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IN THE IDAHO SUPREME COURT
STATE OF IDAHO

WADSWORTH REESE, PLLC, an Idaho professional corporation; CLARK A REESE CPA P.C., and Idaho professional corporation; and WADSWORTH ACCOUNTING CPA, an Idaho professional corporation,

Plaintiffs-Counterdefendants-Respondents,

v.

SIDDOWAY & COMPANY, PC, an Idaho professional corporation; RANDY SIDDOWAY, an individual,

Defendants-Counterclaimants-Appellants.

SIDDOWAY & COMPANY, PC, an Idaho professional corporation; RANDY SIDDOWAY, an individual,

Counterclaimants – Appellants,

v.

FREDERICK WADSWORTH, an individual; and CLARK A. REESE, an individual,

Counterdefendants – Respondents.

Supreme Court No. 46126-2018
Ada County District Court
CV-OC-2015-21225

RESPONDENTS' BRIEF

TABLE OF CONTENTS

Table of Authorities ii

I. STATEMENT OF THE CASE 1

A. Nature of the Case 1

B. Concise Statement of Facts 2

II. ATTORNEY FEES ON APPEAL 5

III. ARGUMENT 6

A. The District Court did not abuse its discretion determining the Siddoway Parties were not prevailing parties in the litigation. 6

B. The District Court's determination that WR PLLC had a legitimate business purpose to pay legal fees to dissociate Siddoway and settle his claim that he was a two-thirds owner were not clearly erroneous 10

a. Standard of Review 10

b. The trial court's findings of fact underlying the conclusion that WR PLLC's payment of litigation costs was a legitimate business expense is supported by substantial evidence. 11

c. Appellants have made no argument the court applied the wrong law or otherwise committed a legal error. 14

d. The trial court correctly found that the nature of the action did not matter to its analysis of the payment of legal expenses. 15

C. The District Court's determination that Siddoway was not entitled to an unjust enrichment award was not clearly erroneous. 16

IV. CONCLUSION 21

TABLE OF AUTHORITIES

Cases

Akers v. Mortensen,
147 Idaho 39, 205 P.3d 1175 (2009).. 12, 13, 14
Borah v. McCandless,
147 Idaho 73, 205 P.3d 1209 (2009)... 13
Bramwell v. South Rigby Canal Co.,
136 Idaho 648, 39 P.3d 588 (2001)... 13
Camp v. East Fork Ditch Co., Ltd.,
137 Idaho 850, 55 P.3d 304 (2002)... 12
Countrywide Home Loans, Inc. v. Sheets,
160 Idaho 268, 371 P.3d 322 (2016)... 18
Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.,
141 Idaho 716, 117 P.3d 130 (2005)... 9
Grease Spot, Inc. v. Harnes,
148 Idaho 582, 226 P.3d 524 (2010)... 11
PacifiCorp v. Idaho State Tax Com'n,
153 Idaho 759, 291 P.3d 442 (2012)... 13
Pandrea v. Barrett,
160 Idaho 165, 369 P.3d 943 (2016)... 17
Prehn v. Hodge,
385 P.3d 876 (2016)... 12, 17
Ransom v. Topaz Mktg., L.P.,
143 Idaho 641, 152 P.3d 2 (2006)... 12
Teton Peaks Inv. Co., LLC v. Ohme,
146 Idaho 394, 195 P.3d 1207 (2008)... 18
The Senator, Inc., v. Ada Cnty. Bd. Of Equalization,
138 Idaho 566, 67 P.3d 45 (2003)... 13
Trilogy Network Sys., Inc. v. Johnson,
144 Idaho 844, 172 P.3d 1119 (2007)... 9

Statutes

I.C. § 30-25-602(6)(C).. 3
I.C. §§ 30-25-801 18

Rules

I.R.C.P. 54(e) 8
I.R.C.P. 52(a) 13
I.R.C.P. 52(a)(7).. 12
I.R.C.P. 54(d)(1)(B) 8
I.R.C.P. 54(d)(1), ... 7
I.R.C.P. 54(e)(1)... 7,8

I. STATEMENT OF THE CASE

A. Nature of the Case

This appeal stems from two accountants' successful efforts to judicially dissociate a third accountant from their business, Wadsworth Reese, PLLC ("WR PLLC"). [1] After more than a year and half of working together and trying to negotiate first a way to remain associated and, later, a way to amicably separate, Randy Siddoway ("Siddoway") decided to leave. He and several former WR PLLC employees, including his nephew, Dustin Siddoway (also an accountant), moved into a new location and established Anchorpoint Accounting PLLC and Anchorpoint LLC. Hundreds of WR PLLC clients followed.

In response, the other two accountants, Clark Reese ("Reese") and Frederick Wadsworth ("Wadsworth"), filed a lawsuit to judicially dissociate Siddoway from WR PLLC. [2] The only claim won by any party in this entire litigation was the respondents' successful summary judgment judicially dissociating Siddoway from WR PLLC because he "[h]as engaged or is engaging in conduct relating to the company's activities and affairs which makes if not reasonably practicable to carry on the activities and affairs with the person as a member." R. Vol. I, p. 376-377; I.C. § 30-25-602(6)(C).

A five-day bench trial spawned copious Findings of Fact and Conclusions of Law but no finding of liability on any of the parties remaining claims. The Court essentially decided to leave the parties in the position they had put themselves in.

[1] WR PLLC was previously named Siddoway, Wadsworth & Reese, PC. The company is referred to as WR PLLC throughout regardless of the name during the period referenced.
[2] Each of the three accountants had a professional corporation in which they held their interest in WR PLLC. They are referred to herein as "Siddoway PC", "Wadsworth PC", and "Reese PC".

Siddoway appeals the trial court's determination that he was not entitled to piecemeal attorney fees for his perceived success in compelling arbitration on two claims he filed against Reese PC. [3] He also objects to the trial court's conclusion that, under the circumstances, it was an appropriate business purpose for WR PLLC to use its resources to dissociate Siddoway and resolve Siddoway's claim that he owned a two-thirds interest in the company and that Reese owned none. Siddoway's third issue lies with the trial court's finding that Siddoway was not entitled to an unjust enrichment award against Reese PC for the value of the clients that did not follow Siddoway and his nephew to their new business. Siddoway has not demonstrated that any of the trial court's factual findings were clearly erroneous and he has not shown a misapplication or misapprehension of the law. It is not always clear what standard of review Siddoway is applying to his arguments. However, the trial court based its decision on detailed factual findings with comprehensive evidence citations and Siddoway's appeal should be denied.

B. Concise Statement of Facts

Reese, Wadsworth, and Siddoway are certified public accountants, each with their own professional corporations. R. Vol. I, p. 385, ¶ 1. Around November 2013 Siddoway and Reese began discussing becoming partners or co-owners of an accounting firm, on terms that involved Reese buying a one-half interest in Siddoway's practice. R. Vol. I, p. 386, ¶ 4. On December 20, 2013, Reese and Siddoway formed CRS Services, PLLC.[4] R. Vol. I, p. 386, ¶ 5 (citing Def's Ex. 1017; Tr. 56:18-25). At the time, no agreement had been reached between Reese and Siddoway for Reese to purchase a one-half interest in

[3] Both claims were dismissed by the arbitrator pursuant to dispositive motions.
[4] CRS was another prior name of WR PLLC.

Siddoway's client base; in fact, no such agreement was formalized until January 2015 (13 months later). R. Vol. I, p. 386, ¶ 5 (citing Pls.' Ex. 14).

After Wadsworth agreed to join the company, the three accountants signed the WR PLLC operating agreement on January 6, 2014. R. Vol. I, p. 387, ¶¶ 9-10 (citing Tr. 57:1-24, 819:22-24, Pls.' Ex. 13, Ex. A). Pursuant to Exhibit "A" of the operating agreement, each of the companies was apportioned a 33.333% interest in the new venture.[5] The operating agreement permitted the accountants to compete with one another and required no formal contribution of any of their client bases. R. Vol. I, p. 387, ¶ 10. During 2014, Reese met with Siddoway from time to time to continue discussing the purchase of a one-half interest in Siddoway's client base. R. Vol. I, pp. 387-388, ¶¶ 10 & 12 (citing Pls.' Ex 13 and Tr. 67:22-68:10).)

On January 28, 2015, Reese and Siddoway entered into a signed agreement ("the Reese Agreement") which included Reese PC's promise to pay $200,000 to Siddoway PC for the "right to receive" a one-third interest in WR PLLC, along with Siddoway's commitment to sell "certain assets" to Reese, and the parties agreement to simultaneously contribute those assets to WR PLLC. R. Vol. I, p. 388, ¶ 12. The Reese Agreement also contained a non-competition clause barring Siddoway from competing with WR PLLC. R. Vol. I, p. 388, ¶ 12 (citing Pls.' Ex. 14 Recitals, §§ 1, 2 and 9; Tr. 144:10-145:17, 261:11-14).) The same day the Reese Agreement was signed, the parties signed Modification #1, which contemplated the three WR PLLC members amending the original operating agreement and, if they failed to do so by February 15, 2015, the Reese Agreement would be void. R. Vol. I, p. 388, ¶ 12 (citing Pls.' Ex 14). Although February 15, 2015 came and went without the parties successfully amending the operating

[5] The Reese Agreement would not be signed until January of the following year. (Pls.' Ex. 14.)

agreement, Reese PC continued to make payments totaling $28,000 through September 1, 2015. R. Vol. I, pp. 388-389, ¶ 13 (citing Tr. 71:19-73:14; Pls'. Ex. 24; Pls.' Ex. 58, at 1-2; Tr. 78:12-19; Tr. 420:2-5; Tr. 76:8-11; 424:23-25).

Because no amended operating agreement was ever agreed to as required by Modification #1, the Reese Agreement was ultimately found to be void by an arbitrator. R. Vol. I, pp. 388-389, ¶ 13 (citing Tr. 287:3-10; see also R. Vol. I, pp. 266-269).

During 2015, Siddoway's relations with Reese and Wadsworth broke down, causing the parties to begin discussing Reese PC and Wadsworth PC buying out Siddoway PC's WR PLLC interest instead of amending the operating agreement. R. Vol. I, p. 389, ¶ 14 (citing Tr. 78:20-79:22). The parties failed to reach an agreement on amending the operating agreement and failed to reach an agreement on buying out Siddoway PC's interest, culminating in Siddoway's decision to announce his voluntary departure from WR PLLC on August 21, 2015. R. Vol. I, p. 390, ¶ 19 (citing Tr. 93:7-22; 95:12-18; 833:5-10).

Soon after Siddoway's departure, his nephew, Dustin Siddoway, and several other Wadsworth Reese employees also left. R. Vol. I, p. 390, ¶ 21 (citing Tr. 95:19-25; 103:7-10). On August 24, 2015, Siddoway sent a list of Wadsworth Reese's clients, including historical billing data, to Dustin Siddoway. R. Vol. I, pp. 390-391, ¶ 22-23 (citing Tr. 121:17 – 122:8; Pls.' Exs. 1, 8, 12). During the litigation it was discovered that the day Siddoway decided to depart he downloaded WR PLLC's Ultra Tax files, which included client names, addresses, social security numbers, prior tax information, and depreciation schedules, as well as work-in-progress and notes of the servicing accountant. R. Vol. I, p. 390, ¶ 20 (citing Tr. 123:6-126:2; 294:24-296:11; 369:10-14; 479:17-20; 1036:17-25;

Pls'. Ex. 60). Siddoway testified that he provided his nephew Ultra Tax data for all clients who signed a release and hundreds of clients left WR PLLC. R. Vol. I, pp. 391-392, ¶ 27 (citing Pls.' Ex. 44; Tr. 369:18-370:12; 618:25-619:7; 653:17-655:3).

In October 2015, Reese and Wadsworth voted to have WR PLLC pay the legal expenses to be incurred in the impending litigation against Siddoway, including those for a dispute between Reese PC and Siddoway PC arising under the Reese Agreement (which, at that point, had yet to be declared void in arbitration). R. Vol. I, pp. 392-393, ¶ 29 (citing Tr. 128:4-129:23; 775:23-777:7; Pls,' Ex. 74). Among the purposes of filing the suit was to disassociate Siddoway PC from WR PLLC and to resolve the dispute over membership interests, as Siddoway PC was claiming to own both its own membership interest and Reese PC's membership interest in WR PLLC. R. Vol. I, pp. 392-393, ¶ 29 (citing Tr. 128:15-129:23; 775:10-22).

II. ATTORNEY FEES ON APPEAL

Respondents request attorney fees on appeal. This action is a commercial transaction under Idaho Code § 12-120(3) and, therefore, if respondents prevail on this appeal they are entitled to an award of reasonable attorney's fees. Idaho Code § 12-120(3) provides that in any civil action to recover on a "contract relating to the purchase or sale of . . . services and in any commercial transaction. . . the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs." Rule 54(d)(1) provides that prevailing parties are entitled to costs as a matter of right. In addition to a prevailing party recovering costs and fees in a commercial transaction, Rule 54(e)(1) provides that the Court may award reasonable attorney's fees to the prevailing party when provided for by statute or by contract. Rule 54(e)(1) also provides that attorney's fees may be awarded pursuant to Idaho Code § 12-121 when the

court finds that the case was "brought, pursued or defended frivolously, unreasonably or without foundation." The instant appeal is without foundation. Respondents request attorney fees on appeal pursuant to both or either Idaho Code §12-120(3) and Idaho Code §12-121.

III. ARGUMENT

A. The District Court did not abuse its discretion determining the Siddoway Parties were not prevailing parties in the litigation.

The Siddoway Parties are not entitled to an award of attorney fees because, "(t)he Siddoway Parties aren't prevailing parties." Aug. R. p. 8.[6] Without so much as saying it, the appellants are arguing that the District Court abused its discretion in making that succinct and firm conclusion.

I.R.C.P. 54(e) permits attorney fee awards and subsection (1) specifically states that, "[i]n any civil action the court may award reasonable attorney fees, including paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract." Section 14 of the Reese Agreement provides, "[s]hould either party be required to commence legal action to enforce any of the terms of this Agreement, the prevailing party in such litigation shall be entitled to an award of reasonable attorney's fees and costs from the other party." Both Rule 54(e)(1) and the language of the void Reese Agreement are clear that any such award is only available to prevailing parties.

It is well settled that, "[a] determination on prevailing parties is committed to the discretion of the trial court." *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.,* 141 Idaho 716, 718–19, 117 P.3d 130, 132–33 (2005). I.R.C.P.

[6] Respondents have moved to augment that record as appellants failed to designate one of the orders from which they appeal.

54(d)(1)(B) guides courts' inquiries on the prevailing party question. *Id.* at 719, 117 P.3d at 133. That rule provides:

> In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

Idaho R. Civ. P. 54(d)(1)(B).

In determining which party prevailed where there are claims and counterclaims between opposing parties, the court determines who prevailed “in the action”; that is, the prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis. *Eighteen Mile,* 141 Idaho at 719, 117 P.3d at 133.

The district court’s determination of who is a prevailing party will not be disturbed absent an abuse of discretion. *Trilogy Network Sys., Inc. v. Johnson,* 144 Idaho 844, 847, 172 P.3d 1119, 1122 (2007). When examining whether a trial court abused its discretion, this Court considers whether the trial court: (1) perceived the issue as one of discretion; (2) acted within the outer boundaries of this discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) reached its decision by an exercise of reason. *Id.* (affirming the trial court’s decision that each party bear its own costs in a case where a plaintiff successfully showed a breach of contract, but failed to provide adequate evidence to show damages that were not mere speculation).

In the immediate case, Siddoway filed arbitration claims against Reese and Reese PC, both of whom moved the District Court to stay the arbitration. See R. Vol. I, p. 267.

The arbitration was stayed as to Reese and not as to Reese PC. *Id.* During the arbitration between Siddoway and Reese PC, the arbitrator declared the Reese Agreement void because of the failure to reach an agreement on amending the operating agreement, as set forth in Modification #1. R. Vol. I, p. 269.

In ruling on Siddoway's persistent requests for attorney fees for compelling arbitration of two claims against Reese PC the trial Court noted that, "[t]o determine whether a party qualifies as a prevailing party, 'the trial court must, in its sound discretion, consider the final judgment or result of the action.'" Aug. R. p. 8; I.R.C.P. 54(d)(1)(B).

> The Siddoway Parties aren't prevailing parties. That is so whether a prevailing party determination is made by considering the results of this action as a whole or instead by considering only the results of the litigation as to the arbitrability of claims made under the Reese Agreement. Though all but one of Plaintiffs' claims in this action failed, every one of the Siddoway Parties' counterclaims failed. And, as already noted, the Siddoway Parties prevailed only in part in litigating the arbitrability of claims made under the Reese Agreement, and then after convincing the Court of the arbitrability of some of those claims, they lost on the merits in arbitration. That is nowhere near enough success to make them prevailing parties. They aren't entitled to any award of attorney fees.

Id. page 8.

Clearly, the trial court perceived the issue as one of discretion, noted and acted within the legal standards applicable, and reached its decision by an exercise of reason, which was memorialized in its order, as set forth above. The Siddoway parties have failed to demonstrate the trial court abused its discretion in finding they were not the prevailing parties.

The Siddoway parties try to avoid the trial court's clear, discretionary finding that

they are not prevailing parties in the litigation by hyper-focusing on one perceived victory, compelling arbitration against Reese PC. There are many problems with this approach.

First, the trial court considered Siddoway's perceived victory as part of its analysis and Siddoway has shown no abuse of discretion, just a difference of opinion. Second, the language in the Reese Agreement only permits an award of attorney fees to the party that prevailed in "the litigation." Siddoway's argument, that we ignore all the other claims decided by the court, is vitiated by the fact that Siddoway lost the arbitration on summary judgment. Which result begets the next problem: the Reese Agreement (including its attorney fees provision) was found to be void and it can no longer serve as the basis for an attorney fee award or anything else.

Appellants try to sidestep all of these arguments by misapplying the holding in *Grease Spot, Inc. v. Harnes*, 148 Idaho 582, 226 P.3d 524 (2010) and claiming it supports their position that they should be awarded attorney fees simply because they partially won a motion to compel arbitration. The trial court addressed this argument and concluded that, "in *Grease Spot* the movants were prevailing parties because they compelled arbitration on <u>all</u> claims, 'thereby terminating consideration of the merits of the action.'" Aug. R. p. 8, fn. 4 (emphasis in original) (citing 148 Idaho at 586, 226 P.3d at 528). "Unlike the movants in *Grease Spot*, the Siddoway Parties fought to win the right to arbitrate only a small portion of a multi-faceted piece of litigation, only partly succeeded in compelling arbitration, lost the claims they won the right to arbitrate, and then lost all the counterclaims they litigated." Aug. R. p. 8, fn. 4.

The appellants are not prevailing parties and are not entitled to attorney fees.

B. The District Court's determination that WR PLLC had a legitimate business purpose to pay legal fees to dissociate Siddoway and settle his claim that he was a two-thirds owner were not clearly erroneous.

a. Standard of Review

Siddoway takes issue with WR PLLC's use of a portion of the fees it was generating to have him judicially dissociated after he left WR PLLC, provided information, credit and assistance to a competitor, and stopped earning revenue for WR PLLC. Siddoway challenges the trial court's determination that WR PLLC had a legitimate business purpose to dissociate Siddoway and resolve his claim that he owned a two-thirds membership interest in WR PLLC, despite an abundance of evidence cited by the court.

Rule 52(a)(7) instructs that findings of fact are not to be set aside unless "clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility." Further, that review of a trial court's decision "is limited to ascertaining whether the evidence supports the findings of fact, and whether the findings of fact support the conclusions of law." *Akers v. Mortensen*, 147 Idaho 39, 43, 205 P.3d 1175, 1179 (2009). The Supreme Court "will liberally construe the trial court's findings of fact in favor of the judgment entered, as it is within the province of the trial court to weigh conflicting evidence and testimony and judge the credibility of the witnesses." *Prehn v. Hodge*, 385 P.3d 876, 882 (2016)(internal citations omitted). A trial court's findings of fact will not be set aside unless they are found to be *clearly erroneous*. *Akers*, 147 Idaho at 43, 205 P.3d at 1179. (citing *Ransom v. Topaz Mktg., L.P.,*143 Idaho 641, 643, 152 P.3d 2, 4 (2006) *Camp v. East Fork Ditch Co., Ltd.,* 137 Idaho 850,

856, 55 P.3d 304, 310 (2002); *Bramwell v. South Rigby Canal Co.,* 136 Idaho 648, 650, 39 P.3d 588, 590 (2001); I.R.C.P 52(a))(emphasis added).

Even if evidence may be conflicting, if the findings of fact are based upon substantial evidence, they will not be overturned on appeal. *Id.* Evidence is substantial if "a reasonable trier of fact would accept it and rely upon it in determining whether a disputed point of fact has been proven." *PacifiCorp v. Idaho State Tax Com'n*, 153 Idaho 759, 768, 291 P.3d 442, 451 (2012)(citing *The Senator, Inc., v. Ada Cnty. Bd. Of Equalization*, 138 Idaho 566, 569, 67 P.3d 45, 48 (2003)). The Idaho Supreme Court has refused to "substitute its view of the facts for that of the trial court." *Akers*, 147 Idaho at 43, 205 P.3d at 1179. The Supreme Court "exercises free review over matters of law." *Borah v. McCandless*, 147 Idaho 73, 77, 205 P.3d 1209, 1213 (2009).

b. The trial court's findings of fact underlying the conclusion that WR PLLC's payment of litigation costs was a legitimate business expense is supported by substantial evidence.

The Siddoway Defendants have failed to identify any specific finding of fact that is alleged to be clearly erroneous. They simply don't like the trial court's conclusion that, "the payments to Wadsworth Reese Parties' legal counsel were made for the legitimate business purpose of addressing disputes among the parties. Most notably, these disputes were over the validity of the Reese Agreement and ownership of the company in the event of its enforceability. The company needed to resolve these disputes in order to stabilize itself and continue as a going concern." R. Vol. I, p. 408, ¶ 31. The supporting evidence is substantial.

Siddoway concedes that Reese provided supporting testimony, but complains that the trial court "based its conclusion almost entirely on the testimony of Clark Reese…"

App. Br. p. 20. Even if there was no more evidence, this would suffice. It is the province of the trial court to weigh conflicting evidence and testimony and judge the credibility of the witnesses. *Akers*, 147 Idaho 39, 43, 205 P.3d at 1179.

However, there was significant additional evidence that Siddoway was claiming he owned two-thirds of the business. For instance, his own testimony:

> **Q.** So after your firm had continued on for a year, say January of 2015, do you recall January 20th, 2015, as being the date that you and Mr. Reese signed the Reese agreement?
> **A.** It was in January of 2015.
> **Q.** And do you recall having mentioned during a partner meeting that if he didn't sign it that you were a two-thirds owner of the entity?
> **A.** I recall having discussions regarding the ramifications of him not living up to his obligation that he had agreed to me prior.
> **Q.** And you agree with me that one of those was that you claimed to be a two-thirds owner of the company. Correct?
> **A.** In my mind, he had bought – had received the right to buy the practice by agreeing with me. So it was evident to me if he didn't follow through on that, that I would get it back, yes.
> **Q.** Okay. That you would be a two-thirds owner of SWR?
> **A.** That I would get back that interest that he would not have had because he didn't follow through.
> **Q. Thereby making you a two-thirds owner of SWR?**
> **A. Yes**.
> **Q.** And you expressed that perceived right to both Mr. Reese and to Mr. Wadsworth. Correct?
> **A.** I believe so.

Tr. 355:15 - 356:18. (Emphasis added).[7]

Reese explained in detail why it was an important business purpose to settle Siddoway's claim:

[7] After the Reese Agreement was declared void, Siddoway repeated his two-thirds ownership argument by adding his Ninth Counterclaim, which sought a declaration that he was a two-thirds owner of WR PLLC. R. Vol. I, p. 295, ¶ 155. It was dismissed on summary judgment. R. Vol. I, p. 379.

> **Q.** BY MR. FISHER: Did you and Fredrick have any discussions about the status of the WR, PLLC, membership?
> **A.** Yes. We wanted to have that resolved because of Randy's previous claims that he felt like that he was a two-thirds owner.
> **Q.** Did you vote for the company to address that issue in the lawsuit as well?
> **A.** Yes.
> **Q.** Why was it important for WR, PLLC, to settle the membership?
> **A.** Because there was a lot of – there was a lack of noncompetes amongst all the members. So at any time, any one of us could get up and leave and leave the other holding the bag for, you know, paying off the debts.
> And so we wanted to resolve that so we know that what we were working with, what -- everything that we were generating would be for the benefit of the firm and for our creditors.
> **Q.** And did you feel that you could have left as well at that point in time?
> **A.** Yes.
> **Q.** Who would have paid all these debts if you guys had all just left?
> **A.** I guess we would have to pay the debts through the existing accounts receivable, but we weren't able -- there wouldn't have been any future revenues generated to pay those debts.
> **Q.** And is that something that the two of you discussed when you made the decision to soldier on?
> **A.** Yeah. And we felt an obligation and a loyalty to those people, and we felt like they deserved to be paid and we would work for them, get them paid.

Tr. 129:4 – 130:14.

Wadsworth testified as well that they voted to initiate the lawsuit, "[t]o resolve the matters that we had not been able to resolve, that Randy was maintaining that he was still an owner even though he quit working for the partnership. In fact, he had talked about even being a majority owner of the firm." Tr. 775:10-18.

There was also put into evidence an email from Wadsworth to Reese on October 5, 2015, which memorialized one of their discussions regarding the decision to have the company pay the legal fees. Pls.' Ex. 74.[8]

Understandably, the District Court concluded that the payments made by WR PLLC "were made on account of a perceived need to address and resolve disputes among the parties, including the dispute in which Siddoway PC claimed that, in the event of the Reese Agreement's failure, the operating agreement's allocation of a one-third membership interest to Reese PC is ineffectual and Siddoway PC owns that membership interest, plus its own one-third membership interest." R. Vol. I, p. 404, ¶ 24. The district court concluded that the evidence supported the contention that the Company needed to resolve the various disputes among the members, including ownership of membership interests, in order to continue as a going concern. R. Vol. I, p. 408, ¶ 31.

c. Appellants have made no argument the court applied the wrong law or otherwise committed a legal error.

Other than citing one case regarding fiduciary duties, Siddoway's argument regarding the payment of legal fees is devoid of legal citation. Instead, appellants take issue with the plaintiffs' decision not to address Siddoway's two-thirds ownership interest claim in response to Siddoway's request for a preliminary injunction. This attempt to establish a tenuous inference is not a legal reason to disturb the trial court's conclusion, especially in light of the fact that success on the merits was not at issue during the preliminary injunction hearing. See generally Rule 65(e).

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[8] The trial court noted and addressed Siddoway's concern that the email didn't specifically mention Siddoway's two-thirds contention, noting that its absence from this one email "certainly doesn't disprove that the claim was part of the reason for taking the vote." Aug. R. p. 4.

The trial court considered whether the payment of legal expenses under these circumstances was a distribution or, even, a disguised distribution. R. Vol. I, p. 404, ¶ 24; R. Vol. I, p. 408, ¶¶ 30-31. Appellants make no argument about the propriety of the Court's detailed legal analysis, which concluded the payment was not a distribution. *Id.* The appellants simply disagree with the court's conclusion, "that the positions the company took were vindicated demonstrates good faith. More to the point, the Court cannot conclude that company's payments of the Wadsworth Reese Parties' legal counsel violated, nullified, or significantly impaired any benefit of Siddoway PC under the operating agreement." R. Vol. I, p. 408, ¶ 31.

d. The trial court correctly found that the nature of the action did not matter to its analysis of the payment of legal expenses.

The trial court determined that it was unnecessary to determine whether this lawsuit was a direct of derivative action. Siddoway pressed the Court for a determination by filing a Rule 59(e) motion. An order denying a motion under Rule 59(e) is appealable, "but only on the question of whether there has been a manifest abuse of discretion." *Pandrea v. Barrett*, 160 Idaho 165, ___, 369 P.3d 943, 949 (2016). (string cite omitted).

In support of their contention that a derivative action would require Wadsworth PC and Reese PC to pay the litigation fees, Siddoway cites *Prehn v. Hodge* arguing that "attorney's fees are deducted from the recovery of the LLC." App. Br. p. 28.[9] However, in *Prehn* the plaintiffs brought the action solely as individuals, the company itself did not pursue the litigation. 161 Idaho 321, 385 P.3d 876 (2016). A derivative action is an action brought by a member of a limited liability company to enforce the company's rights, whereas a direct action is an action brought by a member to assert the member's

[9] Siddoway cites no authority for his contention that a direct action requires a division of costs amongst the plaintiffs.

own rights, and not to recover solely for an injury to the company. I.C. §§ 30-25-801 to 803. However, "neither term [direct or derivative] encompasses an action a limited liability company pursues in its own right." Aug. R. p. 5; See generally, I.C. §§ 30-25-801 to 803. Regardless, the trial court concluded, "[n]o reallocation of legal expenses would result either way." Aug. R. p. 6. There was no abuse of discretion or erroneous factual findings and the trial court's determination that the payment of legal fees toward the successful effort to dissociate Siddoway and resolve his two-thirds ownership argument should stand.

C. The District Court's determination that Siddoway was not entitled to an unjust enrichment award was not an abuse of discretion.

A party is only entitled to damages for unjust enrichment if he establishes three elements: "(1) a benefit is conferred on the defendant by the plaintiff; (2) the defendant appreciates the benefit; and (3) it would be inequitable for the defendant to accept the benefit without payment of the value of the benefit." *Countrywide Home Loans, Inc. v. Sheets*, 160 Idaho 268, 272, 371 P.3d 322, 326 (2016) (quoting *Teton Peaks Inv. Co., LLC v. Ohme*, 146 Idaho 394, 398, 195 P.3d 1207, 1211 (2008)). At trial both Reese and Siddoway advanced unjust enrichment claims and the trial court found for both on the first two elements and not the third, that it would <u>not</u> be inequitable for the other party to keep the benefit without paying for it. R. Vol. I, pp. 400-401, ¶ 19 and p. 422, ¶ 61. In this instance, only Siddoway appealed that decision. However, the Court's reasoning and conclusions were not based on clearly erroneous facts and not an abuse of discretion.

As an initial matter the respondents disagree that any identifiable benefit was "conferred" on Reese. The trial court reached this erroneous conclusion by relying on Conclusion of Law ¶ 19, which <u>incorrectly</u> found that Siddoway transitioned clients <u>after</u>

the Reese Agreement was signed. R. Vol. I, p. 400-401, ¶ 19. A careful review of the testimony cited by the court demonstrates that no such temporal reference is made explicitly or implicitly. The Reese Agreement was executed over a year after the accountants started working together and the evidence demonstrates they all transitioned all of their clients to WR PLLC right from the beginning.[10] Reese testified:

> **Q.** Now, how many clients do you believe that you serviced in, say, the first year that you were at SWR, 2014?
> **A.** I don't know if I can give you an exact number, but 100, 200. I don't know.
> **Q.** Is it more than 8.
> **A.** Yes.
> **Q.** And isn't it true that right from the beginning you were placed in charge of and assigned to be the relationship partner for those hundreds of clients?
> **A.** From the very beginning?
> **Q.** Yes.
> **A.** I don't know if I was assigned. Like I said before, it was all based off of capacity. It was very chaotic, and we'd just – a client would come in. I'd say, "I have capacity. I can help them out."

Tr. 167:16 – 168:8.

When the Reese Agreement was signed, the three accountants had already spent one year integrating their clients and the Harding clients into WR PLLC and had done so pursuant to the operating agreement they signed in the beginning of 2014, with no non-competes or other protections. So, instead of signing the Reese Agreement, Siddoway could have just walked away and invited all of his clients to join him. In fact, that is what Siddoway did seven months later in August when he left to start a new business in a new location with his nephew. In doing so, Siddoway left behind whatever clients he or Dustin could not convince or chose not to pursue, and then asked to be compensated for

[10] It makes no sense (and is contradictory to the evidence) that Siddoway kept his clients in some sort of suspended animation during the year between when WR PLLC was formed and when the Reese Agreement was signed.

what was left behind.[11] No document, not even the voided Reese Agreement, ever even identified which one-half of Siddoway's client base Reese PC was to buy.[12] Siddoway did not confer a benefit on Reese PC.

Nonetheless, the trial court found that some benefit was conferred, but that it, "would not be unjust for Reese PC to retain the excess benefit of $21,359.50 (or whatever other amount the excess benefit might be calculated as)[13] it arguably received under the Reese Agreement over and above the $28,000 it paid to Siddoway PC."[14] R. Vol. I, p. 422, ¶61. Siddoway has appealed that conclusion despite the abundance of evidence cited in the Court's reasoning.

In making its argument, Siddoway stubbornly clings to its inaccurate claim that Reese PC obtained its membership interest in WR PLLC from Siddoway PC (the district court actually held that the membership interest came from the operating agreement (R. Vol. I, pp. 377-378)).[15] When the Reese Agreement was determined void the parties were to be put back in the position they were in as if it had never been signed (i.e. three equal partners in a one year old accounting firm, with no anti-competitive agreements, and each free to leave at will and compete for any of the other's clients).

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[11] If clients may actually be "left" anywhere, they were left to WR PLLC, not Reese PC.

[12] As implied in the last footnote, accounting "clients" are not chattels to be bought and sold. Each was free before and after the execution of the Reese Agreement to hire the accountant of their choice and the only conceivable reason they stayed with WR PLLC is because they were satisfied with the service they were receiving.

[13] Although the trial court attempted to follow Siddoway's calculation, it clearly never adopted that calculation, instead finding that is was unnecessary to adopt any calculation. R. Vol. I, pp. 419-421, ¶¶57-60.

[14] Siddoway transitioned clients into WR PLLC one year before the Reese Agreement was signed and then oversaw the mass migration of his clients away from WR PLLC after the Reese Agreement was signed. Any benefit Reese PC or WR PLLC received in the form of remaining clients was not a benefit received under the Reese Agreement.

[15] Siddoway has not appealed the trial court's finding that Reese PC received its interest from the operating agreement and any argument based on the idea that Reese PC received it from any other source must be disregarded.

The District Court cited substantial evidence in reaching the conclusion that Siddoway failed to meet the burden of proving that it would be unjust for Reese PC to keep the "benefit" it received without compensating Siddoway. The court found that Siddoway's volitional decision to leave WR PLLC created a great potential for client flight and a large share of his client base—hundreds of clients—promptly left for the firm his nephew opened in the same location of Siddoway's new consulting firm.[16] R. Vol. I, pp. 422-423, ¶ 61 (citing Pls.' Ex. 44; Tr 653:17-655:3); see also R. Vol. I, p. 400-401, ¶ 19; Tr. 93:7-22, 95:12-18, 833:5-10. That WR PLLC was able to hang onto some fraction of the Siddoway PC client base, no thanks to the Siddoway Parties, doesn't make it unjust for Reese PC not to further compensate Siddoway PC for those clients. R. Vol. I, p. 423, ¶ 61.

The Court also based its conclusion on the evidence of contributions other than client relations to the enterprise.

> it seems reasonably clear from the evidence that Reese (and thus Reese PC) was actively engaged throughout the period in servicing Wadsworth Reese clients, leading directly to the generation of revenue that contributed to the company's ability to pay the monthly management fees. Whether the same is true of Siddoway (and thus Siddoway PC) was never as clear to the Court.[17]

R. Vol. I, p. 423, ¶ 62 (citing Defs.' Ex. 1010; Pls.' Ex. 49; Tr. 66:10-67:1, 189:20-192:4, 266:1-9).

Reese testified:

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[16] There was testimony at trial that shortly after Randy's departure from WR PLLC, Dustin's new firm had received between 200 and 300 releases for clients transferring from WR PLLC. Tr. 654:21-655:3.

[17] Siddoway concedes that he didn't do much client servicing during his time at WR PLLC because his efforts were, "largely devoted to transferring client relationships and other benefits to Reese…" App. Br. p. 33.

> **Q.** So under Mr. Siddoway's proposal, he assigns himself no clients to work on, but he has an administrative assistant; and he's still supposed to get paid evenly every month with you guys?
> **A.** Yes.
> **Q.** Was that one of the issues causing the partners some consternation?
> **A.** Yes.

Tr. 266:1-9.

Reese and Siddoway both received their membership interests pursuant to the operating agreement. Immediately prior to signing the Reese Agreement the parties were three accountants with equal membership interests and a hope that they would reach an agreement to have Reese purchase one half of Siddoway's client base and that all three would "contribute" those interests and reach an agreement on anti-competitive language to protect the contribution. But that hope never came to fruition and Siddoway chose to leave when he grew frustrated with the negotiations. Siddoway persistently recites the trial court's quote from an earlier order about what the Reese Agreement covers to buttress his contention that Reese received his membership interest from Siddoway under the Reese Agreement. But the Reese Agreement is void, the quote is out of context even within the Reese Agreement (clearly Reese already had a one-third interest and clearly the larger context included identifying and contributing assets to WR PLLC) and the trial court flatly rejected that Reese' one-third membership interest came from anywhere but the same place as Siddoway's, the operating agreement they all executed on January 8, 2014. See App. Br. p. 37. "The operating agreement, not the Reese Agreement, is the source of Reese PC's membership interest." R. Vol. I, p. 378.

"Prior decisions may suggest that, under the Reese Agreement, Reese PC agreed to purchase a one-third membership interest in Wadsworth Reese from Siddoway PC, but any such reading of the Reese Agreement would be mistaken." R. Vol. I, p. 378.

In the end "the Siddoway Parties haven't shown that it is unjust, under the circumstances, for the Court to leave the parties where it found them: Reese PC having paid only part of the agreed price for Siddoway PC's unenforceable—and only partly performed—obligation to transition its client base to Wadsworth Reese." R. Vol. I, p. 424, ¶ 63. The appellants have provided this court with no viable reason to disturb that finding and the appeal should be denied.

IV. CONCLUSION

In the end, the trial court decided to leave the parties in the position into which they put themselves. Appellants have offered no legal reason or factual distinction which requires a different outcome. The trial court did not abuse its discretion in finding that Siddoway was not the prevailing party in the litigation and that he is not entitled to an award of attorney fees for compelling an arbitration that he lost. The trial court's determination that WR PLLC made a legitimate business decision to pursue Siddoway's dissociation and to defeat his two-thirds membership claim is supported by substantial evidence and the legal analysis is not in question. It was not an abuse of discretion to find that justice does not require Reese PC to compensate Siddoway for the clients that chose to continue to purchase services from WR PLLC. The appeal should be denied.

DATED this 22nd day of January, 2019.

FISHER RAINEY HUDSON

/s/ Vaughn Fisher
Vaughn Fisher
Attorney for Plaintiffs-Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of January, 2019, I caused a true and correct copy of the foregoing **RESPONDENTS' BRIEF** to be served upon the following individuals in the manner indicated below:

Brett Hastings
299 South Main Street, 13th
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84110

( ) Via U.S. Mail
( ) Via Facsimile - (801) 961-4001
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/s/ Vaughn Fisher
Vaughn Fisher