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SRBA Case No. 39576 Appellant's Brief Dckt. 44944

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IN THE SUPREME COURT OF THE STATE OF IDAHO

IN RE SRBA, CASE NO. 39576
SUBCASE NO.: 61-12301
Partial Decree

SUPREME COURT NO. 44944-2017

RICKY C. HOLDEN and
KIMBERLY M. HOLDEN,

Objectors-Appellants,

vs.

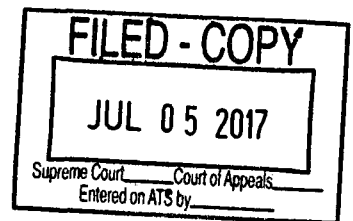
JACKIE WEECE and TERESA WEECE

Claimants-Respondents

APPELLANT'S BRIEF

Appeal from the Snake River Basin Adjudication,
District Court of the Fifth Judicial District
of the State Of Idaho, In and For the County of Twin Falls

The Honorable Eric J. Wildman, District Judge presiding



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I
STATEMENT OF THE CASE

A. NATURE OF THE CASE.

This appeal arises from the issuance of an Order of Partial Decree for a water right by the Snake River Basin Adjudication Court upon the Claimants-Respondents' claim of a water right.

B. COURSE OF PROCEEDINGS

Claimants-Respondents, (Weeces), filed their claim for a water right under the SRBA on or about March 12, 2015 after a dispute with the Objectors-Respondents, (Holdens). (TR. *Trial November 17, 2016*, pp. 124-126) The Holdens timely objected to the claim which resulted in the review by the SRBA Special Master and trial held on November 17, 2016. At trial, the Holdens introduced evidence that refuted the June 4, 2015 Director's Report from the IDWR where it relied on a septic system inspection report dated March 13, 2000 and IDWR presumed the beneficial use of water on the property. (TR. *Trial November 17, 2016*, pp. 117-118)

C. STATEMENT OF FACTS

Claimants-Respondents, (Weeces), are individuals residing in Mountain Home, Idaho. Objectors-Respondents, (Holdens) are individuals who own the property abutting the Weeces' residence and the Holdens property contains a domestic well that provides the water to Holdens' properties and Weeces. The Holdens constructed the well in 1999 and have a licensed water right for the supply to their properties. (R. p. 17) In 2000, the Holdens constructed the improvements for the property that was later acquired by the Weeces in 2005. (R. TR. *Trial November 17, 2016*, p. 114-118)

The Holdens sold this property to their friend Loree Sanders in May of 2001. (TR. *Trial November 17, 2016*, p. 114) Between the time of initial construction of the improvements on the property in 2000 and the sale of the property in 2001, the property was vacant. (TR. *Trial November 17, 2016*, pp. 143-145) As an accommodation for the sale of the property, the Holdens and Saunders entered into a joint well use agreement on or about May 10, 2001, to utilize the well on the Holdens' remaining property. (R. p. 11; TR. *Trial November 17, 2016*, pp. 120-122) Saunders' property was foreclosed by her lender bank in 2001. (TR. *Trial November 17, 2016*, pp. 10, 144) The Weeces acquired the property from this lender bank. (TR. *Trial November 17, 2016*, p. 144) The Holdens and the Weeces continued to operate the well under an agreement until a dispute arose in 2015.

II ISSUES ON APPEAL

A. DID THE SRBA COURT ERR IN ADOPTING THE SPECIAL MASTER'S REPORT AND RECOMMENDATION?

“To assist in the adjudication of water rights, the “district court may appoint one (1) or more special masters in any general adjudication.... Objections to and hearing on the special master's report shall be governed by rule 53(e) of the Idaho rules of civil procedure.” I.C. 42-1422. *McCray v. Rosenkrance*, 135 Idaho 509, 20 P.3d 693 (2001). Idaho Rule of Civil Procedure 53(e)(2) provides that “In an action to be tried without a jury the court shall accept the master's findings of fact unless they are clearly erroneous.” *Id.* “This Court has held that “there is nothing in Rule 53 which precludes the court from adopting the master's factual findings

verbatim if not clearly erroneous.” *McCray v. Rosenkrance*, citing *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho 370, 378, 816 P.2d 326, 334 (1991). This is “[b]ecause the court is required to make its own careful review to determine if the findings of fact are clearly erroneous, [thus] this procedure is consistent with the court’s duty under I.R.C.P. 52.” *Id.*

“The special master’s findings of facts, which are adopted by the SRBA district court, are considered to be the findings of the SRBA district court.” *City of Pocatello v. Idaho*, 127 Idaho 198, 899 P.2d 411 (1995), citing *Clear Springs Foods, Inc. v. Clear Lakes Trout Co.*, 136 Idaho at 764, 40 P.3d at 122. A trial court’s findings of fact will not be set aside on appeal unless they are clearly erroneous. *City of Pocatello v. Idaho*, 127 Idaho 198, 899 P.2d 411 (1995), citing *Bramwell v. South Rigby Canal Co.*, 136 Idaho 648, 650, 39 P.3d 588, 590 (2001); Idaho R. Civ. P. 52(a).

In this case, the SRBA Court adopted the Special Master’s Report and Recommendation without any statement as to the Court’s review of the record or trial transcript.

B. DID THE SPECIAL MASTER ERR IN THE FINDING OF FACTS AND CONCLUSIONS OF LAW IN THE REPORT AND RECOMMENDATION?

The Special Master’s Report and Recommendation at paragraph 15 states:

“Loree Saunders lived in the residence located on the East ½ Lot 16, which was supplied with water from the well located on Lot 17 and which was connected to a sewage disposal system. From these facts the *Director’s Report* properly infers that Loree Saunders domestically used water during the time she occupied the

residence. Therefore the required elements of diversion of water and application to beneficial use have been satisfied.”

(R. p. 95)

However, found that the Special Master’s Report failed to state the date when Saunders actually put water to beneficial use, presumably after she acquired the property which was on or about May 10, 2001. (R. p. 43; *TR.Trial November 17, 2016*, p. 143). This is a crucial element to the recommendation which includes a date of priority. *A & B Irr. Dist. v. Idaho Conservation League*, 131 Idaho 411, 958 P.2d 568 (1997)

The next paragraph of the Special Master’s report states:

“The priority date recommended in the *Director's Report* of March 13, 2000, is based upon the fact that as of that date the residence was connected to a useable sewage system and therefore the residence was occupiable and actual domestic use of water could have begun on that date. This Special Master notes that Loree Saunders did not acquire ownership of the East ½ Lot 16 until approximately 14 months later, May 10, 2001. Objector's Trial Exhibit #101. However, evidence of the date upon which Loree Saunders acquired ownership of the East ½ Lot 16 is insufficient to show that no domestic use of water took place between the dates of March 13, 2000, and May 10, 2001. Accordingly, the presumption of correctness afforded the *Director's Report* has not been rebutted regarding priority date.”

(R. p. 95)

The Special Master’s statement that “the residence was connected to a useable sewage

system and therefore the residence was occupiable and actual domestic use of water *could have begun on that date*” is not only a speculative conclusion but lacks any evidence to support the legally required conclusion which is the date of *actual* beneficial use. [Italics added.]

This conclusion is clearly erroneous. Mr. Holden’s testimony directly rebutted the Director’s report. The testimony showed that not only was the Report incorrect in its reliance on a septic system inspection where it lacked evidence of use of water, but also showed that the property was vacant until the time of sale to Saunders in 2001. (TR. *Trial November 17, 2016*, pp. 116-117, 143-145)

C. SHOULD THE SRBA COURT RELY ON IDWR DIRECTOR’S REPORTS WHEN THEY RELY ON UNCLEAR FACTS AND EVIDENCE?

When the Idaho Department of Water Resources prepares its Director’s Reports, they rely on documents in various files without conducting further research into the validity of the statements contained in those documents. (TR. *Trial November 17, 2016*, pp. 41-44)

Because of the inherent unreliability of using an inconclusive septic system inspection report that was over a dozen years old, and coupled with the fact the IDWR conducted field inspections and had the ability to inquire from Mr. Holden facts necessary for its determination, the Director’s Report and Recommendation should not have been be relied upon for the Special Master’s Report and Recommendation. The evidence presented at trial in both documentary and testamentary form refuted the Director’s Report and was admitted to by the IDWR’s expert. (TR. *Trial November 17, 2016*, pp. 75-80)

III ARGUMENT

A. STANDARDS OF REVIEW

“To assist in the adjudication of water rights, the “district court may appoint one (1) or more special masters in any general adjudication.... Objections to and hearing on the special master’s report shall be governed by rule 53(e) of the Idaho rules of civil procedure.” I.C. 42-1422. *McCray v. Rosenkrance*, 135 Idaho 509, 20 P.3d 693 (2001). Idaho Rule of Civil Procedure 53(e)(2) provides that “In an action to be tried without a jury the court shall accept the master’s findings of fact unless they are clearly erroneous.” *Id.* “This Court has held that “there is nothing in Rule 53 which precludes the court from adopting the master’s factual findings verbatim if not clearly erroneous.” *McCray v. Rosenkrance*, citing *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho 370, 378, 816 P.2d 326, 334 (1991). This is “[b]ecause the court is required to make its own careful review to determine if the findings of fact are clearly erroneous, [thus] this procedure is consistent with the court’s duty under I.R.C.P. 52.” *Id.*

“The special master’s findings of facts, which are adopted by the SRBA district court, are considered to be the findings of the SRBA district court.” *City of Pocatello v. Idaho*, 127 Idaho 198, 899 P.2d 411 (1995), citing *Clear Springs Foods v. Clear Lakes Trout Co.*, 136 Idaho at 764, 40 P.3d at 122. A trial court’s findings of fact will not be set aside on appeal unless they are clearly erroneous. *City of Pocatello v. Idaho*, 127 Idaho 198, 899 P.2d 411 (1995), citing *Bramwell v. South Rigby Canal Co.*, 136 Idaho 648, 650, 39 P.3d 588, 590 (2001); Idaho R. Civ.

P. 52(a).

“When this Court reviews whether certain General Provisions from the Director’s Report should be included in the SRBA decree, it is presented with a mixed question of law and fact.” *State v. Nelson*, 131 Idaho 12, 951 P.2d 943 (1998) citing *A & B Irrigation Dist. v. Idaho Conservation League*, 97.20 ISCR 971, 972, 131 Idaho 411, 958 P.2d 568, 1997 WL 612633 (Oct. 3, 1997)

“The special master’s conclusions of law that are adopted by the district court are treated as the conclusions of the district court.” *State v. Hagerman Water Right Owners Inc.*, 130 Idaho 736, 740, 947 P.2d 409, 413 (1997). This Court freely reviews the district court’s conclusions of law. *Id.*

B. THE DISTRICT COURT ERRED IN ADOPTING THE SPECIAL MASTER’S REPORT AND RECOMMENDATION.

C. THE DISTRICT COURT ERRED BY ADOPTING FACTS THAT ARE CLEARLY ERRONEOUS.

D. THE DISTRICT COURT’S ERRED BY ADOPTING AN INCORRECT LEGAL STANDARD

In this case, the SRBA Court adopted the Special Master’s Report and Recommendation without any statement as to the Court’s review of the record or trial transcript.

The Special Master’s statement that “the residence was connected to a useable sewage system and therefore the residence was occupiable and actual domestic use of water *could have begun on that date*” is not only a speculative conclusion but lacks any evidence to support the legally required conclusion which is the date of *actual* beneficial use. [Italics added.] (R. p. 95)

This conclusion is clearly erroneous. Mr. Holden’s testimony directly rebutted the

Director's report. The testimony showed that not only was the Report incorrect in its reliance on a septic system inspection where it lacked evidence of use of water, but also showed that the property was vacant until the time of sale to Saunders in 2001. (TR. *Trial November 17, 2016*, pp. 116-117, 143-145)

There was no supporting evidence that water had been put to beneficial use on the Weece's property prior to May 10, 2001 when their predecessor, Loree Saunders, acquired the property. Therefore, the priority date of March 13, 2000 as recommended by the Special Master's Report was not supported and is clearly erroneous.

The SRBA Court also failed to "make its own careful review to determine if the findings of fact are clearly erroneous, [thus] this procedure is consistent with the court's duty under I.R.C.P. 52" *McCray v. Rosenkrance*, citing *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho 370, 378, 816 P.2d 326, 334 (1991) The SRBA thereby failed to apply the correct legal standard for review.

IV CONCLUSION

The Partial Decree for the Respondents should be reversed and the matter remanded to the SRBA Court for a determination as to the correct priority date. Appellants Holdens srequest and seek and should be awarded all costs and attorney's fees Oral argument is requested.

DATED this 29th day of June 2017.


THOMAS J. KATSILOMETES
Attorney for Appellants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of June 2017, a true and correct copy of the foregoing **APPELLANT'S BRIEF** was as follows:

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