

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37534

ADA COUNTY, a political subdivision of the)	2011 Unpublished Opinion No. 633
State of Idaho,)	
)	Filed: September 26, 2011
Plaintiff-Counterdefendant-Cross-)	
Respondent,)	Stephen W. Kenyon, Clerk
)	
v.)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
C. ARTHUR CRUMP, ANCHOR POINTE,)	BE CITED AS AUTHORITY
INC.,)	
)	
Defendants,)	
)	
CARLEEN CRUMP, on behalf of herself and)	
all others similarly situated,)	
)	
Defendant-Counterclaimant-Cross-)	
Appellant.)	
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Timothy Hansen, District Judge.

District court’s order denying request for attorney fees, affirmed.

Runft & Steele Law Office, PLLC, Boise, for cross-appellant. Jon M. Steele argued.

Greg H. Bower, Ada County Prosecuting Attorney; Claire S. Tardiff, Deputy Prosecuting Attorney, Boise, for cross-respondent. Claire S. Tardiff argued.

GRATTON, Chief Judge

Carleen Crump appeals from the district court’s denial of her request for attorney fees pursuant to Idaho Code § 12-117. We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Arthur Crump was diagnosed with small cell carcinoma of the left lung with T3 cord compression. Mr. Crump’s treatment resulted in costs totaling \$160,946.07. On July 5, 2005,

Arthur and his wife Carleen filed a Uniform County Medical Assistance Application seeking medically indigent benefits pursuant to Chapter 35, Title 31, Idaho Code. In the application, Mr. Crump was identified and signed as the applicant/patient. Carleen was identified and signed as the spouse/significant other. According to Ada County, a spouse is not required to sign, but if the spouse signs, he/she is treated by Ada County as an applicant. A county may seek reimbursement for medical assistance payments. However, the ability to recover such payments against an applicant differs from the ability to recover from an “obligated” party and/or a spouse’s separate property.

Prior to submission of the application, Carleen received an inheritance. These funds were shifted through several accounts and, as found by the district court, in order to spend down the inheritance, \$31,000 was invested in a company called Anchor Pointe, and the remainder used for living expenses.

The Crumps’ initial application was denied on September 6, 2005. The Crumps’ medical providers appealed the decision. Following a hearing at which the Crumps’ supported the appeal, the Ada County Board of Commissioners approved the application. However, the commissioners also entered an order of reimbursement in the amount of \$31,290. In the order of reimbursement both Arthur and Carleen were identified as applicants, a statutory lien was noted as having been perfected up to the total amount of medical assistance payments, the Crumps were ordered to pay within thirty (30) days or execute a promissory note, and the Crumps were advised of their right to judicial review. The Crumps did not pay, sign a promissory note, or seek judicial review.

Ada County brought suit under theories of specific performance and unjust enrichment to collect under the order of reimbursement. In addition, Ada County asserted fraudulent transfer claims relative to the \$31,000 investment in Anchor Pointe. Eventually, Anchor Pointe interpleaded the \$31,000 and was dismissed.

The action proceeded against Carleen after Arthur died. Carleen answered and asserted a counterclaim. In the counterclaim, she asserted that the lien violated the Equal Protection Clause, substantive and procedural due process rights, 42 U.S.C. § 1983, and Idaho law. She sought to certify a class of similarly situated persons. Her prayer for relief included a request for a permanent injunction, an order precluding the inclusion of a spouse’s separate property as a

resource, an order nullifying all liens, an order requiring reimbursement, and unspecified damages.

Multiple pleading amendments occurred, several motions for summary judgment were filed by the parties, and Carleen removed the case to federal court only to have it remanded to state court. The district court refused to certify the class action. Ultimately, the district court ruled that Carleen, although having signed the application, was not the applicant but an obligated party. As such, the law did not allow Ada County to proceed on an order of reimbursement against her, although a county could obtain a judgment against an applicant on an order of reimbursement. However, the court determined that, through the process, Carleen had consented to a community obligation which could bind her separate property, and, since spouses are obligated to support each other, the obligation extended to her separate property. Thus, under the law, the means of recovery against Carleen was by lien or from the parties' estate. This, in turn, meant that Ada County had legal remedies to recover the medical assistance payments. Therefore, the court held that Ada County was not entitled to the equitable remedies of specific performance and unjust enrichment. Since Ada County was not entitled to recover medical payments against Carleen under equitable theories, judgment was entered in her favor on Ada County's claims. Since a lien was an available remedy by which Ada County could recover payments made for medical assistance and Carleen was an obligated person from whom Ada County could recover, including her separate property, judgment was entered in favor of Ada County on Carleen's counterclaim. The district court determined that Ada County had not sought to foreclose its lien, although it could do so. Therefore, since a cause of action which could result in payment of the interplead money to the county had not been pled, the court ordered the \$31,000 interplead by Anchor Pointe to be distributed to Carleen.

Carleen filed a request for attorney fees. Carleen also submitted an offer of judgment in the amount of \$5000, which had been presented to Ada County prior to trial. Ada County filed a notice of appeal. Carleen filed a second motion for class certification, which was later denied. The district court denied Carleen's request for attorney fees, holding that there was no prevailing party. The court awarded \$867.07 in costs to Carleen incurred subsequent to the offer of judgment. The court noted that such costs were required to be ordered under Idaho Rule of Civil Procedure 68(b)(i) regardless of any ultimate prevailing party determination. Carleen filed a

notice of appeal. Ada County later dismissed its appeal. Therefore, the present appeal is brought by Carleen solely on the denial of her claim for attorney fees.

II. ANALYSIS

Carleen argues that the district court erred in denying her claim for attorney fees under I.C. § 12-117(1).

Idaho Code § 12-117(1) states:

Unless otherwise provided by statute, in any administrative proceeding or civil judicial proceeding involving as adverse parties a state agency or political subdivision and a person, the state agency or political subdivision or the court, as the case may be, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

A county is a political subdivision. I.C. § 12-117(4)(b).

Idaho Rule of Civil Procedure 54(d)(1)(B) provides guidance on identifying the prevailing party and states:

In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

The determination of who is a prevailing party, for the purpose of receiving an award of attorney fees, is committed to the discretion of the trial court. *Shore v. Peterson*, 146 Idaho 903, 914, 204 P.3d 1114, 1125 (2009). That determination will be disturbed only upon a showing of an abuse of discretion. *Id.* at 915, 204 P.3d at 1126. To review an exercise of discretion, this Court considers three factors: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of this discretion and consistent with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason. *Id.*

The Idaho Supreme Court has recognized that “[o]nly in rare cases has this Court or the Court of Appeals reversed a trial court’s determination of which party prevailed.” *Id.* at 914, 204

P.3d at 1125. The Court identified two instances which “illustrate that a defendant may be the prevailing party when he or she is ultimately found not liable.” *Id.* In *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 718-19, 117 P.3d 130, 132-33 (2005), the defendants successfully defended against the plaintiffs’ claim and won a small portion of the amount claimed in their counterclaim. The trial court, however, focused on the counterclaim, which was only marginally successful, and ruled that there was not a prevailing party. The Court ruled that the defendant’s complete non-liability evidenced that the defendants were the prevailing parties. *Id.* at 719, 117 P.3d at 133. In *Daisy Manufacturing Co., Inc. v. Paintball Sports, Inc.*, 134 Idaho 259, 999 P.2d 914 (Ct. App. 2000) (overruled on other grounds *BECO Const. Co., Inc. v. J-U-B Engineers Inc.*, 149 Idaho 294, 233 P.3d 1216 (2010)), this Court indicated that not only did the defendant obtain complete non-liability, but that the plaintiff gained no benefit from the litigation. *Id.* at 262, 999 P.2d at 917.

It is within the trial court’s discretion to decline an award of attorney fees to either side when both parties are partially successful. *Shore*, 146 Idaho at 914-15, 204 P.3d at 1125-26 (citing *Israel v. Leachman*, 139 Idaho 24, 27, 72 P.3d 864, 867 (2003)).

Where, as here, there are claims, counterclaims and cross-claims, the mere fact that a party is successful in asserting or defeating a single claim does not mandate an award of fees to the prevailing party on that claim. The rule does not require that. It mandates an award of fees only to the party or parties who prevail “in the action.”

Israel, 139 Idaho at 27, 72 P.3d at 867 (quoting *Chenery v. Agri-Lines Corp.*, 106 Idaho 687, 691, 682 P.2d 640, 644 (Ct. App. 1984)). In *Israel*, the district court found the plaintiffs prevailed on their claim under the Idaho Consumer Protection Act, but did not prevail on their claims for breach of contract, statutory violations, and fraud. *Israel*, 139 Idaho at 25-26, 72 P.3d at 865-66. The Court affirmed the district court’s decision to award no attorney fees because it determined that both parties prevailed in part. *Id.* at 28, 72 P. 3d at 868.

Carleen requested the district court to award over \$70,000 in attorney fees under a number of provisions: I.C. §§ 12-117, 12-120(3), and 12-121. The district court recognized that identifying the prevailing party was a factual determination reserved for its discretion. It appropriately relied on I.R.C.P. 54(d)(1)(B) to guide its analysis. The district court analyzed the resolution of Ada County’s claims and of Carleen’s claims. Relying upon *Israel*, 139 Idaho at

27, 72 P.3d at 867, the district court reasoned neither party prevailed, noting that “each party prevailed on the other party’s claims and did not prevail on that party’s own claims.”

Carleen argues that Ada County acted contrary to unambiguous laws to support her assertion that it acted without a reasonable basis in fact or law. However, the determination of whether a party acted without a reasonable basis in fact or law is independent of the prevailing party determination. Idaho Code § 12-117(1) provides for an award to a prevailing party if it finds that the nonprevailing party acted without a reasonable basis in fact or law. Thus, the district court must first determine whether there is a prevailing party and only reaches the reasonable basis in fact or law determination if there is a prevailing party. Since the district court determined that there was no prevailing party, it made no determination regarding whether Ada County acted without a reasonable basis in fact or law. The prevailing party determination focuses on the results obtained in the action.

Carleen further contends that she was the party that prevailed “in the action.” However, while Ada County failed in its contention that Carleen was an applicant, the district court determined that Carleen was an obligated party and that her separate assets were a resource from which Ada County could recover for the medical assistance payments. The district court determined that Ada County could seek recovery from Carleen through its lien or against the estate, but not directly on the order of reimbursement. Thus, although Ada County could not obtain judgment against Carleen under the order of reimbursement, the district court held that it could proceed against Carleen’s separate property under the lien, which would include the \$31,000 previously transferred to Anchor Pointe.

Carleen chose not only to defend against the equitable claims brought by Ada County to collect under the order of reimbursement but, recognizing that her separate property may be subject to the statutory lien, further chose to seek affirmative relief from the lien. Inasmuch, Carleen asserted that the lien violated the Equal Protection Clause, substantive and procedural due process rights, 42 U.S.C. § 1983, and Idaho law. However, the district court held that the lien was valid and, although Ada County had not sought to foreclose on the lien, it could do so. On appeal, Carleen acknowledges there is “no doubt” that there is an obligation to repay in the form of a lien on her home and against her personal property.

Carleen was determined to be not liable on the specific performance and unjust enrichment theories pled by Ada County. She was also found to be not subject to a judgment on

the order of reimbursement, as the law provided collection in that regard only against an applicant. However, the district court held that her separate assets were a resource for repayment of the medical assistance payments. Moreover, her affirmative claims that the lien was invalid were rejected by the district court, as were her multiple attempts to certify a class action. The interplead \$31,000 was paid to her principally because Ada County had not attempted to obtain the money through foreclosure on the lien.

This case is unlike *Eighteen Mile Ranch* or *Daisy Manufacturing* because Carleen did not obtain a determination of complete “non-liability” and the litigation cannot be said to have been of no benefit to Ada County. While this litigation did not result in Carleen paying money to Ada County, the results of the litigation include a determination that Carleen’s separate property is subject to recovery for medical assistance payments and the lien mechanism available to Ada County is valid, although Ada County did not seek to foreclose the lien in this case. Thus, it cannot be said that Carleen secured a determination of complete non-liability or that the litigation was of no benefit to Ada County.

Carleen also draws attention to the fact that she made an offer to settle the litigation prior to trial for \$5000. Carleen argues that an offer to settle that is more favorable than the result received should be considered in determining who the prevailing party is. The district court determined that an award of costs under Rule 68 was mandatory without regard to prevailing party and awarded Carleen \$867.07 in costs. Presumably, the award was based upon the fact that Ada County did not recover more than \$5000 against Carleen. However, this award does not materially affect the prevailing party determination. An offer of judgment may be considered in the prevailing party analysis, but it is only a factor and not the most significant factor. *Zenner v. Holcomb*, 147, Idaho 444, 449, 210 P.3d 552, 557 (2009). If Ada County had accepted the offer it could only collect \$5000. The district court’s resolution of the case still allowed for Ada County to collect the full amount through the lien process. Carleen has failed to demonstrate the district court abused its discretion in determining neither party was a prevailing party.

Both Carleen and Ada County request attorney fees on appeal under I.C. § 12-117 and I.A.R. 41. Again, I.C. § 12-117 provides that the court shall award attorney fees to the prevailing party “if it finds that the nonprevailing party acted without a reasonable basis in fact or law.” While the prevailing party determination by the district court is reviewed on appeal for an abuse

of discretion, we have determined that facts and law supporting both parties' positions on appeal exist. Therefore, an award of attorney fees to either party is inappropriate.

III.

CONCLUSION

The district court did not abuse its discretion in finding that neither party was the prevailing party in the action for purposes of an award of attorney fees. Therefore, the district court's order denying Carleen's request for attorney fees is affirmed. Neither party is awarded attorney fees on appeal. Costs awarded to Ada County.

Judge GUTIERREZ and Judge MELANSON **CONCUR.**