

FILED _____

AT _____ O'Clock _____ M
CLERK OF DISTRICT COURT

Deputy

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

CARMEN L. WRIGHT-CAZIER and)
C. DRAKE CAZIER,)

)
Petitioners,)

vs.)

)
STATE OF IDAHO, DEPARTMENT OF)
HEALTH AND WELFARE)

)
Respondent.)
)

Case No. **CV 2009 10886**

**ORDER DENYING PETITIONERS'
MOTION FOR ENTRY OF
JUDGMENT AND AWARD OF FEES
AND COSTS and ORDER
GRANTING RESPONDENT'S
MOTION TO DISALLOW COSTS
AND FEES**

I. PROCEDURAL HISTORY AND BACKGROUND.

On December 31, 2009, petitioner, Carmen Wright-Cazier (Carmen), filed her Petition for Review of Final Order of Unconditional Denial for a Five Year Disqualifying Offense in Kootenai County case CV 2009 10886 before this Court. Carmen applied to the Department of Health and Welfare (DHW) to become a certified family home to care for her adult autistic stepson. First Appeal Brief of Applicant Appellant, p. 1. In the background check for that application, Carmen disclosed she had pled guilty to the charge of false statement pursuant to 18 U.S.C. § 1014. *Id.* DHW denied the application, concluding a conviction under 18 U.S.C. § 1014 was equivalent to the disqualifying Idaho crime of theft under I.C. § 18-2403(2). Notice of the Final Order of Unconditional Denial for a Five Year Disqualifying Offense was sent to Wright by DHW on December 1, 2009. She timely filed her petition for review (within thirty days of the date the decision was mailed, as set forth in IDAPA § 16.05.03.201) and DHW timely

filed its response brief on March 25, 2010. Simultaneously, C. Drake Cazier (Drake) filed his petition for review, seeking the same relief, in CV 2009 10887, a case assigned to the Honorable Benjamin Simpson. At the June 15, 2010, hearing on Carmen's matter, counsel for Carmen and Drake (who filed a Notice of Appearance on June 10, 2010) requested the matters be consolidated and remanded to the Department for additional fact-finding. The State had no objection to consolidation and agreed factual issues remained to be explored on remand. This Court's Order on Consolidation, filed on June 15, 2010, consolidated both matters into CV 2009 10886 and ordered the matters remanded back to the Department of Health and Welfare for further taking of evidence.

On August 13, 2010, counsel for Wright and Cazier filed a motion for leave to withdraw from representation. The State filed its Notice of No Objection to the motion and waiver of appearance at the hearing on the motion on August 17, 2010. The motion for leave to withdraw was granted by the Court on September 29, 2010.

Carmen and Drake filed their *pro se* notice of appearance on October 12, 2010.

On April 21, 2011, Carmen and Drake filed the Motion for entry of Judgment and Award of Fees and Costs, now before the Court. The Affidavit of C. Drake Cazier in Support of Motion was also filed on April 21, 2011. DHW filed Respondent's Motion to Dismiss and/or Motion to Disallow Costs and Attorney Fees on May 25, 2011. On June 16, 2011, DHW filed its "Notice Withdrawing Department's Motion to Dismiss." DHW's Motion to Disallow Costs and Fees remains at issue.

At oral argument on June 21, 2011, counsel for DHW appeared, and Carmen and Drake appeared *pro se*. Counsel for DHW moved to reinstate its motion to dismiss, and that motion to reinstate the motion to dismiss was denied. Oral argument was heard on the motion for entry of judgment and cross motions on costs and fees.

II. ANALYSIS.

A. Attorney Fees.

Carmen and Drake do not *directly* set forth a rule basis for the relief they seek. In their motion, Carmen and Drake ask this Court to “grant entry of judgment and award ...fees and costs” because “on February 22, 2011 the department issued a clearance for both Appellants.” Motion for Entry of Judgment and Award of Fees and Costs, pp. 1-5. Carmen and Drake also seek an award of costs and fees because, “Mr. Luce argued in his brief that the department would be entitled to attorney’s fees if they prevailed. Certainly under the same standard the Appellants should be awarded fees.” *Id.*, p. 5. In its Respondent’s Brief on Petition for Judicial Review, DHW requested fees pursuant to I.C. § 12-117. Respondent’s Brief on Petition for Judicial Review, p. 7. Thus, indirectly, Carmen and Drake have set forth I.C. § 12-117 as the basis for their request for attorney fees.

DHW responds by seeking dismissal of the instant action pursuant to I.R.C.P. 12(b)(1) “on the grounds that this Court lacks jurisdiction over the subject matter as the case was remanded back to the Idaho Department of Health and Welfare ‘for the further taking of evidence’ on June 15, 2010 and the issue is now moot.” Motion to Dismiss, pp. 1-2. DHW also noted Carmen and Drake failed to make a timely request for fees and costs, per Idaho Appellate Rule 40(c). *Id.*, p. 2. DHW has since withdrawn its Motion to Dismiss. Notice Withdrawing Motion to Dismiss filed June 10, 2011, p. 1.

In *Banner Life Ins. Co. v. Mark Wallace Dixson Irrevocable Trust*, 147 Idaho 117, 206 P.3d 481 (2009), the Idaho Supreme Court found an award of attorney’s fees on appeal was not warranted where the party “failed to support her request with both argument and authority.” 147 Idaho 117, 132-33, 206 P.3d 481, 496-97. Here, Carmen and Drake cite no direct authority for the award they seek. Indirectly, they cite I.C. § 12-

117. While Carmen and Drake have indirectly claimed fees under I.C. § 12-117, they have completely failed to meet the requirement of supporting their request with both “argument and authority.” *Banner Life*, 147 Idaho 117, 132-33, 206 P.3d 481, 496-97. The “authority” that exists is against Carmen and Drake. In *Smith v. Washington County*, the Idaho Supreme Court concluded I.C. § 12-117 “does not allow a court to award attorney fees in an appeal from an administrative order.” 150 Idaho 388, ___, 247 P.3d 615, 618-19 (2010). Smith answers the attorney fee question against Carmen and Drake as to all aspects, both during the time period when they had counsel representing them and during the times they have represented themselves pro se.

Additionally, in Idaho, *pro se* litigants are not entitled to attorney fees. *Michalk v. Michalk*, 148 Idaho 224, 235, 220 P.3d 580, 591 (2009) (citing *Barbee v. WMA Securities, Inc.*, 143 Idaho 391, 397, 146 P.3d 657 (2006); *Bowles v. Pro Division, Inc.*, 132 Idaho 371, 377, 973 P.2d 142, 148 (1999); *Curtis v. Campbell*, 105 Idaho 705, 707, 672 P.2d 1035, 1037 (1983)).

Finally, an award of costs under I.A.R. 40 requires:

Within 14 days of the filing and announcement of the opinion on appeal, whether or not a petition for rehearing or petition for review is filed, any party who claims costs shall file with the Court and serve upon all adverse parties a memorandum of costs, itemizing each claimed expense. A memorandum of costs mailed to the Court shall be deemed filed upon the date of mailing. Failure to file a memorandum of costs within the period prescribed by this rule shall be a waiver of the right to costs.

I.A.R. 40(c). As noted by DHW, this Court’s Order consolidating and remanding the matter was filed on June 15, 2010, and DHW’s decision was entered on February 21, 2011. Motion to Dismiss, p. 2. Carmen and Drake’s request is untimely.

Finally, at oral argument Drake requested costs. No basis was given. This was the first request for costs. Carmen and Drake have wholly failed to comply with I.R.C.P. 54(d) regarding costs.

Carmen and Drake are not entitled to fees or costs in this matter. DHW's Motion to Disallow Costs and Attorney Fees is granted; Carmen and Drake's Motion for Award of Costs and Fees is denied.

B. Carmen and Drake's Motion for Entry of Judgment.

It is unclear precisely what Carmen and Drake seek with regard to their request for entry of judgment. DHW's February 22, 2011, determination that the status of their application is "Reviewed & Cleared- Licensed or Certified", that "[t]he background check is complete" and "Records were revealed and reviewed by the criminal history staff and considered not to be a safety risk for DHW clients". It would seem there is simply nothing left for this Court to determine. Exhibit B to the Affidavit of C. Drake Cazier. To the extent the request is, in effect, only for fees and costs, it cannot be granted for the reasons discussed *supra*.

Although Idaho Appellate Rule 13.3. permits the Supreme Court to remand a matter to the district court or administrative agency, during which time "the appeal shall remain pending in the Supreme Court, but the district court or administrative agency shall have jurisdiction to take all actions necessary to fulfill the requirements of the order of remand", the Idaho Rule of Civil Procedure 84 (Judicial Review of Agency Actions by the District Court) contains no such provision. Upon remand to DHW, and in light of Carmen and Drake having been granted by DHW the relief they sought, there remains nothing for this Court to act upon or determine. Caziers' motion for entry of judgment must be denied.

III. ORDER.

IT IS HEREBY ORDERED the Caziers' Motion for Entry of Judgment and Award of Fees and Costs is hereby DENIED.

IT IS HEREBY ORDERED the Department of Health and Welfare's Motion to Disallow Costs and Attorney Fees is hereby GRANTED.

Entered this 22nd day of June, 2011.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of June, 2011, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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