

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**

**GENE HYATT, successor trustee of the
HYATT REVOCABLE LIVING TRUST,**)

Plaintiff,)

vs.)

**JOHN W. HYATT, and SHIRLEY M. HYATT,) individually and as a marital community)
REBEKAH HYATT and JOHN DOE HYATT,) individually and as a marital community,
JOHN W. HYATT as the trustee of record)
for CHURCH ROAD TRUST,**)

Defendants.)

Case No. **CV 2010 6541**

**MEMORANDUM DECISION AND ORDER
GRANTING PLAINTIFF GENE HYATT'S
AMENDED MOTION FOR ATTORNEY'S
FEES, COSTS AND SANCTIONS
PURSUANT TO I.R.C.P. 11**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

The Court has now set forth the factual and procedural history of this case on prior occasions.

This Court issued its Memorandum Decision and Order Granting Plaintiff's Motion for Summary Judgment on March 1, 2011. Thereafter, John Hyatt filed numerous pleadings, all of which were denied by this Court on April 25, 2011, in its "Memorandum Decision and Order Denying Defendant John Hyatt's: Motion for a Temporary Order to Cancel Sheriff's Sale; Motion for Relief from Judgment; Motion to Dismiss for Lack of Real Party in Interest; Motion for Contempt; Motion to Dismiss for Lack of Jurisdiction; Motion to Vacate Summary Judgment; and Pleading Filed April 21, 2011; and Order Granting Plaintiff's Motion to Contest Defendant's Claim of Exemption and Motion to Strike." On April 28, 2011, Gene Hyatt filed an Affidavit of Theron J.

DeSmet Regarding Costs and, on April 29, 2011, Gene Hyatt filed Plaintiff's Amended Motion for Attorneys' Fees, Costs and Sanctions Pursuant to I.R.C.P. 11. John Hyatt has not replied to these filings. Oral argument on Gene Hyatt's Amended Motion for Attorneys' Fees, Costs and Sanctions Pursuant to I.R.C.P. 11 was held May 31, 2011. Counsel for Gene Hyatt appeared. No defendants appeared.

II. ANALYSIS.

A. Costs.

Idaho Rule of Civil Procedure 54(d) states that costs *shall* be allowed as a matter of right to the prevailing party or parties unless otherwise ordered by the court. I.R.C.P. 54(d)(1)(A) (emphasis added). Costs include costs actually paid, which are awarded as a matter of right, and discretionary costs, which may be allowed upon a showing that the costs were necessary and reasonably incurred and should be assessed against the adverse party in the interest of justice. I.R.C.P. 54(d)(1)(C), (D). In ruling upon objections to discretionary costs, the trial court shall make express findings as to why each specific item of discretionary cost should or should not be allowed. I.R.C.P. 54(d)(1)(D). A court may upon its own motion disallow any items of discretionary costs and *shall* make express findings supporting such disallowance. *Id.* (emphasis added). In determining who is the prevailing party, the trial court shall in its discretion consider the final judgment or result in an action in relation to the relief sought by the parties. I.R.C.P. 54(d)(1)(B).

An award of costs, as stated in the rule itself, is committed to the sound discretion of the court. *Zimmerman v. Volkswagen of America, Inc.*, 128 Idaho 851, 857, 920 P.2d 67, 73 (1996). The grant or denial of discretionary costs is also committed to the discretion of the court; such an award or denial will only be set aside for an abuse of that discretion. *Fish v. Smith*, 131 Idaho 492, 493, 960 P.2d 175, 176

(1998). Whether costs are exceptional is evaluated in the context of the nature of the case. *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 307, 314, 109 P.3d 161, 168 (2005) (holding that the trial court's denial of expert fees was not an abuse of discretion where the court considered the nature of the class action and determined that although expert witnesses were necessary and their fees were reasonable, the costs were not exceptional for a class action suit.); *Fish*, 131 Idaho 492, 493-94, 960 P.2d 175, 176-77 (holding that trial court's denial of expert witness fees was not an abuse of discretion where it found the costs necessary and reasonable, but not exceptional because personal injury cases routinely require assessment of the accident and injuries by various doctors, accident reconstructionists, vocational experts, etc.)

Up to this point this Court has not explicitly ordered, adjudged, or decreed that Gene Hyatt is the prevailing party, pursuant to I.R.C.P. 54(d)(1). In its April 25, 2011 Memorandum Decision and Order, the Court vacated John Hyatt's "Motion for a New Trial or an Original Trial" and wrote, "[t]he only matter to be heard on May 31, 2011, will be plaintiff Gene Hyatt's Supplemental Motion for Attorney's Fees, Costs and Sanctions." Memorandum Decision and Order Denying Defendant John Hyatt's: Motion for a Temporary Order to Cancel Sheriff's Sale; Motion for Relief from Judgment; Motion to Dismiss for Lack of Real Party in Interest; Motion for Contempt; Motion to Dismiss for Lack of Jurisdiction; Motion to Vacate Summary Judgment; and Pleading Filed April 21, 2011; and Order Granting Plaintiff's Motion to Contest Defendant's Claim of Exemption and Motion to Strike, p. 23. Implicit in that statement is the finding that Gene Hyatt is the prevailing party in this litigation. Idaho Rule of Civil Procedure 54(d)(1)(B) provides a trial Court may consider both the presence and absence of awards of affirmative relief in determining which party prevailed. *Chadderdon v. King*, 104 Idaho 406, 659 P.2d 160 (Ct.App. 1983). And a party need not be awarded

affirmative relief in order to be the “prevailing party.” *Id.* (trial court did not abuse its discretion in awarding costs and fees to defendant contractor where contractor prevailed on the main issue of the case but was denied affirmative relief on his counterclaim). This Court now makes it explicit, Gene Hyatt is the prevailing party, having been granted all relief sought and in light of each of John Hyatt’s numerous motions having been denied at summary judgment and on reconsideration. In considering the final result (summary judgment in favor of Gene Hyatt and denial of all of John Hyatt’s motions) in relation to the relief sought (domestication of a foreign judgment and issuance of a writ of execution), it is proper for this Court to exercise its discretion and determine Gene Hyatt is the prevailing party.

In their Memorandum of Costs, Gene Hyatt is requesting costs as a matter of right in an amount of \$674.11 for filing fees, costs of certified copies, recording fees, charges for writs of execution and notices of execution, charges for certified mailing, and costs of publication of notice. Affidavit of Theron J. DeSmet Regarding Costs, pp. 2-3. No discretionary costs are sought by Gene Hyatt. No objection has been filed by John Hyatt pursuant to I.R.C.P. 54(d)(6). The failure to timely object to items in a memorandum of costs “shall constitute a waiver of all objections to the costs claimed.”

Id. Importantly, Idaho Rule of Civil Procedure 54(d)(1)(F) reads:

All costs and attorney fees approved by the court and fees for the service of the writ of execution upon a judgment shall be deemed automatically added to the judgment as costs and collected by the sheriff in addition to the amount of the judgment and other allowed costs. In the event the return of the sheriff upon a writ of execution indicates that the service costs were not obtained through the service of the writ, the clerk of the court shall automatically assess the uncollected service fees to the judgment as additional costs.

Costs as a matter of right in the amount sought by plaintiff Gene Hyatt are appropriate.

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B. Attorney Fees.

The district court's decision to award attorney fees is a discretionary decision, subject to the abuse of discretion standard of review. *Bailey v. Sanford*, 139 Idaho 744, 753, 86 P.3d 458, 467 (2004). Similarly, reviewing courts review the district court's imposition of Rule 11 sanctions under the abuse of discretion standard. *Chapple v. Madison County Officials*, 132 Idaho 76, 967 P.2d 278 (1998).

Gene Hyatt also seeks “an order awarding sanctions against John W. Hyatt...in an amount this Court deems appropriate and an award in favor of Plaintiff for all attorney’s fees and reasonable expenses incurred in defending against the aforementioned pleadings or filings.” Plaintiff’s Motion for Attorneys’ Fees, Costs and Sanctions Pursuant to I.R.C.P. 11, p. 3. Applicable to Gene Hyatt’s request are Idaho Code § 12-121 and Idaho Rule of Civil Procedure 11(a)(1). However, Gene Hyatt cites only Rule 11 as a basis for his fee request; his failure to seek fees under I.C. § 12-121 precludes an award on that basis. *See KEB Enterprises, L.P. v. Smedley*, 140 Idaho 746, 754, 101 P.3d 690, 698 (2004) (citing *Hei v. Holzer*, 139 Idaho 81, 73 P.3d 94 (2003)) (Courts do not consider issues not supported by argument or authority.) In *State of Alaska ex rel. Sweat v. Hansen*, 116 Idaho 927, 782 P.2d 50 (Ct.App. 1989), the Idaho Court of Appeals clarified:

The State of Alaska, as represented by the Idaho Attorney General, has requested an award of attorney fees and costs in this appeal. The state invokes I.R.C.P. 11(a)(1) and I.C. § 12-121, arguing that the appeal was brought groundlessly and without good faith.^{FN 3} We have previously stated our position that Rule 11(a)(1) is not a broad compensatory law, but is a court management tool. As we said in *Kent v. Pence*, 116 Idaho 22, 773 P.2d 290 (Ct.App. 1989), the rule does not exist to duplicate I.C. § 12-121, which has long been construed to authorize an attorney fee award in any civil case brought frivolously, unreasonably, or without foundation. *Minich v. Gem State Developers, Inc.*, 99 Idaho 911, 591 P.2d 1078 (1979). Rather, the rule serves a separate, cognizable purpose, focusing upon discrete pleading abuses or other types of

litigative misconduct within the overall course of a lawsuit. *Kent*, 116 Idaho at 23, 773 P.2d at 291. *Compare Stevens v. Fleming*, 116 Idaho 523, 777 P.2d 1196 (1989) (approving use of Rule 11 sanctions where appellants' attorney failed to make proper factual inquiry before filing suit). Here, the state does not contend that any particular litigative misconduct occurred during the course of this lawsuit; instead, it simply argues that Hansen's appeal was meritless.

FN3. The state's brief requested attorney fees on appeal, referring to Rule 11(a)(1) but omitting I.C. § 12-121. The state's counsel later invoked I.C. § 12-121 at oral argument. We think this was permissible, although not model practice. Where, as here, an issue such as attorney fees has been properly raised in a brief, additional legal authorities pertaining to that issue may be presented orally or in writing. Moreover, the state's argument for the award of attorney fees under I.C. § 12-121 was virtually identical to its misdirected argument in support of an award of fees under Rule 11.

116 Idaho 927, 929, 782 P.2d 50, 52.

Pursuant to I.R.C.P. 11(a)(1), all pleadings, motions and other papers signed by an attorney, or as applicable here, signed by a *pro se* party not represented by an attorney, must meet certain criteria. Where such motions, pleadings or other papers are not well grounded in fact, warranted by existing law or a good faith argument for extension, modification, or reversal of existing law, or are interposed for improper purposes (such as to harass, cause undue delay, or needlessly increase the cost of litigation), imposition of sanctions results. I.R.C.P. 11(a)(1); *Slack v. Anderson*, 140 Idaho 38, 39-40, 89 P.3d 878, 879-880 (2004) (citing *Durrant v. Christensen*, 117 Idaho 70, 74, 785 P.2d 634, 638 (1990)).

This Court, in its January 14, 2011, and April 25, 2011, Memorandum Decisions and Orders struck John Hyatt's various filings as violative of I.R.C.P. 12(f). The Court determined John Hyatt's pleadings were a sham, were interposed for improper purposes and, in fact, amounted to harassment. Memorandum Decision and Order Denying Defendant John Hyatt's: Motion for a Temporary Order to Cancel Sheriff's

Sale; Motion for Relief from Judgment; Motion to Dismiss for Lack of Real Party in Interest; Motion for Contempt; Motion to Dismiss for Lack of Jurisdiction; Motion to Vacate Summary Judgment; and Pleading Filed April 21, 2011; and Order Granting Plaintiff's Motion to Contest Defendant's Claim of Exemption and Motion to Strike, pp. 9-10 (citing *Goldstein v. Krause*, 2 Hasb. 294, 12 P. 232 (1887)). In *Slack*, the Supreme Court upheld the District Court's imposition of Rule 11 sanctions, agreeing that the attorney's allegations as signed and filed "were not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and resulted in unnecessary delay and needless increase in the cost of litigation" because he had not exercised reasonableness in asserting that a third party had a direct claim against an insurance company. 140 Idaho 38, 40-41, 89 P.3d 878, 880-81. Here, John Hyatt filed numerous pleadings which the Court determined were a sham. As such, those materials were clearly interposed for an improper purpose in addition to not being warranted by law or grounded in fact. The intent of I.R.C.P. 11 is to grant Courts the power to impose sanctions for discrete pleading abuses or other litigative misconduct. *Lester v. Salvino*, 141 Idaho 937, 940, 120 P.3d 755, 758 (Ct.App. 2005) (citing *Campbell v. Kildew*, 141 Idaho 640, 115 P.3d 731 (2005)). "The rule is considered a management tool to be used by the district court to weed out, punish, and deter specific frivolous and other misguided filings." *Id.* Attorney fees as a sanction under I.R.C.P. 11 as requested by Gene Hyatt, are entirely proper in the instant matter.

III. CONCLUSION AND ORDER.

For the reasons stated above, plaintiff Gene Hyatt's Amended Motion for Attorneys' Fees, Costs and Sanctions Pursuant to I.R.C.P. 11 must be granted.

IT IS HEREBY ORDERED plaintiff Gene Hyatt is the prevailing party in this litigation.

IT IS FURTHER ORDERED plaintiff Gene Hyatt's Amended Motion for Attorneys' Fees, Costs and Sanctions Pursuant to I.R.C.P. 11 is GRANTED. Costs as a matter of right are awarded in favor of Gene Hyatt, the prevailing party against all defendants, jointly and severally, in the amount of \$674.11. Attorney fees are awarded pursuant to I.R.C.P. 11 in favor of Gene Hyatt against John Hyatt in an amount to be determined under the procedure outlined by the Idaho Rules of Civil Procedure.

Entered this 31st day of May, 2011.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of May, 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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