7-19-2021

Four Seasons Solar Productions LLC v. Von Bloes Respondent's Brief Dckt. 47906

IN THE SUPREME COURT, STATE OF IDAHO

HORST VON BLOES, individually; and NORTH WEST MARKETING CORPORATION, dba AMERICAN BRANDS CONSTRUCTION, Defendants/cross-Defendants/Appellants, vs. FOUR SEASONS SOLAR PRODUCTS, LLC, Defendant/Cross-Claimant/Respondent.	Supreme Court No. 47906-2020 Kootenai County District Court No. CV 2018-434

RESPONDENT'S BRIEF

Appeal from the Order and Judgment of the
Idaho First Judicial District Court, Kootenai County

Honorable Cynthia K.C. Meyer, District Judge, presiding

Horst Von Bloes
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Appellant

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I. STATEMENT OF THE CASE

This is a breach of contract case wherein the original plaintiff, Paula Woodward, a homeowner in Kootenai County, Idaho, sued Horst Von Bloes and his corporation, Northwest Marketing Corporation d/b/a American Brands Construction, and Four Seasons Solar Products, LLC ("Four Seasons") for breach of an agreement to construct a sunroom at her home. In essence, she paid Mr. Von Bloes and his company approximately $9,400.00 to build the sunroom, but due to the failures of Mr. Von Bloes to timely complete the project, Ms. Woodward terminated the arrangement, and sued for return of her money.

The procedural dynamic was complicated by the fact that Ms. Woodward had originally wanted a Four Seasons sunroom. At the time, Mr. Von Bloes and his corporate entity were the authorized dealer for Four Seasons in Idaho. Ms. Woodward and Mr. Von Bloes then went on to discuss the project, and ultimately determined that the sunroom would not involve a Four Seasons product at all, but would instead be a custom built product. Nevertheless, when Mr. Von Bloes failed to meet important deadlines, forcing Mrs. Woodward to terminate their contract, Four Seasons was named as a defendant in the lawsuit, and tendered the defense to Mr. Von Bloes and his corporate entity, which tender was refused. These facts are largely undisputed, and many of them are included in Appellant's Brief.

It is important to point out, more for context than anything else, that Mr. Von Bloes and his corporate entity never delivered any construction materials to Ms. Woodward's home for use in the project, and admitted during trial that he never paid for any products or materials to be used

in Ms. Woodward's project. Tr. Vol.1, p.44, L.8-p.46, L.21. Essentially, Mr. Von Bloes and his corporate entity kept the money that had been paid by Ms. Woodward, resulting in the lawsuit filed below.

In the ensuing months, the parties participated in a mediation, and the trial date was continued from the originally set date of April 15, 2019 to October 23, 2019. Ultimately, Ms. Woodward obtained a judgment by default against North West Marketing, and dismissed her remaining claims. Four Seasons moved for summary judgment as to its cross claims against Mr. Von Bloes and North West Marketing in May 2019, and that motion was subsequently denied by the district court. By the time of trial, the remaining issues between the remaining parties were cross claims by Four Seasons against Von Bloes and North West Marketing for breach of contract, and cross-claims by Von Bloes against Four Seasons for wrongful termination and damages. The case was essentially tried on those issues.

Trial was held on October 23, 2019. Approximately two weeks prior, Mr. Von Bloes filed a motion to continue the trial date without a notice of hearing – well after the deadline for filing motions to change the trial date as set forth in the Case Scheduling Order. The district court did not grant Mr. Von Bloes untimely motion, and trial proceeded as scheduled. During trial, Mr. Von Bloes presented no evidence of any damage. Following trial, the district court issued a letter ruling on February 21, 2020 dismissing all claims by all remaining parties with prejudice. Mr. Von Bloes subsequently appealed.

II. ADDITIONAL ISSUES ON APPEAL

The only issues raised by Respondent on appeal are Respondent's right to an award of attorney fees and costs pursuant to Idaho Code § 12-121 and Idaho Appellate Rules 40(a) and 41, addressed below.

III. ARGUMENT

A. The District Court Did Not Violate Appellant's Due Process By Not Acting As Counsel for Appellant Prior To Or During Trial.

1. Standard of Review

Constitutional questions are reviewed de novo because they are purely questions of law. *Bradbury v. Idaho Jud. Council*, 136 Idaho 63, 67, 28 P.3d 1006, 1010 (2001) (citing *V-1 Oil Co. v. Idaho State Tax Comm'n*, 134 Idaho 716, 718, 9 P.3d 519, 521 (2000)).

2. Appellant's Argument Is Not Supported By Idaho Law

The first two issues raised by Appellant on appeal are similar in nature, and will be addressed together in this section. See Appellant's Brief, p. 32. Rule 2.2 of the Idaho Code of Judicial Conduct, which is not cited by Appellant in his brief or argument, provides as follows:

> *"A judge shall uphold and apply the law, and shall perform all duties of judicial office impartially. A judge shall maintain professional competence in the performance of judicial duties."*

Comment 4 to Rule 2.2 of the Code of Judicial Conduct further provides that it is not a violation of Rule 2.2 for judges to make "reasonable accommodations" to ensure self-represented litigants the opportunity to have their matters fairly heard. *Id.* However, the comment goes on to suggest:

> *"A judge's ability to make reasonable accommodations for self-represented litigants does not oblige a judge to overlook a self-represented litigant's violation of a clear order, to*

repeatedly excuse a self-represented litigant's failure to comply with deadlines, or to allow a self-represented litigant to use the process to harass the other side."

Id.

While the case below did not involve an abuse of process by the parties intended to harass the other side, the procedural history does include multiple examples of Appellant violating clear orders, and several instances in which the district court excused Appellant's failure to comply with deadlines.

The trial below provides a perfect example of the extent to which the district court excused Appellant's failures to comply with deadlines. Trial was set to begin at 9:00am on October 21, 2019. R. p. 8. In fact, trial did not begin until approximately 9:44am, as Appellant had an accident at home, and was running late. Tr. Vol 1, p.7, L.1-p.8, L.7. The district court was understanding of the situation, and there was no objection from Respondent to the late start. *Id.* In the opening minutes of the trial, Appellant provided to the district court and to counsel, for the first time, his trial brief and exhibits, despite the fact that they were due weeks earlier. R. p. 8, Tr. Vol 1, p.12, L.15-18. Again, no objection was made by Respondent, and no chastisement was issued by the district court. *Id.*

During trial, Appellant was called as a witness in Respondent's case. Throughout that questioning, the district court took opportunities to explain the process and the implication of the rules of evidence on the questions and testimony provided. See, e.g. Tr. Vol 1, p.13, L.20-p.16, L.7; p.62, L.12-p.64, L.10; p. 78, L.14-19. The district court went out of its way prior to and during trial to help Appellant understand the rules of evidence and procedure.

What Appellant appears to be arguing for is that the trial judge assume the role of counsel for an unrepresented litigant – a position that is not supported by Idaho law (Appellant cites none in his brief), or the U.S. Supreme Court case of *Turner v. Rogers*, relied upon heavily by Appellant in his argument on appeal.

In *Turner v. Rogers*, 564 U.S. 431, 131 S.Ct. 2507 (2011), the United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment does not automatically require a state to provide counsel at civil contempt proceedings to an indigent noncustodial parent who is subject to a child support order, even if that individual faces incarceration. *Turner* at 433. The holding in *Turner* was limited to circumstances involving violations of due process in civil cases where the remedy considered was incarceration. *Id.* at 433-34. This case involves claims by Respondent against Appellant for breach of contract and failure to indemnify, and by Appellant against Respondent for breach of contract and money damages. *Turner* is not binding law on the issue of Appellant's claimed right to additional "assistance or guidance...regarding various aspects of procedure, including the procedure for submitting his witnesses, exhibits and evidence of damages to the court" in a breach of contract case. Appellant's Brief, p. 33.

Furthermore, even if *Turner* was applicable, Appellant was afforded more than adequate procedural safeguards in the form of clear scheduling orders and notices of trial, which included deadlines for submission of exhibits and witnesses, which Appellant generally ignored. R. pp. 2-10. Appellant appeared before the district court at multiple hearings and during trial was given numerous chances to ask questions of the district court and receive answers to those questions. *Id.*, Tr. Vol 1, p.13, L.20-p.16, L.7; p.62, L.12-p.64, L.10; p.78, L.14-19; p.162, L.17-p.164, L.6.

In addition to the *Turner* case, Appellant cites to and provides to the Court practice manuals from two foreign jurisdictions in support of his request that the district court's dismissal of his claims following trial be overturned. Appellant also appears to request a change in the Idaho Code of Judicial Conduct, and other rules of procedure and evidence, supporting a more active role by the trial judge in civil cases involving self-represented litigants. As previously discussed, Idaho has a rule regarding the relationship between judges and self-represented litigants. Rule 2.2 of the Idaho Code of Judicial Conduct, and the supporting comments, address the need for impartiality, and the extent to which judges should accommodate unrepresented parties. Appellant had more than 21 months from the time the Complaint was filed to the time the case was tried below to familiarize himself with the court's scheduling orders, and the Idaho Rules of Civil Procedure and Evidence. Appellant has proven himself more than capable from Respondent's perspective in crafting arguments and pleadings. However, Appellant is not entitled to the district court adopting the role of counsel for the Appellant as he essentially requests. For these reasons, Respondent respectfully submits that the Appeal as to the district court's role in assisting and guiding Appellant be denied, and that the district court's decision to dismiss Appellant's claims be affirmed.

B. The District Court's Decision To Deny Appellant's Motion To Continue Was Not An Abuse Of Discretion.

1. Standard of Review

A decision to deny a motion for a trial continuance is vested in the sound discretion of the trial court. *Doe v. Doe*, 149 Idaho 392, 398, 234 P.3d 716, 722 (2010); *Villa Highlands, LLC v. Western Community Ins. Co.*, 148 Idaho 598, 607, 226 P.3d 540, 549 (2010) ("A decision to grant

or deny a motion for continuance is vested in the sound discretion of the trial court."); *Gunter v. Murphy's Lounge, LLC*, 141 Idaho 16, 24, 105 P.3d 676, 684 (2005) ("A decision to grant of motion for continuance is vested in the sound discretion of the trial court."); *Vendelin v. Costco Wholesale Corp.*, 140 Idaho 416, 425, 95 P.3d 34, 43 (2004).

"In reviewing such a discretionary decision, this Court engages in a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason." *Vendelin*, 140 Idaho at 425, 95 P.3d at 43 (citing *State v. Ransom*, 124 Idaho 703, 706, 864 P.2d 149, 152 (1993)).

"The exercise of such discretion will not be disturbed on appeal unless it was so arbitrary that it deprived a litigant of a fundamentally fair trial." *Krepcik v. Tippett*, 109 Idaho 696, 699, 710 P.2d 606, 609 (Idaho App., 1985). The appellant bears the burden to establish that the denial of a motion for continuance was so arbitrary that it deprived the appellant of a fundamentally fair trial. See *Everhart v. Washington County Road and Bridge Dept.*, 130 Idaho 273, 275, 939 P.2d 849, 851 (1997) ("[I]n order to show that the trial court abused its discretion, the *appellant* from the denial of a motion to continue trial must show that his or her substantial rights were prejudiced by denial of the motion." (emphasis in original).

This case was initiated by the Plaintiff, Paula Woodward, on January 8, 2018. R. pp. 11-19. The case was continued once, and trial was held on October 23, 2019 – more than 21 months after the initial complaint was filed. R. pp. 2-10. Appellant requested a second continuance of the

trial date (the case had already been continued once to allow Appellant additional time to obtain counsel to represent him) on October 8, 2019. R. p. 8. This motion was filed 15 days before trial. No notice of hearing was provided by Appellant when the motion to continue was filed. *Id.* In essence, Appellant appeared for trial on October 23, 2019 and hoped the district court would grant his untimely motion for a continuance, despite the deadline for such filings having elapsed long before pursuant to the district court's scheduling order.

In not granting Appellant's motion to continue on the eve of trial, the district court acted within the boundaries of its discretion, knowing that the opposing parties and counsel had relied on the dates and deadlines set forth in the scheduling order, and prepared accordingly. These preparations included a representative of Respondent flying across the country to personally attend the trial and testify during the proceedings. Tr. Vol 1, p.7, L.12; p.71, L.16-21. The district court exercised reason in allowing the trial to proceed as scheduled under these circumstances, and that decision should not be reversed on appeal.

IV. ATTORNEY FEES ON APPEAL

A. Appellant Is Not Entitled To An Award Of Costs.

Under Idaho law, where a party requests attorney fees on appeal but fails to present any argument as to why the party is entitled to such fees, the Court will not address the issue because the party has failed to comply with Idaho Appellate Rule 35. *Cuevas v. Barraza*, 155 Idaho 962, 965, 318 P.3d 952, 955 (2014) (citing *Weaver v. Searle Brothers*, 129 Idaho 497, 503, 927 P.2d 887, 893 (1996); *Morrison v. Northwest Nazarene Univ.*, 152 Idaho 660, 666-67, 273 P.3d 1253, 1259-60 (2012)).

In this case, Appellant requested an award of costs and other expenses pursuant to Idaho Appellate Rules 35(b)(5) and 41. See Appellant's Brief, p. 51. However, Appellant failed to present any argument as to why Appellant is entitled to the same. Since Appellant failed to present any such argument, Appellant has failed to comply with Idaho Appellate Rule 35. Accordingly, Respondent respectfully requests the Court deny Appellant's request for costs on that basis. Additionally, however, Respondent respectfully submits that Appellant should not be the prevailing party in this matter because the trial court appropriately dismissed the case and requests that Appellant's request for costs be denied for that reason as well.

B. Respondent Should Be Awarded Attorney Fees And Costs On Appeal Pursuant To I.C. § 12-121 And Idaho Appellate Rules 40(a) And 41.

Respondent respectfully request this Court award respondent's attorney fees and costs pursuant to Idaho Code § 12-121 and Idaho Appellate Rules 41 and 40(a).

Idaho Code § 12-121 permits an award of reasonable attorney fees to a prevailing party. I.C. § 12-121. "To receive an I.C. § 12-121 award of fees, the entire appeal must have been pursued frivolously, unreasonably, and without foundation." *Snider v. Arnold*, 153 Idaho 641, 645, 289 P.3d 43, 47 (2012) (*Carillo v. Boise Tire Co., Inc.*, 152 Idaho 741, 756, 274 P.3d 1256, 1271 (2012); *Beus v. Beus*, 151 Idaho 235, 242, 254 P.3d 1231, 1238 (2011). "Such 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." *Id.* (citing *City of Boise v. Ada County*, 147 Idaho 794, 812, 215 P.3d 514, 532 (2009).

Appellant has failed to show that the trial court erred in applying well-established law on the issues raised on appeal. Instead, Appellant relies on practice materials and suggestions from foreign jurisdictions to suggest the district court "inadequately" assisted and/or guided Appellant throughout the pre-trial and trial phases of the case below. In doing so, Appellant argues for procedural and rule changes which would conflict with judicial ethics, and are wholly unsupported by Idaho law. In this regard, it is frivolous, unreasonable and without foundation under Idaho law. Given these considerations, Respondent respectfully requests the Court grant an award to Respondent of its reasonable attorney fees pursuant to Idaho Code § 12-121 and Idaho Appellate Rule 41.

Respondent also respectfully requests costs as a prevailing party on this appeal pursuant to Idaho Appellate Rule 40(a).

V. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the rulings of the trial court in this matter be affirmed, in all respects, and that the dismissal of this matter by the trial court be upheld.

Dated this 19th day of July, 2021.

FORD, DALTON & MORTENSEN, P.S.

WESLEY D. MORTENSEN, ISB# 9354
Attorney for Respondent, Four Seasons

CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury under the laws of the State of Washington that I have served a true and correct copy of RESPONDENT'S BRIEF, upon the individual(s) listed by the following means:

Horst Von Bloes PO Box 1502 Hayden, ID 83835	_____ Hand Delivered __X__ U.S. Mail _____ Overnight Mail _____ Fax Transmission

DATED this 19th day of July, 2021.

Genera Smith