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Credit Bureau of E. Idaho, Inc. v. Lecheminant Appellant's Brief Dckt. 36381

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IN THE SUPREME COURT OF THE STATE OF IDAHO

CREDIT BUREAU OF EASTERN IDAHO, INC., an Idaho corporation,

Plaintiff/Appellant,

v.

JEFF D. LECHEMINANT and LISA LECHEMINANT,

Defendants/Respondents.

Supreme Court Docket No. 36381-2009

APPELLANT'S BRIEF

Appeal from the District Court of the Seventh Judicial District for Madison County.
Honorable Brent J. Moss, District Judge, presiding.

Bryan D. Smith, Esq., residing at Idaho Falls, Idaho, for Appellant.
Marvin M. Smith, Esq., residing at Idaho Falls, Idaho, for Respondents.

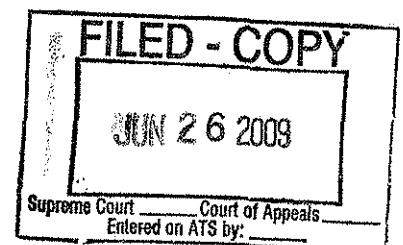


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STATEMENT OF THE CASE

Plaintiff/appellant, Credit Bureau of Eastern Idaho (“CBEI”), appeals from the District Court’s Memorandum Decision affirming the decision of the magistrate court and denying CBEI’s motion to contest claim of exemption. Specifically, CBEI challenges the district court’s ruling that CBEI lacks standing to assert an argument that Idaho Code Section 11-204 is unconstitutional under the Equal Protection Clause of the U.S. Constitution. CBEI further challenges the district court’s ruling denying CBEI’s request for a *finding that Idaho Code Section 11-204 violates the Equal Protection Clause of the U.S. Constitution as to CBEI*. Additionally, CBEI challenges the district court’s ruling that CBEI is not entitled to attorney’s fees under Idaho Code Section 12-120(5) where attorney fees have been incurred in an attempt to collect on the judgment.

COURSE OF PROCEEDINGS

On February 14, 2006, CBEI sued Jeff D. Lecheminant and Lisa Lecheminant seeking to recover amounts due on an open account and for services provided.¹

On March 28, 2006, the court entered default judgment against Jeff D. Lecheminant and Lisa Lecheminant in the amount of \$833.16.²

On September 26, 2007 the Bonneville County Sheriff served a writ of execution and notice of garnishment on EIRMC to garnish the wages of Sandy Moulton, Jeff D. Lecheminant’s wife.³

On October 15, 2007, EIRMC filed a third party claim of exemption for itself and Sandy Moulton stating that the exemption was being claimed pursuant to Idaho Code § 11-204.⁴

¹ R pp. 7-9.

² R pp. 11-12.

³ R p. 48.

⁴ R p. 25.

Idaho Code § 11-204 states that “All real and personal estate belonging to any married woman at the time of her marriage, or to which she subsequently becomes entitled in her own right, and all the rents, issues and profits thereof, and *all compensation due or owing for her personal services, is exempt from execution against her husband.*” (Emphasis added).

On October 17, 2007, CBEI filed a motion to contest claim of exemption and a Brief in Support of Motion to Contest Claim of Exemption.⁵ CBEI argued that the exemption I.C. §11-204 creates in favor of a wife is an unconstitutional distinction in the treatment of marital property upon garnishment and denies equal protection of the laws as guaranteed in the Fourteenth Amendment of the Constitution of the United States.⁶

On October 19, 2007, ERIMC filed its Memorandum in Opposition to Motion to Contest Claim of Exemption.⁷ ERIMC argued in relevant part that because Idaho Code § 11-204 has not been overturned by the Idaho Legislature or courts, it is valid and that by symmetry of reasoning it would apply to both married men and married woman.⁸

On October 23, 2007, the magistrate court held a hearing on CBEI’s motion to contest the claim of exemption at which hearing the magistrate court orally denied CBEI’s motion.⁹

On February 21, 2008, the magistrate court entered the written order denying CBEI’s Motion to Contest Claim of Exemption.¹⁰

On February 28, 2008, CBEI filed its Notice of Appeal with the district court.¹¹

On May 15, 2008, CBEI filed Plaintiff’s Brief on Appeal arguing once again that Idaho Code § 11-204 creates an unconstitutional distinction in the treatment of marital property upon

⁵ R pp. 21-39.

⁶ R pp. 27-39.

⁷ R pp. 40-46.

⁸ R pp. 40-46.

⁹ R pp. 53-55.

¹⁰ R pp. 53-55.

¹¹ R pp. 56-59.

garnishment and therefore denies the equal protection of the laws as guaranteed in the Fourteenth Amendment of the Constitution of the United States.¹²

On June 11, 2008, respondents filed the Respondent's Brief on Appeal further arguing that Idaho Code § 11-204 has not been overturned and that it should be applied to this case.¹³

On February 11, 2009, the district court filed its Memorandum Decision affirming the decision of the magistrate court and denying CBEI's motion to contest claim of exemption. The court found that Sandy Moulton's wages are community property and are subject to garnishment unless exempt. Further, the district court stated that although the exemption contained in Idaho Code §11-204 may violate the equal protection clause as to men, §11-204 does not violate the Equal Protection Clause as to CBEI, a corporation and not a man.¹⁴

STATEMENT OF FACTS

Because there was no answer filed in this case and the magistrate court entered default judgment, the facts of this case contained in the record are limited. Jeff D. and Lisa Lecheminant are indebted to the plaintiff for the amount of \$391.16 for bad checks and unpaid fuel expenses.¹⁵ Plaintiff sent several requests and demands for payment, but Jeff D. and Lisa Lechimant failed to pay the indebtedness in full.¹⁶ In February 2006, CBEI filed suit.¹⁷ In March of 2006, the magistrate court entered default judgment against Jeff D. and Lisa Lecheminant in the amount of \$833.16.¹⁸ Counsel for CBEI met with Jeff D. Lecheminant and discovered that he was currently married to Sandy Moulton who was working at Eastern Idaho Regional Medical Center

¹² R pp. 67-80.

¹³ R pp. 81-89.

¹⁴ R pp. 100-104.

¹⁵ R p. 8.

¹⁶ R p. 8.

¹⁷ R p. 7.

¹⁸ R pp. 11-12.

("EIRMC") as a nurse.¹⁹ In September of 2007, CBEI had a writ of execution and notice of garnishment served on EIRMC to garnish the wages of Sandy Moulton.²⁰ On October 15, 2007, EIRMC and Sandy Moulton claimed an exemption pursuant to Idaho Code § 11-204.²¹ Ultimately, the magistrate court and the district court held that the exemption contained in Idaho Code § 11-204 applied to exempt the wages of Sandy Moulton from garnishment.²²

ISSUES PRESENTED ON APPEAL

1. Does CBEI have standing to assert that Idaho Code Section 11-204 is unconstitutional?
2. Does Idaho Code Section 11-204 violate the Equal Protection Clause of the U.S. Constitution where it exempts only the property of a married woman from execution and not the property of a married man?
3. Is CBEI entitled to attorney's fees and costs under Idaho Code Section 12-120(1), (3), (5) and Idaho Appellate Rule 40 where CBEI has undertaken the intermediate and this appeal in an attempt to collect on the judgment?

ARGUMENT

CBEI HAS STANDING TO ASSERT THAT IDAHO CODE SECTION 11-204 IS UNCONSTITUTIONAL.

A. Standard of Review

This Court has explained the standard of review that applies to this case as follows:

We examine the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure.

¹⁹ R pp. 15 and 27.

²⁰ R p. 48.

²¹ R p. 25.

²² R pp. 53-55 and 100-104.

Losser v. Bradstreet, 145 Idaho 670, 672 (2008); *Nicholls v. Blaser*, 102 Idaho 559, 562 (1981).

B. CBEI Is A “Person” Within The Meaning Of The Equal Protection Clause Of The Fourteenth Amendment To The Constitution Of The United States And Has “Standing” To Challenge Idaho Code Section 11-204.

“It is well established that a corporation is a “person” within the meaning of the Fourteenth Amendment.” *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869, 881 fn. 9 (1985). Both the Idaho Supreme Court and the United States Supreme Court have reaffirmed this position repeatedly for nearly a century. *See, e.g., Ex parte Case*, 20 Idaho 128 (1911) (“corporations are ‘persons’ within the provisions of said fourteenth amendment, and that a state has no more power to deny to them the equal protection of the law than it has to deny it to individual citizens”); *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 780 (1978) (“ It has been settled for almost a century that corporations are persons within the meaning of the Fourteenth Amendment.”) Specifically, it is well established that “a corporation is a ‘person’ within the meaning of the *equal protection* and due process of law clauses” of the Fourteenth Amendment. *Grosjean v. American Press Co.*, 297 U.S. 233, 243 (1936) (emphasis added).

Moreover, this Court has explained that “[b]efore a litigant may challenge a statute’s constitutionality, it must appear that the alleged unconstitutional provisions operate to the hurt of the (litigant) and adversely affect his rights or put him to a disadvantage. It is a fundamental principle of constitutional law that a person can be heard to question the constitutionality of a statute only when and insofar as it is being, or is about to be, applied to his disadvantage.”

Harrigfeld v. District Court of Seventh Judicial Dist. In and For Fremont County, 95 Idaho 540, 543(1973) (internal citations omitted). In *Harrigfeld*, this Court found that although the parties bringing the claim were “not members of the class which was allegedly unfairly burdened by the

statute (eighteen-, nineteen-, twenty-year-old males), they have sufficient personal interest in the matter to raise the constitutional question.” *Id.*

Additionally, the Ninth Circuit Court of Appeals has elaborated on the issue of a party who is not a member of the protected class having standing to challenge the constitutionality of a discriminatory statute. That Court stated:

But plaintiffs who are not members of the protected class have standing to challenge racially discriminatory conduct in their own right when they are the direct target of the discrimination. *See, e.g., Estate of Amos v. City of Page*, 257 F.3d 1086, 1093-94 (9th Cir.2001); *Maynard*, 37 F.3d at 1403. We find no bar to standing under the Equal Protection Clause where an individual alleges a personal injury stemming from his or her association with members of a protected class. *See Maynard*, 37 F.3d at 1403 (holding that white plaintiff had standing where he suffered from illegal retaliation because he assisted a black person). Moreover, “[a] person required by the government to discriminate by [race] against others has standing to challenge the validity of the requirement, even though the government does not discriminate against him.” *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 707 (9th Cir.1997); *accord Columbia Basin Apartment Ass’n v. City of Pasco*, 268 F.3d 791, 798 (9th Cir.2001). A “law compelling persons to discriminate against other persons because of race” is a “palpable violation of the Fourteenth Amendment.” *Peterson v. City of Greenville*, 373 U.S. 244, 248, 83 S.Ct. 1119, 10 L.Ed.2d 323 (1963).

RK Ventures, Inc. v. City of Seattle, 307 F.3d 1045, 1055 (9th Cir. 2002).

Here, the district court concluded that CBEI is not a man and therefore Section 11-204 does not apply to CBEI, a corporation. In other words, the district court held that CBEI does not have standing to assert that Idaho Code Section 11-204 is unconstitutional and in violation of its rights under the Equal Protection Clause of the U.S. Constitution.²³ However, as set forth above, the Equal Protection Clause applies to corporations just as equally as it applies to “persons.” Accordingly, CBEI should have “standing” to assert a violation of its protected rights if the Section 11-204 operates to harm CBEI. In this regard, CBEI will be directly and adversely affected if Section 11-204 applies because Section 11-204 precludes CBEI from collecting on its

²³ R pp. 102-103.

judgment. In other words, CBEI is “disadvantaged” or “harmed” because it cannot collect on its judgment and therefore has “standing” to challenge whether Section 11-204 is constitutional.

II.

IDAHO CODE SECTION 11-204 IS UNCONSTITUTIONAL BECAUSE IT ARBITRARILY AND UNREASONABLY EXEMPTS ONLY THE PROPERTY OF A MARRIED WOMAN FROM EXECUTION AND NOT THE PROPERTY OF A MARRIED MAN.

A. Standard of Review.

This Court has explained the standard of review to apply when reviewing the constitutionality of a statute. This Court has stated that

The constitutionality of a statute is a question of law over which this Court exercises free review. *State v. Cobb*, 132 Idaho 195, 197, 969 P.2d 244, 246 (1998); *Fremont-Madison Irr. Dist. and Mitigation Group v. Idaho Ground Water Appropriators, Inc.*, 129 Idaho 454, 926 P.2d 1301 (1996). The party challenging a statute on constitutional grounds bears the burden of establishing that the statute is unconstitutional and “must overcome a strong presumption of validity.” *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 709, 791 P.2d 1285, 1288 (1990). Courts are obligated to seek an interpretation of a statute that upholds its constitutionality. *State v. Newman*, 108 Idaho 5, 13, 696 P.2d 856, 864 (1985). The judicial power to declare legislative action invalid upon constitutional grounds is to be exercised only in clear cases. *State ex rel. Brassey v. Hanson*, 81 Idaho 403, 406, 342 P.2d 706, 709 (1959). “

Moon v. N. Idaho Farmers Ass'n, 140 Idaho 536, 540 (2004).

B. Idaho Code Section 11-204 Is Not Enforceable Because It Is Unconstitutional.

The Idaho State Legislature enacted Idaho Code § 11-204 in 1881. Section 11-204 establishes an exemption in favor of a married woman’s wages as follows:

All real and personal estate belonging to any married woman at the time of her marriage, or to which she subsequently becomes entitled in her own right, and all the rents, issues and profits thereof, and *all compensation due or owing for her personal services, is exempt from execution against her husband.*

(Emphasis added).

A statute that denies equal protection of the laws guaranteed in the Fourteenth Amendment of the Constitution of the United States is unenforceable. *Suter v. Suter*, 97 Idaho 461 (1976). Specifically, a statute that provides for the different classification of a husband and wife solely on the basis of sex is unenforceable if the basis for that different classification is arbitrary and not reasonable. *Id.* A different classification is arbitrary and not reasonable if the different classification does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike. *Id.*

In *Suter v. Suter*, *supra*, 97 Idaho at 461, this Court held that Idaho Code Section 32-909 was unconstitutional and therefore not enforceable. Idaho Code Section 32-909 read as follows: **“Earnings of wife living separate from husband.** -- The earnings and accumulations of the wife and of her minor children living with her or in her custody, while she is living separate from her husband are the separate property of the wife.” The court held that Idaho Code Section 32-909 was unconstitutional because it “results in unequal treatment for a husband and a wife as regards their individual earnings after a separation. The different classification of a husband and wife solely on the basis of sex ‘must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.’” *Id.* at 467 (quotations omitted). The court explained that “the unequal treatment accorded a husband and wife through the operation of Idaho Code Section 32-909 is arbitrary on its face and demonstrates no substantial relation to the object of community property legislation.” *Id.* The court further explained that “Idaho Code Section 32-909 creates an unconstitutional distinction in the division of marital property upon divorce and therefore is a denial of the equal protection of the laws as guaranteed in the

fourteenth amendment of the Constitution of the United States.” *Id.*

Here, Idaho Code Section 11-204 creates an unconstitutional distinction or results in unequal treatment for a husband and a wife with regards to their individual earnings during marriage because it treats the earnings of the wife differently than the earnings of the husband. It exempts from garnishment a wife’s compensation “due and owing” without exempting from garnishment a husband’s compensation “due and owing.” This unequal treatment accorded between a husband and a wife through operation of Idaho Code Section 11-204 is arbitrary on its face and demonstrates no substantial relation to the object of community property legislation.

In fact, Idaho Code Section 11-204 is contrary to the current object of community property law. When Idaho Code Section 11-204 was enacted in 1881, Idaho’s community property law was that the husband had the exclusive right to manage and control all the community property except for the earnings of the wife for her personal services. *McMillan v. United States Fire Ins. Co.*, 48 Idaho 163 (1929). On the other hand, the wife had the exclusive right to manage and control only her community earnings resulting from her own personal services. *Id.* If this were the law today, Idaho Code Section 11-204 would bear a substantial relation to the object of community property law because execution against the husband should not extend to property over which he would have no right to manage or control. However, in 1974, the Idaho State Legislature changed Idaho’s community property law so that “[e]ither the husband or the wife shall have the right to manage and control the community property.” *See* 1974 Idaho Sess. Laws ch. 194, § 2 and Idaho Code Section 32-912. Thus, today the husband has the right to manage and control a wife’s community earnings resulting from her own personal services just as a wife has the right to manage and control a husband’s community earnings resulting from his own personal services. Given the change to the law in 1974, Idaho

Code Section 11-204 is actually contrary to current Idaho community property law because it exempts from garnishment a husband's interest in property that he has every right to manage and control. Accordingly, Idaho Code Section 11-204 creates an unconstitutional distinction in the treatment of marital property upon garnishment and therefore is a denial of the equal protection of the laws as guaranteed in the Fourteenth Amendment of the Constitution of the United States.

III.

CBEI IS ENTITLED TO ATTORNEY'S FEES UNDER IDAHO CODE SECTION 12-120(5) BECAUSE THE ATTORNEY FEES HAVE BEEN INCURRED IN AN ATTEMPT TO COLLECT ON THE JUDGMENT.

A. Standard of Review.

Whether CBEI should be awarded attorney's fees depends on the interpretation of Idaho Code Section 12-120(5). The Idaho Appellate Court has summarized the standard of review to be applied when deciding an award of attorney's fees based on the interpretation of statute as follows:

When an award of attorney fees depends on the interpretation of a statute, the standard of review for statutory interpretation applies. *Stout v. Key Training Corp.*, 144 Idaho 195, 196, 158 P.3d 971, 972 (2007). The interpretation of a statute is an issue of law over which we exercise free review. *Zener v. Velde*, 135 Idaho 352, 355, 17 P.3d 296, 299 (Ct.App.2000). When interpreting a statute, we will construe the statute as a whole to give effect to the legislative intent. *George W. Watkins Family v. Messenger*, 118 Idaho 537, 539-40, 797 P.2d 1385, 1387-88 (1990); *Zener*, 135 Idaho at 355, 17 P.3d at 299. The plain meaning of a statute will prevail unless clearly expressed legislative intent is contrary or unless plain meaning leads to absurd results. *Watkins Family*, 118 Idaho at 540, 797 P.2d at 1388; *Zener*, 135 Idaho at 355, 17 P.3d at 299.

Action Collection Services, Inc., v. Bigham, 146 Idaho 286 (Idaho App., 2008).

B. Idaho Code Section 12-120(5) Entitles CBEI To An Award Of Attorney's Fees And Costs Incurred During The Intermediate Appeal And This Appeal Because The Magistrate Court Found That CBEI Was Entitled To Attorney's Fees And Costs Under Idaho Code Section 12-120(1) And 12-120(3) In The Underlying Proceeding.

Idaho Code Section 12-120(5) provides:

In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party shall also be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing.

Idaho Code Section 12-120(5).

“This section provides a basis for an award of reasonable attorney fees and costs incurred during post-judgment attempts to collect on the judgment if the party was entitled to attorney fees and costs under the statute in the underlying proceeding that resulted in the judgment.” *Action Collection Services, Inc., v. Bigham*, 146 Idaho 286 (Idaho App., 2008).

In *Action Collection Services, Inc.*, the court dealt with an issue nearly identical to the issue here. In that case, the plaintiff filed a motion to contest a claim of exemption but the majority of the garnished funds were held to be exempt. *Id.* The plaintiff then filed a motion requesting post judgment attorney’s fees and the court held that the plaintiff was not entitled to attorney’s fees because it was not the prevailing party. *Id.* The Idaho Appellate Court reversed the district court and held that because the plaintiff was entitled to mandatory attorney’s fees and costs under Idaho Code Sections 12-120(1) and 12-120(3) in the underlying proceeding, Idaho Code Section 12-120(5) entitled Action to an award of attorney’s fees and costs incurred in its attempt to collect on the judgment. *Id.* The court awarded the plaintiff “reasonable attorney fees and costs incurred on intermediate appeal and the present appeal.” *Id.*

The facts of this case are nearly identical to those of *Action Collection Services, Inc.* In the underlying proceedings in this case, CBEI sought and was awarded costs and attorney’s fees under Idaho Code Sections 12-120(1) and 12-120(3).²⁴ CBEI sought attorney’s fees and costs on the intermediate appeal under Idaho Code Sections 12-120(5) and 11-203(b).²⁵ The district court

²⁴ R pp. 8-12.

²⁵ R pp. 78-79.

held that because the decision of the magistrate court was affirmed, CBEI's petition for fees and costs was denied.²⁶ However, the decision of the district court, as was the decision of the district court in *Action Collection Services, Inc.*, is not consistent with the plain language of Idaho Code Section 12-120(5) because CBEI has brought this appeal as a post judgment attempt to collect on the judgment in which CBEI originally recovered an award of fees and costs under Sections 12-120(1) and 12-120(3). Therefore, the decision of the district court denying CBEI attorney's fees and costs on the intermediate appeal should be reversed.

Similarly, CBEI has brought this appeal as a post judgment attempt to collect on the judgment against the Lecheminants. Accordingly, CBEI should be awarded attorney's fees and costs under 12-120(5) regardless of whether CBEI "prevails" on this appeal. Additionally, CBEI should be entitled to an award of attorney's fees under Idaho Code Sections 12-120(1) and 12-120(3) and costs under Idaho Appellate Rule 40 if this Court finds CBEI to be the prevailing party on this appeal.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's Memorandum Decision affirming the decision of the magistrate court denying CBEI's motion to contest claim of exemption and remand this case with instructions for the magistrate court to grant CBEI's motion.

RESPECTIVELY SUBMITTED this 23rd day of June, 2009.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 

Bryan D. Smith
Attorneys for Appellant,
Credit Bureau of Eastern Idaho, Inc.

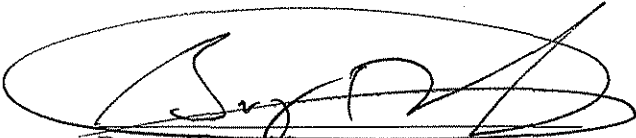
²⁶ R p. 103.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of June, 2009, I caused a true and correct copy of the foregoing **APPELLANTS BRIEF ON APPEAL** to be served, by placing the same in a sealed envelope and depositing in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

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ANDERSON, NELSON, HALL,
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Bryan D. Smith