

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcases 57-10486, 57-10487, 57-
	)	10487A, 57-10487B, and 57-10922
Case No. 39576	)	
	)	<b>ORDER DENYING MOTION FOR</b>
_____	)	<b>ATTORNEY'S FEES</b>

**I.**

**APPEARANCES**

Richard L. Harris, Caldwell, Idaho, for Challenger Joyce Livestock Company.

Charles L. Honsinger, Ringert Clark Chartered, Boise, Idaho for Respondent Jay Hulet.

**II.**

**MOTION**

This is a motion for discretionary costs and attorneys fees brought pursuant to I.R.C.P. 54 and I.C. § 12-121.

**III.**

**BRIEF PROCEDURAL BACKGROUND**

1. On October 6, 1999, this Court entered a *Memorandum Decision and Order on Challenge* in the above entitled subcases which overruled the challenge filed by Joyce Livestock Company (“Joyce”). In the *Memorandum Decision* the Court set forth in detail the procedural chronology of the case. The chronology will not be herein repeated.
  
2. On October 20, 1999, Jay Hulet (“Hulet”) timely filed a *Memorandum of Costs and Attorney’s Fees*, together with a *Brief in Support of Memorandum of Costs and Attorneys Fees* and an *Affidavit in Support of Attorney’s Fees*.

3. On November 1, 1999, Joyce file a *Motion to Disallow and Objection to Attorney's Fees* together with a *Memorandum in Support of Objection to Attorney's Fees and Costs*.
4. On January 20, 2000, a hearing was held on the motion. After hearing the respective arguments of counsel in open court, the Court denied Hulet's motion and set forth its reasoning on the record.

#### IV.

#### MATTER DEEMED FULLY SUBMITTED

The Court having heard arguments on the motion on January 20, 2000, and the Court having ruled on the matter on the record in open court, this matter is deemed decided as of January 20, 2000. This decision reduces to writing the Court's reasoning which was orally set forth on the record on January 20, 2000.

#### V.

#### DECISION

Hulet relies on I.R.C.P. 54(d)(1) in support of his motion for discretionary costs. I.R.C.P. 54(d)(1)(D) provides for the allowance of discretionary costs to the prevailing party "upon a showing that said costs were necessary and exceptional costs reasonably incurred, and in the interest of justice should be assessed against the adverse party." I.R.C.P. 54(d)(1)(D). Hulet relies on I.R.C.P. 54(e)(1) and I.C. § 12-121 in support of his motion for attorneys fees. I.R.C.P. 54(e)(1) provides in relevant part:

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), when provided by any statute or contract. Provided, attorneys fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation. . . .

I.R.C.P. 54(e)(1) . I.C. § 12-121 provides in relevant part: “[I]n any civil action, the judge may award reasonable attorney’s fees to the prevailing party.” I.C. § 12-121.

In order to be entitled to attorney’s fees pursuant to I.R.C.P. 54(e)(1) and § 12-121, the defense or pursuit of the **entire** action must be frivolous, unreasonable, or without foundation. Put another way, the various claims and defenses within a single action cannot be segregated to determine which were frivolous or unreasonable for the purpose of awarding attorney’s fees on the individual claims or defenses. *Turner v. Willis*, 119 Idaho 1023, 1025, 812 P.2d 737, 739 (1991); *Magic Valley Radiology Assoc. v. Professional Business Services*, 119 Idaho 558, 563, 808 P.2d 1303, 1308 (1991); *DeFosses v. DeFosses*, 122 Idaho 634, 638, 836 P.2d 1095, 1099 (Ct. App. 1992); *U.S. Nat. Bank of Oregon v. Cox*, 126 Idaho 733, 735, 889 P.2d 1123, 1125 (Ct. App. 1995).

In the instant case there is no issue regarding which party was the “prevailing party.” Hulet prevailed on the Special Master’s July 24, 1998, *Order on Motion to Alter or Amend*. Joyce’s challenge to the *Order* was ultimately was denied by this Court. Instead, the issue turns on whether Joyce’s claim was pursued frivolously, unreasonably or without foundation.

As stated in open court, the basis for the denial of the motion is twofold. First, the entire action brought by Joyce was not frivolous, unreasonable or brought without foundation. Hulet also does not contend that the entire action was pursued frivolously or without foundation.<sup>1</sup> The claim arises with respect to the course of action taken by Joyce following the issuance of the *Order on Motion to Alter or Amend* on June 24, 1998, wherein the Special Master ruled in favor of Hulet. (The Special Master also issued an *Amended Special Master’s Report* on July 29, 1998, in accordance with the *Order*.) In response to the June 24, 1998, *Order*, Joyce filed a *Motion to Reconsider Order Granting Motions to Alter or Amend*, moving the Special Master to reconsider the ruling on the motion to alter or amend. However, prior to the hearing being held on Joyce’s motion, an *Order of Partial Decree* was issued by then presiding Judge Hurlbutt, together with a Rule 54(b) certificate, which disallowed Joyce’s water right claims. Joyce did not appeal

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<sup>1</sup> Hulet does not contend that Joyce’s claim for the water right was frivolous or brought without foundation. In fact, Joyce initially prevailed on the claim following a trial on the merits.

from the *Order of Partial Decree*. A hearing was then held on January 22, 1999, on the motion to reconsider even though the partial decree had already been entered. The Special Master ruled from the bench and denied the motion. Apparently, however, because the hearing was not recorded, counsel for Joyce was instructed by the presiding Special Master to file a subsequent motion for reconsideration.<sup>2</sup> Joyce filed a *Second Motion to Reconsider* on February 5, 1999. A hearing was then held on the Joyce's second motion for reconsideration. For reasons unknown to this court, this hearing again was also not recorded. Then on June 3, 1999, the Special Master issued a written *Order Denying First Motion To Reconsider* and on June 9, 1999, the Special Master issued another written *Order Denying Second Motion to Reconsider*. Then on June 22, 1999, Joyce filed the *Notice of Challenge* with this Court. This Court dismissed the Challenge because the filing of the motion for reconsideration did not toll the time for filing a *Notice of Challenge*, hence the Challenge was not brought timely in accordance with AO1(13). This Court further concluded that Joyce was prohibited procedurally from filing a motion to reconsider on an order granting or denying a motion to alter or amend pursuant to I.R.C.P. 11(a)(2)(B).<sup>3</sup> Further, the Court concluded that if Joyce's motion was construed to be a motion to alter or amend rather than a motion for reconsideration that such a motion is also procedurally prohibited pursuant to AO1(13)(b).<sup>4</sup> Lastly, the Court concluded that since a Rule 54(b) certificate had already been issued and the time for appeal had lapsed, this Court had no further jurisdiction over the matter. *See Memorandum Decision and Order on Challenge* (October 6, 1999).

Hulet made it clear in briefing and at oral argument that the motion for attorney's fees and costs was limited to only for those fees incurred in the action subsequent to Joyce filing the first motion for reconsideration. Hulet argues that from that point forward, Joyce's course of action became frivolous and without foundation.

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<sup>2</sup> Counsel for Joyce informed the Court that he was instructed by the special master to file a subsequent motion for reconsideration.

<sup>3</sup> I.R.C.P. 11(a)(2)(B) expressly prohibits the filing of a motion for reconsideration of a I.R.C.P.59(e) motion to alter or amend

<sup>4</sup> AO1(13) expressly prohibits a party from filing a motion to alter or amend on a decision granting or denying a motion to alter or amend.

Since the entire action was not pursued frivolously or without foundation, as a matter of law this is not an appropriate case for attorney's fees. Hulet only contends, and the record only reflects, procedural irregularities after the issuance of the *Order on the Motion to Alter or Amend*. In the SRBA, the proceedings in front of a special master as well as the proceedings in the district court are both components of a single action. AO1 (9); I.R.C.P. 53; *Seccombe v. Weeks*, 115 Idaho 433, 767 P.2d 276 (Ct. App. 1989). This is not analogous to the situation where attorney's fees can be awarded on appeal where an appeal was brought frivolously or without foundation independent of the underlying action. *Ade v. Batten*, 126 Idaho 114, 119, 878 P.2d 813, 818 (Ct. App. 1995)(standard for awarding attorney's fees on appeal when appeal is brought, pursued or defended frivolously, unreasonably, or without foundation). Accordingly, for purposes of awarding attorney's fees, this Court cannot segregate out various claims and defenses within a subcase that are alleged to be frivolous or without foundation. The entire action must be pursued frivolously or without foundation.

The second reason the Court denied attorney's fees and discretionary costs is that all parties as well as the Special Master shared some responsibility for the case proceeding following the entry of the partial decree. The Special Master was at fault for entertaining Joyce's motion after the ruling on the motion to alter or amend had been entered and also after the partial decree had been entered. Joyce was at fault for failing to follow the procedures set forth in AO1 and I.R.C.P.. Hulet, however, is also not without fault in this matter. Hulet did not raise any objections to Joyce's course of action as being contrary to procedure until it became time to seek attorney's fees. Rather, Hulet continued to defend Joyce's motions which ultimately resulted in the subject attorney's fees. Thus, either Hulet was aware that the case was proceeding contrary to procedure and nonetheless elected to proceed, thereby incurring additional costs and fees, or Hulet was in the same boat as Joyce and the Special Master and simply overlooked the procedural rules governing the SRBA. In either event, as a matter of discretion, it would be inappropriate for this Court to award attorney's fees on the basis that Joyce failed to follow procedure, when Hulet could have initially raised the issue with either the Special Master or this Court and ultimately avoided incurring the additional fees and costs now being sought.

**VI.**  
**CONCLUSION**

For the reasons set forth herein, Hulet's motion for attorney's fees and discretionary costs is denied.

IT IS SO ORDERED:

DATED: January 28, 2000.

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BARRY WOOD  
Administrative District Judge and  
Presiding Judge of the  
Snake River Basin Adjudication