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I. INTRODUCTION

This case arises from an order entered by Administrative District Judge Melissa Moody of the Fourth Judicial District on November 6, 2017 finding Mark Colafranceschi to be a vexatious litigant under Idaho Court Administrative Rule 59. (R. at 451-460.) Mr. Colafranceschi now appeals that order.

Mr. Colafranceschi's central allegation is that Judge Moody's order is unfair because other people who have been declared vexatious litigants have engaged in more egregious behavior than his; her determination that he is a vexatious litigant focused on conduct in one case as opposed to multiple; and Judge Moody purportedly either disregarded or improperly weighed evidence in reaching her decision.

None of these arguments establish that Judge Moody abused her discretion. Idaho Court Administrative Rule 59(d) allows an administrative judge to declare a person to be a vexatious litigant if they find that person has engaged in any one of four categories of conduct. The category applied by Judge Moody in this case is subsection (3), which prohibits three types of conduct: (1) repeatedly filing unmeritorious motions, pleadings, or other papers; (2) conducting unnecessary discovery; and (3) engaging in other tactics that are frivolous or solely intended to cause delay. Idaho Ct. Admin. R. 59(d)(3). Engaging in this conduct "[i]n any litigation" is sufficient to support a vexatious litigant determination. *Id.* In his divorce proceeding, Mr. Colafranceschi propounded 380 discovery requests, which included requests for information related to his ex-wife's sexual history and whether she had been raped by her ex-husband. (*See* R. at 456 (citing *Aff. of Scott Ludwig Ex 8*, at 3, 6, *Neustadt v. Colafranceschi*, No. CV 2016-125-C (Valley Cty.).)

When she declined to respond, Mr. Colafranceschi filed several motions to compel. (*Id.*)

Judge Moody found the discovery requests unnecessary and frivolous, and the subsequent motions to compel answers likewise unmeritorious. (*Id.*) She properly applied the plain language of Rule 59 to Mr. Colafranceschi's conduct in reaching her determination. (*Id.*) Mr. Colafranceschi's belief that he did not behave badly enough to justify the entry of a prefiling order does not mean that Judge Moody acted outside the boundaries of her discretion in doing so. In her order, Judge Moody expressly acknowledged the gravity of a vexatious litigant finding, but determined Mr. Colafranceschi's behavior was sufficient to warrant the entry of a prefiling order nonetheless. (*Id.* at 455-57.)

For the foregoing reasons set forth in greater detail below, this Court should affirm Judge Moody's vexatious litigant determination and uphold the prefiling order.

II. FACTUAL AND PROCEDURAL BACKGROUND

Mr. Colafranceschi has been involved in a divorce proceeding with his former spouse, Julie Neustadt, since a petition for divorce was filed on May 6, 2016. (R. at 66 (citing Petition for Divorce, *Neustadt v. Colafranceschi*, No. CV 2016-125-C (Valley Cty. May 6, 2016)).

On March 16, 2017, counsel for Ms. Neustadt filed a motion requesting a referral to the presiding Administrative District Judge for a determination as to whether Mr. Colafranceschi should be declared a vexatious litigant. (R. at 61.) Mr. Colafranceschi filed two objections to that motion; one on March 20, 2017, and another on March 29, 2017. (*Id.*) He also filed a response on April 12, 2017. (*Id.*)

Judge Moody entered her "Proposed Findings and Notice of Intent to Issue a Prefiling

Order” on April 19, 2017. (R. at 61-69.) Her proposed findings state that Mr. Colafranceschi’s conduct satisfied three of the four bases upon which a person might be declared a vexatious litigant under Rule 59(d). (R. at 62-63 ¶¶ A, B, C making findings under 59(d)(1), (2) and (3), respectively).

His conduct satisfied 59(d)(1) because he had commenced, prosecuted or maintained three litigations in the past seven years *pro se* that had been decided against him. (R. at 62 (citing *Colafranceschi v. Schoonover*, Valley County case no. CV 2010-312-C; *Colafranceschi v. Boomer*, Valley County Case No. CV 2012-375-C; and citing *Colafranceschi v. Briley*, Valley County Case No. CV 2012-376-C)).

His conduct satisfied 59(d)(2) because he had made meritless attempts to re-litigate adverse outcomes in two cases. (R. at 63 (citing *Colafranceschi v. Schoonover*, Valley County Case No. CV 2010-312-C (finding that Mr. Colafranceschi’s second motion to set aside a final judgment and his subsequent appeal was frivolous); citing *Neustadt v. Colafranceschi*, Valley County Case No. CV 2016-125-C (finding that motion to reconsider divorce decree was an attempt to reargue issues previously decided, and that motion to set aside judgment was frivolous)).

His conduct satisfied 59(d)(3) because he had submitted needlessly burdensome discovery requests for information that were both irrelevant and deliberately targeted an extremely personal and delicate subject matter, and then filed motions to compel responses to those requests. (R. at 63 (citing *Neustadt v. Colafranceschi*, Valley County Case No. CV 2016-125-C in which Mr. Colafranceschi propounded 380 discovery requests, some of which sought information related to

his ex-wife's sexual history and whether she had been raped, and filed several motions to compel at least one of which was denied in its entirety)).

Mr. Colafranceschi filed a written objection to Judge Moody's proposed findings on May 1, 2017 in a document entitled "Administrative Court: Response and Affidavit to Proposed Findings and Notice of Intent to Issue a Prefiling Order." (R. at 253-72.) In that written objection, Mr. Colafranceschi requested that the proposed prefilng order be dismissed, or in the alternative that he be permitted to present evidence to counter the proposed findings. (R. at 271.)

Judge Moody entered an order on June 12, 2017, granting Mr. Colafranceschi's request to present evidence in support of his objections to her findings. (R. at 308.) She set a hearing pursuant to Rule 59(e), and Mr. Colafranceschi submitted exhibits (*see* R. at 311 ("Administrative Court: Notice of Exhibits")) and subpoenaed witnesses in advance of hearing (R. at 359-60 ("Subpoena for Hearing")).

The hearing was held on August 7, 2017. (R. at 380.) At the hearing, Mr. Colafranceschi claimed for the first time that he had contacted attorneys prior to filing lawsuits identified by Judge Moody in her proposed findings, and that he had been told by those attorneys that the lawsuits had merit. (*Id.*) Given these claims, Judge Moody gave Mr. Colafranceschi until September 7, 2017 to submit written evidence substantiating these claims, at which point she would take the matter under advisement before entering a decision. (R. at 381.) On September 12, 2017, Judge Moody extended that deadline to October 15, 2017. (R. at 434.)

Mr. Colafranceschi submitted affidavits from Curt McKenzie, Carol Griffith, Sam Johnson, Nate Peterson, Terri Melcher, and two from himself. (R. at 452.) After considering

these materials, on November 6, 2017, Judge Moody entered an order declaring Mr. Colafranceschi to be a vexatious litigant (R. at 451-57) and a prefiling order prohibiting Mr. Colafranceschi from filing any new civil actions in Idaho courts *pro se* without first obtaining leave of court where the litigation is proposed to be filed (R. at 459).

Citing the affidavits submitted by Mr. Colafranceschi after the August 7th hearing, Judge Moody's order dismissed the findings in her proposed prefiling order under Rule 59(d)(1) and (2). (R. at 451-56.) She dismissed her findings under 59(d)(1) because the affidavit of Terri Melcher suggested Mr. Colafranceschi had been told by an attorney prior to filing one of the three cases cited that it had merit. (R. at 454.) She dismissed her findings under 59(d)(2) because in one of the two cases cited Justice Schroeder wrote that it was not unreasonable for Mr. Colafranceschi to retry issues related to the custody determination. (R. at 456.) However, "no evidence or argument" altered her conclusion with respect to her proposed finding under 59(d)(3). (R. at 456-57.) Therefore, she adopted that proposed finding and declared Mr. Colafranceschi to be a vexatious litigant. (*Id.* at 457.)

III. ISSUE ON APPEAL

Did Judge Moody abuse her discretion when she found Mr. Colafranceschi to be a vexatious litigant and entered an order requiring him to comply with pre-filing conditions before commencing future litigation in Idaho courts *pro se*?

IV. STANDARD OF REVIEW

Proceedings governing vexatious litigants must comply with Idaho Court Administrative Rule 59. *See* Idaho Ct. Admin. R. 59. A person found to be a vexatious litigant by an

administrative district judge may appeal the order to the Idaho Supreme Court as a matter of right. Idaho Ct. Admin. R. 59(f). Findings of fact will not be set aside unless clearly erroneous. Idaho R. Civ. P. 52(a). An administrative judge's vexatious litigant determination is a matter within that judge's discretion and is, therefore, reviewed under an abuse of discretion standard. *Telford v. Nye*, 154 Idaho 606, 610, 301 P.3d 264, 268 (2013) (holding "Rule 59 uses discretionary language: 'An administrative judge *may* find a person to be a vexatious litigant' Therefore, we hold that an abuse of discretion standard applies on review." (Citation omitted.)). The test for determining whether Judge Moody abused her discretion is (1) whether she rightly perceived the issue as one of discretion; (2) whether she acted within the boundaries of such discretion and consistently with applicable legal standards; and (3) whether she reached her decision through an exercise of reason. *Id.* (citing *Schmechel v. Dille*, 148 Idaho 176, 179, 219 P.3d 1192, 1195 (2009)).

V. ARGUMENT

1. **Judge Moody correctly perceived the issue of whether to declare Mr. Colafranceschi to be a vexatious litigant as one of discretion.**

A successful challenge of a lower court ruling on the grounds that the judge did not recognize the issue as one of discretion typically requires a showing that the court mistakenly believed it was constrained in a way that caused it to enter the particular decision in question. For example, in *917 Lusk, LLC v. City of Boise*, the appellant successfully challenged a decision by the City of Boise affirming a grant of a conditional use permit issued by the local Planning and Zoning Commission that did not impose parking requirements as a condition of approval beyond

those established by the local Parking Chapter. 158 Idaho 12, 15, 343 P.3d 41, 44 (2015). The City's decision as well as the subsequent district court decision upholding it were reversed. *Id.*, 158 Idaho at 20, 343 P.3d at 49. The record indicated the City and the district court failed to recognize that statute authorized the commission to impose parking requirements beyond the minimum amount established by the local Parking Chapter. *Id.*, 158 Idaho at 17-18, 343 P.3d at 46-47. The City incorrectly believed it was constrained in a way that it was not and therefore failed to recognize the issue to be decided as one of discretion. *Id.*

Here, there is no evidence that Judge Moody believed her hand was forced or that a vexatious litigant determination was mandatory. In fact, the record strongly indicates Judge Moody would not have made the vexatious litigant determination if she had reason to believe the evidence did not support it. Judge Moody initially found Mr. Colafranceschi had engaged in conduct that satisfied three of the four categories under Rule 59(d), and then vacated two of three findings after weighing evidence presented at hearing and "construing every possible inference in favor of Mr. Colafranceschi's position." (R. at 455.) She also made clear that she recognized "it is a serious matter to be declared a vexatious litigant" and for that reason she was giving "Mr. Colafranceschi every benefit of the doubt." (R. at 454-55.) If she had believed the circumstances did not warrant a finding under 59(d)(3), she would have dismissed that proposed finding just as she did with her findings under 59(d)(1) and (2).

There is nothing in the record that indicates Judge Moody made her determination because she believed she was constrained in some way, or because she misinterpreted the legal standard to be applied. Her analysis indicates she recognized that a vexatious litigant determination is

discretionary and that she properly exercised discretion when making her determination.

2. Judge Moody acted within the outer boundaries of her discretion and consistent with applicable legal standards.

Reversal of a lower court decision based on this prong of the abuse of discretion analysis is typically based on a finding that the judge either failed to apply or incorrectly applied an essential component of the applicable legal test. *See 917 Lusk, LLC*, 158 Idaho at 17-18, 343 P.3d at 46-47; *see also State v. Thompson*, 132 Idaho 628, 635, 977 P.2d 890, 897 (1999). The boundaries of an administrative judge's discretion and the legal standards applicable to a vexatious litigant determination are set forth in Rule 59. Subsection (d) permits the entry of a prefiling order if the judge makes a finding that the person subject to the order has engaged in any one of four types of conduct. Idaho Ct. Admin. R. 59(d). Judge Moody determined Mr. Colafranceschi to be a vexatious litigant based on her finding that his conduct satisfied section 59(d)(3). (R. 456-57.) Under 59(d)(3):

(d) An administrative judge may find a person to be a vexatious litigant based on a finding that a person has done any of the following:

(3) In any litigation while acting pro se, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause delay.

Idaho Ct. Admin. R. 59(d)(3).

Judge Moody's finding was as follows:

Mr. Colafranceschi has engaged in a pattern of conducting frivolous discovery, or discovery solely intended to cause unnecessary delay, in the following cases[:]

1. *Neustadt v. Colafranceschi*, Valley County case no. CV 2016-125-C. In a divorce case, Mr. Colafranceschi propounded over 380 discovery requests,

including 337 requests for admission. These requests included asking Petitioner to describe the nature and duration of her affairs with other married men in the last ten years and to admit that another man had raped her. *Aff. of Scot Ludwig Ex. 8*, at 3, 6. The court concluded that many of these requests were irrelevant. Mr. Colafranceschi filed several motions to compel responses to his discovery requests, at least one of which was denied in its entirety. *Order Den. Mot. to Compel*, Oct. 6, 2016.

(R. at 456.)

This conduct falls squarely within Rule 59(d)(3). Mr. Colafranceschi “conduct[ed] unnecessary discovery” by submitting a needlessly burdensome volume of requests for information that was both irrelevant and deliberately targeted an extremely personal and delicate subject matter. The nature and volume of the requests suggest they were submitted for the purpose of harassment and employed as a “tactic” that was “frivolous” or otherwise “solely intended to cause unnecessary delay.” The filing of multiple motions to compel, at least one of which was found to be entirely frivolous, to recover information in response to irrelevant, needlessly burdensome discovery requests about a person’s sexual history or past history of sexual abuse, supports a finding that Mr. Colafranceschi also “repeatedly fil[ed] unmeritorious motions.” The plain language of Rule 59(d)(3) permits a vexatious litigant determination based on a finding that a litigant has engaged in this type of conduct.

Mr. Colafranceschi argues Judge Moody violated applicable legal principles when she made this finding because the Valley County case cited had not been finally determined when Judge Moody made her vexatious litigant determination. (Appellants’ Br. at 14-15.) Rule 59(d)(3) requires only that the litigant engage in certain proscribed behavior “[i]n any litigation while acting pro se. . . .” It does not require the litigation to be finally determined in order for the

litigant's conduct to be considered. Mr. Colafranceschi appears to be conflating section (d)(3) with section (d)(2), which relates to attempts to re-litigate cases that have been "finally determined." Idaho Ct. Admin. R. 59(d)(2)(A) & (B). However, section (d) permits a vexatious litigant determination based on a finding of "any" of the categories of conduct. Judge Moody was not required to make an additional finding under 59(d)(2).

Mr. Colafranceschi claims Judge Moody violated applicable legal principles because her finding was based on conduct in one case rather than multiple. (Appellant's Br. at 20.) Again, the plain language of 59(d)(3) permits a vexatious litigant determination based on a finding that a litigant has engaged in certain conduct "[i]n any litigation while acting pro se"; it does not require a finding based on conduct in multiple cases. Idaho Ct. Admin. R. 59(d)(3). Engaging in conduct proscribed by the Rule in multiple cases may bolster support for an administrative judge's determination, but its absence does not bar a vexatious litigant determination under Rule 59.

Mr. Colafranceschi claims Judge Moody violated applicable legal principles because her finding was based on one set of discovery. (Appellant's Br. at 15.) The number of sets of requests a litigant submits is arbitrary and inapposite. Mr. Colafranceschi's "set" of requests included 380 requests. More to the point, the language of 59(d)(3) does not require abuse of the discovery process through the use of multiple sets of discovery. It requires a litigant to either (1) conduct "unnecessary discovery," (2) to "repeatedly file[] unmeritorious motions," or (3) to "engage in other tactics that are frivolous or solely intended to cause delay." Idaho Ct. Admin. R. 59(d)(3). Judge Moody found that Mr. Colafranceschi had conducted unnecessary discovery, much of which was frivolous, and that he had filed "several" motions to compel answers to that discovery,

“at least one of which was denied in its entirety.” (R. at 456.) The Rule requires nothing more.

Mr. Colafranceschi argues Judge Moody failed to comply with applicable legal standards because her order does not apply two of the four factors set forth by the Ninth Circuit in its review of a vexatious litigant order in the case of *De Long v. Hennessey*, 912 F.2d 1144 (9th Cir. 1990). (Appellant’s Br. at 25-26 (citing *De Long*, 912 F.2d at 1147-48).) *De Long* is a federal circuit court case that does not analyze Idaho’s vexatious litigant rule and is therefore inapplicable. It is also readily distinguishable.

- In *De Long*, the litigant received no opportunity to oppose the vexatious litigant order before it was entered. 912 F.2d at 1147.
 - It is undisputed that Mr. Colafranceschi presented evidence and argument challenging the pre-filing order before it was filed. (See R. at 311, 380-81, 434, 452.)
- In *De Long*, the district court failed to identify which filings of cases or motions supported its determination. 912 F.2d at 1148.
 - Judge Moody identified the case in which the unnecessary discovery and associated motions to compel were filed. (R. at 456.)
- In *De Long*, the district court made “no finding that De Long’s claims were frivolous.” 912 F.2d at 1148.
 - Here, Judge Moody found that the discovery and subsequent motions to compel filed by Mr. Colafranceschi in Valley County Case No. CV-2016-125-C were frivolous. (R. at 456.)

- Finally, in *De Long* Court determined the vexatious litigant order was not properly tailored. 912 F.2d at 1148. Rule 59 contains no tailoring requirement.
 - The prohibitions that may be contained in a prefiling order are specific. Permitted restrictions include “enter[ing] a prefiling order prohibiting a vexatious litigant from filing any new litigation in the courts of this state pro se without first obtaining leave of a judge of the court where the litigation is proposed to be filed” and penalizing “[d]isobedience of a prefiling order entered” with contempt of court or dismissal. Idaho Ct. Admin. R. 59(g), (h), (j). In light of the specific language of the Rule 59, the tailoring of restrictions Mr. Colafranceschi calls for could be construed as an impermissible application of legal principles and an abuse of discretion.

3. Judge Moody determined Mr. Colafranceschi to be a vexatious litigant through an exercise of reason.

“The role of this Court, in determining if the district court reached its decision by an exercise of reason, is to review the process the district court engaged in to make its decision.” *Palmer v. Spain*, 138 Idaho 798, 801-02, 69 P.3d 1059, 1062-63 (2003) (citing *Sheridan v. St. Lukes Reg'l Med. Ctr.*, 135 Idaho 775, 781, 25 P.3d 88, 94 (2001)). The district court must “disclose its reasoning” unless its reasoning is obvious from the record. *Id.*, 138 Idaho at 802, 69 P.3d at 1063 (citation omitted).

Judge Moody demonstrated in her order declaring Mr. Colafranceschi to be a vexatious litigant that her determination was based on a careful consideration of the relevant factual

circumstances and legal principles. On the issue of whether Mr. Colafranceschi satisfied one of the four types of conduct prohibited by section (d), Judge Moody specifically recounted reasons why evidence presented at hearing cast the findings in the proposed prefilng order related to 59(d)(1) and (2) “in a different light.” (R. at 452-56.) She considered evidence presented by Mr. Colafranceschi in response to the findings in the proposed prefilng order and dismissed the findings in her proposed prefilng order under Rule 59(d)(1) and (2) after considering the evidence presented. (R. at 451-56.) She dismissed her findings under 59(d)(1) because the affidavit of Terri Melcher suggested Mr. Colafranceschi had been told by an attorney prior to filing one of the three cases cited that it had merit. (R. at 454.) She dismissed her findings under 59(d)(2) because in one of the two cases cited Justice Schroeder wrote that it was not unreasonable for Mr. Colafranceschi to retry issues related to the custody determination. (R. at 456.)

As a result, Judge Moody clarified that she did not rely on those findings in making her final determination. (*Id.*) She then differentiated subsection (3) and made clear that unlike subsections (1) and (2), there was no evidence or argument presented at hearing that “alters the Court’s conclusion” with respect to her finding that Mr. Colafranceschi had engaged in conduct proscribed by that section of 59(d). (R. 456-57.) The change in findings from the proposed prefilng order to the one ultimately entered shows that Judge Moody carefully considered the evidence presented and reached her conclusion through the exercise of reason.

Mr. Colafranceschi argues that Judge Moody failed to reach her decision through an exercise of reason because *pro se* litigants labeled vexatious in other states have engaged in more egregious conduct. (*See* Appellant’s Br. 20-21.) He compares this case to cases in other states in

which “litigants have filed dozens of motions either during the pendency of an action or relating to the same judgment.” (*Id.* (citing *Bravo v. Ismaj*, 99 Cal. App. 4th 211, 120 Cal. Rptr. 2d 879 (Cal. Dist. Ct. App. 2002)). Identifying dozens of frivolous motions is not required by Rule 59. Mr. Colafranceschi fails to explain how more egregious behavior by litigants in other states shows that Judge Moody abused her discretion when she made her vexatious litigant determination in this case. Judge Moody applied the relevant Rule as written and Mr. Colafranceschi’s conduct satisfies the Rule’s plain language.

Throughout his briefing, Mr. Colafranceschi tries to establish that Judge Moody failed to reach her decision through an exercise of reason by re-litigating various facts or arguing that Judge Moody weighed evidence incorrectly or purportedly did not consider certain evidence. He argues Judge Moody abused her discretion because she purportedly failed to consider statements by Ms. Neustadt about the amount of money Ms. Neustadt is willing to spend on legal representation in litigation with Mr. Colafranceschi. (Appellant’s Br. at 21.) He argues that questions in discovery asking Ms. Neustadt to describe the nature and duration of purported affairs with other married men in the preceding ten years and to admit that another man had raped her were “reasonable and necessary based upon [Ms. Neustadt’s] own claim that she would harm [Mr. Colafranceschi] by making [a] false allegation of PTSD.” (*Id.* at 17.) He lists 27 “false allegations and bad acts” allegedly committed by Ms. Neustadt that Judge Moody purportedly failed to consider. (*Id.* at 11-12.) He claims Judge Moody inappropriately gave weight to the contents of a written statement by Carl Miller related to his use of the judicial process to harass witnesses. (*Id.* at 6-7.) He claims Judge Moody incorrectly perceived Ms. Neustadt’s distress

based on her courtroom demeanor. (*Id.* at 8.) He argues Judge Moody’s determination should be reversed in light of the contents of a list of documents that have been created since the prefiling order was entered. (*Id.* at 13-14.)

This type of challenge to Judge Moody’s factual findings does not establish an abuse of discretion. On appeal, the Court “will not substitute [its] view of the facts for the view of the district court.” *Mortensen v. Berian*, 163 Idaho 47, 408 P.3d 45, 48 (2017) (quoting *Marshall v. Blair*, 130 Idaho 675, 679, 946 P.2d 975, 979 (1997)). “In view of this role, the trial court’s findings of fact will be liberally construed in favor of the judgment entered.” *Id.* (quoting *Sun Valley Shamrock Res., Inc. v. Travelers Leasing Corp.*, 118 Idaho 116, 118-119, 794 P.2d 1389, 1391-92 (1990)). Rule 59 lays out the standard to be applied when making a vexatious litigant determination and the Rule contains no mention of some type of mandatory weighing or balancing the administrative judge must conduct. Judge Moody found that Mr. Colafranceschi engaged in conduct prohibited by Rule 59. How she weighed the evidence before her in reaching that determination is not a basis to overturn it.

VI. CONCLUSION

The thrust of this appeal appears to be Mr. Colafranceschi’s belief that the entry of a prefiling order is too serious a consequence for his behavior. While Mr. Colafranceschi might consider the outcome unfair, Judge Moody did not abuse her discretion in reaching it. Mr. Colafranceschi’s issue is not actually with how Judge Moody applied Rule 59, but with the language of Rule 59 itself. His appeal to this Court boils down to one question: How can there be a Rule that allows the entry of a prefiling order in a case such as this? But that is not the

