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**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

**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.

District Court

Case No.: CV28-18-7030

Supreme Court No. 46852-2019

**APPELLANTS' RESPONSE TO
RESPONDENT'S BRIEF**

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APPEAL FROM THE DISTRICT DIVISION OF
THE DISTRICT COURT OF
THE FIRST JUDICIAL DISTRICT, KOOTENAI COUNTY

IDAHO SUPREME COURT

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ARGUMENT AND RESPONSE TO RESPONDENT'S BRIEF

There are four issues argued in this appeal. For ease of reading, throughout this brief, Land Renewal Management will be referred to as "Appellant LRM"; Drake Cazier will be referred to as "Appellant Cazier"; the Trustee of the Lola L. Cazier Revocable Trust as "Respondent"; the Third Amendment to the Lola L. Cazier Revocable Trust as "Third Trust Amendment"; The Lola L. Cazier Revocable Trust as "Trust"; and Lola L. Cazier as "Grantor".

ISSUE ONE: APPELLANT CAZIER'S CLAIM AGAINST THE TRUST

The first issue raised by Respondent is the cross-claim of Appellant Cazier against the Trust. The standard for review on appeal from summary judgment is as follows:

This Court engages the same standard as the district court in evaluating an appeal from an order granting summary judgment. Summary judgment is appropriate if the pleadings, affidavits, and discovery documents on file with the court, read in a light most favorable to the nonmoving party, demonstrate no material issue of fact such that the moving party is entitled to a judgment as a matter of law. The burden of proving the absence of material facts is upon the moving party. All disputed facts are to be construed liberally in favor of the nonmoving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the nonmoving party. If reasonable people might reach a different conclusion from conflicting inferences based on the evidence then the motion must be denied. If the evidence is conflicting on material issues or supports conflicting inferences, or if reasonable minds could reach differing conclusions, summary judgment must be denied. *Cramer v. Slater*, 146 Idaho 868, 873, 204 P.3d 508, 513 (2009) (internal cites omitted).

Respondent's Brief requests the court apply a different standard. However, Respondent's requested standard is inapplicable in this matter.

The standard of review set forth by Respondent in analyzing Appellant Cazier's claim against the Trust focuses on a situation without a jury. *See* Respondent's Brief, page

9. The standard for a non-jury case is inapplicable when a party has requested a jury. Although a quiet title action is not heard by a jury, in Appellant LRM's Answer to Plaintiffs Complaint, Appellant LRM specifically asked for a jury on all triable issues. [R. at 32]. I.R.C.P. 38 is simple and straight forward as the demand for jury if for any issue triable of right by a jury. This right is inviolate. I.R.C.P. 38. As Appellant LRM was not allowed to be dismissed, Appellant LRM's request was never withdrawn and thus the jury trial standard for summary judgment is still applicable on this appeal. I.R.C.P. 38(d).

The Idaho Supreme Court, when addressing a matter that included a trust interpretation, applied the following standard:

When this Court reviews a district court's grant of summary judgment, it uses the same standard properly employed by the district court originally ruling on the motion. Summary judgment is proper if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. The record is construed in the light most favorable to the non-moving party, and all reasonable inferences are drawn in favor of that party. If reasonable minds might come to different conclusions, summary judgment is inappropriate. On appeal, this Court exercises free review. See *Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 866, 870, 993 P.2d 1197, 1201 (1999) (internal cites omitted, trust discussion found in part C).

In this matter, where a jury request was made and as in past trust interpretation cases, the Court should continue to apply the standard of review set forth by Appellant. Applying the correct standard, the District Court was in error to grant summary judgment.

Before proceeding further, it is important to disabuse the Respondent's newly raised procedural arguments in regards to the District Court's erroneous decision on the claim against the Trust. First, Respondent attempts to address jurisdiction by invoking Idaho Code § 15-7-201. This argument is incorrect as a matter of law. The District Court

did not dismiss on lack of jurisdiction. The District Court dismissed Appellant Cazier's Cross Claim with prejudice for failure to state a claim. [R. at 269], Tr. Transcr. Page 27, line 12-15. Jurisdiction was not argued. Indeed, as set forth in Appellants Brief, by filing the action in Kootenai County, Respondent submitted itself to the jurisdiction of Idaho Courts in accordance with I.R.C.P. 4.1(a).

There is also the argument that Appellant Cazier referred to himself as a creditor. Respondent's Brief, page 12. The thrust of that argument seems focused at labeling Appellant Cazier as a "creditor" and thus not a sibling, so that the spendthrift portion of the trust blocks his claim. Inexplicably, in applying labels, Respondent fails to mention that Appellant Cazier also stated that he is a sibling and a beneficiary. Transcr page 18, line 20-24. Regardless of whether Appellant Cazier labeled himself as a "creditor" such a label would not change his actual status as a "sibling." Respondent also fails to mention the law in attempting to define Appellant Cazier. According to Idaho Code § 15-1-201(3) a beneficiary is defined as:

Beneficiary, as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

Here, Appellant Cazier has a present interest or is a beneficiary by transfer. The present interest is based on Kimberly Howard owing Appellant Cazier money. Appellant Cazier is also a beneficiary as he is an owner of an interest by other transfer, a transfer from Kimberly Howard's portion. Whether a present interest or by transfer, Appellant Cazier's right is to collect directly from the Trust from Kimberly Howard's share.

Respondent also states that Appellant Cazier failed to establish that Kimberly Howard owed Appellant Cazier money. Respondent's Brief, page 14. Respondent's allegation is directly contradicted by the record. In the Transcript page 19, line 4 and 5, Appellant Cazier states "It's very clear in my affidavit that she is my sister and there is money owed." At no point did Respondent contradict the fact that Kimberly Howard owed money to Appellant Cazier. With all undisputed facts liberally construed in his favor, a contrary statement in an appeal brief by Respondent is without merit or foundation.

Respondent's final argument, in regards to the Trust, is in regards to interpretation. Respondent's argument in regards to interpretation of the Trust is surprising. This argument is well outside of the failure to make a claim. Indeed, Respondent's spendthrift argument against Appellant Cazier's claim against the Trust is confirmation of Respondent's recognition of the claim. Furthermore, established case law sets forth the requirements that interpretation of an ambiguity in a trust cannot be resolved on summary judgment. *Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 874, 993 P.2d 1197, 1204-1205. According to the Idaho Supreme Court trust interpretation proceeds as follows:

Unless contrary to settled principles of law, the intentions of a trust's settlors must control in actions involving the trust. When this Court attempts to determine a settlor's intent, it construes a trust instrument as a whole, considering all parts in light of the entire instrument. The Court's primary objective is to discover the intent of the parties through viewing the document in its entirety. When a document is clear and unambiguous, interpretation of its meaning is a question of law. In determining whether a document is ambiguous, the Court seeks to determine whether it is reasonably subject to conflicting interpretation. While a patent ambiguity is apparent on the face of the trust, a latent ambiguity is not evident until there is an attempt to apply the trust's provisions to the existing facts. *Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 874, 993 P.2d 1204 (internal cites omitted).

Once a court determines that a document is ambiguous, interpretation of the document presents a question of fact which focuses upon the intent of the parties. This issue of the settlors' intent, as a question of fact, could not be resolved on summary judgment. *Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 874, 993 P.2d 1204-1205 (internal cites omitted).

In the instant case, the District Court failed to analyze the Trust. This failure alone necessitates a remand. Here, the Trust was subject to differing interpretations and is therefore ambiguous. The differing interpretations and resulting ambiguity revolve around the Third Trust Amendment which states:

b. The remaining undivided one-half interest (1/2) shall be distributed in equal shares to KATHY DELL TRACY, MERRILL DEAN CAZIER, MELANIE R. THOMPSON, and KIMBERLY D. HOWARD, provided, however, that the share of KIMBERLY D. HOWARD shall be reduced by any amounts she may owe her siblings at time of Grantor's death, and said amounts shall be added to the share of the sibling or siblings she owes. Grantor directs the Trustee to adjust the shares based on the amount owed by KIMBERLY D. HOWARD to her siblings regardless if the loan is barred by the statute of limitations or is for some other reason is legally enforceable.

Grantor is intentionally leaving nothing to Charles Drake Cazier or his children. She is also intentionally leaving nothing to Monty Noel Cazier or his children as she has previously gifted Monty Noel Cazier the sum of Ten Thousand Dollars (\$10,000.00).

3. In the event any of the beneficiaries named and designated in paragraph 2 above shall fail to survive Grantor by thirty (30) days, then the share of such deceased beneficiary shall be distributed equally to his or her issue, per stirpes, except as set forth in Paragraph 5 below.

In applying the standard of review, which requires that all evidence to be construed in light most favorable for the nonmoving party and that all disputed facts are to be construed liberally in favor of the nonmoving party, Appellant is a sibling and can collect directly from the Trust. The Trust does not define sibling to exclude Appellant Cazier.

Interpretation of a document requires the Court to give words their plain, usual, and ordinary meaning. *Verska v. St. Alphonsus*, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011) (interpreting the language of statutes). The Trust also states that Grantor intentionally left nothing to Appellant Cazier. These are not mutually exclusive clauses as there is no contradiction between not leaving a specific share to Appellant Cazier, but allowing Cazier to collect a portion of the Trust from Kimberly Howard's share in his role as a sibling that Kimberly Howard owes money to.

This right outlined in the Trust creates a situation where Kimberly Howard's share is reduced and a trust share would be created and the money owed by Kimberly Howard would be added to Appellant Cazier share. [R at. 76]. Yet these arguments, along with Respondent's arguments as set forth on page 14 of his brief, focus on different interpretations of the Trust. Different interpretations that create ambiguities which are not appropriate for resolution on summary judgment. *see Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 874, 993 P.2d 1197, 1204-1205. Appellant acknowledges that Respondent has a different interpretation of the clauses contained in the Third Trust Amendment. Yet, the differing interpretations demand legal analysis, not dismissal on summary judgment.

Respondent also brings up the spendthrift clause to argue against Appellant Cazier's claim to the Trust. Respondent's invocation of the spendthrift clause is a confirmation of the legal basis of the claim brought by Appellant Cazier. After all, a person would not assert a spendthrift clause defense against a non-existent claim. The spendthrift provision again powerfully shows that the Trust is subject to differing interpretations. The Trust reads that Appellant Cazier can make a claim to Kimberly

Howard's share of the Trust. [R. at 76]. The Trust also contains a spendthrift clause. [R. at 51]. Where Grantor gave a specific right to the siblings of Kimberly Howard, this specific allowance against Kimberly Howard supersedes the spendthrift clause. This is especially true where the spendthrift clause appears to be boilerplate. By the Trust's own language, Appellant Cazier can collect the claim he has against Kimberly Howard's portion of the Trust directly from the Trust.

With all disputed facts in his favor and all non-disputed facts liberally in his favor, the District Court erred in not analyzing the Trust for different interpretations which establish ambiguity. The Trust undoubtedly provides Appellant Cazier the right to collect against the Trust as he is a sibling of Kimberly Howard. Yet, Respondent's own interpretation of the Trust language is different than Appellant Cazier's as shown by the briefing herein. The existence of two differing interpretations shows that the Trust is ambiguous. Where an ambiguity is present, the interpretation of the Trust presents a question of fact which cannot be resolved on summary judgment. See *Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 874, 993 P.2d 1204. Appellants request this Court reverse the holding of the District Court and remand for further proceedings.

ISSUE II: APPELLANT LRM'S DISMISSAL

The second issue involves the failure of the Court to dismiss Appellant LRM from the litigation. This issue has been troubling in this matter. The troubling nature of this issue can be summed up in giving context to the assignment spoken of by Respondent on page 6 of the Respondent's Brief. Respondent aggressively stated while discussing disclaimers of interest that "Rather, LRM further complicated the cloud on title through the assignment referenced in the Appellant's Brief, which was wholly self-serving assignment

executed by Drake Cazier as CEO of LRM to himself.” Respondent’s Brief, page 6. Yet, the Affidavit of Kurt Schwab shows this statement to be wildly incorrect. On page 214 of the Record, in the Affidavit of Kurt Schwab, the assignment was specifically discussed with Respondent as a method of having Appellant LRM dismissed from the case. The assignment was not self-serving, it was a method discussed with Respondent to show that Appellant LRM had no interest in the matter and could be dismissed from the case. Although paragraph 12 is in dispute in regards to an evidentiary finding, other paragraphs show the context of why the assignment was created. The assignment should not be misconstrued, where there is information on file establishing how the assignment came to be.

The rest of the Respondent’s argument in regards to the dismissal of LRM are already addressed in Appellant’s Opening Brief and will be quickly consolidated here. Appellant LRM was not required to allow a default against itself. Idaho Code §6-402 is not mandatory, nor is it the only legal procedure available to a defendant to exit a case. Appellant requested Respondent release Appellant LRM from the case. [R. at 114-115]. Respondent refused. [R. at 114-115]. Appellant LRM tried to disclaim the property in an assignment, which assignment was discussed with Respondent. [R. at 114-115]. Again, Appellant LRM’s request to be dismissed was refused by Respondent. Appellant LRM then stated it had no interest and requested to be dismissed in summary judgment in accordance with I.R.C.P. 12(b)(6). [R. at 134-138]. Appellant LRM’s response in summary judgment clearly showed that it was not seeking an interest in the property and requested dismissal. Appellant LRM was not defending frivolously as Appellant’s defense was the continual request of dismissal. It was not unreasonable for Appellant LRM to

request dismissal. Finally, LRM has as much foundation to defend the suit as Respondent had the right to include an unnecessary party. The District Court erred when it did not allow Appellant LRM to be dismissed.

ISSUE III: ABUSE OF DISCRETION FOR EVIDENTIARY RULINGS

Respondent discussed the evidentiary issues, without addressing the law cited or the argument presented. Respondent failed to address the arguments raised in regards to the Affidavit of Kurt Schwab. First, the Court abused its discretion by failing to allow the Affidavit of Kurt Schwab based on I.R.E. 803(24). Respondent failed to address or analyze I.R.E. 803(24). This failure was an abuse of discretion based on failure to follow I.R.E 803(24). The failure robs Appellants the right to bring evidence to prove why the attorney fees should not have been granted in this matter.

Next, Respondent cited an Idaho case in regards to the standard for attorney fees. However, the case cited did not address any part of the argument in regards to I.R.C.P. 54(e)(6) and the failure to hold an evidentiary hearing. The caselaw presented by Respondent in regards to attorney fees will be addressed in greater depth in the attorney fees and costs section set forth below.

Respondent did not address the failure of the Court to hold an evidentiary hearing in accordance with I.R.C.P. 54(e)(6). The Idaho Rules of Evidence apply to the evidentiary hearing which require witnesses and documents to be in compliance with I.R.E. 603 and I.R.E. 803. Yet, the Court failed to apply the I.R.E. to the evidentiary hearing in regards to attorney fees in this matter. The failure to apply the rules to all parties substantially effects the right of Appellants to present facts in opposition to the requested attorney fees. Appellant is not asking the Court to second guess the District

Court's failure to follow the law. Appellant is requesting this matter be remanded so Idaho Law can be followed.

ISSUE IV: ATTORNEY FEES AND COSTS

Respondent cites to several cases which will now be addressed. First, In regards to an award of attorney fees, Respondent cites to an Idaho Case which discussed the standard for awards of attorney fees and costs. *Idaho Military Historical Soc'y, Inc. v. Maslen*, 156 Idaho 624, 633, 329 P.3d 1072, 1081 (2014). In that case the Supreme Court clarified that the judicial standard for granting attorney fees includes the ability for the court to apportion fees when an action contains both frivolous and good faith legal claims. *Id.* In the same ruling, the Supreme Court reiterated that "Attorney fees will not be awarded for arguments that are based on a good faith legal argument." *Id.* at 1081 (internal cites omitted). To be sure, it is clear that the Court was not creating a standard where a frivolous claim automatically results in attorney fees no matter how many good faith claims are present. Indeed, the Court in the *Idaho Military Historical Soc'y, Inc.* (IMHS) declined to award attorney fees on the appeal. *Id.* at 1081. In this matter, the cited case law does not change the Appellants' objections to the attorney fees, but rather bolsters Appellants' requests for redress in this matter.

Appellant has already included in this appeal that the District Court was wrong for failure to apportion attorney fees. Apportionment of legal fees was requested in Appellants' opening brief on page 27-32, and continues to be requested by Appellant if any attorney fees are awarded. It is also worth discussing the different facts between the instant case and *IMHS*. In *IMHS*, Holbrook Malsen, initiated a case that had factual claims that were indefensible, legal theories he could not prove, and unsupportable claims that

were known to be unsupportable. *Id.* at 1080. That is not the situation in the instant case. Here, Appellants did not bring this action. They defended this action.

Second, Respondent correctly cites to *Smith v Treasure Valley Seed Co., LLC*, 161 Idaho 107, 383 P.3d 1277, 1280 (2016). The Court in *Smith* held that I.R.C.P. 54(e)(2) requires written findings when determining whether an award of attorney’s fees is appropriate, but that the absence of written findings does not constitute reversible error. *Id.* However, the Court in *Smith* still held that a writing requirement serves to create a clear record so it might be determined whether the court applied to property law to appropriate facts. *Smith v Treasure Valley Seed Co., LLC*, 161 Idaho 104, 383 P.3d 1280. According to the Court in *Smith*, the writing requirement can be met with a Transcript. *Id.* 383 P.3d 1281. The Court then held that “... the absence of written findings in this case does not constitute reversible error because it does not affect Vernon’s substantial rights.” *Id.* 383 P.3d 1281. The clear language of the holding provides that the failure to provide a written finding could constitute a reversible error due to affecting substantial rights, like the right to appeal.

In this case, the failure to have a written finding affected substantial rights of Appellants to appeal a decision which lacked basis and reason as required by I.R.C.P. 54(e)(2). This writing finding failure also failed to take into account standards already set forth in law, which standards start with taking the entire course of the litigation into account. *Coward v. Hadley*, 150 Idaho 282, 289-90, 246 P.3d 391, 398-99 (2010). Next, attorney fees will not be award for arguments that are based on a good faith legal argument. *Idaho Military Historical Soc'y, Inc. v. Maslen*, 156 Idaho 624, 633, 329 P.3d 1072, 1081 (2014). Finally, the writing must create a clear record so that it might be

determined whether the trial court applied the property law to the appropriate facts. *Smith v. Treasure Valley Seed Co., LLC*, 161 Idaho 104, 383 P.3d 1280. Here, the Transcript, Orders, and Judgments all fail to satisfy the requirements of Idaho Law.

Looking at the transcript, there is no reasoning or basis for the dismissal of Appellant Cazier's claim against the Trust. No case law, no rule, no statute, no analysis, and no basis. The only ground provided on the transcript is that "I find the dismissal of the counterclaim as appropriate, that it doesn't state a cause of action against the trust. I'll leave it at that." Tr. Transcr. Page 27, line 12-15. Even if the Court accepts "failure to state a claim" as the basis, the rule requires more; the rule requires the basis and reasons. See *Lee v. Nickerson*, 146 Idaho 5, 10, 189 P.3d 467, 474 (2008); see I.R.C.P. 54(e)(2). Moreover, the basis and reasons for Appellant LRM's request to be dismissed in accordance with I.R.C.P. 12(b)(6) are also left out entirely. The lack of basis or reason in this case also blocks the ability for this Court to determine whether the trial court applied the proper law to the appropriate facts. Here, the failure to provide a writing, which include the statements made on the record, do not meet the requirements of Idaho Law. Where the requirements were not met, and affect substantial rights, require that award of attorney fees be vacated and remanded.

Finally, Respondent addresses the issue of attorney fees based on the unlawful practice of law. Respondent's argument is made without the use of statute or case law. In applying Idaho Law, the attorney fees of M. Patton Echols should not have been granted. First, the entire Affidavit is hearsay according to I.R.E. 803. Where the Affidavit of M. Patton Echols was hearsay, it should not have been considered in establishing attorney

fees. Second, Attorney fees should not be granted as the Affidavit of M. Patton Echols shows violations of Idaho Code § 3-420.

Idaho Code § 3-420 forbids the unauthorized practice of law. Idaho Code § 3-420 states as follows:

If any person shall, without having become duly admitted and licensed to practice law within this state or whose right or license to practice therein shall have terminated either by disbarment, suspension, failure to pay his license or otherwise, practice or assume to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer within this state, he shall be guilty of an offense under this act, and on conviction thereof be fined not to exceed five hundred dollars (\$500), or be imprisoned for a period of not to exceed six (6) months, or both, and if he shall have been admitted to practice law he shall in addition be subject to suspension under the proceedings provided by this act. Idaho Code § 3-420.

The Idaho Supreme Court has further clarified that “The practice of law has been defined as doing or performing services in a court of justice, in any matter... in a larger sense, it includes legal advice and counsel, and the preparation of instruments and contracts through which legal rights are secured....” *Citibank (South Dakota), N.A. v. Carroll*, 148 Idaho 254, 220 P.3d 1073, 1079 (2009).

Attorney fees should not be granted on the bases of a violation of Idaho Law. As outlined in the Appellants’ Brief, M. Patton Echols contacted Appellant Cazier by phone. [R. at 196.] M. Patton Echols then sent an offer letter to Appellant Cazier. [R. at 196.] The preparation of the offer letter was the preparation of an instrument through which legal rights were being secured for the client of M. Patton Echols. No facts have presented to contradict that an offer was made. Indeed, according to M. Patton Echols Affidavit, Appellant Drake responded to the offer, which response was discussed by M. Patton Echols with other individuals for 1.3 hours. [R. at 196]. These discussions about the offer

in regards to the disputed property in Idaho, would focus on Idaho Law. The attorney fees of M. Patton Echols should not be granted and should be vacated.

Respondent requests attorney fees and costs pursuant to Idaho Code §12-121 and I.A.R.41. These requests should be denied. In this matter, as set forth by Appellant, this appeal does not request a second guess as to the application of law, but requests the District Court follow and apply established law. Respondent also requests sanctions according to I.A.R. 11.2. This request should be denied as Appellants' arguments are brought for a property purpose and grounded in fact and law.

CONCLUSION

Appellants respectfully request that this Court overturn the judgment of the District Court, vacate the attorney fees, and remand the case for additional proceedings.

DATED this 17th day of September, 2019.

Post Falls Law



KurtIL Schwab, Attorney for Appellants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September, 2019, I caused to be served a true and correct copy of the foregoing document, by the following:

Randall C. Probasco Post Office Box 3641 Coeur d'Alene, Idaho 83816 Telephone: (208) 930-0875 randall@rplawcda.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Court Box <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile to: <input checked="" type="checkbox"/> Electronic Service
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Kristin Berg-Paralegal to Kurt Schwab