

SUPREME COURT OF THE STATE OF IDAHO

Marvin F. Morgan v. Michael Alexander Demos, M.D., John D. Chambers, Jr., M.D., and Idaho Heart Institute, P.C.

Morgan · No. 40170 · Decided March 19, 2014

SUMMARY

The Idaho Supreme Court affirmed dismissal without prejudice of Marvin F. Morgan’s wrongful death action under Idaho Rule of Civil Procedure 40(c), holding that he failed to show good cause for retaining the inactive case. The court held that the district court erred in imposing sanctions under Rule 37(a)(4) because the respondents had not obtained an order compelling discovery. The court vacated the sanctions award and denied attorney fees and costs on appeal.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                               |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of Idaho                                                                                                                                                                                                                                           |
| WRITING FOR THE COURT | J. Jones, Justice; Chief Justice Burdick; Justice Eismann; Justice W. Jones; Justice Horton                                                                                                                                                                                   |
| JURISDICTION          | Idaho                                                                                                                                                                                                                                                                         |
| DECIDED               | March 19, 2014                                                                                                                                                                                                                                                                |
| DOCKET                | 40170                                                                                                                                                                                                                                                                         |
| DISPOSITION           | other                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Morgan appealed the dismissal without prejudice of his wrongful-death action under Idaho Rule of Civil Procedure 40(c), the denial of his motion to reopen and reconsider, and an order awarding discovery-related sanctions under Rule 37(a)(4).                             |
| STANDARD OF REVIEW    | Abuse of discretion. The Court considered whether the district court correctly perceived the issue as discretionary, acted within the boundaries of its discretion, and acted consistently with applicable legal standards and reached its decision by an exercise of reason. |
| PRECEDENTIAL VALUE    | Published Idaho Supreme Court opinion; precedential                                                                                                                                                                                                                           |
| PARTIES               | Marvin F. Morgan v. Michael Alexander Demos, M.D., John D. Chambers, Jr., M.D., Idaho Heart Institute, P.C.                                                                                                                                                                   |

TOPICS

civil procedure

sanctions

appellate procedure

medical malpractice

wrongful death

## PRACTICE AREAS

civil procedure

appellate procedure

medical malpractice

wrongful death

professional negligence

## QUESTIONS PRESENTED

1. Whether the district court abused its discretion by dismissing Morgan's case without prejudice under Idaho Rule of Civil Procedure 40(c).
2. Whether the district court erred by awarding sanctions under Idaho Rule of Civil Procedure 37(a)(4) without a prior motion to compel and order compelling discovery.
3. Whether either party was entitled to attorney fees on appeal.

## HOLDINGS

1. The determination whether good cause exists to retain an inactive case under Rule 40(c) is within the trial court's discretion. If the trial court determines that good cause for retention has not been shown, dismissal under Rule 40(c) is mandatory.
2. A party seeking retention of an inactive case under Rule 40(c) must present sworn testimony by affidavit or otherwise set forth facts demonstrating good cause for retention. A bare assertion of attorney neglect, without sworn evidence explaining the twenty-one-month inactivity, did not establish good cause.
3. The district court's failure to provide the formal notice contemplated by Rule 40(c) was not reversible error where Morgan had actual notice through the respondents' motion to dismiss and an opportunity to be heard on good cause for retaining the case.
4. Rule 37(a)(4) sanctions are available only when the predicate provisions of Rule 37(a)(2) have been satisfied through a motion to compel discovery and an order granting that motion. Because the respondents did not file a motion to compel or obtain an order compelling discovery, the district court lacked authority to impose sanctions under Rule 37(a)(4).
5. Neither party was entitled to attorney fees or costs on appeal because the appeal was not shown to have been brought, pursued, or defended frivolously, unreasonably, or without foundation, and each party prevailed in part.

## KEY QUOTATIONS

*"We now clarify the standard under 40(c) as follows: the determination of whether good cause is shown for retention is within the trial court's discretion. If the trial court finds, in its discretion, that good cause for retention is not shown, then dismissal under Rule 40(c) is mandatory." (6-7)*

*"Thus, in order to show good cause under Rule 40(c), a party must present sworn testimony by affidavit or otherwise setting forth facts that demonstrate good cause for retention of a case." (7)*

*"Rule 37(a)(4) can apply only if a motion was made to compel discovery." (9)*

*“Because Respondents never complied with the predicate provisions of Rule 37(a)(2), the district court erred in imposing sanctions under Rule 37(a)(4).” (9-10)*

## FACTUAL BACKGROUND

Morgan alleged that Dr. Michael Demos negligently performed an angiogram on his wife, Ella Morgan, causing a heart and coronary-artery dissection and complications that resulted in her death. During discovery, Morgan repeatedly failed to provide a complete list of his proposed expert Dr. Jay N. Schapira's prior testimony, despite interrogatories and disclosure obligations. The district court ultimately excluded Schapira, and the case then remained inactive for twenty-one months while Morgan's former counsel took no action supported by sworn evidence explaining the delay.

## PROCEDURAL HISTORY

Morgan filed a wrongful-death action in 2006. After the district court excluded Morgan's expert witness for repeated failures to provide a complete testimonial history, the case remained inactive for approximately twenty-one months. The district court denied Morgan's motion to reopen and reconsider and dismissed the action without prejudice under Rule 40(c), while an earlier order had imposed \$9,995.82 in sanctions against Morgan and/or his former counsel. The Idaho Supreme Court affirmed the dismissal, vacated the sanctions order, and denied attorney fees and costs on appeal.

## DISPOSITION

other

## CASES CITED

- J-U-B Engineers, Inc. v. Sec. Ins. Co. of Hartford, 146 Idaho 311, 193 P.3d 858 (2008)
- Rudd v. Merritt, 138 Idaho 526, 66 P.3d 230 (2003)
- Madsen v. Nuxoll, 120 Idaho 530, 817 P.2d 196 (Ct. App. 1991)
- Kirkham v. 4.60 Acres of Land, 100 Idaho 781, 605 P.2d 959 (1980)
- Agrodyne, Inc. v. Beard, 114 Idaho 342, 757 P.2d 205 (Ct. App. 1988)
- Warden v. Lathan, 96 Idaho 34, 524 P.2d 162 (1974)
- Nerco Minerals Co. v. Morrison Knudsen Corp., 132 Idaho 531, 976 P.2d 457 (1999)
- Taylor v. Chamberlain, 154 Idaho 695, 302 P.3d 35 (2013)
- Frost v. Hofmeister, 97 Idaho 757, 554 P.2d 935 (1976)
- Bond v. United States, 2008 WL 655609 (D. Or. 2008)
- Harris v. State, ex rel. Kempthorne, 147 Idaho 401, 210 P.3d 86 (2009)

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