

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

St Lukes Health System LTD, St
Lukes Regional Medical Center LTD,
Chris Roth, Natasha Erickson, MD,
Tracy Jungman
Plaintiff,

vs.

Ammon Bundy, Ammon Bundy for
Governor, Diego Rodriguez,
Freedom Man PAC, Peoples Rights
Network, Freedom Man Press LLC
Defendant.

Case No. CV01-22-06789

Memorandum Decision and Order
Denying Reconsideration and
Granting/Awarding Deposition Fees and
Costs Against Diego Rodriguez

Defendant Rodriguez's Motion to Cancel or Reconsider the Court's Order on Motions for Sanctions and Memorandum in Support, filed Oct. 4, 2022, and Plaintiffs' Motion for Award of Attorneys' Fees Against Diego Rodriguez Pursuant to Court's September 8, 2022, Orders on Motions for Sanctions, filed October 19, 2022, came before the Court for hearing on November 22, 2022.

Appearances: Eric Stidham for Plaintiffs

Diego Rodriguez did not appear

Orders of default are entered for the other defendants

On October 4, 2022, Defendant Rodriguez filed a Motion to Cancel or Reconsider the Court's Order on Motions for Sanctions and Memorandum in Support. A Notice of Hearing was filed on November 7, 2022 that noticed the matter for hearing on November 22, 2022 before the District Court, Ada County Courthouse, Boise, Idaho.

On October 19, 2022, the Plaintiffs filed a Motion for Award of Attorneys' Fees Against Diego Rodriguez Pursuant to Court's September 8, 2022, Orders on Motions for Sanctions. The Plaintiffs noticed the matter for hearing on November 22, 2022. All hearings before the District Court are in person and no motion for a videoconference hearing was filed by either party.

Diego Rodriguez did not appear at the hearing on November 22, 2022. No motion to appear by videoconference was filed by Diego Rodriguez. All hearings at the



District Court level, even in civil cases, are being held in person unless a party moves for an exception to appear by videoconference.

The Fourth Judicial District Local Rules provide the following when a party fails to appear at a civil hearing:

5.1. If the moving party or his or her attorney fails to appear to argue a contested motion at the time set, the court may summarily deny the motion for failure to prosecute pursuant to I.R.C.P. 41(b) or I.R.F.L.P. 123 or may deem the motion withdrawn.

5.2. If the moving party or his or her attorney appears to argue the motion at the time set, if the opposing party or his or her attorney does not appear, and if the motion has been properly and timely noticed for hearing with proof of due service, the court may render a decision on the merits of the motion.

I. RODRIGUEZ’S MOTION TO RECONSIDER SANCTIONS RELATED TO EXPEDITED DISCOVERY

Defendant Rodriguez’s did not file a separate memorandum or affidavit but stated: “Included within this motion is a memorandum supporting the facts and law for this request as well as a verification from Diego Rodriguez that the statements contained herein are true.” Instead, his motion and memorandum are combined in his Motion to Cancel or Reconsider the Court’s Order on Motions for Sanctions and Memorandum in Support.¹ Plaintiffs responded² with supporting declaration from counsel.³

While the Court could consider the motion withdrawn or summarily deny the motion pursuant to Fourth Judicial District Local Rule 5.1, the Court reads the motion in part as a request to disallow fees requested by the Plaintiffs in their Motion for Sanctions which was heard in oral argument at the same hearing. To that extent, the Court considers Rodriguez’s Motion to Cancel or Reconsider as a written responsive argument to the Plaintiffs’ Motion for Sanctions.

¹ Verified Motion to Cancel or Reconsider Court’s Order on Motions for Sanctions and Memorandum in Support (“Def’s Memo”), filed Oct. 4, 2022.

² Plaintiffs’ Opposition to Defendant Diego Rodriguez’s Verified Motion to Cancel or Reconsider Court’s Order on Motions for Sanctions and Memorandum in Support (“Response”), filed Nov. 15, 2022.

³ Declaration of Erik F. Stidham in Support of Plaintiffs’ Opposition to Defendant Diego Rodriguez’s verified Motion to Cancel or Reconsider the Court’s Order on Motions for Sanctions (“Stidham Reconsider Dec’), filed Nov. 15, 2022.



On July 12, 2022, the court entered an Amended Order Granting Motion for Expedited Discovery allowing Plaintiffs leave to serve expedited Interrogatories on Diego Rodriguez and ordering a response by August 5, 2022. Diego Rodriguez did not respond to the expedited Interrogatories and the Court entered an Order on September 6, 2022 addressing sanctions for the failure to respond to the Interrogatories. In relevant part of the Order the Court stated:

The Court also ORDERS that Defendant Rodriguez is to pay the costs of the deposition that are costs that would not have been incurred but for Mr. Rodriguez's failure to respond to the Interrogatories proposed by Plaintiffs since Mr. Rodriguez was on notice of Plaintiffs' intent to seek this discovery and was mailed the Court's Orders for at least three months prior to the hearing on September 6, 2022.

Further, the Court finds it must award the Plaintiffs' the costs and fees incurred in filing the motion for sanctions and appearing at the hearing on September 6, 2022.

Rodriguez now seek reconsideration of that Order and requests the Court vacate the portion of the order that requires him to pay the deposition costs and awards the Plaintiff fees for conducting the deposition.

First, Rodriguez asserts that the Order is void because he was not properly served with process and sanctions were imposed before his Answer was due on September 7, 2022. There is no dispute for purposes of this motion that Defendant Rodriguez is not a resident of Idaho and is currently a resident of Florida. The Plaintiffs argue that Rodriguez was properly served and had actual knowledge of the lawsuit and the Court's Order well before September 6, 2022. The Plaintiffs also assert that Rodriguez has waived any claim that this court lacks jurisdiction over the defendant because he did not file a Rule 12 motion prior to filing his answer.

The Court agrees that Defendant Rodriguez has waived any claim for lack of personal jurisdiction since no claim for lack of jurisdiction was raised by Rodriguez by filing a Rule 12(b) motion before filing his responsive pleading and no claim of lack of jurisdiction was raised in the Answer that he filed. Therefore, the Court finds that Rodriguez has waived any claim that the Court lacks jurisdiction over him or to enter orders against him in this case.



Next, the Court finds Diego Rodriguez was properly served with process in this case. The publications informed Rodriguez that at “Any time after 21 days following the last publication of this summons, the court may enter a judgment against you without further notice, unless prior to that time you have filed a written response in the proper form.” The last publication of the summons in the Idaho Statesman and the Orlando Sentinel was August 8, 2022, which meant his deadline to answer was August 29, 2022. However, the final publication date of the summons in the Orlando Weekly was on August 17, 2022,⁴ so his deadline to answer was September 7, 2022 under that publication. However, the deadline to Answer is not dispositive of this issue. The Court finds that the Defendant was properly served and had notice of the hearing on sanctions and Defendant Rodriguez did not attend that hearing before the Court entered its Order on the Motion for Sanctions. While there was a procedural deficiency in the original service of process attempted on Rodriguez, this deficiency was corrected prior to the Court’s Order for Sanctions. And the Court would finally note that expedited discovery may occur before there is a responsive pleading or before the deadline for a responsive pleading in a litigation – as was ordered in this case.

Finally, the Court’s original purpose for the Amended Order Granting Motion for Expedited Discovery and then for imposing sanctions for noncompliance with that Amended Order, and that Rodriguez knowingly failed to comply with this Court’s Order that required him to answer the expedited discovery has not been disproven. Further, the Court does not find that the Order on Motion for Sanctions is confusing or vague as to Defendant Rodriguez. The Plaintiffs have presented sufficient evidence that Rodriguez was aware of the Amended Order for Expedited Discovery, was served the Order and the Interrogatories, and did not comply by answering the Interrogatories, and that noncompliance necessitated a deposition to obtain answers to those questions. Therefore, the Court finds its September 6, 2022 Order was not procedurally deficient and does not violate Rodriguez’s constitutional rights or his right to due process. Defendant Rodriguez’s Motion to Cancel or Reconsider the Court’s Order on Motions for Sanctions and Memorandum in Support, filed October 4, 2022, is **DENIED**.

⁴ Proof of Publication, Diego Rodriguez, filed Aug. 19, 2022.



II. PLAINTIFFS' MOTION FOR FEES AND COSTS AGAINST RODRIGUEZ FOR DEPOSITION

The Plaintiffs' Motion for Award of Attorneys' Fees Against Diego Rodriguez Pursuant to Court's September 8, 2022, Orders on Motions for Sanctions,⁵ with supporting memorandum⁶ and declaration from attorney Erik Stidham,⁷ requests an award of \$5,945.55 to Plaintiffs for costs and fees associated with the Rodriguez deposition to obtain the answers to the expedited discovery (\$537.45 for the Reporting/Stenographer charges and \$5,408.10 in attorney fees). The deadline for filing any motion to disallow fees and costs under Idaho Rule of Civil Procedure 54 was November 2, 2022. No Motion to Disallow was filed, and although the Court reads Rodriguez's motion for reconsideration in part as a motion to disallow, Rodriguez did not raise any specific arguments related to the reasonableness of the fees request. Therefore, the Court will simply consider whether the fees are reasonable under I.R.C.P. 54.

After considering the factors in I.R.C.P. 54(e)(3), the court finds that the hourly rate charged this client and the billed hours requested for the deposition are reasonable. Therefore, the Court **GRANTS** Plaintiffs' Motion for Award of Attorneys' Fees Against Diego Rodriguez Pursuant to Court's September 8, 2022, Orders on Motions for Sanctions, filed October 19, 2022, and the Court awards Plaintiff the \$5,408.10 of fees and costs incurred in the deposition. The Plaintiffs must submit a proposed order and the proposed order may require payment by Defendant Rodriguez to the Plaintiffs no later than thirty days after that order is entered.

IT IS ORDERED

Dated: 11/28/2022 6:28:26 PM


Lynn Norton
District Judge

⁵ Plaintiffs' Motion for Award of Attorneys' Fees Against Diego Rodriguez Pursuant to Court's September 8, 2022, Orders on Motions for Sanctions, filed Nov. 19, 2022.

⁶ Memorandum in Support of Plaintiffs' Motion for Award of Attorneys' Fees Against Diego Rodriguez Pursuant to Court's September 8, 2022, Orders on Motions for Sanctions ("Fees Memo"), filed Nov. 19, 2022.

⁷ Declaration of Erik F. Stidham in Support of Plaintiffs' Motion for Award of Attorneys' Fees Against Diego Rodriguez Pursuant to Court's September 8, 2022, Orders on Motions for Sanctions ("Stidham Fee Dec"), filed Nov. 19, 2022.



CERTIFICATE OF SERVICE

I certify that on this day I served a copy of the attached to:

Erik F. Stidham
Diego Rodriguez

efstidham@hollandhart.com
freedommanpress@protonmail.com

E-mail
 E-mail

Phil McGrane
Clerk of the Court

Dated: 11/29/2022

By: Janine Korsen
Deputy Clerk

