

STATE OF IDAHO)
County of Bonner)^{SS}

FILED _____

AT _____ O'clock _____ M
CLERK OF THE DISTRICT COURT

Deputy Clerk

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

BILL DRUMWRIGHT)
)
Petitioner,)
)
vs.)
)
LESTER SCHERR)
)
Respondent.)
_____)

Case No. **S CV 1999 1575**

**MEMORANDUM DECISION AND
ORDER REMANDING TO
MAGISTRATE DIVISION**

I. PROCEDURAL BACKGROUND.

How this case came before the District Court this second time is convoluted. This case started in 1999 as a small claims action related to allegedly defective installation of some insulation by defendant Scherr in the plaintiff Drumwright’s residence in Bonner County. On May 22, 2003, Magistrate Judge Buchanan filed her Order Granting Plaintiff’s Motion to Amend Complaint to Allege Damages in Excess of \$10,000.00. This Court determines on its review of the record that such decision to grant plaintiff’s Motion to Amend Complaint to Allege Damages in Excess of \$10,000.00 was in error. Essentially, the District Court lacks jurisdiction, and this case must be remanded back to Magistrate Division. The procedural history is as follows:

- December 28, 1999, this action was filed as a Small Claim in Bonner County.
- February 9, 2000, Magistrate Judge Harden recused himself from this case. Minutes of 2/9/2000.

- April 12, 2000, Magistrate Judge Burton entered judgment for the defendant. Judge Burton ruled that the action was time barred by the Statute of Limitations for oral contracts. Minutes of 4-12-2000. Plaintiff was advised that he could dismiss and file in Magistrates Division. *Id.* Plaintiff dropped the issue related to the sliding door, he was advised by Judge Burton that this claim would be lost. *Id.*
- May 10, 2000, plaintiff filed a Notice of Appeal from Small Claims Judgment.
- May 23, 2000, the Magistrate Judge Burton filed an Appeal Order and the case was set for trial *de novo* on July 21, 2000. Paragraph 4 of that order describes the jurisdictional limits on appeal to magistrate's court.
- June 13, 2000, attorney J. T. Diehl appeared for defendant Scherr and filed a motion for summary judgment and a motion to vacate, continue and reset the trial date.
- July 14, 2000, Drumwright filed a Memorandum and Affidavit *pro se*.
- July 17, 2000, at a hearing before Magistrate Judge Buchanan, Drumwright said that he had hired attorney Steve Smith and needed time to prepare. The trial set for July 21, 2000 was continued. Minutes 7/17/2000.
- July 28, 2000, Steve Smith appeared for plaintiff Drumwright and requested additional time.
- August 7, 2000, Drumwright's motion for additional time filed by attorney Steve Smith was denied and oral argument on the Motion for Summary Judgment was heard. Minutes 8/8/2000.
- August 15, 2000 Magistrate Judge Buchanan filed an Order on the Motion for Summary Judgment. Judge Buchanan ruled that this is an oral contract, and per I.C. § 5-241 and *Twin Falls Clinic and Hospital Bldg. v. Hamill*, 103 Idaho 19, 644 P.2d 341 (1982) the

four year statute of limitation (I.C. § 5-217) starts to run at completion of the work. The work was completed and the bill was paid March 4, 1994. Since this action was commenced December 28, 1999 Judge Buchanan held it is time barred and the matter was dismissed.

- August 28, 2000, Drumwright filed motions: 1) to reconsider I.R.C.P. 11(a)(2)(B); 2) to amend the Finding of Fact and Conclusions of Law I.R.C.P. 52(b) and 3) to Alter or Amend I.R.C.P. 59(e); and for relief under I.R.C.P. 60(b).
- September 28, 2000, Magistrate Judge Buchanan granted Drumwright's motion to reconsider and the action was set to go to trial only on the single issue of negligent construction, which had a 6-year statute of limitations.
- March 22, 2001, the case was set for a settlement conference on May 2, 2001 at 5:00 p.m. with mediator Ken Stone.
- April 2, 2001, the Scherr objected to the settlement conference setting.
- April 12, 2001, Magistrate Judge Buchanan vacated the settlement conference setting and indicated that the "parties shall/may submit a proposed stipulation for mediation or objection thereto with in 28 days" to Judge Buchanan.
- May 11, 2001, the parties submitted a stipulation for mediation.
- December 5, 2001, a notice of proposed dismissal per Rule 40(c) was sent to the parties.
- December 14, 2001, Drumwright, through his attorney submitted an Affidavit for Retention.
- December 31, 2001, the case was dismissed per I.R.C.P. 40(c), Judge Buchanan ruled that the "affidavit does no not set forth good cause for the complete lack of activity in this matter since May 2001."

- January 24, 2002 Drumwright filed motions: 1) to reconsider I.R.C.P. 11(a)(2)(B); 2) to Amend I.R.C.P. 52(b) and 3) for relief pursuant to I.R.C.P. 60(b).
- March 14, 2002, Judge Buchanan denied those motions and the dismissal was affirmed. Minutes 3/11/2002; Order filed March 14, 2002.
- April 25, 2002, a Notice of Appeal was filed.
- March 13, 2003, District Judge Steve Verby filed his Decision on Appeal, the magistrate's court was reversed and the case was remanded back to the Magistrate. Minutes 2/25/2003; Order filed March 13, 2003. Judge Verby found that Drumwright had showed good cause for retention and that the court below had improperly focused on lack of good cause for delay. Decision on Appeal, p. 17.
- March 18, 2003 a notice of scheduling and planning conference was mailed out by Magistrate Judge Barbara Buchanan. The conference was set for April 14, 2003.
- April 14, 2003, plaintiff filed a Motion to Move to District Court, and a Motion for Leave to Amend the Complaint. The court set a May 19, 2003 hearing date for the Motion to Amend. Drumwright was ordered to file an amended complaint by May 5, 2003. Order Setting Hearing and Requiring the Filing of Proposed Amended Complaint, Filed April 14, 2003.
- May 5, 2003, Drumwright filed a Motion to Amend *pro se*
- May 6, 2003, the remittitur from district court was filed.
- May 19, 2003, Scherr filed an Objection to the Motion to Amend and a Motion for a More Definite Statement.

- May 19, 2003, Magistrate Barbara Buchanan held a hearing in the matter on the issue of whether or not the plaintiff would be allowed to amend the complaint and move the case to District Court. Judge Buchanan took the case under advisement.
- May 22, 2003, Judge Buchanan filed her Order Granting Plaintiff's Motion to Amend Complaint to Allege Damages in Excess of \$10,000.00. Judge Buchanan based her decision on *Gilbert v Moore*, 108 Idaho 165, 697 P.2d 1179 (1985).
- June 2, 2003, the Amended Complaint was filed. Damages sought in that Amended Complaint total **\$68,483.92**. **Keep in mind this is a Small Claims appeal.**
- October 1, 2003, a Notice of Proposed Dismissal for Inactivity was mailed
- October 14, 2003, the plaintiff filed a Motion for Mediation and a letter to District Judge Verby in response to the notice of proposed dismissal.
- October 29, 2003, the case was retained and not dismissed per I.R.C.P. 40(c).
- April 7, 2004, a Notice of Proposed Dismissal for Inactivity was mailed
- April 21, 2004, the plaintiff filed another letter to Judge Verby in response to the proposed dismissal. The letter does mention that a motion had been filed earlier in this action.
- July 23, 2004, District Judge Steve Verby disqualified himself from this case.
- October 28, 2004, this case was administratively assigned to District Judge Mitchell.
- May 26, 2005, a status conference was held and the case was set for trial on October 17, 2005 before District Judge Mitchell.
- June 24, 2005, Drumwright filed a Request to Enter Default on Lester Scherr.

II. ANALYSIS.

Judge Buchanan's ruling that allowed the case to be transferred to District Court was in error. Her reliance on *Gilbert v. Moore* was correct in as much as the jurisdictional limits available to the small claim plaintiff do increase when the appeal is taken from small claims court to the magistrates division. However, the small claims appeal does not get moved to District Court. The rule is clear, the appeal **shall** be a trial *de novo* before an attorney **magistrate**. I.R.C.P. 81(n), 83(b). (emphasis added).

A. THIS IS AN APPEAL FROM SMALL CLAIMS.

This case was dismissed by Judge Burton, then appealed and dismissed by Judge Buchanan. Judge Buchanan reconsidered and the action was set for trial on the single issue of negligent construction. Judge Buchanan later dismissed the case per Rule 40(c). Judge Verby reversed Judge Buchanan's dismissal and remanded the case to the magistrate's division. Judge Buchanan then allowed the case to be moved by plaintiff to District Court via an Amended Complaint which seeks \$68,483.92 in damages. This is not the correct procedure for an appeal from the small claims department.

B. A SMALL CLAIMS APPEAL IS TO BE A TRIAL *DE NOVO* BEFORE AN ATTORNEY MAGISTRATE.

An appeal from the small claims department is to be a trial *de novo* before an attorney magistrate. I.R.C.P. 81(n), 83(b). Pleadings in the appeal before the attorney magistrate may be amended and discovery may be allowed. I.R.C.P. 81(o); I.C. § 1-2312. The jurisdictional limit of the attorney magistrate hearing the appeal is \$10,000.00. I.R.C.P. 83(c)(2)(A).

C. *GILBERT* IS STILL GOOD LAW.

Gilbert simply held that when a small claims judgment is appealed to the District Court, and a trial *de novo* is conducted, the district court's jurisdiction is not confined to the small

claims court's jurisdiction limit. *Gilbert v Moore*, 108 Idaho 165, 168, 697 P.2d 1179, 1182 (1985). The holding in *Gilbert*, as far as it goes, is still good law. Before the law was changed in 1985, a small claim was appealed to **district court** for a trial *de novo*, and that was the situation when *Gilbert* was decided. *Gilbert v Moore*, 108 Idaho 165, 168, 697 P.2d 1179, 1182 (1985).

The law changed just after *Gilbert* was decided. In 1985, Idaho Session Law, Chapter 167, § 1, p. 443 changed I.C. § 1-2311 and the small claims appeal process. Today the law requires an appeal from the small claims department be heard as a trial *de novo* before an attorney magistrate. I.C. § 1-2311; I.R.C.P. 81(n), 81(o)(2), 83(b). The rules state that an appeal from small claims department **shall** be conducted as a trial *de novo* before an attorney magistrate. I.R.C.P. 81(n), 81(o)(2), 83(b).

If *Gilbert* is read substituting the words “an attorney magistrate” for the words “district court” to reflect the 1985 amendment to I.C. § 1-2311, the conclusion that must follow is that the attorney magistrate is not limited to the small claims department jurisdictional limit. However, the attorney magistrate's limit in civil cases is defined as \$10,000.00 by I.R.C.P. 83(c)(2)(A). Thus, an attorney magistrate shall hear an appeal from the small claims department as a trial *de novo* and the jurisdictional limit for damages on that appeal is \$10,000.00. I.R.C.P. 82(c)(2)(A).

The small claims appeal is to be tried by the attorney magistrate without any pleadings other than those required in the small claims department. I.C. § 1-2312. The attorney magistrate may require additional statements and information as required to properly consider the case. *Id.*; I.R.C.P. 81(o). The attorney magistrate that hears the appeal is not the same magistrate that rendered the final judgment. I.C. § 1-2311.

The Statement of Purpose in S.B. 1011 which modified I.C. § 1-2311 in 1985, offers an explanation as to how the legislature viewed the district court's role related to appeals from the small claims department:

Presently, appeals from small claims decisions are heard by a district judge as a trial *de novo* (a completely new trial). Because of district judge trial schedules, this system causes delays in a final resolution of small claims, and necessitates bumping more complex cases on the district court calendar.

This bill would allow small claims appeals to be heard by a lawyer magistrate, (other than the magistrate who decided the original small claim), rather than a district judge. The proposed new system would not result in just substituting one magistrate's decision for another's, since appeals, unlike the original small claim, are heard under formal rules of evidence, with lawyers allowed to represent the parties. The proposed change would result in eliminating delays in the final resolution of small claims, and in freeing the time of district judges to hear other cases and appeals on their calendars.

The bill also eliminates the requirement of posting a supersedeas bond on appeal – a requirement that the Idaho Supreme Court has determined to be unconstitutional.

Statement of Purpose, 1985 S.L. Ch. 167, p. 443 (S.B. No. 1011). The statement of purpose makes it very clear that the legislature does not believe the district court should be hearing small claims department appeals *de novo*. The correct procedure here is to remand for a trial *de novo* before an attorney magistrate.

IV. ORDER.

IT IS HEREBY ORDERED this case is REMANDED to the Magistrate Division for further action on the appeal. The appeal continues, but jurisdiction rests in the Magistrate Division at this point. The appeal is limited to \$10,000.00.

IT IS FURTHER ORDERED that the October 17, 2005 trial setting in District Court is VACATED.

DATED this 12th day of August.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of August, 2005 a true and correct copy of the foregoing was mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Bill Drumwright, Pro Se
Hon. Barbara Buchanan

James T. Diehl
Hon. Robert Burton
Hon. Steve Verby

Clerk of the District Court

By: _____
Merri Thorne, Deputy Clerk