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Irish v. Hall Respondent's Brief 2 Dckt. 44794

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IN THE SUPREME COURT OF THE STATE OF IDAHO

DENNIS IRISH and WANDA IRISH,
husband and wife,

Plaintiffs/Appellants/Cross-
Respondents,

vs.

JEFFREY HALL and DONA HALL,
husband and wife,

Defendants/Respondents/
Cross-Appellants.

DOCKET NO. 44794-2017

Kootenai County Case No.
CV-2015-5814

RESPONDENT'S REPLY BRIEF

**APPEAL FROM THE DISTRICT COURT OF THE
FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF KOOTENAI**

HONORABLE CYNTHIA K.C. MEYER
District Judge Presiding

SUSAN P. WEEKS, ISB No. 4255
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684
Attorney for Appellants

ERIK P. SMITH, ISB No. 5008
LAKE CITY LAW GROUP PLLC
435 W. Hanley Ave., Ste. 101
Coeur d'Alene, ID 83815
Telephone: (208) 664-8115
Facsimile: (208) 664-6338
Attorney for Respondents

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INTRODUCTION

Jeffrey Hall and Donna Hall (“the Halls”) are seeking attorneys’ fees at trial and on appeal pursuant to Idaho Code § 12-121. The case presented a set of facts and evidence that the trial court concluded could only be viewed one way by a reasonable person, and a directed verdict was granted. Yet looking at those same facts, the trial court could not again say they were unreasonable for the award of attorneys’ fees.

STANDARD OF REVIEW

I. Review Of Denial Of Attorneys’ Fees – Abuse Of Discretion

“The award of attorney fees rests in the sound discretion of the trial court, and the burden is on the person disputing the award to show an abuse of discretion...If there is a legitimate, triable issue of fact, attorney fees may not be awarded...” *Ross v. Ross*, 142 Idaho 536, 539 (Ct.App. 2006)(citing *Nampa & Meridian Irr. Dist.*, 135 Idaho 518, 525 (2001)). I.C. § 12-121 provides in pertinent part:

In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties when the judge finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation. This section shall not alter, repeal or amend any statute that otherwise provides for the award of attorney's fees. The term "party" or "parties" is defined to include any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

ARGUMENT

I. The Case Was Pursued In An Unreasonable Or Frivolous Manner And Without Foundation.

The Halls have already briefed the issues that the case was litigated without discovery, without mediation, and by means of a fatally deficient Complaint. The Halls rely upon *Anderson v. Ethington*, 103 Idaho 658 (1982) for the award of attorneys' fees. In *Anderson*, although the Plaintiff survived a pre-trial motion for summary judgment, it still suffered a directed verdict based on the fact that the complaint was without reasonable foundation. *Id.* at 659. Although IRCP 54(e)(1) had not become effective when *Anderson* was decided, the Supreme Court has since concluded that *Anderson* is still valid. See *Sun Valley Shopping Center v. Idaho Power Company*, 119 Idaho 87, 90 (1991).

The Court in *Sun Valley* recognized the similar analysis for granting a motion for directed verdict in a jury trial and the award of attorneys fees pursuant to I.C. § 12-121. *Id.* at 90-91.

The case of *J.M.F Trucking v. Carburetor & Electric*, 113 Idaho 797 (1987), also viewed the similar standards for granting a motion for directed verdict in a jury trial and the award of attorneys' fees pursuant to I.C. § 12-121. In *JMF*, the Supreme Court was incredulous with the trial court. The trial court denied a post-trial motion to dismiss stating that factual disputes existed. *Id.* at 799. Yet, the trial court later granted an award of

attorneys' fees based on § 12-121 because the case was "frivolous and unreasonable". *Id.* The Supreme Court stated:

It is simply inconsistent and arbitrary for the trial court to have denied the motion to dismiss the cross-complaint, stating that reasonable factual conflicts existed sustaining the claim, and to later allow an award of attorneys' fees on the basis that the cross-claim was frivolously and unreasonably pursued.

Id.

In this case, despite the similar analysis, the trial court did not distinguish the two decisions on the record.

II. The Trial Court Abused Its Discretion.

The trial court granted the motion for directed verdict in favor of the Halls and in the same breath, on the record, chastised the defendant Jeff Hall. The trial court judge took personal offense and called his behavior "reprehensible," "childish," "ridiculous," and "shameful."

And for these reasons that I have given, I am going to grant the motion for directed verdict on the defamation claims with respect to Wanda Irish's lawsuit for defamation. Having said this, I think the conduct as I have heard it is reprehensible. It's childish, it's harassment, it's ridiculous. If I were the Irishes, I would be terribly, terribly upset. I would certainly consider filing a lawsuit. It's untenable. And what strikes me as being so very sad about this case is that we have this tiny little gem of a town on the shores of Lake Coeur d'Alene, and both of you couples represent that town. Here we have the mayor and her husband, who are the leaders, leader and husband, of the town, who I'm sure has the interest of the town and its citizens very close to her heart. Here we have people who have a business that serves the people of the community and tourists who come into the community. To me, you folks should be working together. I'm surprised that you're not friends. And, granted, I only see what I see in court, having spent a day with you, but it is

heartbreaking to me that you are at such loggerheads that things could fall apart to the point that there is all of this name calling. And, Mr. Hall, I'm just -- this is shameful behavior. It really is.

Tr. Vol. II. p. 238, ll. 1-25, p. 239, l. 1.

In addition to the belittling and name-calling of Mr. Hall, the trial court also implored the parties to "just be friends."

Later, upon hearing the motion for attorney fees, the trial court acknowledged that it was a discretionary decision. Tr. Motions on Request for Attorneys' Fees, p. 28, ll. 23- p. 29, l. 1. However, the trial court was unable to articulate why the two similar standards did not apply consistently in this case and what part of the plaintiffs' case was not unreasonable, not frivolous, and not without foundation. Instead, we are left with the court's comments that she herself would "consider filing a lawsuit." Tr. Motions on Request for Attorney's fees. p. 35, ll. 5-6.

The trial court further stated:

We have a situation where a motion for directed verdict was granted and attorney's fees are asked for, and as I was starting to say, I can understand the basis for the argument that the standard would be somewhat the same, but I do disagree with that. I think that people can bring a lawsuit and completely lose, completely lose the lawsuit, as happened in this case where I was granted a directed verdict, finding that the statements were made were either beyond the statute of limitations or even the ones that were within the statute of limitations constituted an opinion or constituted hyperbole, but did not constitute all of the elements of defamation or slander. But I don't think that necessarily means that a case—that this case was brought without foundation or unreasonably or frivolously. And that is going to be my ruling. And so I am going to deny attorney's fees, because I don't find that this case was pursued frivolously, unreasonably, or without foundation.

Tr. Motions on Request for Attorney's fees. p. 34, ll. 1-20.

Then the trial court tried to qualify and retract the statements directed at Mr. Hall personally:

Now, my comments at court when I said that the conduct was reprehensible and so forth, there's a couple things that I want to explain. Based on what I'd heard, and I had only heard the plaintiffs' side of the story, and taking that as true, as I must on a motion for directed verdict, I find that that—I said that I found that that information, the conduct that was alleged, was reprehensible and so forth, and that if I were the Irishes, I would be very bothered and I would consider filing a lawsuit.

Tr. Motions on Request for Attorney's fees. p. 34, ll. 21- p. 35, l. 6.

Yet the court made another very personal comment, that she felt the lawsuit was bothersome and she would consider suing the Halls. *Id.* This statement came with the recognition that Mr. Hall did not get an opportunity to testify. Finally the trial court said:

It doesn't mean that I would file a lawsuit, it doesn't mean that I would file a defamation lawsuit. There are and were other potential causes of action. But it's something that I did indicate that I thought was egregious behavior. But I also said later in that ruling that I understood that I hadn't heard your side of the story and I know that there is another side of the story. I recognize that. And I recognize that this is, you know, a relationship that, you know, whatever it was when you first met became something very different over time. In any event, as I have said now three times probably, I don't find that the plaintiffs bringing this action was without foundation or unreasonable or frivolous despite the fact that I granted a motion for directed verdict against them.

Tr. Motions on Request for Attorney's fees. p. 35, ll. 7-23.

So the trial court failed to articulate why the Halls' motion should not be granted and failed to distinguish between its decision to grant directed verdict and refusing to

award attorneys' fees. The Idaho Supreme Court has reversed rulings on attorneys' fees when based on matters or feelings not based on the record. *Severson v. Hermann*, 116 Idaho 497, 499 (1989)(district court abused its discretion in predicating its award of attorney fees upon salacious matters not contained in the record.)

The Idaho Court of Appeals considered it error for the district court to decline the award of attorneys' fees because one party had not acted equitably towards the other. *Bank of Idaho v. Collet*, 103 Idaho 320, 326 (1982).

Evans v. Sawtooth Partners, 111 Idaho 381 (Ct. App. 1986) reversed the district court's refusal to award attorneys' fees because of the court's own sense of justice. *Id.* at 387. *Evans* went on to say that the trial court may not use the award or denial of attorneys' fees to vindicate its sense of justice beyond the judgment rendered on the underlying dispute between the parties. *Id.* A court may not use the award or denial of attorneys' fees to vindicate its sense of justice beyond the judgment rendered on the underlying dispute, provide relief from an adverse judgment, or penalize a party for misdeeds during the litigation. *Medical Recovery Servs., LLC v. Jones*, 145 Idaho 106, 110 (2008) *Citing Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 720 (2005); *Evans v. Sawtooth Partners*, 111 Idaho 381, 387 (Ct. App. 1986); *DeWils Interiors, Inc. v. Dines*, 106 Idaho 288 (Ct. App. 1984).

III. The Halls Are Entitled To Attorney's Fees On Appeal.

The Halls seek attorney's fees under Idaho Code Section 12-121. The Irishes acted frivolously, unreasonably or without foundation in law or fact in pursuing this appeal.

Attorney's fees should be awarded to the Halls on appeal, because it is established case law that when:

[S]uch circumstances exist when an appellant has only asked the appellate court to second-guess the trial court by reweighing the evidence or has failed to show that the district court incorrectly applied well-established law. Further, attorneys' fees on appeal have been awarded under Section 12-121 when appellants 'failed to add any new analysis or authority to the issues raised below' that were resolved by a district court's well-reasoned authority.

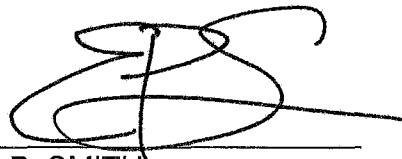
Elliott v. Murdock, 161 Idaho 281, 289 (2016)

In this case the Irishes have failed "to add any new analysis or authority" to their appeal. Furthermore, the Irishes are asking this Court to second-guess the trial court's correct application of well-established law. Therefore, the Halls should be awarded attorney's fees for the Irish's frivolous appeal.

CONCLUSION

The trial court should be affirmed in its directed verdict, and the Halls should be awarded attorney fees both at trial and on this appeal based on Idaho Code § 12-121, and Idaho Appellate Rules 40 and 41.

DATED this 16 day of November, 2017.



ERIK P. SMITH
Attorney for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of November, 2017, I caused to be served a true and correct copy of the foregoing by the methods indicated below, and addressed to all counsel of record as follows:

Susan P. Weeks JAMES, VERNON & WEEKS, P.A. 1626 Lincoln Way Coeur d'Alene, ID 83811 Fax: 208/664-1684	<input checked="" type="checkbox"/> U.S. MAIL <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> FACSIMILE <input type="checkbox"/> ELECTRONIC MAIL
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The undersigned does hereby certify that the electronic brief is in compliance with all the requirements set out in I.A.R. 34.1, and that an electronic copy was served on the court and each party at the following email addresses:

Clerk of the Supreme Court

sctbriefs@idcourts.net

Susan P. Weeks

sweeks@jvwlaw.net


Llewellyn Kennedy