



Case Summaries and Complaints Filed in the U.S. District Court, District of Idaho

Sanderson v. Berryhill, 1:16-CV-00242-CWD
Social Security Administration

- Brad D. Parkinson, Petersen Parkinson and Arnold, Idaho Falls, ID, for Petitioner.
- Daphne Banay, SSA, Seattle, WA; and Joanne P. Rodriguez, U.S. Attorney's Office, Boise, ID, for Respondent.

Petitioner filed a petition for review after the Social Security Administration denied her application for disability insurance benefits and supplemental security income. Petitioner was diagnosed with fibromyalgia and other physical disorders. Petitioner sought review of an Administrative Law Judge's (ALJ) decision discrediting Petitioner's complaints about the intensity, persistence, and limiting effects of her pain. The ALJ also rejected the testimony of lay witnesses and the opinion of the Petitioner's treating physician on the basis that they were based on the Petitioner's discredited testimony. On review, the Court determined that the ALJ erred in several respects.

Regarding the Petitioner's credibility, the ALJ erred in rejecting Petitioner's subjective complaints on the basis that objective medical evidence was not available for her condition. Instead, the Court found that a "lack of objective findings is precisely what characterizes fibromyalgia," and that the "record was replete with consistent findings" to support Petitioner's chronic pain and fibromyalgia diagnosis. In addition, the ALJ erred in failing to evaluate evidence including Petitioner's "constant complaints of pain and other symptoms." The ALJ also erred in selectively picking Petitioner's physical activities from the record to discredit her without considering Petitioner's statements that the activities caused disabling symptoms. Further, the ALJ erred in discrediting Petitioner on the basis that devices she was using for pain management were not medically necessary because she did not have a prescription for them. The Court cited various progress notes indicating that Petitioner needed the devices, despite the lack of prescription.

Regarding the lay witness testimony, the ALJ erred in rejecting the lay witness statements that were based on Petitioner's discredited statements because the ALJ had erroneously discredited those statements. Additionally, the ALJ erred in rejecting the lay witness testimony as merely parroting Petitioner's subjective complaints because the lay witnesses also discussed their own observations and interactions with Petitioner. The ALJ also erred in rejecting the lay witness testimony on the basis that it was "colored by affection because of the personal relationships with the claimant." The Court determined that a personal friendship does not constitute a germane reason to discredit lay-witness testimony. As a result, the Court found that none of the reasons the ALJ gave for rejecting the lay witness testimony were acceptable.

Regarding the treating physician's statement, the ALJ erred in rejecting a functional assessment form provided by the physician on the basis that it appeared that Petitioner had completed it. The Court noted that the treating physician signed the form, and therefore endorsed the statements therein. The ALJ also erred in rejecting the treating physician's statements that were based on Petitioner's discredited statements because the ALJ had erroneously discredited those statements. As a result, the Court decided that the ALJ's reasons for discrediting the treating physician's statement were neither specific nor legitimate reasons.

Because the ALJ erred in these respects, the Court remanded to the Commissioner for further proceedings consistent with its opinion.

Limary v. United Parcel Service, et al., Case No. 1:15-CV-00394-EJL

Gender Discrimination and Retaliation/ Title VII / Idaho Human Rights Act

- Sam Johnson, Johnson & Monteleone, Boise, ID, for Plaintiff.
- B Newal Squyres, A. Dean Bennett, and Alexandra Grande, Holland & Hart, LLP, Boise, ID, for Defendants.

Plaintiff worked as an employee for Defendant United Parcel Service (UPS). She brought this suit alleging sex discrimination in violation of Title VII of the Civil Rights Act of 1964 and the Idaho Human Rights Act and retaliation in violation of Title VII of the Civil Rights Act of 1964 and the Idaho Human Rights Act (IHRA).

UPS sought summary judgment. The Court concluded that UPS did not meet its burden to establish the absence of material facts on this issue and was not entitled to summary judgment. Additionally, facts in the record could support a finding that the single employer doctrine applied, allowing the two corporations to be treated as one for the purpose of an employment discrimination claim.

Regarding the retaliation claim under Title VII and the IHRA, the Court discussed each element of a retaliation claim individually. The Court determined that Plaintiff presented genuine issues of material fact as to whether (1) she had acted to protect her Title VII rights, and (2) UPS took adverse employment action against Plaintiff based on retaliation (although not every employment action taken was based on retaliation). The Court concluded that Plaintiff had put forward enough evidence for a jury to decide whether she was constructively discharged.

However, the Court determined that Plaintiff had not demonstrated a genuine dispute of fact showing sexual discrimination linked to a hostile work environment or disparate treatment. The Court also decided that Plaintiff had not presented a *prima facie* case of gender discrimination because she could not show that similarly situated male employees were treated any more favorably than Plaintiff because of her gender.

In conclusion, Plaintiff established genuine issues of material fact on her retaliation claims, but not on her sexual discrimination claims. Thus, the Court granted, in part, and denied, in part, the motion for summary judgment.

Prisoner/Civil Rights

- Brad Vanzant, Boise, ID, *pro se*.
- Oscar S. Klaas, Sherry A. Morgan, and Cory W. Nielsen, Ada County Prosecutor's Office; Phillip J. Collaer and Yvonne A. Dunbar, Anderson Julian and Hull LLP; and Dylan Eaton and J. Kevin West, Parsons Behle & Latimer, Boise, ID, for Defendants.

An Idaho State Correctional Institute (ISCI) inmate brought Eighth Amendment and Americans with Disabilities Act (ADA) claims against the Idaho Department of Correction (IDOC), a private company (Corizon, Inc.), and various individuals. The "IDOC Defendants" and the "Corizon Defendants" filed separate motions for summary judgment. The Hon. Candy W. Dale filed a Report and Recommendation recommending that the Hon. Edward J. Lodge grant, in part, and deny, in part, both motions. The Plaintiff and some of the Defendants have filed objections to the Report and Recommendation and these objections are pending for Judge Lodge's consideration.

Regarding the Eighth Amendment claims against the Corizon Defendants, Judge Dale recommended granting summary judgment to all but one defendant, as the plaintiff could not satisfy the *Monell* deliberate indifference element. The one Defendant remaining was the health care professional who evaluated the Plaintiff when he arrived at ISCI from the Ada County Jail, and requested a wheelchair. Although the Defendant had authority to continue this medical treatment upon intake at ISCI for up to seven days, and she knew that Plaintiff was prescribed a wheelchair at the Ada County Jail, she refused to provide one. She did not articulate any reason for not providing the wheelchair. Judge Dale concluded that a reasonable jury could find that this Defendant read and understood the Plaintiff's medical records and a statement from the Plaintiff as requiring a wheelchair to prevent needless infliction of pain, limited mobility, or a fall. Judge Dale also concluded that a jury could find that the Defendant failed to respond to Plaintiff's pain and medical need when she insisted on a medical evaluation before providing a wheelchair and harm could have occurred as a result of plaintiff being placed in an inadequately equipped cell without access to a wheelchair. Thus, Judge Dale recommended denying the summary judgment motion as to this defendant on the plaintiff's Eighth Amendment claims.

Regarding the Eighth Amendment claims against the IDOC Defendants, Judge Dale determined that non-medical personnel are generally entitled to rely on the opinions of medical professionals with respect to treatment of an inmate, and these Defendants reasonably relied on medical staff to evaluate Plaintiff for medical services. Thus, Judge Dale recommended granting the IDOC defendants' summary judgment motion on the Eighth Amendment claims.

Regarding the ADA claims against IDOC, Judge Dale stated that a public entity must have knowledge of an individual's disability and need for an accommodation before it can be required to provide an accommodation. Knowledge can be derived from a request for an accommodation or can be imputed because the need for an accommodation is obvious. In this case, the Plaintiff requested a wheelchair several times. He also had a previous prescription for a wheelchair, which made his need for the accommodation obvious. Judge Dale determined that IDOC may have

denied Plaintiff public services provided by the jail in violation of the ADA; namely, access to the shower and safe, appropriate housing. Thus, Judge Dale recommended denying IDOC's summary judgment motion on the ADA claims.

Engineering/Remediation Resources Group, Inc. v. Performance Systems, Inc., CV-17-316-EJL

Breach of Contract/Diversity Jurisdiction

- Keely Duke, Duke Scanlan Hall PLLC, Boise, ID, and Scott Hennigh, Hanson Bridgett LLP, San Francisco, CA, for the Plaintiffs.
- Defendant has not yet responded.

Plaintiff, Engineering/Remediation Resources Group, Inc., and Defendant, Performance Systems, Inc., entered into a subcontract agreement for the supply and installation of two 200,000-gallon water tanks in American Samoa. Plaintiff agreed to pay \$1,178,388.00 for the water tanks, accessories, installation, freight, and foundation design. Plaintiff alleges that it made a progress payment of \$357,062.40, but Defendant breached the subcontract agreement by failing to pay its subcontractor for fabrication of the tanks. Plaintiff further alleges that the accessories were not fabricated and the Defendant verbally confirmed it was unable to perform any more work on the subcontract.

Plaintiff sent Defendant a Notice of Default and Termination for Cause of the Subcontract Agreement, demanding repayment of the \$357,062.40, as well as compensatory damages exceeding \$75,000, attorneys' fees and costs, pre-judgment interest, and post-judgment interest.

On September 7, 2017, the Court granted, in part, Plaintiff's Application for Prejudgment Writ of Attachment and Temporary Restraining Order, but denied a motion for Temporary Restraining Order. The Court will conduct a show cause hearing on the Application for Prejudgment Writ of attachment before issuing any writ of attachment.

Smith v. Trust Financial, LLC, CV-17-369-BLW

Debt Collection, Abuse of Process

- Ryan Ballard, Ballard Law, PLLC, Rexburg, ID, for the Plaintiffs.
- Wilkerson & Bremer Law Group, LLC, Ammon, ID, for the Defendants.

On April 17, 2017, Defendants Trust Financial, LLC ("Trust Financial"), and Wilkerson & Bremer Law Group, LLC ("Wilkerson"), sued Plaintiffs in state court in Bingham County to recover a \$200 disputed balance remaining for legal services that Parmenter Rivera ("Parmenter") performed for Plaintiffs. The state court granted default judgment against Plaintiffs on August 11, 2017.

Plaintiffs then filed this case in federal court, claiming that Defendants violated the Fair Debt Collection Practices Act (“the Act”) by filing the state court action in an improper jurisdiction. Specifically, the Act requires debt collection actions be brought in a judicial district in which the contract sued upon was signed or the consumer resides at the commencement of the action. 15 U.S.C. § 1692i(a)(2)(a). Plaintiffs allege that they did not sign a contract in Bingham County, and that they resided in Custer County, rather than Bingham County, at the time Defendants commenced the state court case in Bingham County.

Plaintiffs’ supplemental abuse of process claim arises from Idaho Code § 5-404, which requires lawsuits to be filed in the county where the defendant resides. Plaintiff alleges that Defendants willfully used the legal process to file a lawsuit in Bingham County, and continued to willfully act to obtain a default judgment after learning that Plaintiffs did not reside in Bingham County. Plaintiffs assert that those acts were intended to deprive them of their right to face a lawsuit in their county of residence, and to make default judgment more obtainable.

Plaintiffs seek actual damages, statutory damages of \$1,000 per plaintiff provided for in the Act, punitive damages, and costs and attorney fees.

DeLeon v. Berryhill, Case No. 1:16-CV-00057-CWD

Social Security Administration

- Taylor Lynn Mossman-Fletcher, Mossman Law Office LLP, Boise, ID, for Petitioner.
- Joanne P. Rodriguez, US Attorney’s Office, Boise, ID, Leisa A. Wolf, SSA, Seattle, WA, for Respondent.

Petitioner filed a petition for review after the Social Security Administration denied her application for disability insurance benefits and supplemental security income. Petitioner sought review of an administrative law judge’s (ALJ) evaluation of Petitioner’s disability claim. The ALJ bifurcated Petitioner’s claim into two time periods: one before Petitioner was diagnosed with multiple sclerosis (MS), and the other after Petitioner was diagnosed with MS. After evaluating Petitioner’s ability to work during the bifurcated time periods, the ALJ concluded that Petitioner was not disabled. The ALJ also discredited Petitioner’s testimony and the opinions of her treating physicians.

On review, the Court found that the ALJ erred in several respects. First, regarding bifurcating the record, the ALJ erred because he failed to consider the record as a whole and ignored Petitioner’s observed symptoms of MS prior to her diagnosis.

Regarding the Petitioner’s credibility, the ALJ erred in discrediting Petitioner’s complaints of pain and other symptoms made to two doctors who concluded that she was amplifying her symptoms. The doctors at issue did not know that Petitioner had MS, and the ALJ erred in not considering that fact in his credibility determination. The ALJ also erred in discrediting Petitioner on the basis that she exercised because the ALJ misconstrued her testimony and failed to

acknowledge the limitations of her exercise. The ALJ further erred in discrediting Petitioner on the basis that she had not followed up with her neurologist after being diagnosed with MS because other doctors were managing her care, which rendered such a follow-up unnecessary. Consequently, the Court determined that the ALJ erred because his reasons for discrediting Petitioner's testimony were not specific, clear, convincing, or based upon substantial evidence in the record. Additionally, the substantial, objective medical evidence in the record regarding Petitioner's MS symptoms did not support the ALJ's credibility finding.

Finally, regarding the treating providers' opinions, the ALJ erred in rejecting the opinions because he did not properly weigh them, and he erroneously concluded that the opinions were not supported by, or consistent with, other medical evidence in the record. Further, the ALJ erred in rejecting the treating physicians' opinions that were based on Petitioner's discredited statements because the ALJ had erroneously discredited those statements.

Because the ALJ erred in these respects, the Court remanded to the Commissioner for an immediate calculation and award of benefits.

Hurrle v. Snake River Restaurants, LLC, et al., Case No. 4:16-CV-220-BLW

Subject Matter – Title VII Claims and State Discrimination Claims.

- Robert K. Beck, Robert K. Beck & Associates, Idaho Falls, ID, for Plaintiff.
- David S. Perkins, William G Pope, Carey Perkins LLP, Boise, ID, for Defendants.

Plaintiff was 17 years old when she started working for Defendants. Her Complaint alleged that her shift supervisor subjected her to sexual harassment, including requests for oral sex, inappropriate touching, and lewd comments. She brought claims against Defendants under Title VII for discrimination and retaliation and alleged state law claims for negligent supervision and negligent infliction of emotional distress.

Defendants recently sought summary judgment. The Court dismissed the federal claims and exercised its discretionary authority to dismiss the state claims, without prejudice to their being filed in state court.

At issue was the timing of Plaintiff's lawsuit. The Idaho Human Rights Commission (IHRC) denied Plaintiff's discrimination claim and notified her that a private action under the Human Rights Act must be filed within 90 days of the date of the notice of dismissal. Plaintiff filed her Complaint 96 days after this right-to-sue letter was issued. Plaintiff did not allege any claims under Idaho's Human Rights Act, but she did allege claims under its federal counterpart, Title VII. Although the Court considered that a plaintiff may rely on a right-to-sue-letter from a state counterpart agency, it determined that the claims still had to be brought within 90 days from receipt of the right-to-sue letter from the state agency. Because Plaintiff filed outside of that 90-day requirement, the Court dismissed all of Plaintiff's claims under Title VII.

The Court then considered whether to exercise supplemental jurisdiction over the remaining state claims. The Court relied on its statutory discretion to dismiss the state claims, *see* 28 U.S.C. § 1367(c)(3), and did so, without prejudice, because the claims raise novel issues under Idaho law, which would be better heard in state court.

Plaintiff has appealed the decision to the United States Court of Appeals for the Ninth Circuit.

Garriott v. Western Medical Associates, 2:16-CV-00081-CWD

Medical Malpractice

- Jeffrey R. Owens, R. Bruce Owens, Regina Michele McCrea, Owens, McCrea & Linscott, PLLC, Hayden, ID, for Plaintiffs.
- Michael E. Ramsden, Ramsden, Marfice, Ealy & Harris, LLP, Coeur D'Alene, ID, for Defendants.

Defendant filed a partial motion for summary judgment in this medical malpractice and loss of consortium action brought against two emergency room physicians. The sole issue before the Court was whether the injured party's two minor children could proceed with their loss of parental consortium claims. The Court found that the case *Green v. A.B. Hagglund and Soner*, 634 F. Supp 790 (D. Idaho 1986) resolved the issue and that no subsequent case nor the enactment of tort reform in Idaho in 1987 persuaded the Court to depart from the *Green* disposition. In *Green*, the Idaho Supreme Court determined that it would not recognize a loss of parental consortium action on behalf of children. The Court found that cases involving damage claims for destruction of a parent-child relationship have allowed parents to recover for "the loss of their child's companionship, but not the converse." In addition, neither party at oral argument had knowledge of any Idaho state trial court cases that allowed such damages.

The Court also rejected the Plaintiff's argument that dicta in the Idaho Supreme Court case *Conner v. Hodges*, 333 P.3d 130 (Idaho 2014) indicated that third parties other than spouses may recover under a loss of consortium claim. The Court concluded that the Idaho Supreme Court mentioned the right in passing without providing an explanation, and the case was mainly directed toward limiting loss of consortium claims to spouses.

Because the Court concluded that neither the Idaho Legislature nor the courts of Idaho have recognized a loss of parental consortium claim, the Court granted the partial summary judgment motion and dismissed the children's claims with prejudice.

NEPA / Environment

- Dana M. Johnson, Law Office of Dana Johnson PLLC, Moscow, ID; William S. Eubanks, II, Meyer Glitzenstein & Eubanks LLP, Fort Collins, CO; and William N. Lawton, Meyer Glitzenstein & Eubanks LLP, Washington, D.C. for Plaintiffs.
- Rebecca Jaffe, U.S. Department of Justice, Environment & Natural Resources Division, Washington, DC; and Christine G. England, United States Attorney's Office, Boise, ID, for Defendants.

The Wild Free-Roaming Horses and Burros Act (WHA) mandates that wild horses, as “living symbols of the historic and pioneer spirit of the West,” are “protected from capture, branding, harassment or death,” and as such are considered an “integral part” of public lands in areas where they were presently found. 16 U.S.C. § 1331. The statute requires the Secretary of the Interior, through the BLM as its delegate, to “manage wild free roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands.” *Fund for Animals v. United States Bureau of Land Mgmt.*, 460 F.3d 13, 15 (D.C. Cir. 2006) (quoting 16 U.S.C. § 1333(a)). The BLM uses localized “herd management areas” (HMAs) established in accordance with broader land use plans, to manage wild horse herds. 16 U.S.C. § 1332(c); 43 C.F.R. § 4710.3-1.

Plaintiffs brought this case under the Administrative Procedure Act, alleging violations of the WHA and the National Environmental Policy Act (NEPA). Plaintiffs' claims relate to a wild horse herd in southeastern Idaho and northern Nevada. Plaintiffs share a common interest in the preservation of wild horses and contest a BLM decision to adopt a Resource Management Plan that included managing the Saylor Creek Wild Horse Herd as entirely non-reproducing (in other words, sterilizing the herd). Plaintiffs allege Defendants failed to consider the significant direct, indirect, and cumulative impacts that sterilizing the entire herd will have on the behavior and physiology of wild horses and herd dynamics, the Saylor Creek HMA environment, and members of the public who have a strong interest in recreational observation of the natural behaviors of wild horses. In short, Plaintiffs argued Defendants' decision failed to take a hard look at the significant impacts of sterilization and that their decisions were arbitrary and capricious. Plaintiffs also argued that Defendants failed to consider a reasonable range of alternatives by failing to consider a partially reproducing herd alternative as opposed to only alternatives that were either entirely reproducing or entirely nonreproducing and by failing to give its reasons for not having considered a partially reproducing herd alternative. The Court recently granted in part and denied in part both parties' motions for summary judgment, but determined that Defendants had violated NEPA and then remanded the matter to the BLM for its further consideration. The Court made clear it was not deciding whether the Defendants violated the WHA but, instead, remanded the issue to the BLM for it to address in the first instance.

Idaho Conservation League v. Atlanta Gold Corp., No. 1:11-CV-00161-REB

- Bryan Jack Hurlbutt, Laurence J. Lucas, Advocates for the West, Kristin F. Ruether, Western Watersheds Project, Boise, ID, Andrew McAleer Hawley, Northwest Environmental Defense Center, Portland, OR, for Plaintiffs.
- Michelle R. Points, Points Law, PLLC, Gary D. Babbitt, Richard G. Smith, Hawley Troxell Ennis & Hawley, Boise, ID, for Defendant.

The Court recently resolved a Motion for Civil Contempt, filed by Plaintiff in this case, a re-opened Clean Water Act case, first filed in 2011. The case concerns discharges of water containing arsenic and iron from a mining adit into Montezuma Creek, a tributary stream of the Middle Fork of the Boise River, located near Atlanta, Idaho.

Previously, this case was presided over by U.S. Magistrate Judge Mikel L. Williams. In 2013, Judge Williams entered an injunction requiring the Defendant Atlanta Gold to bring the arsenic and iron pollutants into compliance with the terms of the applicable Clean Water Act permit. Plaintiff contends, however, that the waters flowing from the mining tunnel adit still contain levels of arsenic and iron in excess of the Clean Water Act permit that requires Atlanta Gold to treat the water coming from the adit. Accordingly, Plaintiff requested that Atlanta Gold be held in civil contempt under Federal Rule of Civil Procedure 70(e).

The Court was not persuaded by Atlanta Gold's assertions that it is unable to treat the contaminated water more effectively such that full compliance with the terms could be achieved. The Court noted it considered that there are logistical challenges and additional expense that will be incurred in improving the existing water treatment facilities. But the fact that such improvements may require site-specific engineering solutions and the associated expense needed to implement such solutions does not mean that such improvements are impossible, and does not mean that Atlanta Gold would be unable to accomplish such improvements. The Court concluded that Atlanta Gold has not diligently and sufficiently pursued additional solutions that could bring the treatment system into full compliance with the terms of the Clean Water Act permit, despite the significant improvements that have occurred in recent years.

For those reasons, the Court (1) issued a new injunction requiring that Atlanta Gold make improvements to its treatment system so as to bring the system into compliance with the Clean Water Act permit, no later than August 30, 2018; (2) imposed additional penalties for Clean Water Act violations in the amount of \$251,000; and (3) imposed monetary sanctions in the amount of \$251,000 on Atlanta Gold, in the form of a civil contempt order, for Atlanta Gold's failure to comply with Judge Williams' prior orders, with payment of that amount held in abeyance to allow Atlanta Gold the opportunity to fully comply with the Clean Water Act permit.

UPCOMING TRIALS TO WATCH

Starting October 30th, Judge Lodge will preside over a multi-week bench trial in *Asarco v. Union Pacific* (CV-12-283), a new case related to the prior Asarco CERCLA cases Judge Lodge presided over involving the Coeur d'Alene Basin (CV91-0342; 96-0122). Asarco has brought a contribution claim against Union Pacific seeking to recover remediation costs Asarco paid in the CERCLA settlement. At issue are Union Pacific's alleged contamination of its rail beds, which it constructed using "jig tailing" from the contaminated mining waste in the area, as well as other alleged releases from Union Pacific's sites.