

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 BONNER**

THERESA R. BLANKENSHIP,)
)
) *Petitioner,*)
vs.)
)
WASHINGTON TRUST BANK,)
)
) *Respondent.*)

Case No. **S CV 2007 572**

**MEMORANDUM DECISION AND
ORDER GRANTING WASHINGTON
TRUST BANK'S MOTION TO
DISMISS**

WILLIAM MICHAEL BOWMAN and ERIC)
BOWMAN,)
)
) *Intervenors,*)
vs.)
)
WASHINGTON TRUST BANK,)
)
) *Respondent.*)

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on Respondent Washington Trust Bank's (WTB) "Motion to Dismiss First Amended Complaint of Intervenor(s)."

Petitioner Theresa Blankenship (Blankenship) is one of four beneficiaries of a trust created by her mother. The trust (real) property is located in Bonner County. In her petition filed April 3, 2007, Blankenship asked this Court to remove WTB as trustee because she alleges WTB participated in lending to other beneficiaries beyond what is permitted in the trust and did not operate the real property to maximize the return of profits to benefit beneficiaries of the trust. Blankenship moved this Court for a Protective Order to prevent WTB from selling the real property over the beneficiaries'

objections because the sale would deprive the beneficiaries of future income and assets.

On October 21, 2008, William Michael Bowman, another beneficiary to the trust, filed his motion for leave to intervene, and this Court allowed such on November 12, 2008. On January 17, 2009, WTB filed its Motion for Summary Judgment. On February 17, 2009, Intervenor William Michael Bowman, filed his Complaint of Intervenor. Also, on February 17, 2009, J.T. Diehl, counsel for William Michael Bowman, filed an Affidavit of J.T. Diehl and Memorandum in Opposition to Motion for Summary Judgment. On February 24, 2009, Eric Bowman, another beneficiary, filed a Motion to Intervene which was heard on March 2, 2009. At that hearing, Eric Bowman was allowed to intervene. Order, March 5, 2009. Following oral argument on WTB's summary judgment motion, on March 2, 2009, this Court dismissed Blankenship's and William Michael Bowman's requests for preliminary injunction, ruled the removal of trustee issue was moot, granted summary judgment to WTB on the violation of Idaho trust law and violation of the trust document issues, and permitted only Blankenship's and William Michael Bowman's claims regarding standing and negligence to move on to trial.

On March 11, 2009, this Court denied WTB's motion for change of venue, granted WTB's motion to depose the Bowmans, or in the alternative bar their testimony, and denied Blankenship's motion for I.R.C.P. 54(b) Certification and motion to continue trial. On March 12, 2009, Bowmans filed their First Amended Complaint. Trial was held on March 16, 2009, and at trial, Blankenship and WTB settled, placing their settlement agreement on the record.

On March 24, 2009, WTB filed its "Motion for Order Dismissing Intervenor William Michael Bowman With Prejudice", for failure to appear at his scheduled

deposition on March 12, 2009. That motion was denied at the May 4, 2009, hearing. WTB filed a Motion for Reconsideration on May 18, 2009. WTB's Motion to Reconsider was denied at oral argument on that motion held on June 24, 2009.

On April 10, 2009, WTB filed its "Motion to Dismiss First Amended Complaint of Intervenor(s)". WTB seeks to dismiss the Intervenor(s)' First Amended Complaint because "...the claims presented in the Intervenor(s)' First Amended Complaint have already been addressed, resolved, and dismissed by this Court in favor of WTB via this Court's Order Regarding Respondent's Motion for Summary Judgment dated March 8, 2009, and Intervenor(s) can prove no set of facts which would entitle them to the relief they seek." Motion to Dismiss First Amended Complaint of Intervenor(s), pp. 1-2. A Memorandum in Support of Motion to Dismiss First Amended Complaint of Intervenor(s) was also filed on April 10, 2009. On April 24, 2009, Bowmans filed their "Objection to Motion to Dismiss Amended Complaint." On June 18, 2009, WTB filed its "Reply Brief in Support of Motion to Dismiss First Amended Complaint of Intervenor(s)." On June 23, 2009, Bowmans filed their "Rebuttal Memorandum in Opposition to Motion to Dismiss Amended Complaint". At the June 24, 2009, hearing where this Court denied WTB's Motion to Reconsider, this Court was to have also heard argument on WTB's Motion to Dismiss First Amended Complaint of Intervenor(s). Due to confusion stemming from the multitude of motions filed since trial, and due to the late filing of WTB's Reply Brief in Support of Motion to Dismiss First Amended Complaint of Intervenor(s) and even later filing of Bowmans' Rebuttal Memorandum in Opposition to Motion to Dismiss Amended Complaint, oral argument on WTB's Motion to Dismiss First Amended Complaint of Intervenor(s) was ordered to be heard at a different time. Oral argument on WTB's Motion to Dismiss First Amended Complaint of Intervenor(s) was finally noticed up for

hearing on August 31, 2010.

II. ANALYSIS.

A. WTB's Motion to Dismiss the First Amended Complaint of Intervenors.

WTB moves to dismiss the first amended complaint pursuant to I.R.C.P. 12(b)(6) for failure to state a claim. Memorandum in Support of Motion to Dismiss First Amended Complaint, p. 3. WTB argues Bowmans can prove no set of facts which would entitle them to the relief sought. *Id.* WTB states the allegations in the Complaint concern damages purportedly caused by WTB's advance of funds to Ryan Bowman's Trust and recordation of a Deed of Trust against his one-fourth undivided interest in the trust property, which issues have already been addressed and disposed of by this Court on the record on March 8, 2009. *Id.*, p. 4. (Ryan Bowman is the fourth beneficiary to this trust, along with Blankenship, William Bowman and Eric Bowman). The same issue and claim preclusion arguments are advanced by WTB regarding Bowmans' requests for preliminary injunction. *Id.*, p. 5. In response, Bowmans argue the only two purposes of the First Amended Complaint were to name Eric Bowman as an intervenor and to remove the negligence issues. Objection to Motion to Dismiss Amended Complaint, p. 1. Bowmans point out their counsel informed the Court at trial of the filing of the Amended Complaint and that Bowmans would not participate in the trial, but would "preserve our right to appeal the issues decided at Summary Judgment." *Id.*, p. 2. Following summary judgment, only Blankenship's and Bowmans' standing and negligence claims remained. Blankenship's claims were settled thereafter and the matter was dismissed as to her. However, the First Amended Complaint makes the substantive changes of adding intervenor Eric Bowman and removing the negligence claims. It appears Bowmans sought only to appeal this Court's Order on Summary

Judgment, but could not do so without an I.R.C.P. 54(b) certificate. Bowmans have not followed through on the I.R.C.P. 54(b) certification process.

At oral argument of WTB's motion to dismiss on August 31, 2010, WTB clarified its position. WTB set forth a timeline of events and argued that Eric Bowman moved for leave to intervene on February 24, 2009, was granted leave to intervene on March 5, 2009, and filed his claims via the First Amended Complaint on March 12, 2009, *after* this Court had already dismissed the same claims on summary judgment on March 8, 2009. Because Eric Bowman had not yet filed his claims as of the March 8, 2009, ruling on summary judgment, WTB argues Eric Bowman cannot appeal the summary judgment, but rather that his appeal lies in an appeal of this Court's dismissing his Amended Complaint. Eric Bowman argued that I.R.C.P. 15(c) served to make his claims relate back to the original date Teresa Blankenship filed her Complaint, on April 3, 2007, and, as such, the summary judgment acted upon his claims. WTB replied Eric Bowman's request for intervention was granted by this Court on March 5, 2009, and he filed his Amended Complaint on March 12, 2009. However, this Court entered its Order on summary judgment on March 8, 2009. Thus, WTB states Eric Bowman filed claims that had already been dismissed four days earlier.

Idaho Rule of Civil Procedure 15(c) states in relevant part:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the claim of the original pleading.

I.R.C.P. 15(c). A Court's decision with respect to I.R.C.P. 15(c) is a matter committed to the Court's discretion. *Trimble v. Engelking*, 130 Idaho 300, 303, 939 P.2d 1379, 1382 (1997). Here, the acts and occurrences complained of by Eric Bowman were clearly those also giving rise to the initial Complaint filed by Teresa Blankenship. WTB noted at oral

argument that Eric Bowman's claims must be dismissed because he is a new party who had no claims before the March 12, 2009, filing of his Amended Complaint and therefore there was nothing for his Complaint to relate back to as summary judgment had been granted in favor of WTB on March 8, 2010, on the issues raised in his Amended Complaint.

An issue arises as to whether the "relation back" provision applies when there is a different party (compared to the party originally filing the complaint) seeking to amend their pleading to have it relate back to some other party's complaint. *Muir v. Pocatello*, 36 Idaho 532, 212 P. 345 (1922), and *McGrath v. West End Orchard and Land Co.*, 43 Idaho 255, 251 P. 623 (1926), appear to allow this. In *Muir*, the Idaho Supreme Court held: "In *Idaho Trust & Savings Bank v. Nampa & Meridian Irr. Dist.*, 29 Idaho, 658, 161 Pac. 872, it is held that where additional parties are brought in after the statute of limitations otherwise would have run as to them except for the action having been previously begun, the cause of action was not barred as to the new parties, and such cause of action after the amendment would relate back to the commencement of the original action." 36 Idaho 532, 212 P. 345, 347. *McGrath* concerned substitution of an administratrix of a decedent's estate, following the death of the person who was the defendant in the case. The Idaho Supreme Court in *McGrath* held: "An amendment or substitution of a competent party introduces no new cause of action, but relates back to the commencement of the suit." 43 Idaho 255, 251 P. 623, 626.

The Court notes the time period leading up to the March 16, 2006, trial, was fraught with numerous motions by all parties, some of which were noticed up for hearing and some of which were not. Eric Bowman's counsel was present at the trial and stated he would not participate, but was merely preserving his right to appeal the issues decided on summary judgment. No prejudice would result to WTB if the Court were to

deny the motion to dismiss because WTB knew that Eric Bowman would be seeking a I.R.C.P. 54(b) certificate by March 16, 2009, at the latest. Indeed, Eric Bowman has filed two requests for an I.R.C.P. 54(b) certificate since hearing on the motion for summary judgment took place (March 5, 2009 and April 1, 2009). At present, WTB is correct in its assertion that no claims remain. Eric Bowman continues to seek an I.R.C.P. 54(b) certificate so that he may appeal the Court's ruling on summary judgment. On April 1, 2009, Bowmans noticed up their Motion for Certification of Partial Summary Judgment pursuant to Rule 54(b) for May 4, 2009. Because of the myriad of other motions heard in this case on May 4, 2009, the Court indicated it would not hear the I.R.C.P. 54(b) motion that day, but it could be taken up at a later date. Since that time, Bowmans have not noticed up their I.R.C.P. 54(b) motion for hearing. Had Bowmans done so, perhaps this case could have moved on to the Idaho appellate courts more than a year ago.

This Court finds Bowmans claims relate back to Blankenship's original complaint which started this litigation. However, due to Bowmans failure to prove any set of facts which would entitle them to relief, there are no claims stated in Bowmans' "Intervenors First Amended Complaint" which remain, and MTB's Motion to Dismiss pursuant to I.R.C.P. 12(b)(6) must be granted against Bowmans. However, the Court's previous grant of summary judgment against Blankenship was not final (discussed below), and since Bowmans appear to seek only an I.R.C.P. 54(b) certificate, and are not raising any issues regarding the *merits* of the claims in their Amended Complaint, they are entitled to such certificate if they ever notice such up for hearing. Because this Court's summary judgment ruling against Blankenship and William Bowman was not a final appealable order, once either 1) Bowmans finish the I.R.C.P. 54(b) process or 2) some

party provides a “judgment” and has such entered, Bowmans will still be timely on their appeal. Bowmans I.R.C.P. 54(b) motion remains pending, it is just that no party has noticed such for hearing.

WTB also posits issue and claim preclusion should result in dismissal of Bowmans’ Amended Complaint. Memorandum in Support of Motion to Dismiss First Amended Complaint, pp. 3-5; Reply Brief in Support of Motion to Dismiss First Amended Complaint of Intervenors, pp. 3-6. While the granting of WTB’s Motion to Dismiss under I.R.C.P. 12(b)(6) would ordinarily render a discussion of issue and claim preclusion moot, because WTB apparently seeks an end to all litigation in this case, *including appeal*, questions of issue and claim preclusion must be discussed. For reasons set forth below, issue and claim preclusion do not bar Eric Bowman’s claims.

B. Issue Preclusion.

In its Reply Brief, WTB argues the First Amended Complaint should be dismissed as to Eric Bowman because issue preclusion bars his claims. Reply Brief in Support of Motion to Dismiss the First Amended Complaint of Intervenors, p. 3. WTB admits the claims set forth by Eric Bowman “were the first claims in this action to be lodged against WTB by Eric Bowman. As such, they have not been resolved by the Court.” *Id.*, p. 4. Nonetheless, WTB states the issues were decided by the Court in its March 8, 2009, Order and Eric Bowman can prove no set of facts on which he could prevail against WTB. *Id.*, pp. 4-5. Bowmans reply there has been no final judgment on the merits in the prior litigation in this matter and Eric Bowman was not a party or in privity with a party in the prior litigation, therefore issue preclusion is not applicable. Rebuttal Memorandum in Opposition to Motion to Dismiss Amended Complaint, p. 3.

As set forth by WTB, issue preclusion, also known as collateral estoppel, protects

litigants from relitigating an identical issue with the same party or that party's privy. *Ticor Title, v. Stanion*, 144 Idaho 119, 123, 157 P.3d 613, 617 (2007). The five factors that must be present to bar relitigation of an issue determined in a prior proceeding are: (1) the party against whom the previous decision was asserted had a full and fair opportunity to litigate the issue; (2) the issue previously decided was identical to the instant issue; (3) the issue sought to be precluded was actually decided; (4) there was a final judgment on the merits in the prior litigation; and (5) the party against whom the issue is asserted was a party or was in privity with a party to the prior litigation. 144 Idaho 119, 124, 157 P.3d 613, 618 (citing *Rodriguez v. Dept. of Corr.*, 136 Idaho 90, 93, 29 P.3d 401, 404 (2001)).

Here, there was no final judgment on the merits. Idaho Rule of Civil Procedure 58 clearly sets forth that a judgment must be set forth on a document separate from an Order granting summary judgment. *Spokane Structures, Inc. v. Equitable Law, LLC*, ___ Idaho ___, 226 P.3d 1263, 1266-67 (2010). The separate document rule is designed to eliminate confusion about when the clock for appeal begins to run and over what action the Court intended to be its Judgment. ___ Idaho ___, 226 P.3d 1263, 1267, citing 46 AM.JUR.2D *Judgments* § 70 (2006).

A document entitled "Order" that stated "It is hereby ordered that the complaint is dismissed" would constitute a judgment. It would set forth the relief to which the party was entitled. Obviously, however, merely typing "it is so ordered" at the end of a memorandum decision does not constitute a judgment. The judgment must be a separate document that does not contain the trial court's legal reasoning or analysis.

Id. In the instant matter, the Court entered its ruling on the record; there was no written Memorandum and Decision, much less a written Judgment submitted by the parties to the Court for signature and filing. What remained after the Court's Order on summary judgment were the issues of standing and negligence. Bowmans explicitly amended

their complaint to “remove the allegations with regards to the issues of negligence and to ensure that ERIC BOWMAN was added as a party to those issues previously argued and ruled upon in the Motion for Summary Judgment.” Rebuttal Memorandum in Opposition to Motion to Dismiss Amended Complaint, p. 3. Additionally, the term “privity” has been discussed and defined in case law.

“Privity” is defined as the “connection or relationship between two parties, each having a legally recognized interest in the same subject matter.” BLACK’S LAW DICTIONARY 1217 (7th Ed. 1999). It is generally accepted that whether privity exists or not is not simply a matter of relationship,...but, rather, whether a party against whom the doctrine is asserted had its legal rights litigated in the prior action...Indeed, due process concerns would plague a holding that barred a party from asserting its rights when it did not have an opportunity to be heard. (citations omitted).

Schwan’s Sales Ent., Inc. v. Idaho Transp. Dept., 142 Idaho 826, 832, 136 P.3d 297, 3030 (2006). Eric Bowman’s relationship with William Bowman is therefore not determinative. Eric Bowman had not asserted his legal rights regarding the issues decided on summary judgment. However, by his own statements, Eric Bowman sought only to appeal the issues decided on summary judgment, going so far as to specifically remove the negligence issues which remained after summary judgment from consideration. No such appeal regarding the Court’s rulings on summary judgment was taken in this matter because the I.R.C.P. 54(b) process has not been completed. However, as discussed above, there has been no final judgment on the merits.

C. Claim Preclusion.

WTB argues claim preclusion bars William Bowman from relitigating claims already decided by the Court. Reply Brief in Support of Motion to Dismiss First Amended Complaint of Intervenors, p. 5.

Because the claims alleged by Intervenor William Bowman in the First Amended Complaint of Intervenor(s) were previously addressed and disposed of by this Court via its March 8, 2009 Order, Intervenor William

Bowman is now precluded from re-asserting said claims against WTB under the plain language of the Court's March 8, 2009 Order, and under claim preclusion principles.

Id., p. 6. Intervenors again argue the absence of the elements of the same parties being involved and no final judgment existing preclude the doctrine of claim preclusion from barring their claims. Rebuttal Memorandum in Opposition to Motion to Dismiss Amended Complaint, p. 3.

Claim preclusion bars re-adjudication of matters offered and received to defeat a claim *and* "every matter which might and should have been litigated in the first suit." *Magic Valley Radiology, P.A. v. Kolouch*, 123 Idaho 434, 437, 849 P.2d 107, 110 (1993). Claim preclusion, or true *res judicata*, bars a subsequent action with: (1) the same parties, (2) the same claim, and (3) a final judgment. *Ticor*, 144 Idaho 119, 124, 157 P.3d 613, 618. When a valid, final judgment is rendered in a proceeding, it "extinguishes all claims arising out of the same transaction or series of transactions out of which the cause of action arose." *Diamond v. Farmers Group, Inc.* 119 Idaho 146, 150, 804 P.2d 319, 323 (1990).

Although the Court entered its Order on summary judgment on the record on March 2, 2009, no Judgment was ever submitted by the parties for the Court's signature. The issues remaining for trial after summary judgment were issues of standing and negligence. Blankenship settled during trial, and counsel for Intervenor William Bowman notified the Court at trial that, "we would not be participating in the trial but would preserve our right to appeal the issues decided at Summary Judgment." Objection to Motion to Dismiss Amended Complaint, p. 2. Although Intervenors have sought an I.R.C.P. 54(b) certificate on two occasions, no hearing has been held on the issue.

III. CONCLUSION AND ORDER.

This Court's Order on Summary Judgment, entered orally on the record with no Judgment ever having been submitted by any party, was not a final judgment. Until a final judgment is entered, this case is not finished and any party's time to appeal has not begun to run.

WTB is entitled to have its Motion to Dismiss First Amended Complaint of Intervenor granted, not on the grounds of issue or claim preclusion, but because Bowmans have not proven a set of facts which would entitle them to the relief sought. Bowmans "relief sought" in their First Amended Complaint of Intervenor is very limited, filed only to keep their claim of standing alive, and to seek appeal of this Court's ruling on summary judgment as to the negligence claim. The Court's ruling on those issues on summary judgment as pertains to Blankenship and William Bowman remains for appeal, if appeal is taken. Eric Bowman's claims asserted relate back to Blankenship's complaint, and while those claims are dismissed under I.R.C.P. 12(b)(6), Eric Bowman's time to appeal does not begin to run until an appropriate judgment has been entered. It seems the simplest thing would be for Bowmans to complete the I.R.C.P. 54(b) process.

IT IS HEREBY ORDERED Respondent WTB's Motion to Dismiss First Amended Complaint of Intervenor is GRANTED under I.R.C.P. 12(b)(6).

Entered this 28th day of September, 2010.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of September, 2010, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer
Todd Reed

Fax #
208-263-4438

Lawyer
Peter J. Smith/Mischelle Fulgham

Fax #
664-4125

J. T. Diehl

208-263-8983

Jeanne Clausen, Deputy Clerk