested that 1) he be restored to his leasehold possession or awarded damages; 2) the District Court declare that the Property was held by Giesler in an express trust and that Giesler be required to deed back a one-half interest in the Property to Hull; 3) that the District Court declare that one-half of the Property be held in a resulting trust in favor of Hull; and 4) that the District Court declare that the Property be held in constructive trust in favor of Hull. (R. Hull I, pp. 14–15.)

Giesler denied the allegations of the *Verified Complaint* and raised allegations against Hull for 1) breach of contract and unjust enrichment arising out of Hull's failure to pay certain

loans, farm rent and expenses, and other miscellaneous expenses; 2) conversion arising out of Hull's removal of certain irrigation equipment from the Property that was included in the original sale of the Property; and 3) unlawful detainer arising out of Hull's continued possession of the Property. (R. Hull I, pp. 53–57.) The parties resolved the unlawful detainer issue shortly after the filing of the *Answer and Counterclaim*.

The case was tried to the District Court on June 4 to 6, 2013, following which the District Court entered a *Memorandum Opinion and Judgment*. (R. Hull I, pp. 188–229.) The District Court found that Hull and Giesler entered into a verbal agreement after the sale pursuant to which Giesler would develop the Property at his own cost, subject to reimbursement, and give Hull one-half the profits from such development. *Hull I*, 156 Idaho at 771. In exchange, Hull would pay back the Bank Loans. *Id.* The District Court also noted that Giesler's buy-out of Hull's interest in 40 acres left only the remaining 107 acres subject to the oral agreement. *Id.* With respect to the irrigation equipment, the District Court found the equipment to be valued at $25,122.00, which amount it ordered Hull to reimburse Giesler. *Id.*

The District Court ordered Giesler to develop the remaining Property, and ordered Hull to timely pay the Bank Loans. The District Court also set forth various penalties the parties would be subject to if they failed to abide by the oral agreement and the court's orders. *Id.* Specifically, the District Court determined that if Hull failed to timely pay the loans, he would forfeit his interest in the developed Property's profits. *Id.* The District Court ordered Giesler to complete all infrastructure to make the subdivision marketable and zoning compliant. *Id.* The District Court further detailed that Giesler was to develop the 107 acres in three phases in three years. *Id.*

The District Court further ordered that Giesler must take reasonable efforts to sell the lots in the developed subdivisions and to pay to Hull one-half the net profits of each lot sold. *Id.* at 772. Net profits were defined as the gross sales price of each lot less selling costs, less the original land acquisition price, less the pro-rata share of development costs, plus the value of the irrigation equipment that would have been sold as that specific lot was developed.[2] *Id.* The District Court also set forth that if Giesler did not develop the Property as ordered 1) Hull could stop his payments on the Bank Loans, and 2) the 107 acres would be sold and the sales proceeds divided equally between Giesler and Hull, without reimbursement to Giesler for his development costs. *Id.* Giesler appealed from the District Court's rulings. (R. Hull I, pp. 247–52.)

In *Hull I*, this Court upheld the District Court's finding that Hull had an equitable interest in the profits from the sale of developed lots in the 107 acres (but no interest in the actual real estate), and that neither party had breached their contract. *Hull I*, 156 Idaho at 773–74. This Court vacated the portions of the District Court's decision 1) ordering Hull to pay Giesler one-half of the irrigation equipment's value; 2) setting deadlines for development of Parcels 2 and 3; 3) imposing forfeitures as a remedy for future breaches of the parties' contract; and 4) prohibiting Giesler from further encumbering the Property. *Id.* at 775–80. This Court remanded the case to the District Court to enter orders and conduct further proceedings in accordance with the decision in *Hull I*. *Id.* at 780.

Following remand, the District Court entered an order 1) directing that as each lot is sold Giesler shall receive, as an expense of sale, one-half of the value of the irrigation equipment that

[2] The District Court noted that such definition did not foreclose inclusion of other development-related costs later identified by the parties. *Id.* at 772.

would have been retired at the time of the sale[3]; 2) a trial would be set for the purposes of taking testimony and evidence from which to determine a reasonable time for developing Parcels 2 and 3; and 3) providing that the District Court would retain jurisdiction of this matter until all lots are sold and full accounting has been concluded. (R. pp. 20–22.)

On November 12, 2014, the parties entered a *Stipulation on the Issue of Reasonable time to Compete Subdivision Phases*. (R. pp. 24–26.) That stipulation provided that the remaining undeveloped portions of the Property be divided into various phases (the first to be completed by October 31, 2016), with development of each phase be completed in a one-year period that is to commence once one-half of lots in the preceding phase have been sold. (R. pp. 24–25.) The parties also agreed that, with respect to the then completed phase (called Triple Crown Subdivision Number 1 ("Phase 1")), no more lots may be sold until the parties or the District Court determined the development costs for that phase.[4] (R. p. 25.)

On February 6, 2015, the District Court entered an *Amended Judgment* that, among other things, 1) adopted the parties' stipulation regarding the development of the Property in phases; 2) outlined what constitutes the "net profits" of the Property in which Hull had a one-half interest; 3) provided that a master would be appointed to determine the development costs for the Property and the "net profits" to be divided between the parties[5]; and 4) retaining jurisdiction of

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[3] The parties later stipulated in open court that the sum of $25,122.00 represents the value of the irrigation equipment, and, rather than attempt to determine how much equipment would have been removed upon sale of any specific lot, the parties shall pro-rate reimbursement for the irrigation equipment on an acreage basis, per lot. (R. p. 224.) Accordingly, for each lot, $233.19 ($25,122.00 divided by 107.73 acres) would be multiplied by the lot's acreage and then added to the sale price. (R. pp. 224–25.)

[4] At the time, only one lot in Phase 1 had been sold (which is referred to by the parties as the "Nix Lot"). (R. p. 25.) The buyer of that lot was the owner of Nix Excavating, Inc. (a contractor that performed work on the Property), and Hull reserved the right to challenge the conditions of that sale in order to increase Hull's share of profits from that sale. (R. p. 25.)

[5] The District Court's *Amended Judgment* also provided that the master would determine the reasonableness of the sale of the Nix Lot. (R. p. 28.)

the matter to resolve further disputes and approve or reject the master's decisions.[6] (R. pp. 27–31.) The District Court appointed Larry Braga as master to determine the development costs and net profits for lots subject to the District Court's *Amended Judgment*. (R. pp. 39–43.)

The master completed and filed his report with the District Court on January 15, 2016. (R. p. 55.) The District Court accepted the master's report and provided the parties a time frame in which to file objections to the report. (R. p. 55.) The parties objected to the master's report. (R. p. 57.) On March 3, 2016, the District Court entered an *Order Re: Master Report and Appointment*, in which it considered the various objections to the master's report, determined certain legal issues, and attempted to provide further guidance to the master. (R. pp. 57–78.)

Both parties filed motions to reconsider the District Court's *Order Re: Master Report and Appointment*. (*See* R. p. 79.) On March 23, 2016, the District Court decided such motions without hearing, oral argument or further briefing. (R. pp. 79–83.) In so doing, the District Court terminated the appointment of the master and disregarded the master's report, rescinded its recent orders, and ordered all unresolved issued between the parties to be decided by a court trial set for the summer of 2016. (R. pp. 80–81.)

Prior to trial, Hull moved for summary judgment on various alleged development costs and other claimed expenses of developing the Property. (R. pp. 87–190.) The District Court promptly denied Hull's motion without hearing or further briefing as there existed material issues of fact pertaining to each of the issues raised by Hull. (R. pp. 191–92.)

Trial was held on July 26 to 29, 2016. (*See* R. p. 222.) On August 4, 2016, the District Court issued a memorandum opinion setting forth its findings of fact and conclusions of law with

[6] The *Amended Judgment* was altered or restated multiple times to correct errors and refine certain orders. (*See* R. pp. 44–54.)

respect to the outstanding issues in the case.[7] (R. pp. 222–45.) The District Court later issued a supplemental opinion with respect to certain issues on which it had requested further evidence. (R. pp. 246–51.) The District Court entered a *Judgement* on August 15, 2016, confirming the accountings set forth in its memorandum opinions. (R. pp. 252–53.)

Hull later moved filed a motion for reconsideration and correction with respect to the District Court's memorandum decisions. (R. pp. 254–67.) That motion was denied as untimely; however, the District Court did correct certain errors in its prior reimbursement calculations. (R. pp. 276–80.)

On September 22, 2016, Hull filed a notice of appeal from the District Court's judgments, which notice of appeal was subsequently amended by Hull. (R. pp. 291–93.) On October 20, 2016, this Court conditionally dismissed Hull's appeal because the District Court's judgments were not final judgments. (*See* R. p. 294.) The District Court subsequently entered a *Partial Judgment* in attempt to comply with the Idaho Rules of Civil Procedure. (*See* R. pp. 288–89.) However, that judgment was also not a final judgment, so this Court again conditionally dismissed the appeal. (R. p. 294.) On December 22, 2016, the District Court entered an *Amended Judgment*, which judgment was considered an appealable judgment from which Hull's appeal could continue. (R. p. 300.)

As directed by this Court, Hull filed an *Amended Notice of Appeal*. R. 301–06. Giesler thereafter filed a *Notice of Cross-Appeal*. (R. pp. 308–11.)

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[7] The District Court expressly provided that its *Memorandum Opinion for July 2016 Trial* superseded any prior findings of fact and conclusions relating to the master (including the March 3, 2016 *Order Re: Master Report and Appointment*). (R. p. 223.)

IV. ADDITIONAL ISSUES PRESENTED ON APPEAL

1. Is Giesler entitled to costs and attorney fees on appeal?

V. ISSUES PRESENTED ON CROSS-APPEAL

Giesler hereby expressly waives the right to pursue issues on cross-appeal, and leaves the only issues to be considered on appeal as those properly raised by Hull in his *Appellant's Brief*.[8]

VI. ARGUMENT

1. Did Hull waive his assignments of error on appeal by failing to adequately support them with argument and authority?

It is a basic requirement of appellate practice that an appellant's brief must contain argument "with citations to the authorities, statutes and parts of the transcript and record relied upon." I.A.R. 35(a)(6); *Bolognese v. Forte*, 153 Idaho 857, 866, 292 P.3d 248, 257 (2012); *Suits v. Idaho Bd. Of Prof'l Discipline*, 138 Idaho 397, 400, 64 P.3d 323, 326 (2003) (the court will not search the record on appeal for error). Idaho appellate courts have refused to consider claims on appeal when there is a failure to support the claims with relevant argument and authority or coherent thought. *Jorgensen v. Coppedge*, 15 Idaho 524, 528, 181 P.3d 450, 454 (2008).

Likewise, an appellate court will not address issues on appeal when an appellant fails "to comply with Rule 35(a)(6) by not including citations to the trial testimony when challenging the court's factual findings, in addition to failing to support its assertion with argument and

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[8] When a respondent waives or abandons its cross-appeal before argument, the disposition of the cross-appeal does prevent the respondent from being found the prevailing party on appeal with respect to the issues ultimately considered by the appellate court. *See e.g., Glenn v. Gotzinger*, 106 Idaho 109, 110, 675 P.2d 824, 825 (1984) (respondent was prevailing party after expressly waiving right to pursue cross-appeal and prevailing on remaining issues on appeal); *Idaho Power Co. v. Cogeneration, Inc.*, 134 Idaho 738, 751, 9 P.3d 1204, 1217 (2000) (waiver of cross-appeal did not prevent award of costs to respondent as prevailing party); *Desfosses v. Desfosses*, 120 Idaho 27, 31–32, 813 P.2d 366, 370–71 (Ct. App. 1991) (waiver of cross-appeal did not prevent award of costs to respondent as prevailing party).

authority." *Vanderwal v. Albar, Inc.*, 154 Idaho 816, 822, 303 P.3d 175, 181 (2013). This refusal applies to cases in which the appellant merely makes general attacks on findings and conclusions of the district court, without specifically referencing the evidentiary or legal errors, as well as when an issue is simply mentioned in passing without providing cogent argument or authority. *Bach v. Bagley*, 148 Idaho 784, 790, 229 P.3d 1146, 1153 (2010). Such deficiencies and noncompliance with the Idaho Appellate Rules results in a waiver of the unsupported assignments of error. *Id.; Bolognese*, 153 Idaho at 866–67. Finally, the aforementioned waiver applies even if supporting authority is later supplied in the reply brief. *Bach*, 148 Idaho at 791.

The vast majority of Hull's *Appellant's Brief* fails to comply with the requirements of I.A.R. 35(a). To begin, the *Appellant's Brief* lists eleven "Issues Presented on Appeal." *Appellant's Brief*, pp. 4–5. However, the *Appellant's Brief* does not contain any argument with respect to at least seven of the issues raised by Hull.[9] Due to Hull failing to further address those issues with relevant argument and authority, this Court should refuse to even consider such issues. *Jorgensen*, 15 Idaho at 528.

Hull fails to provide a statement of facts from which this Court can even begin to understand the factual background of this case. Instead, Hull simply references terms such as "Belmont/Emerald," "Phase 1," "remaining 107 acres," as well as making mention of farming operations and water delivery systems, all without any coherent explanation as to what exactly those terms refer and the relationship between them. Similarly, there is a complete lack of any citation to the record with respect to the factual underpinnings of this appeal. This Court was simply left to search the record itself to gain any understanding of the factual background of this case necessary to follow and consider the issues raised on appeal.

[9] Specifically, the issues Hull listed as Paragraphs D, E, F, G, H, I and J. *See Appellant's Brief*, pp. 4–5.

Likewise, when arguing that the District Court erred, the *Appellant's Brief* is replete with conclusory statements and assumptions that are without citations to the record from which this Court can evaluate Hull's allegations and/or the District Court's findings. Examples of the foregoing include:

- "the Trial Court has included in its decision, reimbursement of costs attributable to expenses clearly incurred exclusively for farming operations and from Belmont/Emerald expenses. Those costs appear in numerous categories regarding expenses allowed for upgrading the irrigation system, electrical upgrades, operation of a private water company and expenses incurred exclusively for farming." *Appellant's Brief*, p. 3.
- "the Trial Court went forward and made two separate rulings allowing 'front loading' of development costs from Phase 2 into Phase 1." *Appellant's Brief*, p. 12.
- "More problematic are the costs which the Trial Court carried forward from the original Belmont/Emerald Subdivision as allowable expenses to Triple Crown Phase 1. The Trial Court allowed innumerable expenses incurred in 2006-2007 from Belmont/Emerald even though the Trial Court had stated that Respondent Giesler was solely responsible for development costs from the Belmont/Emerald phase of the subdivision." *Appellant's Brief*, p. 12.
- "Numerous other examples exist of expenses which the Trial Court allowed Respondent to carry into the Triple Crown development; costs that although they were clearly incurred either for the earlier development of Belmont/Emerald or were costs that were being 'front loaded' from Phase 2 were allowed as Triple Crown costs." *Appellant's Brief*, p. 12.
- "The Trial Court also allowed as recoupable expenses, charges which Appellant had never seen either in discovery or at the time of trial." *Appellant's Brief*, p. 17.

With respect to the foregoing allegations, Hull does not make any citation to the record, or provide appropriate context, from which any alleged error can be judged. Hull does not specify which of the expenses were incurred for farming operations or Belmont/Emerald costs. Hull does not specify or cite the decisions of the District Court in which there is allegedly improper "front loading" of costs. Hull does not specify which costs were "carried forward" from Belmont/Emerald. Hull did not specify which allowed expenses he had never seen in discovery or at trial.

The deficiencies noted in the preceding paragraph are fatal to Hull's appeal. The District Court made numerous decisions in this case over course of the five years since this case was

commenced—including multiple decisions since *Hull I*. Hull's lack of citation to the complained-of decisions leaves this Court to guess as to which one (of the many decisions of the District Court) that Hull alleges contain errors. Similarly, with respect to reimbursable development costs found following the most recent trial,[10] there were dozens of individual costs of which the District Court found Giesler was entitled to reimbursement. Hull's lack of specification leaves this Court to simply search the record and then guess at which ones of the dozens of costs are the particular ones Hull takes issue with.[11]

With regard to authority to support his legal arguments, the *Appellant's Brief* does contain some citations to authority; however, those citations are simply general rules applied to the interpretation of contracts. Hull belabors the point that implied terms in a contract should be reasonable, but fails to specify which rulings (with citations to the specific orders and judgments in the record) and contract terms were not reasonable. Additionally, Hull fails to cite any authority to support his arguments that the District Court's rulings limiting the testimony of Greg Ruddell ("Ruddell") were not consistent with applicable legal standards.

Hull's *Appellant's Brief* consists mainly of general, unsupported, conclusory, and incoherent attacks on the District Court's decisions without putting forth an adequate legal or factual basis for his arguments. It is not the reviewing court's burden to search the record for error. *Vanderwal,* 154 Idaho at 822. Consequently, Hull has waived his unsupported assignments of error and this Court should refuse to consider such claims.[12] *Id.*; *Dawson v.*

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[10] *See* R. pp. 222–51.

[11] Hull does make some citations to the trial transcript when referencing questions the District Court posed to the litigants at trial. However, those questions were posed during the trial, and do not account for the various testimony and evidence that was subsequently provided on the issues. Moreover, it is the ultimate findings and conclusions of the District Court that were appealed (not the District Court's questions or comments at trial), and Hull fails to direct this Court the alleged error in those findings by citation to the record.

[12] The waiver of error will remain even in the event Hull realizes the deficient nature of his *Appellant's Brief* and attempts to rectify the lack of citation and/or support in his reply brief. *Bach*, 148 Idaho at 791.

Cheyovich Family Trust, 149 Idaho 375, 382–83, 234 P.3d 699, 706–07 (2010). Nevertheless, even if Hull's claims are considered, the District Court did not err and its decisions should be upheld on appeal.

2. Did the District Court err when determining development costs for Phase 1?

"The review of a trial court's decision after a court trial is limited to ascertaining 'whether the evidence supports the findings of fact, and whether the findings of fact support the conclusions of law.' " *Griffith v. Clear Lakes Trout Co., Inc.*, 143 Idaho 733, 737, 152 P.3d 604, 608 (2007) (quoting *Idaho Forest Industries, Inc. v. Hayden Lake Watershed Imp. Dist.*, 135 Idaho 316, 319, 17 P.3d 260, 263 (2000)). *McCormick Int'l USA, Inc. v. Shore*, 152 Idaho 920, 923, 277 P.3d 367, 370 (2012); Idaho R. Civ. P. 52(a). "Factual findings are not clearly erroneous if they are supported by substantial and competent, although conflicting, evidence." *McCormick Int'l USA*, 152 Idaho at 923. "Evidence is substantial if a reasonable trier of fact would accept it and rely on it." *Aspiazu v. Mortimer,* 139 Idaho 548, 550, 82 P.3d 830, 832 (2003). Further, because of "the trial court's role to weigh conflicting evidence and testimony and to judge the credibility of witnesses, the trial court's findings of fact will be liberally construed in favor of the judgment entered." *Griffith*, 143 Idaho at 737.

a. The decision as to the reimbursable development costs is a factual determination to be made by the District Court.

Hull argues that the determination of which development costs of Phase 1 that are reimbursable to Giesler is a question of law that this Court should freely review. *See Appellant's Brief*, pp. 7–8. This argument appears to be based on the presumption that because the District Court supplied a "missing contract term" (i.e., reimbursement of development costs) all determinations with respect to development costs are legal questions subject to free review by this Court. Hull also presumes that development costs awarded by the District Court must meet

a reasonableness standard, even though the District Court did not so limit reimbursable costs when declaring the parties' rights and obligations under the their contract.

This Court has held that only reasonable terms should be implied into contracts. *Star Phoenix Min. Co. v. Hecla Min. Co.*, 130 Idaho 223, 231, 939 P.2d 542, 550 (1997). Such terms are implied not because they are reasonable, but because they are necessary to effectuate the intent of the contracting parties. *Id.* This Court's instructions simply require the implied terms themselves to be necessary and reasonable, not that the ultimate performance of those terms also be measured by a reasonableness requirement.

In the present case, the term the District Court implied in the parties' contract was that Hull was entitled to one-half of the "net profits" of each lot in the Property that was sold. *See Hull I,* 156 Idaho at 772. The District Court further defined "net profits" as the gross selling price of each lot minus selling costs and minus the pro-rata share of acquisition costs and development costs. [13] *Id.* It is those two terms that were implied and must be reasonable. The reasonableness standard does not trickle down to each determination that is made as a result of the inclusion of terms in the contract. Accordingly, the reasonableness inquiry is not at the development cost level, but rather with respect to the decision that Giesler be reimbursed development costs (and that development costs be used to calculate net profits).

Hull has not challenged the reasonableness of the District Court's determination that development costs be included in the net profit calculation that ultimately determines any profit in which Hull is to share. Rather, Hull concedes that development costs are properly included

[13] Giesler notes that the District Court did not use the term "reasonable development costs" when defining net profits.

(i.e., reasonable) in the calculation of profits for Phase 1.[14] *See Appellant's Brief*, p. 9. Accordingly, the finding then required by the District Court was simply what were the development costs of Phase 1. Such inquiry is unquestionably a question of fact, not of law.

Furthermore, to the extent there is a reasonableness component implied or applied to the amount of development costs, that reasonableness inquiry would also be a question of fact. Reasonableness determinations with respect to contractual terms are factual inquires. *See e.g., Hull I*, 156 Idaho at 778 (whether time frames for developing phases of a subdivision are reasonable was a question of fact); *Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 720, 918 P.2d 583, 589 (1996) (whether a period of probation included in an employment contract is reasonable is a question of fact); *G & H Land & Cattle Co. v. Heitzman & Nelson, Inc.*, 102 Idaho 204, 208, 628 P.2d 1038, 1042 (1981) (what is a reasonable time in which to inspect goods for conformance with the contract is a question of fact). Accordingly, to the extent it is required that the development costs for Phase 1 must be reasonable, any review of the District Court's findings with respect to such development costs should be upheld if supported by substantial and competent evidence.

The District Court's findings with respect to reimbursable development costs for Phase 1 were findings of fact. Consequently, any review by this Court of such findings should be limited to ascertaining whether the evidence produced at trial supports the District Court's findings on the issue of development costs. As set forth below, Giesler provided the District Court with ample evidence to support its development cost conclusions.

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[14] And in any event, inclusion of costs is clearly reasonable when calculating profits. Further, this Court in *Hull I* affirmed the District Court's findings with respect to the parties' contract and Hull's interest in the profits from the sale of lots in the Property.

b. The District Court's conclusions as to development costs for Phase 1 were supported by substantial and competent evidence.

Hull asserts that the District Court erred with respect to various factual findings made following the latest trial in this matter, including those that relate to allocation of development expenses between phases, the amount of costs for developing Phase 1, pressurized irrigation equipment, and farming expenses. Hull does not argue that the District court's findings of fact are not supported by substantial and competent evidence. Instead, Hull simply implies—through unsupported, conclusory statements—that the District Court's findings were not reasonable. Furthermore, Hull, with very few exceptions, does not even provide citations to the record to support his factual and legal arguments.

In this case, the District Court awarded Giesler reimbursement of what were referred to as "direct costs" of development, which costs were directly attributable to Phase 1 and were grouped in eight categories.[15] (R. pp. 229–31.) The District Court also awarded reimbursement of what were referred to as "indirect costs" of development, which were costs that related to the entire Property and were grouped into three categories.[16] (R. pp. 231–32.) The District Court made findings as to what the total indirect costs were for the entire Property, and then calculated the portion attributable to Phase 1. (*See* R. pp. 231–32.)

With respect to direct costs for ditch removal, Giesler testified that a concrete ditch and gravel road traversed Phase1 and were removed to provide clear, buildable lots. (Tr. p. 42, l. 3 to p. 44, l. 4; Defendant's Exhibit 6-A.) Giesler testified that he hired Mountain Grain & Fertilizer to remove the ditch and gravel road. (Tr. p. 43, ll. 18–21.) Giesler testified that he was

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[15] Those costs were "Removal of a ditch: $18,000"; "Roads, demolition/cleanup: $219,785.61"; "Pressurized water system: $63,943.18"; "EHM engineering: $42,848.00"; "Idaho Power: $34,926.00"; "Fees: $8749.64"; "Labor and Misc: $7241.58"; and "2015 expenses: $5677.07." (R. p. 229.)

[16] Those costs were Idaho Power costs totaling $124,564.00, engineering costs totaling $15,029.00, and subdivision entrance costs totaling $51,368.21. (R. p. 231.)

invoiced and paid $18,000.00 to Mountain Grain & Fertilizer for the ditch/road removal. (Tr. p. 45, l. 5 to p. 48, l. 9; Defendant's Exhibits 6-B to 6-C.)

With respect to roads and demolition/cleanup, Giesler testified that there were old feed lots, buildings, trees and other "junk" located on the Property (and adjacent real property) that were in rough shape and an eyesore to the subdivision being developed by Giesler. (Tr. p. 49, l. 8 to p. 52, l. 6; Defendant's Exhibits 7-A to 7-B.) Giesler testified that he hired various persons to demolish the feed lots, buildings, trees, etc. and haul them off in order to improve its appearance and the marketability of lots in Phase 1. (*See* Tr. p. 53, l. 6 to p. 54, l. 5.) Giesler also testified that he constructed various roads within Phase 1 to provide access to the lots. (*See* Tr. p. 56, l. 2 to p. 58, l. 6; Defendant's Exhibits 7-C to 7-E.) Giesler testified as to amounts he was invoiced and paid to Idaho Sand & Gravel Company, Road Work Ahead Construction Supply, Lancaster Trenching Inc., Eureka Construction & Excavating, Inc., Jim Thorpe, Thorpe Demolition & Excavation LLC, and Nix Excavating, Inc. for the demolition/cleanup costs and construction of roads within Phase 1. (Tr. p. 58, l. 7 to p. 83, l. 15; Defendant's Exhibits 7-H to 7-T.)

As for the pressurized irrigation system, Giesler testified that the system was installed in approximately 2013 in order to provide increased capacity for delivering irrigation water the lots in the Property other than the Belmont/Emerald subdivision. (Tr. p. 87, l. 21 to p. 91, l. 19.) Giesler testified as to the components making up the system and how they work together. (*See* Tr. p. 91, l. 20 to. p. 98, l. 8.) Giesler testified that he hired Sliman & Butler Irrigation, Inc. to extend the pressurized irrigation system. (Tr. p. 90, l. 4 to p. 91, l. 11.) Giesler did not dispute that some of the charges and invoices for the parts of system may be related to farming, but he identified those amounts at trial and testified that he did not include them in the claimed

development costs. (*See* Tr. p. 99, l. 1 to p. 101, l. 14.) Giesler testified that he was invoiced and paid $63.943.18 in non-farm related expenses to Sliman & Butler Irrigation, Inc. and Farmore of Idaho for irrigation system expenses. (Tr. p. 95, l. 17 to p. 103, l. 8; Defendant's Exhibits 9-B to 9-E.)

With respect to costs for EHM engineering, Giesler testified that the engineers assisted with surveying and platting of Phase 1 as part of the larger subdivision plan, as well as going before the local zoning authority to get approval for Phase 1. (*See* Tr. p. 105, l. 15 to p. 106, l. 17.) Giesler testified that he was invoiced and paid $42,848.00 to EHM Engineers, Inc. for engineering services related to Phase 1. (Tr. p. 106, l. 18 to p. 107, l. 19; Defendant's Exhibits 10-A to 10-B.)

As for direct costs of Idaho Power, Giesler testified that in 2014 it was necessary to trench and install underground power lines in order to provide electricity to each lot in Phase 1. (Tr. p. 108, l. 20 to p. 110, l. 17.) Giesler testified that he was invoiced and paid Idaho Power $34,926.00 to install power to the lots in Phase 1. (Tr. p. 109, l. 17 to p. 113, l. 10; Defendant's Exhibit 11-A to 11-E.)

The direct cost category of "Fees" included various fees of Twin Falls County, Idaho and Giesler's legal counsel with respect to Phase 1. Giesler testified that these amounts related to planning and zoning fees of the county, legal work for drafting supplemental irrigation agreements and restrictive covenants, as well as purchase of an easement. (Tr. p. 114, l. 21 to p. 119, l. 24.) Giesler testified that he was charged and paid a total of $8,749.64 for the county fees, legal fees, and easement purchase. (Tr. p. 120, ll. 3–5; Defendant's Exhibits 12-A to 12-E.)

As to labor and miscellaneous costs, Giesler explained that these costs included various labor costs to maintain and prepare the lots in Phase 1 for sale. Giesler testified that the costs

were for work including weed removal and control, picking rock, lot clean-up, cleaning out culverts, as well as storage costs for mailboxes that were used in Phase 1. (*See* Tr. p. 123, l. 12 to p. 126, l. 20.) Giesler testified and provided evidence that he paid a total of $7,241.58 for the aforementioned work. (Tr. p. 128, ll. 12–15; Defendant's Exhibits 13-A to 13-C.)

The 2015 expenses claimed by Giesler included costs for tree trimming, installation of mailboxes, weed control, drilling of test holes, sprinkler hookups, accounting fees, and legal fees related to Phase 1. (*See* Tr. p. 133, l. 3 to p. 135, l. 2.) Giesler testified that all of these claimed costs related to Phase 1. (Tr. p. 135, ll. 3–5.) Giesler further provided evidence that the total of the 2015 expenses that he paid was $5,677.07. (Defendant's Exhibits 15-A to 15-C.)

As for the indirect engineering costs, Giesler explained at trial that after acquiring the Property from Hull in 2005, he engaged the engineering firm of Reidesel & Associates, Inc. to perform various tasks including nitric pathogen studies, locate survey corners, prepare preliminary plats, and obtain final plats. (Tr. p. 141, l. 12 to p. 142, l. 25.) Giesler provided summaries and breakdowns of the various engineering charges and the different parts of the Property that they applied to. (*See* Defendant's Exhibits 2-A to 2-H; *see also* Tr. p. 145, l. 11 to p. 147, l. 14.) The engineering costs submitted by Giesler specified $15,029.00 in costs allocated to portions of the Property other than the Belmont/Emerald subdivision. (*See* Tr. p. 147, ll. 10–14; Defendant's Exhibit 2-G.) Giesler testified that he paid all of the Reidesel & Associates, Inc. billings he received. (Tr. p. 147, ll. 17–19; Defendant's Exhibit 2-E.)

Giesler testified at trial that the main entryway to the Property includes various landscaping, fencing, sculptures, and signage. (Tr. p. 151, ll. 2–23; Defendant's Exhibit 3-A.) Giesler explained that the entryway was constructed in 2007 to benefit the entire Property, including Phase 1. (Tr. p. 151, l. 24 to p. 152, l. 9.) Giesler further provided the District Court

with a detailed breakdown of the various costs of each component of the entrance way, which totaled $51,368.21. (*See* Tr. p. 154, l. 9 to p. 155, l. 2; Defendant's Exhibits 3-B to 3-D.)

The indirect Idaho Power costs claimed by Giesler related to the costs of upgrading the main power line leading to the Property. Giesler explained that when he acquired the Property from Hull, the existing power line the vicinity required upgrading in order to support the development proposed for the Property. (Tr. p. 157, l. 22 to p. 158, l. 3.) The required upgrades included reengineering the power system, trenching, and running over a mile and one-half of new power line. (Tr. p. 158, l. 4 to p. 160, l. 8.) Giesler testified how the Idaho Power upgrades applied to the various portions of the Property, and provided the District Court with evidence to show the total costs ($124,564.00) incurred with respect to the power upgrade. (*See generally*, Tr. p. 160, l. 19 to p. 166, l. 8; Defendant's Exhibits 4-A to 4-S.)

As summarized above, Giesler testified at trial to each category of development costs ultimately awarded by the District Court. Giesler testified as to the specific work completed, the costs he incurred, the amounts he paid, and that the claimed costs were related to Phase 1 (or if certain costs were not related to Phase 1 that they were not included in the amounts submitted to the District Court). (*See generally* Tr. pp. 42–207.) Further, admitted as exhibits were copies of invoices and payments related to such costs, as well explanations and summaries as to how costs were allocated to the various aspects of the development and parts of the Property. (*See generally* Defendant's Exhibits 2-A to 2-H, 3-A to 3-D, 4-A to 4-S, 5-A, 6-B to 6-C, 7-H to 7-T, 8-A to 8-B, 9-B to 9-E, 10-A to 10-C, 11-A to 11-E, 12-A to 12-E, 13-A to 13-C, 14-A to 14-B, 15-A to 15-C, 16-A.)

The foregoing testimony and documentation provides substantial and competent evidence to support the findings of the District Court with respect to the development costs reimbursable

to Giesler. Consequently, the District Court did not err when determining the development costs for Phase 1, and its judgments related thereto should be affirmed.

3. **Did the District Court err by refusing to allow Greg Ruddell to testify as to what charges applied to Phase 1?**

At trial, Hull attempted to introduce various testimony by Ruddell, who was presented as both an expert witness and lay witness.

a. Mr. Ruddell's testimony as an expert.

To promote candor and fairness during the discovery process, the Idaho Rules of Civil Procedure require litigants to identify experts that will testify at trial and provide complete statements of the expert opinions to be expressed by such experts. *See* I.R.C.P. 26(b)(4)(A). If there is a lack of compliance with those requirements, the offending party will typically be prevented from admitting such evidence. *Radmer v. Ford Motor Co.*, 120 Idaho 86, 89, 813 P.2d 897, 900 (1991). When expert testimony is at issue, compliance with expert disclosure requirements becomes more critical. *Id.*; *Zylstra v. State*, 157 Idaho 457, 466, 337 P.3d 616, 625 (2014).

In *Zylstra v. State*, this Court was confronted with the situation in which a party was presented with discovery requests seeking information about any expert the party intended to call as a witness at trial, the subject matter of the testimony, the facts the expert would rely upon, any and all opinions to which the expert was expected to testify, and any pertinent reports generated by the expert (including materials relied upon in generating the reports). *See generally* 152 Idaho at 462. The party responded with only a generalized subject matter disclosure and short statement as to expected testimony, but did not disclose the actual expert opinions. *Id.* at 464. This Court affirmed the district court's exclusion of later testimony from those experts, reasoning

that "Rule 26(b) requires more than placing an opponent 'on notice' of what your expert is 'likely' to testify to 'if asked' his opinion." *Id.* at 467.

At trial, Giesler's counsel explained that during discovery Hull was asked to identify experts that would testify at trial, the subject matter of the expert testimony, the substance of the expert's opinions/conclusions, plus the underlying facts and data on which such opinions were based. (*See* Tr. p. 278, ll. 9–14.) Hull simply responded "Greg Ruddell; Mr. Ruddell will testify as to the reasonableness of extensive requests by defendant, land valuation, and development costs. He's relied upon the data provided by plaintiff to defendants." (Tr. p. 278, ll. 14–18.) Hull did not provide reports of Ruddell, instead Hull simply included with his discovery responses a stack of proposed exhibits, which he asserts encompass and adequately disclose Ruddell's alleged expert opinions. (*See* Tr. p. 280, l. 17 to p. 282, l. 2.) Such "disclosures" do not meet the expert disclosure requirements discussed in *Zylstra*.

The inadequacy of Hull's expert disclosures was on display at trial when confronted with objections to certain proffered testimony. For example, when presented with an objection to expert opinion in relation to road cost calculations, Hull was unable to point to where it was disclosed that Ruddell would provide an opinion on that subject—instead he could only respond that it was referenced in the stacks of exhibits. (Tr. p. 493, l. 23 to p. 494, l. 24.) Such exchange plainly demonstrates the inadequacy of disclosures with respect to Ruddell's opinions as an expert. Accordingly, the District Court did not err by not prohibiting Ruddell from providing expert opinions not adequately disclosed.[17]

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[17] Further, Hull has the burden of providing an adequate record to show the court below erred. *W. Cmty. Ins. Co. v. Kickers, Inc.*, 137 Idaho 305, 306, 48 P.3d 634, 635 (2002). When a party fails to provide the documentation vital to understanding a lower court's decision, there is in inadequate record which prevents the court on appeal from finding that the lower court erred. *Vanderwal*, 154 Idaho at 823. Hull failed to include the disputed discovery disclosures in

For experts that have been properly disclosed, the standards for admission of expert testimony as evidence are set forth in Idaho Rule of Evidence 702. This Court explained that those standards allow expert testimony when the subject of the testimony is "beyond common experience and allowing an expert to testify on the issue will assist the trier of fact." *State v. Hester*, 114 Idaho 688, 692–93, 760 P.2d 27, 31–32 (1988).

This Court has previously dealt with the situation in which a witness was allegedly providing "expert" testimony, but was really being used as a conduit for inadmissible hearsay or opinion evidence. In *State v. Vondenkamp*, a conservator was presented as an "expert" to testify as whether checks written on accounts of the protected person were for that person's benefit. *See generally* 141 Idaho 878, 119 P.3d 653 (Ct. App. 2005). The conservator testified that after being appointed conservator she investigated the protected person's accounts, called payees to discuss whether the protected person had an account with that entity, and compiled documents from her investigations into charts and other material introduced into evidence. *Id.* at 886. The conservator was asked to testify as an "expert" to conclusions, based on her investigation, as to whether particular checks written on the protected person's accounts were for that person's benefit. *Id.* at 886–87. The Court of Appeals held that the district court erred in permitting such "expert" testimony because such testimony had little to do with particular expertise as a conservator, and did not involve matters beyond common experience. *Id.* at 887. The Court further explained that the function of the improper "expert" testimony was "to convert inadmissible hearsay declarations of the contacted entities into admissible 'opinions' and to render the same conclusion, in part, that the jury was asked to reach, i.e., whether [checks written on the protected person's account were for such person's benefit]." *Id.* It was err on the district

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the record on appeal. Consequently, error cannot be presumed, and the District Court's decisions on this issue should be upheld.

court's part to qualify the conservator to testify as an expert on matters not in need of expert testimony, and the "expert opinion" testimony did not assist the trier of fact within the meaning of I.R.E. 702. *Id.*

In the present case, the "expert" testimony of Ruddell is the same situation presented in *Vondenkamp*. Ruddell basically testified that he gathered invoices, receipts, accounting records, zoning files, etc. with respect to the Property. (*See generally* Tr. p. 471, l. 1 to p. 473, l. 1.) From that investigation, Ruddell formed an opinion as to whether certain expenses related to Phase 1, and produced various spreadsheets and summaries setting forth his opinions. (*See generally* Tr. p. 471, l. 1 to p. 483, l. 7.) Hull attempted to solicit testimony of such opinions and the exhibits prepared by Ruddell.

Even prior to Ruddell's testimony, the parties and the District Court discussed whether such testimony would be admissible. The District Court explained that if Ruddell was to be qualified as an "expert," that he must provide evidence that would assist the trier of fact based on specialized knowledge. (Tr. p. 284, ll. 3–8.) The District Court further warned Hull that if Ruddell was going to simply testify as to how development costs should be allocated "you're just wasting your time because that's not what an expert is here to do . . . . The issue is that's for me to decide." (Tr. p. 284, ll. 8–13.)

Despite the District Court's admonition, Hull proceeded with attempts to inquire of Ruddell what his opinion was with regards to whether certain amounts should be allocated to development costs for Phase 1. The District Court sustained objections that Ruddell was providing improper "expert" testimony, and simply giving lay witness testimony for which there was no need. (Tr. p. 483, l. 25 to p. 485, l. 10.) The District Court explained that Ruddell had inadequate foundation for his opinions, Ruddell's opinions were not expert opinions based on his

specialized knowledge, and the testimony was not helpful to the District Court (i.e., the trier of fact). (Tr. p. 484, l. 6 to p. 485, l. 20.)

The District Court correctly determined that Ruddell's opinions were not based on any scientific, technical, or other specialized knowledge, but were instead simple assumptions based on information Ruddell acquired. Further, the District Court properly recognized that Ruddell's alleged "expert" testimony was not helpful in assisting it—as the trier of fact—in making its ultimate decision on the issues at trial. Rather than assist the District Court, Ruddell (by his testimony and exhibits) was simply attempting to tell the District Court how to ultimately decide this case. Accordingly, the District Court did not err by sustaining objections to Ruddell testifying as an expert with respect to determining development costs.

b. Mr. Ruddell's testimony as a lay witness.

Permitting a lay witness to state an impression or conclusion within his knowledge rests in the trial court's discretion. *State v. Johnson*, 199 Idaho 852, 855, 810 P.2d 1138, 1141 (Ct. App. 1991). Opinion testimony of lay witness "is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the testimony of the witness or the determination of a fact in issue." I.R.E. 701. Additionally, "lay opinions are subject to the restriction that when the question is one which can be decided by persons of ordinary experience and knowledge, it is for the trier of fact to decide." *State v. Pugsley*, 128 Idaho 168, 175, 911 P.2d 761, 768 (Ct. App. 1995).

Similarly, it is improper to allow a lay witness to provide as "opinion" testimony information relayed to him by others, as the witness is simply passing on the credibility of others. *Johnson*, 119 Idaho at 856–58. In the *Johnson* case, a doctor (not qualified to testify as an expert) provided "opinion" testimony that a child had been abused. That opinion testimony was

ultimately held to have violated I.R.E. 701 because the doctor's opinion was not based on his own perception of abuse, but rather simply what other persons had told him. *Id.* at 857–58. The court held that the trier of fact had been presented with evidence alleging abuse, as well as evidence denying abuse, and the doctor was simply vouching for the credibility of some of that evidence—which was improper use of lay witness opinion testimony. *Id.*

In this case, Ruddell basically testified that he gathered invoices, receipts, accounting records, zoning files, etc. with respect to the Property. (*See generally* Tr. p. 471, l. 1 to p. 473, l. 1.) From that investigation, Ruddell formed an opinion as to whether certain expenses related to Phase 1, and produced various spreadsheets and summaries setting forth his opinions. (*See generally* Tr. p. 471, l. 1 to p. 483, l. 7.) Hull attempted to solicit testimony of such opinions and the exhibits prepared by Ruddell.

As noted above, Ruddell's "opinion" testimony was not helpful in assisting the District Court —as the trier of fact—in making its ultimate decision on the issues at trial. In fact, Ruddell himself explained that he was simply taking the information provided, comparing it to other records, making assumptions, and essentially just lining out what he thought certain expenses applied to. (*See e.g.*, Tr. p. 471, l. 12 to p. 472, l. 8; p. 474, l. 22 to p. 476, l. 10; p. 481, l. 17 to p. 483, l. 24.) Rather than assist the District Court, Ruddell (by his testimony and exhibits) was usurping the District Court's role as a trier of fact with respect to determining allocation of development expenses.

Further, Ruddell's "opinion" testimony sought by Hull asked for nothing more than weighing the credibility of evidence of development expenses. In fact, Ruddell was asked directly on multiple occasions whether Giesler's expense evidence is justified. (Tr. p. 474, ll. 1–10; p. 483, ll. 8–11; p. 493, ll. 23–25.) The "opinions" of Ruddell that Hull sought to introduce

were a far more blatant attempt to pass judgment on the credibility of other evidence than was prohibited in *Johnson*. The District Court correctly recognized the impropriety and unhelpfulness of such testimony, and did not err by sustained objections to the same.

4. Is Giesler entitled to costs and attorney fees on appeal?

Giesler requests an award of costs incurred in responding to this appeal pursuant to Idaho law, including I.A.R. 40. Giesler also requests an award of attorney fees incurred in defending this appeal pursuant to Idaho law, including I.A.R. 41 and Idaho Code sections 12-120 and 12-121.

Idaho Code section 12-120(3) entitles the prevailing party in actions arising from a commercial transaction to an award of attorney fees. Commercial transactions are "all transactions except transactions for personal or household purposes." Idaho Code § 12-120(3). Section 12–120(3) applies to proceedings before the trial court and those on appeal. *Oakes v. Boise Heart Clinic Physicians, PLLC*, 152 Idaho 540, 546, 272 P.3d 512, 518 (2012).

The present case clearly involved a commercial transaction. This appeal arose from a dispute over the ownership and share of profits from certain real property being developed into residential subdivisions. (R. Hull I, pp. 6–29.) Disputes over agreements and rights to a share of profits from the sale of developed lots in a subdivision arise from a commercial transaction. *See Rockefeller v. Grabow*, 139 Idaho 538, 546, 82 P.3d 450, 458 (2003).

Further, Giesler would also be entitled to an award of attorney fees under Idaho Code section 12-121 on appeal. Attorney fees may be awarded under section 12-121 to the prevailing party on appeal if the appellate court is "left with the abiding belief that the entire appeal was brought, pursued, or defended frivolously, unreasonably, or without foundation." *Griffith v. JumpTime Meridian, LLC*, 161 Idaho 913, 393 P.3d 573, 576 (2017). Such a situation occurs

when the appellant merely asks the reviewing court to second guess the findings and decisions of the lower court. *Bach*, 148 Idaho at 797. Additionally, when an appellant's briefing provides "no argument or authority on which reversal of the District Court could be based," there is no basis for the appeal and it is brought unreasonably. *Id.*

On appeal, Hull has failed to show (or even explain) how the District Court erred, as well as provide particularized allegations of error in order to allow this Court to review such alleged errors. Further, Hull's *Appellant's Brief* is replete with conclusory statements and unsupported by reasoned argument or authority. Instead, he simply makes conclusory statements and merely asks this Court to second guess the District Court's findings of fact and conclusions of law.

Therefore, in the event Giesler is the prevailing party on appeal, Giesler is entitled to an award of costs and attorney fees pursuant to I.A.R. 40 and 41 and Idaho Code sections 12-120(3) and 12-121.

VII. CONCLUSION

Hull waived his claims of error by not presenting this Court with an adequate record or briefing justifying his allegations of error. Further, the District Court not err when determining the development costs for Phase 1 that were reimbursable to Giesler. At trial, the District court did not err by refusing to allow Ruddell to testify as to what development charges applied to Phase 1. Based on the foregoing, Giesler respectfully request that the District Court's decisions be affirmed and that Giesler be awarded costs and attorney fees on appeal.

Oral argument is requested.

DATED this 17 day of July, 2017.

WRIGHT BROTHERS LAW OFFICE, PLLC

By:_____
Andrew B. Wright

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of July, 2017, I caused two true and correct copies of the foregoing document to be served, pursuant to I.A.R. 34(d), upon the following persons in the following manner:

Gery W. Edson Gery W. Edson, P.A. P.O. Box 448 Boise, ID 83701	[ ] [ ] [ ] [X]	U.S. Mail, postage prepaid Express Mail Facsimile E-mail
Terry Lee Johnson Attorney at Law P.O. Box X Twin Falls, ID 83303	[ ] [ ] [ ] [X]	U.S. Mail, postage prepaid Express Mail Facsimile E-mail

Andrew B. Wright