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Gangi v. Debolt Respondent's Brief Dckt. 48003

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ALICIA GANGLI, an individual, Plaintiff-Appellant, v. MARK W. DEBOLT and JANE DOE DEBOLT, husband and wife, Defendants-Respondents.	SUPREME COURT NO. 48003-2020 Kootenai County Case No. CV28-18-5145

Appeal from the District Court of the First Judicial District
Of the State of Idaho, in and for the County of Kootenai

HONORABLE JOHN T. MITCHELL, Presiding

DEFENDANT/RESPONDENTS' RESPONSE TO PLAINTIFF/APPELLANT'S BRIEF ON APPEAL

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I. STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Statement of Facts

This is an appeal from the decision of the district court, the Honorable John T. Mitchell upholding an award of attorney's fees based on contract. (R. 142). This dispute arose from Plaintiff-Appellant, Alicia Gangi's (hereinafter "Gangi"), whom filed a suit seeking a determination that the easement in question was not an exclusive easement and the subsequent filings of her motion for summary judgment and motion to dismiss with prejudice. (R. 93). Thereafter, Gangi's motion to dismiss with prejudice was granted, the district court awarded Defendant-Respondent, Mark DeBolt's (hereinafter "DeBolt"), attorney's fees based on contract.

Looking at the nature of this case from the beginning, and what was asserted in the complaint, what is really the crux of this dispute, is whether or not Gangi had the right to use the water system for three residences, and this ties back to an agreement signed by Mr. Art Elliot and his wife Trudy, and Dave Daboll back in 2000, and as seen as Exhibit "*A*" to the Declaration of Mark DeBolt filed with the court on November 27th, 2019. (Tr. p. 6, L. 5).

Clarification that assists the Court in understanding where the parties started and where they ended up, is that the predecessors-in-interest of both parties, Mr. and Mrs. Elliot, were the owners of both properties that are the subject of this dispute. (Tr. p. 10, L. 6-8). They owned the now-Gangi parcel and the now-DeBolt parcel. (Tr. p. 10, L. 9-13). The Elliots entered into an agreement with the adjoining landowner, Mr. Daboll (hereinafter "Daboll") regarding use of the water system. In essence, this agreement provided that an 8,000-gallon water reservoir would be put in; on which, a deck sits on top of it. Each parcel, that being the Elliot parcel and the Daboll parcel, could hook up to that system, and each parcel was allowed one single-family residence to be connected. (Tr. p. 10, L. 14-15). This agreement also contains an attorney fee provision that awards attorney's fees for a party to the agreement that is seeking to enforce or interpret it. (Tr. p. 6, L. 19-22).

Within the underlying complaint, Gangi asserts that Plaintiff-Appellant's predecessor in interest, the Elliots, and the DeBolts, agreed that an additional residence

could be served by the existing water system and attempted to secure a water right that allowed three (3) residences to be served by the existing system. (Tr. p. 6-7, LL. 23-25, 1-3). Essentially, what was brought up in this complaint was that Gangi would get to connect to this water system governed by the subject agreement signed back in 2000 by Elliot and Daboll, and that agreement bound Elliot as the applicable party, and stated that all future owners of the property understood that there was going to be one (1) hookup for the Elliot parcels. (Tr. p. 7, L. 4-11).

Moving forward to summary judgment, the case narrowed a bit. It went right into enforcing a right to use a deck sitting on top of this water system as being "exclusive" or "non-exclusive." (Tr. p. 7, L. 12-15). The crux of that argument was that the underlying easement from 2012 was not clear that it was exclusive, so therefore, it had to be non-exclusive; and the district court ruled on summary judgment that there was a question of fact. (Tr. p. 7, L. 15-19).

Following this decision from the court, Gangi filed a motion to dismiss the case with prejudice; which essentially sought to get rid of this case because there was a question of fact. (Tr. p. 7, L. 22-24). Arguably, this may have been a strategic move by Gangi to avoid dealing with the underlying water system because it raises the subject 2000 agreement, whereas the focus is solely on the deck, but if the deck easement is non-exclusive, then presumably the water system is also, non-exclusive. (Tr. p. 8, L. 8-12).

Argument as to the grounds for attorney fees and costs by DeBolt was heard by the district court at the January 28, 2020 hearing on DeBolt's motion for attorney fees and costs. Specifically, DeBolt raised argument that attorney fees and costs were provided under the subject agreement which had been clearly referenced within the initial complaint. (Tr. p. 9, L. 12-14). Further, that such agreement contained the provision that states that if legal action was required or deemed necessary to enforce or interpret any provisions of said agreement, the prevailing party was entitled to recover its costs, including reasonable attorney's fees incurred in connection therewith. (Tr. p. 9, L. 14-20). Furthermore, that the underlying complaint, which asserted that Gangi had the right to one, hook-up, which would add two hookups to the prior Elliot parcel, called upon and applied, the 2000 agreement containing the subject attorney fees provision. (Tr. p. 9-10, LL. 22-25, 1-2).

While argument by DeBolt at this January 28, 2020 hearing acknowledges the point raised by Gangi, that she and DeBolt weren't parties to this 2000 agreement, as Elliot and Daboll had signed the 2000 agreement, it was pointed out to the court that the predecessor in interest to both Gangi and DeBolt, was Elliot. (Tr. p. 10, L. 5-8). Further highlighted by DeBolt was the fact that when the Elliot parcel split, the rights of the parties were still governed by the subject 2000 agreement as it ran with the land, and as such, after the split of the Elliot parcel, only one single-family hookup to the water system was permissible. (Tr. p. 10, L. 8-13). There is one single-family hookup on the Elliot parcel, which is now two parcels, and that serves the DeBolt parcel. (Tr. p. 10, L. 14-15). Therefore, the dispute as to whether this agreement allowed for three (3) hookups or not, invoked the attorney fees clause contained thereunder said agreement. (Tr. p. 10, L. 16-20).

Despite Gangi's attempts to argue that the 2000 agreement, dealing with the water system, didn't apply to this case as she had been arguing only over the deck, and not the water system, was unpersuasive. (Tr. p. 10-11, LL. 21-25, 1-6). The initial pleadings discussed the water system and being connected to it; as such, there was certainly an agreement before the court that allowed an award of attorney's fees. (Tr. p. 11, L. 6-10).

The district court correctly found that there was an agreement in place that did specifically provide for attorney fees, that it related to both aspects of this case-not only the water right, but also the deck- and that it ran with the land. (Tr. p. 17-18, LL. 20-25, 1-4). In sum, the court correctly found that the subject agreement ran with the land, therefore, it applied. (Tr. p. 18, L. 5-11). In light of the lack of objection by Gangi as to the attorney fee amount sought, the district court acted well-within its discretion in its award of attorney fees and costs to DeBolt and should not be disturbed on appeal.

II. ARGUMENT

A. STANDARD OF REVIEW

An award of attorney's fees is reviewed for an abuse of discretion. *Ellis v. Ellis*, 467 P.3d 365 (2020). If it is determined that when reviewing the court's discretionary decision, we determine whether (1) the district court correctly perceived the issue as one of discretion; (2) acted within the boundaries of such discretion and consistently with applicable legal standards; and (3) reached its decision by an exercise of reason. *Blackmore*

v. Re/Max Tri-Cities, LLC, 149 Idaho 558, 563, 237 P.3d 655, 660 (2003).

On appeal, "a trial court's findings of fact will not be set aside unless they are clearly erroneous." *Camp v. East Fork Ditch Co., Ltd.*, 137 Idaho 850, 855, 55 P.3d 304, 309 (2002); Idaho Rules of Civil Procedure 52(a). In applying that principle, the appellate court cannot re-weigh the evidence…or substitute the view of the facts for that of the district court. *Argosy Trust ex rel. v. Wininger*, 141 Idaho 570, 572, 114 P.3d 128, 130 (2005). The appellate court's role is simply to determine whether there is evidence in the record that a reasonable trier of fact could accept and rely upon in making the factual finding that is challenged on appeal. *Miller v. Callear*, 140 Idaho 213, 216, 91 P.3d 1117, 1120 (2004). The district court's findings of fact will be liberally construed in favor of the judgment entered. *Beard v. George*, 135 Idaho 685, 23 P.3d 147 (2001).

Further, pursuant to I.R.C.P. 54(d)(1), costs shall be allowed as a matter of right to the prevailing party. Additionally, the district court is authorized to award attorney's fees to the prevailing party when provided for by statue or contract. I.R.C.P. 54(e)(1).

B. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN AWARDING DEBOLT ATTORNEY FEES BECAUSE IT WAS PROVIDED FOR UNDER CONTRACT.

Idaho Rule of Civil Procedure 54(d)(1) provides that the costs shall be allowed as a matter of right to a prevailing party in litigation. Rule 54(e)(1) allows that, "in any civil action the court may award reasonable attorney fees…to the prevailing party or parties as defined in Rule 54(d)(1)(B)." Under Rule 54(d)(1)(B), to determine the prevailing party the trial court should consider the "final judgment or result of the action in relation to the relief sought by the respective parties." I.R.C.P. 54(d)(1)(B).

Here, there can be no doubt that DeBolt is the prevailing party over Plaintiff-Appellant, Gangi. Gangi and DeBolt's dispute is centered around the sharing of a water facility, as set forth under the underlying complaint. The agreement signed by Mr. Art Elliot and his wife Trudy, and Dave Daboll in 2000, specifically states, *"[t]he easement and other rights, described in this agreement are intended to be perpetual, shall run with the land, and shall be binding upon and inure to the benefit of heirs, representatives, successors and assigns of Elliot and Daboll with respect to the Elliot property and the Daboll property*." (Emphasis added). (Tr. p. 27-28, LL. 21-25, 1-3). The successors to the

Elliots and the Dabolls, are Gangi and DeBolt, and such agreement further provides that if legal action is required to enforce or interpret its provisions, the prevailing party is entitled to recover attorney fees and costs. (Tr. p. 9, L. 13-20).

Gangi's action, as understood by DeBolt and the district court, essentially sought to eviscerate DeBolt's use of the water tank and therefore, invoking the terms of the subject 2000 agreement. This much is seen by the underlying complaint's reference to this agreement. Gangi's position that that attorney fees should not have been awarded because Gangi and DeBolt were not parties to the original agreement between Elliot and Daboll carries no water. If this Court were to uphold this theory, every easement in the state of Idaho would be unenforceable against any new or subsequent owners that were not present at the execution of such easement agreement. This outcome would be catastrophic to many, especially railroad companies, utility companies, government entities, etc.

What transpired in this case was that a lawsuit was filed, a significant amount of money was incurred to litigate this case, and an award for attorney fees and costs under contract was granted by the district court. Gangi brought this case, didn't pursue it, and decided to drop it, eventually using it as leverage to get DeBolt to comply with her wishes. She was unsuccessful as the district court correctly found that the subject agreement expressly provided that the rights under it ran with the land, for the benefit of successors, and that such rights, were binding on successors; including the provision regarding attorney fee awards. This case was pursued not only frivolously by Gangi, but also with the intent to harass DeBolt into settling.

In short, the district court's original award of attorney fees and costs is not only valid under the plain language of this disputed agreement (which is binding on the present parties), but also proper given Gangi's lack of objection as to the specific amount sought. This evidence is without a doubt, substantial and competent and must not be disregarded here on appeal merely because Gangi disagrees with it.

III. PRAYER AND ARGUMENT FOR AWARD OF DEBOLT'S ATTORNEY FEES AND COSTS.

A. DeBolt should be awarded his costs on appeal pursuant to Idaho Code §12-107 and/or I.A.R. 40.

"As to costs on appeal, *as a matter of course*, costs are awarded as to the prevailing party under Idaho Code section 12-107 and Idaho Appellate Rule 40(a)." (Emphasis added). *Big Wood Ranch, LLC v. Water Users' Association of the Broadford Slough*, 158 Idaho 225, 233, 345 P.3d 1015, 1023 (2015) (citing *Saint Alphonsus Diversified Care, Inc. v. MRI Assocs., LLP*, 148 Idaho 479, 501, 224 P.3d 1068, 1090 (2009)).

B. DeBolt should be awarded his attorney's fees on appeal.

Pursuant to Idaho Appellate Rule 41(a), DeBolt asserts a claim to attorney's fees on appeal. However, that Appellate Rule "does not provide authority to award attorney fees," so DeBolt prays this Court "permit a later claim for attorney's fees under such conditions as it deems appropriate." I.A.R. 41(a). *Bagley v. Thomason*, 149 Idaho 799, 805, 241 P.3d 972, 978, (2010) (citing *Swanson v. Kraft, Inc.*, 116 Idaho 315, 322, 775 P.2d 629, 636 (1989)).

Idaho Code section 12-117 allows attorney's fee awards on a judicial review appeal. I.C. §12-117(6)(e). DeBolt prays this Court finds that Gangi, the [non-prevailing party] acted without a reasonable basis in law or fact. I.C. §12-117(1). Because Gangi's arguments presented in appeal are opaque and certainly not supported by substantial and competent evidence cited in the Opening Brief, DeBolt must be the prevailing party and be awarded his attorney's fees. I.C. §12-117(1).

IV. CONCLUSION

The irony here is striking. Plaintiff-Appellant believes that her act of ignoring the fact that if one is going to file a lawsuit, they should certainly be aware of where they are going with the lawsuit, especially when others are going to be incurring significant amounts of money to litigate the case. To say that one domino falls and the other does not, is disingenuous. If one has the right to go onto the disputed property to use the deck, they are using the same right under the easement to use the water system as well. The disputed easement contains express language providing for attorney fees; and makes no exception for appeals. Defendant-Respondent respectfully requests that this Court affirm the District Court's grant of an award of his attorney fees and award Defendant-Respondent his attorney's fees and costs on appeal, and for such other relief as this Court deems equitable.

DATED this 26th day of October, 2020.

MADSEN LAW OFFICES, P.C.

By: _____
Alex N. Semanko,
Attorney for Defendant-Respondent.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of October, 2020, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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