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IN THE SUPREME COURT OF THE STATE OF IDAHO

H2O ENVIRONMENTAL, INC., an Idaho Corporation,

Plaintiff/Appellant,

vs.

FARM SUPPLY DISTRIBUTORS, INC.,
an Oregon corporation

Defendant/Respondent.

Supreme Court Case No. 45116

District Court No. CV-OC 1500236

RESPONDENT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

HONORABLE GERALD F. SCHROEDER, DISTRICT JUDGE PRESIDING

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I.

STATEMENT OF THE CASE

A. Nature of the Case

The underlying dispute in this matter involved a disagreement over the reasonableness of certain charges H2O, a multi-state, multi-base, corporation (TR. 30), unilaterally imposed on Farm Supply Distributors, a small agricultural transportation company located in Enterprise, Oregon. (TR. 86). This appeal arises from the amount of attorney fees the Magistrate Court awarded as reasonably incurred following a one-day court trial.

B. Course of Proceedings

Following the trial in this matter, H2O timely moved for an award of costs and attorney fees. R. 285. It supported the motion with a Memorandum in Support of Motion for Costs and Attorney Fees and the Affidavit of Vaughn Fisher in Support of Motion for Costs and Attorney Fees. R. 286-287; 339.

Farm Supply opposed H2O's motion on the basis that, among other things, the vast majority of its attorney fees were the result of unreasonable litigation choices. R. 350 – 440. The Magistrate found Farm Supply's reasoning concerning the I.R.C.P. 54(e)(3) factors persuasive and adopted it as her own. Tr, Vol 2, P. 3, LI. 10-13 and P. 4, LI. 15-17. In reaching her decision she determined that most of the attorney fees were not reasonably incurred and so limited the award to \$7,354.65, as the amount reasonably incurred. *Id.*; R. 442.

H2O appealed the award of fees to the District Court on three issues:

1. Whether the Magistrate Court abused its discretion by limiting the award of attorney fees to a predetermined amount; R. 463.

2. Whether the Magistrate Court abused its discretion because of its perception of the parties' settlement conduct; R. 465.
3. Whether the Magistrate Court abused its discretion by adopting clearly erroneous factual findings. R. 467

Farm Supply responded to the appeal arguing that:

1. The Magistrate Court did not pre-determine the attorney fee award; R. 490.
2. The Magistrate Court considered all of the factors provided for by rule in making its attorney fee award; R. 491-493.
3. H2O failed to preserve its arguments in the Magistrate Court; R. 493 and
4. It was proper for the Magistrate Court to consider the history of the litigation. R. 494

The District Court affirmed the Magistrate and H2O timely appealed.

C. Statement of Facts

H2O is a Nevada environmental cleanup company with locations in Arizona, Idaho, Nevada and Utah. R. 13; Tr, Vol. 1, P. 30, LI. 14-18. It unilaterally sets its rates based upon the nature of the work involved, including whether it is done on an emergent basis. Tr, Vol. 1, P. 33, L. 10 - P. 34, L. 7.

H2O was called out to clean up a fuel spill at a Maverick station in Boise in July 2014 for Farm Supply. Tr, Vol. 1, P. 15, LI. 5-7. H2O failed to supply pricing prior to commencing work and there was no agreement reached regarding pricing. R.

277. H2O billed Farm Supply in the total amount of \$45,828.19, of which \$38,473.55 was paid and \$7,354.64 was disputed. R. 269, Para. 10.

H2O filed suit to recover the disputed amount in contract and for breach of the covenant of good faith and fair dealing. R. 013 – 016. There was no dispute that H2O had performed the work, or the quality of it. R. 271, Para. 20. Rather, the dispute centered around whether a contract had been formed and whether H2O's unilateral charges were reasonable. R. 017 – 021. H2O ultimately recovered on a claim for breach of an express oral contract and was awarded the disputed amount of \$7,354.64. R. 281.

Following entry of judgment, H2O moved for an award of costs and fees including \$53,403.50 in attorney fees. R. 285 – 349. Although the memorandum in support identified the appropriate areas of inquiry under I.R.C.P. 54(e)(3), it provided little-to-no substantive analysis of the application of those factors, either generally or under the circumstances of the case. R. 339 – 349.

Farm Supply opposed the motion with a Response in Opposition to Plaintiff's Motion for Costs and Fees and supported that response with an affidavit from its counsel. R. 350 – 440. Farm Supply opposed H2O's request for attorney fees on the basis that, among other things:

1. Rather than pursue its claims on the simple and straightforward basis available to it, the vast majority of H2O's fees were incurred as a result its pursuit of claims that had no factual basis; R. 356-357.

2. There was nothing novel or difficult about the case. Rather the questions involved were of the most basic nature to the practice of law; R. 358.
3. Given the fundamental nature of the questions involved, neither specialized skill nor significant experience were required to prosecute the claim; R. 358.
4. The rates H2O's counsel charged far exceeded the rates charged by other attorneys in the area, including counsel for Farm Supply, for work of a similar nature; R. 358.
5. There was nothing unique about the circumstances of the case that would justify an attorney fee award so out of proportion to the amount sought; R. 359.
6. There was nothing undesirable about the nature of the case to justify a larger award to encourage attorneys to provide representation to individuals who may otherwise have difficulty procuring representation; R360.
7. H2O failed to avail itself of the even the most basic and economical discovery procedures, propounding no interrogatories and only a single request for production directed to Farm Supply's insurance policy; R. 361.
8. H2O engaged in discovery procedures which it was forewarned would not yield the information sought; R. 362.

9. Failing to disclose its own experts in an effort to force the Magistrate Court to exclude Defendant's experts; R. 362.
10. Offering an affidavit to defeat a motion for summary judgment that was, in fact, false; R. 362.
11. H2O elected to file litigation in spite of the insurer for Farm Supply's offer to provide additional information H2O had requested; R. 363.
12. H2O's own litigation mismanagement invited much of the motion practice that occurred in the case; R. 363 – 364; and
13. H2O failed to negotiate in good faith. R. 364.

H2O did not dispute Farm Supply's position in any respect. It elected not to file a reply brief and declined to provide argument at the hearing on the its motion. Tr, Vol. 2, P. 5, LI. 11-14. After considering the materials, and based on the analysis of the I.R.C.P. 54(e)(3) factors in Farm Supply's brief, the Magistrate found the reasonable amount of attorney fees incurred was \$7,354.64. Tr, Vol. 2, P. 3, LI. 10-23.

H2O timely appealed to the District Court asserting only three manners in which the Magistrate Court allegedly abused its discretion:

- Predetermining that the reasonable amount of fees awarded could not exceed the amount in controversy; R. 463.
- By adopting Farm Supply's position that H2O failed to negotiate in good faith; R. 465. and
- By basing its decision on findings of fact that were clearly erroneous. R. 467.

R. 450 – 470.

Farm Supply responded to H2O's appeal on the basis that:

- Contrary to H2O's mischaracterization, the Magistrate Court had not predetermined the amount of the attorney fee award;
- H2O had waived any objection to the facts the Magistrate Court considered by failing to object in the lower court; and
- That the Magistrate Court properly based its award on a consideration of all of the I.R.C.P. 54(e)(3) factors, including the litigation and negotiation history of the case.

R. 482 – 489.

The District Court considered each of H2O's issues and assumed, without deciding, that they had been properly preserved below. R. 520 – 527. Nevertheless, it affirmed the Magistrate's decision, finding that, contrary to H2O's representation, did not predetermine the amount of fees that would be awarded in the case. R. 525. It also found that the Magistrate considered each of the I.R.C.P. 54(e)(3) factors. R. 524. Finally the District Court found that the Magistrate made her determination primarily based upon the low factual and legal complexity of the case in addition to the amount in controversy. R. 526. Based on the foregoing, the District Court found that the Magistrate had not abused her discretion and affirmed the attorney fee award. R. 527. H2O timely appealed that decision.

II. ADDITIONAL ISSUES ON APPEAL

1. Whether H2O properly preserved the issues it now appeals.

III.

ATTORNEY FEES ON APPEAL

Farm Supply is entitled to attorney fees on appeal pursuant to Idaho Code § 12-120(3) and Idaho Code 12-121. Idaho Code § 12-120(3) provides for recovery of attorney fees by the prevailing party in a suit based upon a commercial transaction not only at the trial level, but also on appeal. *Bryan Trucking, Inc. v. Gier*, 160 Idaho 422, 374 P.3d 585, 590 (2016). Idaho Code § 12-121 provides for recovery of attorney fees where an appeal has been brought or pursued frivolously. As will be shown below, H2O has consistently misstated the bases upon which the Magistrate Court rendered its award of attorney fees. For that reason, Idaho Code § 12-121 provides an alternate basis upon which to grant Farm Supply its attorney fees incurred in this appeal.

IV.

STANDARD OF REVIEW

This Court has articulated the standard of review for matters such as this one as follows:

The Supreme Court reviews the trial court (magistrate) record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure.

Bailey v. Bailey, 153 Idaho 526, 529, 284 P.3d 970, 973 (2012). Under the above standard, this Court does not review the magistrate court's decisions. Rather, this Court affirms or reverses the decision of the District Court. *Id.* Furthermore, although this Court exercises free review over the application of procedural rules, the

determination of a reasonable attorney fee is within the discretion of the trial court. *Id.*

When an exercise of discretion is involved, Idaho's appellate courts conduct a three-step inquiry: "(1) whether the trial court properly perceived the issue as one of discretion; (2) whether that court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by the exercise of reason." *Id.* "The burden is on the party opposing the award to demonstrate that the district court abused its discretion." *Id.*

V. ARGUMENT

1. *The District Court Properly Affirmed the Magistrate Court's Decision*

The District Court correctly perceived its role as an appellate court in its review of the attorney fee award. R. 521. Furthermore, it noted the correct standard for review of that decision – abuse of discretion – and that H2O bore the burden of proving that the Magistrate had abused her discretion. R. 522. Finally, it applied the three-step analysis for review of such a discretionary decision, and correctly determined that there was no abuse of discretion. R. 522 - 527.

In its review, the District Court correctly acknowledged that I.R.C.P. 54(e)(3) sets forth the criteria a court must consider in determining the amount of an attorney fee award. R. 524; *Bailey v. Bailey*, 153 Idaho 526, 529, 284 P.3d 970 (2012). Furthermore, "[t]he law is clearly settled that when awarding attorney fees in a civil action, the district court must consider the I.R.C.P. 54(e)(3) factors, but need not make specific written findings on the various factors. *Lake v. Purnell*, 143 Idaho 818, 820,

153 P.3d 1164 (2007)(trial court did not abuse its discretion in placing significant weight upon one I.R.C.P. 54(e)(3) factor.) A court awarding attorney fees acts within the bounds of its discretion if it has sufficient information available to it to consider the relevant factors (whether from party submissions or the court's own knowledge) and then considers the relevant factors in rendering its decision. See *Bailey*, 153 Idaho at 530-531.

In this case, the Magistrate not only presided over the proceeding, but was the trier of fact. Following that trial, H2O filed its motion for costs and fees and support it with a discussion of the I.R.C.P. 54(e)(3) factors, as well as a detailed breakdown of the attorney fee billings in the matter. R. 285 – 349. Farm Supply also submitted its memorandum in opposition that provided a detailed analysis of the I.R.C.P. 54(e)(3) factors under the facts of this case. R. 350 – 368. It also submitted an affidavit in opposition to the request for attorney fees, supplied evidence for consideration under a number of the factors. R. 369 – R440. At the hearing on the matter, the Magistrate acknowledged reviewing the submissions. TR. Vol. 2, P. 2, LI. 4-7. She further acknowledged that Farm Supply's submission did a "very good job of going through all of the factors that I, as a judge, am supposed to look at in terms of determining what are reasonable fees." TR. Vol. 2, P. 3, LI. 11-13. She then adopted that analysis as her own. Tr, Vol. 2, P. 3, LI. 20-21. In other words, the Magistrate had sufficient information available to her to consider each of the factors, she considered the factors and then rendered her decision based on those factors. Consequently, the District Court properly affirmed her decision.

2. *H2O failed to preserve its argument that the Magistrate Court arbitrarily limited the fee award to the amount in controversy.*

H2O contends that the Magistrate improperly limited the amount of any attorney fee award to the amount in controversy. Appellant's Brief, P. 13. There are two problems with the issue. First, H2O failed to raise, and so preserve, the issue in the lower courts. "The longstanding rule of this Court is that we will not consider issues that are raised for the first time on appeal." *Parsons v. Mutual of Enumclaw Ins. Co.* 143 Idaho 743, 152 P.3d 614 (2007).

Second, even if properly preserved, it has failed to support the issue with argument applying the cases upon which it relies, to the facts of this case. Claims of error are waived where an appellant fails to support citations with argument related to the relevance of the citation. *Bach v. Bagley*, 148 Idaho 784, 790, 229 P.3d 1146, 1152 (2010) ("Where an appellant fails to assert his assignments of error with particularity and to support his position with sufficient authority, those assignments of error are too indefinite to be heard by the Court. A general attack on the findings and conclusions of the district court, without specific reference to evidentiary or legal errors, is insufficient to preserve an issue. This Court will not search the record on appeal for error."); *Wolford v. Montee*, 161 Idaho 432, 443, 387 P.3d 100 (2016)(Citation of authority, without analysis or reference to application to the record, insufficient to support assignment of error.)

3. *The District Court Properly Concluded the Magistrate Court Did Not Predetermine the Attorney Fee Award.*

H2O also argues that "[t]he attorney fee award was also problematic because it was a pre-determination of the Rule 56(e)(3) [sic] factors." Appellants Brief,

P. 21. Although it cites to *Medical Recovery Services, LLC v. Jones*, 145 Idaho 106, 175 P.3d 795 (Ct. App. 2007) in support of that proposition, it provides no citation to anywhere in the record that the Magistrate made such a predetermination. Furthermore, the case it relies upon is inapposite to this case.

In *Medical Recovery*, the Court of Appeals determined that the magistrate court had not abused its discretion, despite the fact that it entered an award before submission of either a memorandum of costs, or an affidavit in support and even though the magistrate flatly asserted that it would not change the award regardless of the documentation submitted. *Id.* at 110. The Court of Appeals affirmed the decision because, in spite of its earlier statements, the magistrate actually held a hearing after submission of the memorandum and affidavit and “did consider the time actually expended by M.R.S.’s counsel and the factors enumerated in the rule.” *Id.*

By way of contrast, the Magistrate in this matter did not render an attorney fee award until after Plaintiff’s motion for such an award. Furthermore, although the Magistrate indicated she would find it difficult to award more than the amount at issue, H2O has failed to identify any place in the record where she ruled such an award out. Furthermore, she did not rule out the possibility of being convinced to award a greater amount. R. 525. Most importantly, however, the Magistrate went on to indicate that she had, in fact, considered the I.R.C.P. 54(e)(3) factors and found Farm Supply’s analysis on those factors persuasive. Tr, Vol. 2, P. 3, Ll. 10-13. Thus the District Court correctly concluded that she had acted properly within her discretion.

H2O also contends that the reason the fee award in *Medical Recovery Services* was upheld was a determination that “the magistrate court did, in fact, explain

why it believed fees in excess of \$200.00 were incurred unreasonably. And those reasons were well articulated and made sense.” Appellant's Brief, P. 21. It then offers argument concerning the reasonableness of its prosecution of the matter. There are two problems with H2O's position. First, the Court of Appeals did not weigh the reasons articulated by the magistrate in *Medical Recovery Services* to determine whether it agreed with the outcome. Rather, it reviewed the comments to determine whether the magistrate had entered the award to punish perceived misconduct and concluded it had not. 145 at 111. After its review, the Court of Appeals determined that the lower court had reduced the amount it awarded based on a lack of communication that could have helped avoid the fees in the first place, not to punish perceived misconduct. *Id.*

The second problem with H2O's position is that it asks this Court to weigh the reasonableness of H2O's litigation decisions i.e. apply an incorrect standard of review and substitute its judgment on the matter. The applicable question before this Court is not whether this Court would have rendered the same decision. Rather, the question is whether the District Court properly found that the Magistrate followed the correct standard in reaching her decision. *Bailey*, 153 Idaho at 529. It did.

In considering whether the Magistrate acted in accordance with the correct standards, the District Court provided an extensive review of the record. R. 524-525. In particular, the District Judge found that the Magistrate's statement that she would find it "very hard" to convince her to change her mind, not impossible and that such a statement was not a predetermination. R. 525.

The District Court also found that the Magistrate considered the I.R.C.P. 54(e)(3) factors when he noted the Magistrate's agreement with Farm Supply's position that H2O's attorneys had not spent their time efficiently, by virtue of her conclusion that "[T]his was not a hard factual case . . . It was not a hard legal case . . . It was the facts and putting them on." R. 525. The District Judge also highlighted the Magistrate's acknowledgement, and adoption, of Farm Supply's analysis of the I.R.C.P. 54(e)(3) factors and their application to this case. R. 524. Finally, he found that the Magistrate's acknowledgement and adoption of the I.R.C.P. 54(e)(3) analysis set forth in Farm Supply's brief in opposition, satisfied the court's obligation to consider each of the factors. Nothing more was required under Idaho law, consequently he correctly affirmed the decision. *Bailey*, 153 Idaho 529.

4. *The District Court correctly concluded the Magistrate Court acted within the bounds of its discretion in rendering the attorney fee award*

H2O next argues that the "District Court did not contemplate whether the Rule 53(e)(3) [sic] factors were properly applied (or applied at all)." Ironically it is H2O that fails to properly consider or apply the very factors it contends were absent from the Magistrate Court's decision. As will be shown below, not only is H2O incorrect, even if it were not, it failed to preserve the issue for appeal.

- a. *Idaho law requires consideration of litigation practices in determining the reasonableness of an attorney fee award.*

H2O raises for the first time on appeal the question of whether litigation mismanagement and inefficiencies can provide a reasoned basis to reduce attorney fee awards. Appellant's Brief, P. 15. However, since it failed to raise the issue below, it

has waived the issue on appeal. 143 Idaho 743. Even if preserved, however, Idaho rules and case law both confirm such considerations are appropriate.

Among the factors I.R.C.P. 54(e)(3) provides for consideration in determining the amount of an attorney fee award, are the novelty and difficulty of the questions and the skill requisite to perform the legal service properly. I.R.C.P. 54(e)(3)(B)-(C). Such considerations reflect directly upon the efficiency with which a matter is litigated – more seasoned, skilled attorneys should handle matters more efficiently. Similarly, less complex litigation should be handled more efficiently. Thus, the rule expressly provides for the consideration of litigation efficiency in determining whether attorney fees were reasonably incurred.

The rule also requires consideration of the amount of time and labor "required". I.R.C.P. 54(e)(3)(A). In fact, in one of the cases H2O relies upon elsewhere, the Idaho Court of Appeals held that "although the time and labor actually expended is to be considered, it is also to be evaluated under a standard of reasonableness. [Citation omitted.] An attorney cannot spend his or her time extravagantly and expect to be compensated by the party who loses. Hence, a court may disallow fees that were unnecessarily or unreasonably incurred or that were the product of attorney 'churning'." *Action Collection Services v. Bigham*, 146 Idaho 286, 291, 192 P.3d 1110 (Ct. App. 2008)(Emphasis added.) Thus, not only does the rule incorporate the question of litigation efficiencies into the evaluation, but Idaho case law does as well.

H2O cites *Meldco, Inc. v. Hollytex Carpet Mills, Inc.*, 118 Idaho 265, 796 P.2d 142 (Ct. App. 1990) in support of its position that the trial court should not consider

H2O's litigation mismanagement. Its reliance upon the quoted language is misplaced. The issue in that case was whether language in the complaint triggered a manufacturer's duty to defend under Idaho's product liability statute and, consequently, whether the retailer could recover attorney fees under that statute. In that decision, the Court of Appeals stated for purposes of determining whether the duties under that statute had been triggered:

"[T]he mere allegations in a complaint do not dictate whether indemnity will be allowed under the statute. [Citations omitted.] As we reasoned in *Wefco*, where the manufacturer is held liable and the retailer is absolved of liability, the availability of fees and costs 'should not rest on the presence or absence of such pleading by a third party, who through an over abundance of caution or optimism, alleges more (or less) than he can prove.' [Citations omitted.] Rather, the availability of costs and attorney fees should be made upon the findings of the trier of fact, and not upon the allegations made in the parties' complaint."

Id. at 272. Simply put, the passage relied upon by H2O has nothing to do with consideration of whether attorney fees were reasonably incurred within the context of I.R.C.P. 54(e)(3) factors.

Finally, even absent the specific criteria set forth in (A)-(K), the rule expressly permits the trial court to consider "any other factor which the court deems appropriate in the particular case." I.R.C.P. 54(e)(3)(L). This Court has acknowledged that it is appropriate to consider a party's litigation tactics and conduct in determining whether an attorney fee was reasonably incurred. *Lettunich v. Lettunich*, 145 Idaho 746, 751, 185 P.3d 258 (2008). Based on the foregoing, not only did H2O waive its argument, even if preserved, it is directly contrary to Idaho law.

- b. *The magistrate did not rely exclusively on the amount in controversy in making her award.*

H2O also argues for the first time on appeal that it is improper to rely exclusively on the amount in controversy to set the amount of attorney fees. Appellant's Brief, P. 22. That issue has been waived as it was not raised in the courts below.

Even if preserved, however, H2O cites nowhere in the record to support its position. In affirming the Magistrate in this matter, the District Court noted that the Magistrate had acknowledged considering all of the factors and identified support in the record for that finding. R. 524. The District Court also found that the Magistrate agreed that H2O's attorneys had not spent their time on the case efficiently. R. 524. Furthermore, the District Court found that, in addition to relying upon the amount in controversy, the primary reason the Magistrate awarded the amount of fees she did, was the low degree of factual and legal complexity presented in the case. R. 526. H2O cites nothing in the record which contradicts that finding.

H2O next argues for the first time on appeal that there is no authority for the use of the amount in controversy as establishing a baseline and/or a proportionality requirement for attorney fee awards. As with previous issues raised, Plaintiff cites nothing in the record to support the proposition that the Magistrate established such a baseline. However, even if she had done so, such an approach was still within the bounds of the Magistrate's discretion because she had the information required to, and did, consider each of the I.R.C.P. 54(e)(3) factors. *Medical Recovery Services*, 145 Idaho 106, 111.

In *Medical Recovery*, not only did the trial court employ a "baseline" but it actually predetermined the award it would make in the case and made the award prior to submission of a memorandum of costs or supporting documentation. *Id.* at 110. The Idaho Court of Appeals nevertheless affirmed the award because the record made clear that the court did, in fact, consider the I.R.C.P. 54(e)(3) factors following submission of the memorandum of costs and supporting documentation. As discussed above, the record demonstrates that the Magistrate considered all of the required factors and the District Court so found. Consequently her decision was correctly affirmed.

H2O next contends that the magistrate's fee award appears to have been "pulled out of a [sic] thin air", relying upon *Johannsen v. Utterbeck*, 146 Idaho 423, 196 P.3d 3341 (2008). Appellant's Brief, P. 24. That reliance is also misplaced. In that case, this Court determined the trial court abused its discretion because the trial court failed to consider all of the I.R.C.P. 54(e)(3) factors. *Id.* at 433. The court in that matter did not consider the time actually spent and, based on the dearth of information in the record, it appeared that the figure was simply pulled from thin air.

The record on appeal is far different in this matter. Here, the Magistrate expressly acknowledged that she considered each of the I.R.C.P. 54(e)(3) factors, together with the parties' submissions. Tr, Vol. 2, P. 2, LI. 6-7. Additionally, she had both H2O's billing breakdown together with Farm Supply's line-by-line response thereto. R. 296 – 338 and 369 – 385. Finally, the Magistrate acknowledged and adopted Farm Supply's reasoning with respect to each of the elements as set forth in its Response in Opposition to Plaintiff's Motion for Costs and Fees. Tr, Vol. 2, P. 3, LI. 10-22. *Johannsen* is simply inapposite.

c. *The Magistrate's award correctly struck the balance sought under Idaho law.*

Finally, H2O argues for the first time on appeal, that the Magistrate's approach encourages "petty tyranny" and sanctions expensive, unnecessary litigation, relying upon 7th Circuit case law that does not touch upon Idaho's attorney fee statutes or the proper analysis under those statutes. Even if H2O preserved the argument, it ignores both Idaho law and key distinctions from the 7th Circuit considerations.

Notably, this state has struck a balance between encouraging settlement through the enactment of fee-shifting statutes, while at the same time taking steps to protect against inefficient or unscrupulous litigation practice by limiting recovery to those fees reasonably incurred as determined through the application of the I.R.C.P. 54(e)(3) factors in the event that litigation is not avoided.¹ "An attorney cannot spend his or her time extravagantly and expect to be compensated by the party who loses. Hence, a court may disallow fees that were unnecessarily or unreasonably incurred or that were the product of attorney 'churning'." *Action Collection Services v. Bigham*, 146 Idaho 286, 291, 192 P.3d 1110 (Ct. App. 2008)(Emphasis added.) The Magistrate in this matter recognized both the right to recovery of fees, as well as the limitation of that right to those fees it found reasonably incurred after application of the factors and acted in accordance with Idaho law.

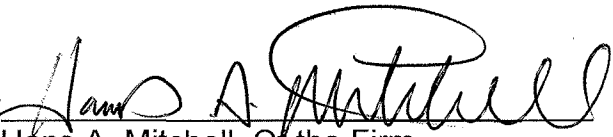
¹ See *Anderson v. Goodlife*, 140 Idaho 446, 449, 95 P.3d 64 (2004)(Obvious purpose of Idaho Code § 12-120(1) to discourage litigation.)

**VI.
CONCLUSION**

For the foregoing reasons, Farm Supply respectfully requests that the District Court's decision be affirmed in all respects and that it be awarded its costs and attorney fees on appeal.

DATED this 13th day of February, 2018.

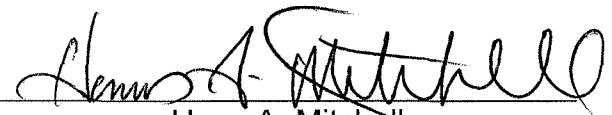
PERKINS, MITCHELL, POPE & McALLISTER LLP

By 
Hans A. Mitchell, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of February, 2018, I served a true and correct copy of the foregoing RESPONDENT'S BRIEF by delivering the same to each of the following, by the method indicated below, addressed as follows:

Vaughn Fisher	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Rebecca Rainey	<input type="checkbox"/>	Hand-Delivered
FISHER RAINEY HUDSON	<input type="checkbox"/>	Overnight Mail
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Hans A. Mitchell