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IN THE SUPREME COURT OF THE STATE OF IDAHO

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THE LOLA L. CAZIER REVOCABLE  
TRUST;

Plaintiff/Respondent,

vs.

CHARLES DRAKE CAZIER; LAND  
RENEWAL MANAGEMENT, INC., an  
Idaho Corporation; and JOHN DOES I-  
X;

Defendants/Appellants.

Supreme Court Case No.: 46852-2019

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**RESPONDENT'S BRIEF**

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Appeal from the District Court of the First Judicial District for Kootenai County  
Honorable John R. Mitchell, District Judge

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## I. STATEMENT OF THE CASE

### A. NATURE OF THE CASE

This case originates from an action to quiet title to real property owned by the Respondent, the Lola L. Cazier Revocable Trust, (hereinafter the “Cazier Trust”).

### B. COURSE OF PROCEEDINGS / PROCEDURAL HISTORY

The Cazier Trust commenced the current quiet title action pursuant to I.C. § 6-401, seeking to quiet title in the subject parcel (the legal description is in the record and is not in dispute) and a declaratory judgment removing any alleged interests in the property by the Appellants, Charles Drake Cazier (hereinafter “Drake Cazier”) and Land Renewal Management, Inc. (hereinafter “LRM”) (John Does I - X were also listed as defendants). *R.*, pp. 8-22. The Cazier Trust filed the Verified Complaint on August 31, 2018. *Id.* Drake Cazier filed his Answer and Cross Complaint on October 11, 2018, denying the Cazier Trust’s allegations supporting quiet title and declaratory relief and demanding the trust be ordered to sell the subject property to him. *R.*, pp. 23-29. Counsel for LRM filed a Notice of Appearance on October 11, 2018, followed by a verified Answer on August 16, 2018. *R. p.* 3. LRM’s verified Answer includes denials of the Cazier Trust’s claims for quiet title and declaratory judgment, raises affirmative defenses of estoppel and bad faith/unclean hands, and demands the court enter “Judgment stating that Defendant [LRM] ***retains an interest in the property*** identified in Plaintiff’s complaint” as well as “a Judgment for damages that will be proven at trial”. *R.*, pp. 30-35. (*Emphasis added*). LRM failed to include defenses pursuant to Rule 12(b), I.R.C.P.,

in its verified Answer. *Id.* It is important to note that throughout the course of the action, neither LRM, nor Drake Cazier, offered or filed any disclaimer of interest in the subject property, nor allowed default to be entered against them.

On December 21, 2018, the Cazier Trust filed its Motion for Summary Judgment, arguing that 1) title to the subject property should be quieted in the name of the Cazier Trust, 2) any alleged interest of Drake Cazier and LRM arising from a 1999 agreement by express terms expired in 2001 and were time barred, and 3) the cross complaint of Drake Cazier failed to state a claim upon which relief might be granted. *R.*, *pp.* 78-80. The Affidavit of Cheryl Witkowski and Declaration of Counsel, along with supporting brief and statement of undisputed facts were filed in support of the Cazier Trust's motion for summary judgment. *R.*, *pp.* 78-125. Copies of the title report / Litigation Title Guarantee issued by First American Title Co., showing the fee simple ownership in the Cazier Trust, and title exceptions (clouds on title ), with Drake Cazier and LRM identified as necessary parties for an action to clear title. *R.*, *pp.* 84 - 116. The Cazier Trust's recitation of facts was largely undisputed by Drake Cazier and LRM. *R.*, *pp.* 126 & 134.

Drake Cazier filed a Memorandum in Response to Plaintiff's Motion for Summary Judgment on January 9, 2019, conclusively arguing that based upon his previously filed answer and cross claim, he was a creditor of the Cazier Trust. *R.*, *pp.* 128-129. On January 9, 2019, LRM filed the Affidavit of Drake Cazier, Owner of LRM, confirming that on November 14, 2018, in the midst of the quiet title action, as owner of LRM he executed an assignment of the subject property from LRM

to himself. *R.*, pp. 131-132. (Upon objection, ¶¶ 8 & 9 of the affidavit were stricken.) LRM also filed its Memorandum in Response to Plaintiff's Motion for Summary Judgment (LRM also filed a separate Rule 12(b)(6) Motion to Dismiss, which was never noticed for hearing). *R.*, pp. 134-152. (Exhibit "A" attached to LRM's Memorandum was stricken, as it lacked proper foundation, having been attached directly to LRM's brief and not to any affidavit. *Tr.*, p. 11, ll.3-5.) The Cazier Trust filed its Reply Memorandum on January 16, 2019. *R.*, pp. 166-172.

On January 23, 2019, hearing was held on the motion for summary judgment, with the trial court considering the various pleadings and filings submitted by the parties and ruling in favor of the Cazier Trust. *R.*, p. 4. In granting summary judgment, the trial court ruled that "[t]he statute of limitations has provided an *outright bar* to this [the defendants claims to an interest in the property pursuant to the 1999 agreement], and that has been the case *for many, many years*" and "...that the defense in this case has been unreasonable and frivolous." *Tr.*, p. 26, ll. 13-20. Relative to LRM's argument that I.C. § 6-402 provided it relief and a basis for dismissal, the court read the statute and considering LRM's conduct in the action ruled as follows:

"6-402 reads, 'If the defendant in such action [quiet title] disclaim in his answer any interest or a stake in the property or suffer judgment to be taken against him without answer, the plaintiff cannot recover costs.' ***That's clearly not what happened.*** ...looking at your firm's answer ... the defendant corporation is clearly litigating this... stating that defendant retains an interest in the property... ***That is 180 degrees opposite*** of what 6-402 reads, and ***I find any claim to the contrary is absolutely ridiculous***, so both the individual defendant Mr. Cazier and LRM are subject to costs and fees defending this case." *Tr.* pp. 26-27, ll. 24-11. (*Emphasis added*).

On January 28, 2019, the trial court entered the written Order Granting Plaintiff's Motion for

Summary Judgment and Judgment Quieting Title against LRM and Drake Cazier. *R.*, pp. 177-179.

As the prevailing party, and in compliance with Rule 54, on February 7, 2019, the Cazier Trust filed its Memorandum of Costs & Declaration of Fees, along with the Declaration of M. Patton Echols, Oregon Attorney for the Cazier Trust. *R.*, pp. 180-196. Kurt Schwab filed a Substitution of Counsel and appeared on behalf of both LRM and Drake Cazier, on February 20, 2019. *R.*, pp. 197-198. The substitution was followed by an Objection to Attorney Fees and Costs and objection memorandum which were filed on February 21, 2019. *R.* pp. 199-212. Notably, although objections were raised, neither LRM, nor Drake Cazier filed a “Motion to Disallow” as the motion required by Rule 54. Hearing was noticed by counsel for the Cazier Trust and was held on April 3, 2019, wherein the court applied the standards of Rule 54 and ruled in favor of the Cazier Trust, awarding the trust its reasonable costs and attorney fees. *R.*, pp. 5-6. On April 16, 2019, the Court entered the written Order Awarding Plaintiff Costs & Attorney Fees Against the Defendants, and the Amended Judgment. *R.*, pp. 247-249.

This appeal followed.

**C. STATEMENT OF FACTS - ADDITIONAL RELEVANT FACTS NOT FULLY DISCLOSED BY APPELLANTS’ BRIEF -**

The Cazier Trust raises several additional facts that appear to have been omitted from the Appellant’s Brief. First, the express terms of the 1999 Agreement required the sale to LRM to be completed by February 16, 2001, within 2 years from the agreement’s execution. *R.*, p. 21. Further, no evidence was introduced to the trial court to support any efforts by LRM to fulfill the terms of

1999 - Letter of Agreement and exercise the option to purchase the subject property between 1999 and 2018 and as the trial court recognized “[t]he statute of limitations has provided an *outright bar* to this [the defendants claims to an interest in the property pursuant to the 1999 agreement], and that has been the case *for many, many years*”. *Tr.*, p. 26, ll. 13-15. (*Emphasis added*).

Second, both the defendants, Drake Cazier and LRM filed answers to the Cazier Trust’s Verified Complaint wherein they alleged interests in the subject property and asked the trial court to grant judgment in the quiet title claim against the Cazier Trust. *R.*, pp. 23-35.

Third, Drake Cazier is the owner, CEO and registered agent of LRM and signed the verification of LRM’s Answer. *R.*, pp. 34, 131-132, & 149.

Fourth, Drake Cazier was not and is not entitled to receive any share of the Cazier Trust, as he was removed from the trust as a beneficiary and the terms of the trust expressly bar the trustee from giving Drake Cazier anything from the trust. More specifically, “Grantor is intentionally leaving nothing to Charles Drake Cazier or his children.” *R.*, p. 76, Third Amendment to the Lola L. Cazier Revocable Trust Article II, Paragraph E.(2)(b). The express disinheritance was acknowledged by the Appellants and their counsel in Drake Cazier’s argument that he was a “creditor” by way of amounts owed to him by Kimberly. *R.*, p. 27, ¶ 27.

Fifth, the Cazier Trust is a trust being administered in the State of Oregon with the assistance of Oregon attorney Patton Echols and the cloud on title caused by the Defendants caused the trust to incur additional fees with the Oregon attorney handling its administration. *R.*, p. 193-196.

Further, in bold opposition to the Cazier Trust’s ownership interest in the subject property

and without foundation in law or fact, both LRM and Drake Cazier, filed answers in response to the Cazier Trust's quiet title and declaratory judgment claims, wherein both LRM and Drake Cazier claimed interests in the Cazier Trust property and requested the trial court to deny the relief requested by the Cazier Trust and rule that they each held interests in the subject property. *R.*, pp. 23-35; *Tr.*, pp. 26-27, ll. 9-19. The Answers filed by LRM and Drake Cazier speak for themselves, and clearly illustrate why it became necessary for the Cazier Trust to seek quiet title and declaratory relief from the court.

Finally, as evidenced by the Record, and aptly noted by the trial court at the hearings, throughout the course of the action, neither LRM, nor Drake Cazier disclaimed any interest in the subject property to the Cazier Trust. *Id.* Rather, LRM further complicated the cloud on title through the assignment referenced in the Appellant's Brief, which was a wholly self-serving assignment executed by Drake Cazier as CEO of LRM to himself - Drake Cazier. *R.*, p. 132, ¶ 3; *R.* pp. 150.

## **II. ADDITIONAL ISSUES ON APPEAL**

The following additional issues are presented to this Court on appeal.

1. Is the appeal filed by LRM and Drake Cazier frivolous, unreasonable and lacking in foundation, meriting an award of attorney fees to the Cazier Trust pursuant to I.C. § 12-121 and I.A.R. Rule 41?

### III. ARGUMENT

#### A. STANDARDS OF REVIEW

Standards of review are included in Respondent's Brief to address errors and/or omissions from the Appellants' brief relative to the applicable standards of review.

##### 1. ON APPEAL, THE APPELLANTS HAVE THE BURDEN OF PROVING THAT THE TRIAL COURT COMMITTED REVERSIBLE ERROR.

The Appellants have the burden on appeal to affirmatively establish that the trial court committed reversible error. *Durrant v. Christensen*, 120 Idaho 886, 821 P.2d 319 (1991). "Error will not be presumed on appeal but must be affirmatively shown on the record by appellant." *Id.* (Citations omitted). Further, the Court "will not reverse a judgment where the result would have been the same had the error not been made." *Ernst v. Hemenway*, 126 Idaho 980, 895 P.2d 581 (Ct.App. 1995); (citing *G& H Land & Cattle Co. v. Heitzman & Nelson, Inc.*, 102 Idaho 204, 628 P.2d 1038 (1981). *See also* I.R.C.P 61). Rule 61, I.R.C.P. provides in relevant part as follows:

At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

Accordingly, on appeal, the Appellants must not only establish an error on the record, but must also show that the purported error affected the party's substantial rights and that the result would have been different but for the error.

##### 2. SUMMARY JUDGMENT

On review of the trial court's ruling granting summary judgment, this Court will review the decision applying the same standard as that applied by the trial court. *Chapin v. Linden*, 144 Idaho

393, 396, 162 P.3d 772, 775 (2007). Pursuant to I.R.C.P. Rule 56, “[t]he court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” In order to avoid summary judgment, the non-moving party must make a showing sufficient to establish the existence of an element which is essential to their case and upon which they will bear the burden of proof at trial. *Badell v. Beeks*, 115 Idaho 101, 107, 765 P.2d 126, 127 (1988); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A party opposing summary judgment “may not rest on the mere allegations or denials of that party’s pleadings, but the party’s response ... must set forth specific facts showing that there is a genuine issue for trial.” *Smith v. Meridian Joint School Dist. No. 2*, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996). Once the party moving for summary judgment shows the absence of a genuine issue of material fact, the party opposing summary judgment must come forward with adequate evidence to create a genuine issue of fact. *Vreeken v. Lockwood Engineering*, 148 Idaho 89, 103, 218 P.3d 1150, 1164 (2009). Further, if the matter is to “be tried before the court without a jury, resolution of the possible conflict between the inferences is within the responsibilities of the trial court as fact finder. (Citation omitted). The trial judge is not constrained to draw inferences in favor of the party opposing a motion for summary judgment, but rather the judge is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts, despite the possibility of conflicting inferences.” *See Chapin* at 396, & 775. *Also see Vreeken* at 101, & 1162.

In the case at bar, there was no genuine issue of fact, and for the reasons provided herein, the trial court’s ruling granting summary judgment to the Cazier Trust was proper and should not be

disturbed on appeal.

**3. TRIAL COURT'S EVIDENTIARY RULINGS**

On review of the trial court's evidentiary rulings, this Court will review the decision applying the three-part abuse of discretion analysis, disregarding any error that does not affect substantial rights of the appellant(s). *See Vreeken* at 106, & 1167; *also* Rule 61, I.R.C.P.

**4. STATUTORY INTERPRETATION**

The Appellants have not identified any Idaho statute that requires the Court to apply standards for interpretation, nor provided any genuine basis to claim any error in applying Idaho law.

**B. THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR IN DISMISSING THE CROSS-CLAIMS OF CHARLES DRAKE CAZIER.**

On appeal the LRM and Drake Cazier argue that it was error for the trial court to grant summary judgment against Drake Cazier relative to his cross claims. At the hearing on summary judgment, the trial court aptly ruled that the allegations included in Drake Cazier's cross complaint/counterclaim failed to state a cause of action against the Cazier Trust and declined to "issue a written decision on this because it is so straightforward." *Tr.*, p. 27, ll. 12-19.

In considering the allegations included in Drake Cazier's Answer and Cross Complaint, it is clear the face of the document that it does not state any viable claim against the Cazier Trust for which relief may be granted. At best, the primary allegations of Drake Cazier allege that he is entitled to seek information and control over the private administration of the Cazier Trust, which is being administered with the assistance of counsel in the State of Oregon. More specifically, paragraphs 1 - 26 and 28 - 31 of Drake Cazier's "Cross Complaint" only relate to the private matters of the trust administration, for which he is not a beneficiary. *R.*, pp. 25-28. Further, exclusive jurisdiction over questions relating to the administration of the trust would be in Oregon, the state of its administration. I.C. § 15-7-201 *et seq.*

On its face the unsworn cross claims of Drake Cazier vaguely allege what might be characterized as two main points. First, while acknowledging that he is not a beneficiary of the Cazier Trust, Mr. Cazier alleges that the beneficiaries have not received information from the trustee and that the trustee should be ordered to sell the Cazier Trust parcel to Drake Cazier at a discounted

purchase price. *R.*, pp. 25-28. Second, that “*Kimberly [presumably a beneficiary of the Cazier Trust] owes Drake money*” making Drake Cazier a creditor of the trust; thereby entitling him to directly pursue recovery from the trust for any money owed by Kimberly and allowing him to control the disposition of the Trust’s property, ensuring that it can not be sold to anyone but himself. *R.*, p. 27, ¶ 27. In his “Requested Relief”, “Drake Cazier as a creditor of the trust” asks the court to order 1) “the trustee to provide the documentation and accounting of the trust”; 2) “the trust be ordered to sell [the property] to Drake”; and 3) an award of attorney fees and costs. *R.*, p. 28. However, even construing inferences in favor of Drake Cazier, neither of the issues alleged by Mr. Cazier in his cross / counter complaint rise to the level to be recognized as stating a valid claim against the Cazier Trust from which relief might be granted.

Further, although given ample opportunity, in responding to summary judgment, neither LRM, nor Drake Cazier presented any material evidence or legal basis that would provide support for a viable claim against the Cazier Trust. Rather, Drake Cazier argued only that he was a creditor of the trust and thereby entitled to a full accounting of the trust without providing any factual, or legal basis for his alleged claim. *R.* p. 128. Notably, LRM’s counsel also included argument for Drake Cazier’s cross claim stating “Mr. Cazier is asserting a claim against the trust for payment to himself as a creditor ... [f]rom the pleadings it appears that the Trust owes Mr. Cazier money *as a creditor* of the Trust.” *R.* p. 137.

The Appellants submitted the Affidavit of Drake Cazier, Owner of LRM, which provided no statements relating to any money allegedly owed by Kimberly, or his claim to be a creditor of the

trust. *R. pp.* 131-33. Aside from the conclusive allegation that “Kimberly owes Drake money ... makes[ing] Drake a creditor of the trust”, the record is void of other facts to support a claim against the trust that would entitle Drake Cazier to relief. Accordingly, judgment against Drake Cazier was appropriate; “for H & M [Drake Cazier & LRM] to successfully oppose a motion summary judgment which is supported by a particularized affidavit, it may not rest upon bare allegations or general denials.” *Ernst v. Hemenway and Moser Co.*, 126 Idaho 980, 985, 895 P.2d 581, 586.(Ct.App. 1995).

Additionally, it is notable that even if Kimberly were named as a defendant, Drake Cazier’s cross complaint would be subject to dismissal, as it simply fails to state a claim for which relief may be granted. The cross complaint simply states that Kimberly owes him money and does not state a viable claim for relief. An orderly legal system requires the claimant to spell out the basis of their claim, both factually and legally. Relative to Drake Cazier’s Cross claims we can only speculate what is the very basis of his claim? For example: is his claim contractual or tort based; legal or equitable; are damages compensatory, general, or exemplary; and how much is owed? What facts give rise to the purported liability? All the generally required facts and legal claims are missing from Drake Cazier’s cross complaint, thus it fails to state a claim. *R. pp.* 25-28.

Further, when given ample opportunity to respond, he failed to provide any factual clarification or elaboration that would support a viable claim. Nor did he move to amend his cross complaint to assert a viable claim. Based upon the Record, the trial court considered the allegations and the law and determined that Drake Cazier was not entitled to relief against the Cazier Trust and granted summary judgment. *Tr. pp.* 26-27, ll. 1-25. Simply, Drake Cazier failed to state a claim for

which relief could be granted and the trial court did not commit error in its order granting summary judgment.

It must be noted that on appeal, counsel for Drake Cazier and LRM now argue that Drake's claims arise by way of some undisclosed amount that Drake Cazier had at some time "*lent to his sister Kimberly D. Howard.*" Appellant's Brief. This is an allegation of fact without support in the Record. That Appellants further argue that a provision that directs the trustee to offset the share of one beneficiary - Kimberly Howard, by any amount she owes to another beneficiary provides support for the claim. However, on its face the provision is inapplicable to a creditor that is not a beneficiary with a share in the trust estate, as the term expressly provides that "said amounts shall be added to the share of the sibling or siblings she owes". *R.*, p. 76, Third Amendment to the Lola L. Cazier Revocable Trust Article II, Paragraph E.(2)(b). Thus in order to add the amount to the sibling's share, the sibling must have a share as a beneficiary of the trust, not be a creditor claiming a named beneficiary owes them money. Drake Cazier has no share in the trust to add any amount, as the trust expressly states that "Grantor is intentionally leaving nothing to Charles Drake Cazier". *Id.* Thus, Drake Cazier is in no different position than any other creditor of a beneficiary to a trust. Accordingly, as a matter of law, the spendthrift clause of the trust acts as a bar to Drake Cazier from taking action against the trust to collect the debt of the beneficiary. *I.C. § 15-7-502 & Article VI of the Cazier Trust at R. pp. 51.*

Further, for the sake of argument, if one accepts Drake Cazier and LRMs' argument that Drake is a creditor of the trust, as a matter of law he is barred from pursuing recovery directly from

the trust by the spendthrift clause included within the trust. Specifically, I.C. § 15-7-502 recognizes the validity of spendthrift provisions of a trust in providing in relevant part as follows:

15-7-502. SPENDTHRIFT TRUSTS. (1) A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal of in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

(2) A declaration in a trust instrument that the interest of a beneficiary shall be held subject to a “spendthrift trust” is sufficient to restrain voluntary or involuntary alienation of the interest by a beneficiary to the maximum extent permitted under this section.

In the Cazier Trust, in relevant part the spendthrift clause provides as follows:

Article VI - Limitation on Powers of Beneficiaries

No title in the trust or trusts created in this instrument or in any property at any time becoming a part of any such trust, or in the income therefrom, shall vest in any beneficiary, other than Grantor, and neither the principal nor the income of any such trust estate shall be liable to be reached in any manner by the creditors of any beneficiary ...

*R. pp. 51.*

Accordingly, Drake Cazier, even if accepted as a creditor of Kimberly Howard, is not entitled to seek payment of her debt, if any, directly from the Cazier Trust.

Neither Drake Cazier, nor LRM provided any admissible facts or legal authority to support a claim that would entitle Drake Cazier to relief against the Cazier Trust. They can not now add new facts or augment allegations to attempt to create a claim that did not exist before the trial court. LRM and Drake Cazier have failed to establish that the trial court committed reversible error in granting the Cazier Trust summary judgment on the cross/counter claims alleged by Drake Cazier. Further, on appeal, no new legal argument or analysis has been provided to support reversal, rather, the LRM

and Drake Cazier merely ask the Court to second guess the decision of the trial court. Accordingly, the trial court's judgment should be affirmed.

**C. THE TRIAL COURT WAS CORRECT IN GRANTING SUMMARY JUDGMENT AGAINST LRM.**

On appeal LRM argues that the trial court should have dismissed it from the present action after it responded to the Cazier Trust's motion for summary judgment by filing a motion to dismiss pursuant to Rule 12(b)(6).<sup>1</sup> In support of its motion, LRM made the baseless argument that LRM had not claimed any interest in the property and should be entitled to the benefit of I.C. § 6-402, to be treated as though it had not filed an answer and had allowed default, which it did not do. *R.*, p. 137. The trial court ruled against LRM on its argument for dismissal on the basis that LRM had claimed an interest in the property and was not entitled to the benefit of I.C. § 6-402. *Tr.*, pp. 26-27, ll. 16-11. Specifically, finding LRM's defense "*is 180 degrees opposite of what 6-402 reads, and I find any claim to the contrary is absolutely ridiculous.*" *Id.*, p. 27, ll. 7-9. The trial court ruling confirms that the trial court recognized, that the Cazier Trust was justified in alleging the quiet title and declaratory relief claims against both Defendants LRM and Drake Cazier to clear their alleged interests in the property.

The trial court was correct in granting summary judgment in favor of the Cazier Trust against both Drake Cazier and LRM. LRM's argument requesting dismissal based on Rule 12(b)(6) and I.C. § 6-402 was not supported by the Record or Idaho law. Accordingly, following argument on

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<sup>1</sup> Contrary to LRM's representation, LRM did not raise a Rule 12(b)(6) defense in its verified Answer.

summary judgment, the trial court ruled that “the defense in this case has been unreasonable and frivolous.” *Tr.*, p. 26, ll. 19-20. In its ruling against LRM and Drake Cazier, the trial court quoted I.C. § 6-402 and noted the following:

The Court:     *“That’s clearly not what happened. I’m sitting here looking at your firm’s answer anyway, I don’t know that Mr. Schwab signed the pleading for the corporation, but in the affirmative defenses, the defendant corporation is clearly litigating this, and in the prayer for relief, Item A, quote, for judgment stating that defendant retains an interest in the property identified in plaintiff’s complaint as parcel three, end of quote. That is 180 degrees opposite of what 6-402 reads, and I find any claim to the contrary is absolutely ridiculous.”*  
*(Emphasis added.)*

*Tr.*, pp. 26-27, ll. 24-9. As the trial court noted, the Answer filed by LRM on October 16, 2018, which was verified by Drake Cazier, clearly and unequivocally denied that the Cazier Trust was entitled to quiet title and a declaratory judgment, while praying that judgment be entered for LRM. LRM’s verified Answer was frivolous, unreasonable and entirely lacking in foundation in this quiet title action in that it sought specific relief from the trial court in the form of judgment against the Cazier Trust “stating that Defendant [LRM] retains an interest in the property identified in Plaintiff’s complaint.” *R.*, p. 32. The repeated representation by LRM’s counsel that LRM did not claim any interest in the subject property during the course of the action, continues to be false, unreasonable, frivolous, and entirely lacking in a good faith foundation.

Further, for LRM to claim that it did not claim an interest, not only contradicts its own verified Answer, it supports an argument that LRM and Drake Cazier acted with malice during the course of the action. Specifically, it is notable that on November 14, 2018, in the midst of this quiet

title action and presumably with the guidance of LRM's counsel, Drake Cazier as owner of LRM executed an assignment of the subject property from LRM to himself. *R.*, pp. 131-132.<sup>2</sup> LRM received "good and valuable consideration" for the assignment. *R.*, pp. 148-150.

The Verified Complaint clearly stated claims that entitled the Cazier Trust to relief against both LRM and Drake Cazier. LRM's alleged defense based upon Rule 12(b)(6) and raised only in response to summary judgment, was not supported by the Record and was properly rejected as explained by the trial court's ruling. Accordingly, both before the trial court and on appeal, LRM's argument is not supported by the facts and Idaho law, nor is there any good faith basis for an extension of the law that would support the Appellants' argument. Simply, LRM has failed to establish reversible error in the trial court's decision and clearly attempts to re-litigate the issues and asks the court to second guess the trial court's decision on appeal without a good faith basis in law or fact.

**D. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN RULING ON THE EVIDENTIARY ISSUES.**

The standard of review for evidentiary rulings is for an abuse of discretion. *See Vreeken*, at 106, 1167. "Error is disregarded unless the ruling is a manifest abuse of the trial court's discretion and affects a substantial right of the party." *Id.* (Citation omitted). Three factors are applied in the

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<sup>2</sup> LRM's argument ignores the fact that if it did not claim any interest in the subject property, the Assignment executed by Drake Cazier on November 14, 2018, as well as any additional instruments between LRM and Drake Cazier purporting to transfer an interest in the property from LRM to Drake Cazier would appear to be false or fraudulent instruments intended to harass, harm and cause damages to the Cazier Trust as the fee simple owner of the property and thereby executed by LRM with malice and disregard for the results of such conduct.

analysis to determine if the trial court abused its discretion as follows:

- 1) whether the trial court correctly perceived the issue as one of discretion;
- 2) whether the trial court acted within the boundaries of this discretion and consistent with the legal standards applicable to the specific choices available to it; and
- 3) whether the trial court reached its decision by an exercise of reason.

*Id.*

In the case at bar, LRM and Drake Cazier have not established that the trial court abused its discretion in ruling on evidentiary issues at either the hearing on summary judgment or at the hearing on attorney fees. First, there is no indication that the trial court failed to recognize its discretion in ruling upon the evidentiary issues. Second, the trial court's rulings were within the outer boundaries of the court's discretion and consistent with the applicable legal standards. Third, LRM and Drake Cazier have failed to show that the trial court failed to exercise sound reasoning in ruling on each of the issues raised in the Appellants' Brief. Finally, even if there was error on the part of the trial court, LRM and Drake Cazier have failed to show that such error affected substantial rights or would have changed the reasonable outcome of the action.

**1. LRM's Objections relative to the spendthrift provisions of the Cazier Trust are not supported and was waived by counsel Schwab at hearing.**

On appeal, LRM and Drake Cazier argue that the Court should not have considered the "spendthrift provision" included in the Cazier Trust. However, if followed, such argument would have required the trial court and this Court to blatantly ignore both the terms of the Cazier Trust, which were part of the record, as well as I.C. § 15-7-502. The complete terms of the Cazier Trust and amendments thereto, were part of the record before the trial court. R., pp. 40-77. The spendthrift

clause was raised on summary judgment when both Drake Cazier and LRM argued that Drake Cazier's claim against the trust was not as a beneficiary, but as "a creditor" of the Cazier Trust, by way of amounts owed to him by a beneficiary of the trust. *See argument in Section IV A. Infra.*

The facts are indisputable that the Cazier Trust includes a valid spendthrift clause at Article VI of the trust agreement. *R.*, p.51. Without support, at the hearing on summary judgment, LRM's counsel raised the objection that the trust was not before the trial court, an objection that was overruled with the Court noting that:

The Court: "The trust is before the Court."  
*Tr.*, p. 23, l. 11.

...  
The Court: "So if there's an objection, it's overruled."  
*Tr.*, p. 23, ll. 16-17.

Mr. Schwab then waived the objection with the following:

Mr. Schwab: "If the trust is included, that's fine with us. We hadn't seen it that that was accepted, so if that's now before the Court and accepted as part of the documents for this hearing, that's - - we're okay."  
*Tr.* p. 23, ll. 18-21.

Further, LRM and Drake Cazier have failed to meet the burden of establishing that the trial court abused its discretion in allowing argument related to the spendthrift clause. It was not an abuse of discretion to consider the spendthrift terms included within the Cazier Trust, which was already before the trial court. Nor have the Appellants shown that the admission of argument regarding the spendthrift clause was erroneous and affecting a substantial right. Accordingly, the Court should reject the Appellants' argument and uphold the trial courts ruling on this issue, as LRM and Drake

Cazier merely ask this Court to second guess the trial court on this issue.

**2. The Idaho Rules of Evidence apply to Affidavits filed with the trial court and it was appropriate for the trial court to strike hearsay portions of the Affidavit of K. Schwab.**

On appeal, LRM and Drake Cazier argue that it was an abuse of discretion for the trial court to sustain the objections to hearsay statements included within paragraphs 9, 11, and 12 of the Affidavit of Kurt Schwab, and the objection to Exhibit C attached to Defendants' Memorandum on the basis of lack of foundation. Without any foundation in law, LRM's counsel also argues that the Rules of Evidence do not apply to his affidavit, as it was submitted for consideration by the trial court in opposing the attorney fees and costs requested by the Cazier Trust. The trial court was not persuaded by this argument of Mr. Schwab - Drake Cazier and LRM, at the hearing on April 3, 2019. *Tr.*, pp. 31-33, sub-pages 3 - 9, ll. 18 -14. In ruling on Mr. Schwab's argument, the trial court referenced Rule 101 of the Idaho Rules of Evidence, and ruled that the affidavit was not exempt from the Idaho Rules of Evidence. *Tr.*, p. 32, sub-page 7, ll. 20-25. The trial court then evaluated each statement pursuant to the Idaho Rules of Evidence and determined that the statements included within paragraphs 9, 11, and 12 of the Affidavit of K. Schwab were inadmissible hearsay. *Tr.*, pp. 32-33, sub-pages 8 - 9, ll. 2-14. The Exhibit C referenced by Mr. Schwab was attached directly to the Memorandum, rather than to an affidavit, thereby lacking foundation. (The exclusion of Exhibit C was not prejudicial, as it is part of the record considered on summary judgment).

The record does not support a claim that the trial court abused its discretion in ruling upon the evidence either at the summary judgment hearing, or at the hearing for attorney fees. The record

clearly reflects that the trial court heard each objection, recognized it as within its discretion, and reasonably exercised its discretion in applying the Idaho Rules of Evidence in each instance. Further, relative to the exclusion of paragraphs 9, 11, and 12 of the Affidavit of K. Schwab and the Exhibit C that was attached directly to the defendants' memorandum, any alleged error did not affect substantial rights of the appellants. Accordingly, on appeal the Court should reject LRM and Drake Cazier's argument and uphold the trial courts ruling, as the Appellants merely ask this Court to second guess the trial court on this issue.

**E. THE TRIAL COURT DID NOT ABUSE IT'S DISCRETION IN AWARDING ATTORNEY FEES AND COSTS TO THE CAZIER TRUST.**

On appeal, LRM and Drake Cazier argue that the trial court's award of attorney fees and costs should be reversed. In essence, LRM and Drake Cazier argue that the trial court failed to provide adequate findings to support its ruling that the defenses and claims of LRM and Drake Cazier were unreasonable, frivolous and lacking in foundation, authorizing an award of attorney fees pursuant to I.C. § 12-121 and Rule 54, I.R.C.P.

An award of attorney fees rests in the sound discretion of the trial court with the burden upon the appellant to establish an abuse of discretion in the award. *Idaho Military Hist. Soc., Inc. v. Maslen*, 156 Idaho 624, 329 P.3d 1072, 1079 (2014). Further, "[a]pportionment of attorney fees is appropriate for those elements of the case that were frivolous, unreasonable, and without foundation." *Id.* Contrary to the citation provided in Appellant's Brief, the Court in *Idaho Military Hist.*, took a step back from the standards stated in *Nampa & Meridian Irr. Dist. v. Washington Fed.*

*Sav.*, 135 Idaho 518, 524-25, 20 P.3d 702 (2001), that barred I.C. § 12-121 attorney fees if there was any legitimate triable issue. In *Idaho Military Hist.*, this Court recognized that fees should be awarded and the trial should apportion fees for frivolous defenses and claims that lack foundation. *Id.* It is of significant note that, the Court in *Idaho Military Hist.* affirmed an award of attorney fees awarded pursuant to I.C. § 12-121 that were apportioned against a party where the Court recognized that on the record it was clear that the subject litigation “should never have been necessary” and that “[t]he litigation was necessitated by factual claims that were indefensible.” *Id.*

Likewise, in the case at bar the record is clear that a quiet title action to clear title to the subject property in the name of the Cazier Trust, should never have been necessary. The present action was only necessary due to the unsupported and indefensible claims raised by LRM and Drake Cazier. Further, it was made necessary for the quiet title action to continue through summary judgment, due solely to the indefensible claims raised in the answers filed by both LRM and Drake Cazier.

- 1. The Trial Court made the required findings that the claims and defenses of LRM and Drake Cazier were frivolous, unreasonable and lacking in foundation, thus supporting the award of attorney fees pursuant to I.C. § 12-121.**

On appeal LRM and Drake Cazier argue that the trial court’s ruling that the claims and defenses of LRM and Drake Cazier were frivolous, unreasonable and without foundation and award of attorney fees pursuant to I.C. § 12-121, should be reversed. They argue that the trial court failed to make written findings of the reasons supporting the award as required by Rule 54(e)(2), I.R.C.P.. While Rule 54(e)(2) sets forth a requirement for written findings for an award of attorney fees

pursuant to I.C. § 12-121, “the absence of written findings does not constitute reversible error.” *Smith v. Treasure Valley Seed Co., LLC*, 161 Idaho 107, 383 P.3d 1277, 1280 (2016). This Court in *Smith* recognized that the written findings requirement of Rule 54(e)(2) may be satisfied by the transcript, where the transcript reveals the trial court’s reasoning and basis in making the award. *Id.* The Court noted that the transcript in *Smith*, created a “clear record” of the trial court’s reasoning and basis of the award, thereby meeting the requirements for the written findings. *Id.* at 1281. Therefore, the absence of written findings does not automatically constitute error affecting the appellant’s substantial rights and as such, was not reversible error. *Id.*

In the case at bar, after considering the pleadings, supporting filings and record, as well as briefing and arguments of both parties, the trial court discussed its reasoning at the hearing on January 23, 2019, and expressly concluded that the defenses and claims raised by LRM and Drake Cazier were unreasonable and frivolous. Specifically, the trial court ruled:

“I am granting summary judgment as a matter of law. The agreement that Mr. Cazier has was an agreement that expired in 2001 ... *The statute of limitations has provided an outright bar to this, and that’s been the case for many, many years.* The Defendant Land Renewal Management, Inc. can’t seek any relief under 6-402 and is responsible for costs and fees, and I do find that fees are warranted.”

“*I find that the defense in this case has been unreasonable and frivolous.* 6-402 reads, “If the defendant in such action disclaim in his answer any interest or a stake in the property or suffer judgment to be taken against him without answer, the plaintiff cannot recover costs.” *That’s clearly not what happened.* I’m sitting here looking at your firm’s answer, ... the defendant corporation is clearly litigating this, and in the prayer for relief, Item A, quote, for judgment stating that defendant retains an interest in the property identified in plaintiff’s complaint as parcel three, end of quote. *That is 180 degrees opposite of what 6-402 reads, and I find any claim to the contrary is absolutely ridiculous, so both the individual defendant Mr. Cazier and*

*LRM, Inc. are subject to costs and fees defending this case.”*

...

“I’m not going to issue a written decision on this *because it is so straightforward.*”

*Tr., pp. 26-27, ll. 9-19. (Emphasis added).*

Further, at the hearing on attorney fees, held on April 3, 2019, the trial court ruled:

*“[T]he corporation [LRM], which did have an attorney representing it, could have from the inception disclaimed an interest. It didn’t. They - - the corporation answered and didn’t disclaim at that point. ... so its joint and several attorney fees in the amount requested.”*

*Tr., p. 34, sub page 16, ll. 8-15. (Emphasis added).*

Additionally, the trial court ruled “that ***the defense of both [Drake] Cazier and LRM in this lawsuit were at all times unreasonable*** and that that is the reason for the grant of attorney’s fees ...”

*Tr., p. 35, sub page 18, ll. 8-11.*

Additionally, if the statements included in the transcript are not enough, the written Order Awarding Plaintiff Costs and Attorney Fees Against the Defendants was entered by the Court on April 16, 2019, and includes findings and conclusions entered by the Court as support in the award of the costs and attorney fees in this matter. The record is clear that both LRM and Drake Cazier asserted unsupported claims against the Cazier Trust even after the action was commenced. Neither LRM, nor Drake Cazier ever disclaimed any alleged interest in the subject property, requiring the Cazier Trust to prosecute the quiet title action until it could obtain a summary judgment ruling from the trial court. Both at the summary judgment and attorney fee stage, LRM and Drake Cazier continued to make unsupported arguments that the trial court found to be “*180 degrees opposite*”

of what could be applied and “*absolutely ridiculous.*”

Based upon the record and Idaho law, there is ample support for the trial court’s decision that LRM and Drake Cazier raised defenses that were frivolous, unreasonable, and lacking in foundation, which entitled the Cazier Trust to an award of attorney fees. LRM and Drake Cazier have failed to show that the trial court abused its discretion and committed reversible error in granting the award and merely ask this Court to second guess the trial court’s award.

**2. The trial court evaluated the various elements of Rule 54 in determining its award of reasonable attorney fees to the Cazier Trust.**

On appeal, LRM and Drake Cazier argue that the attorney fees award is unreasonable. This ignores the fact that the trial court individually evaluated the standards required by Rule 54(e). Specifically, the trial court clearly noted on the record at the hearing on April 3, 2019, that it had considered the requirements of Rule 54(e)(3)(A-K) in making its award of attorney fees and costs. *Tr.*, pp. 34-35, sub page 16-17, ll. 22-17. Additionally, if the statements included in the transcript are not enough, the written Order Awarding Plaintiff Costs and Attorney Fees Against the Defendants was entered by the Court on April 16, 2019, and includes findings and conclusions entered by the Court as support in the award of the costs and attorney fees in this matter. Based upon the record, there is ample support for the amount of attorney fees awarded by the trial court. LRM and Drake Cazier have failed to show that the trial court abused its discretion in its Rule 54(e) analysis and reasonable award of the attorney fees requested and awarded to the Cazier Trust. Rather, on appeal, Drake Cazier and LRM, merely ask this Court to second guess the trial court’s award.

**3. The trial court appropriately awarded attorney fees incurred by the Cazier Trust in consultation with the Oregon Trust counsel.**

On appeal, LRM and Drake Cazier also make the unsupported (and libelous per se) argument that M. Patton Echols, the Oregon attorney for the Cazier Trust in its administration in Oregon, was somehow engaging in the unauthorized practice of law within the State of Idaho. In responding to this unsupported argument, the Declaration of M. Patton Echols largely speaks for itself. The Declaration of M. Patton Echols sets forth the additional attorney fees that were incurred by the Cazier Trust through necessary consultations and actions of the Oregon counsel advising the Trustee in the administration of the Cazier Trust in the State of Oregon, all of which were incurred and made necessary because of the unreasonable actions of Drake Cazier and LRM in claiming unfounded interests in the trust's Idaho property. *R.*, pp. 193-194. Nothing in the Record supports the Mr. Schwab's slanderous claim that Mr. Echols was claiming, holding himself out, or carrying on the practice of law in the State of Idaho. *Id.* Rather, the time entries show otherwise, as Mr. Echols engaged in phone conferences with licensed Idaho attorneys on the property issue, initially Robert Romero and then current counsel Randall Probasco. *R.*, p. 196. Furthermore, Mr. Echols would have been remiss in his duties as counsel for the Cazier Trust, if he had failed to engage in telephone conferences with the trustee, beneficiaries, Mr. Cazier, and Idaho counsel, regarding the issue that had arisen by LRM and Drake Cazier's cloud on the trust's Idaho property.

This is yet another example of the unsupported arguments raised by LRM and Drake Cazier and which should be rejected on appeal. The Appellants' argument on appeal is conclusory, without

a basis in fact or law, and wholly lacking in foundation. As with the other arguments of LRM and Drake Cazier, this argument fails to establish that the trial court abused its discretion in granting the award of costs and attorney fees to the Cazier Trust. Rather, once again, counsel for LRM and Drake Cazier merely asks this Court to second guess the trial court, without showing any reversible error.

**F. THE CAZIER TRUST IS ENTITLED TO AN AWARD OF ATTORNEY FEES ON APPEAL.**

On appeal, this Court may award attorney fees pursuant to I.C. § 12-121, when the appellant have pursued an appeal frivolously, unreasonably or without foundation. “Such circumstances exist when an appellant has only asked the appellate court to second-guess the trial court by reweighing the evidence or has failed to show that the district court incorrectly applied well-established law.” *Snider v. Arnold*, 153 Idaho 641, 645-646, 289 P.3d 43, 47-48 (2012). Attorney fees are also awarded pursuant to I.C. § 12-121 on appeal, where appellants “‘failed to add any new analysis or authority to the issues raised below’ that were resolved by a district court’s well-reasoned authority.” *Wagner v. Wagner*, 160 Idaho 294, 302, 371 P.3d 807, 815 (2016); (Citations omitted).

The arguments of LRM and Drake Cazier in this appeal are not supported by the facts or law. Roughly the same arguments are being raised by LRM and Drake Cazier on appeal as were set forth before the trial court, without providing any new analysis of the basis in law or fact to establish that the trial court committed reversible error or even should have reached a different result. For example, first, LRM and Drake Cazier argue on appeal that summary judgment should not have been granted against Drake Cazier for his unsupported cross claim against the trust. The same argument and analysis is raised on appeal as that presented before the trial court. Second, LRM and Drake Cazier

argue that the court should not have granted summary judgment against LRM, but rather should have ignored LRM's verified Answer to the Complaint and dismissed the claims against LRM. Again, LRM provides the same argument as that presented to the trial court. Third, LRM and Drake Cazier argue that the trial court made errors in its evidentiary rulings, but fail to establish that if the rulings were error, they were reversible as an abuse of discretion. Fourth, LRM and Drake Cazier argue that the trial court committed error in awarding reasonable attorney fees and costs to the Cazier Trust. But again, on appeal LRM and Drake Cazier only ask the Court to second guess the trial court's ruling.

On appeal LRM and Drake Cazier have simply failed to establish that the trial court failed to apply well established law in its rulings and that it committed any reversible error. LRM and Drake Cazier raise the same unreasonable, frivolous and unfounded arguments on appeal as they argued to the trial court. Accordingly, the same reasons that supported the award of attorney fees by the trial court are present on appeal. Thus, on appeal, this Court should uphold the trial court's judgment and rule that the appeal pursued by LRM and Drake Cazier is unreasonable, frivolous and without foundation and award attorney fees to the Cazier Trust pursuant to I.C. § 12-121 and Rule 41, I.A.R. It could also be argued that attorney fees could be awarded as a sanction available pursuant to Rule 11.2 I.A.R., as the issues raised on appeal by LRM and Drake Cazier are not well grounded in fact, warranted by existing law, nor any good faith argument for an extension, modification or reversal of existing law, but rather appears to be for the sole purpose of unnecessary delay and needless increase in the cost of litigation to the Cazier Trust.

#### IV. CONCLUSION

Based upon the caselaw and the reasons set forth above, the Cazier Trust respectfully requests that the District Court's Decision be upheld and that the Cazier Trust be awarded its reasonable attorney fees incurred in this appeal.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of August, 2019.

By:   
Randall C. Probasco - Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27<sup>th</sup> day of August, 2019, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals, by the method indicated below, addressed as follows:

Kurt Schwab  
Post Falls Law LLC  
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*Attorney for Appellants - LRM &  
Charles Drake Cazier*

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/s/ Randall C. Probasco

\_\_\_\_\_  
Randall C. Probasco