8-17-2009

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

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,

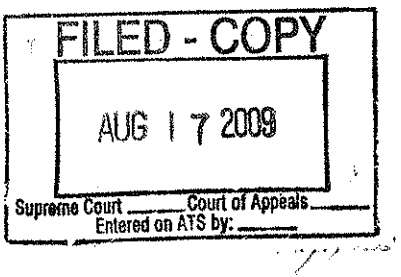
Defendants/Respondents.

Supreme Court Docket No. 36381-2009

APPELLANT'S REPLY 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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ARGUMENT

I.

CBEI HAS STANDING TO CHALLENGE THE CONSTITIONALITY OF IDAHO CODE SECTION 11-204.

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000). As explained more fully in Appellant's Brief, a corporation is a person within the meaning of the Fourteenth Amendment, and Respondents do not dispute that CBEI is a "person" within this context.

Respondents have stated that "it cannot be argued that CBEI is a married man" and seem to conclude that because CBEI is not a married man, it does not fit into the classification of persons who can assert the unconstitutionality of Idaho Code §11-204. Respondents do not support this position with any law, and this position is actually contrary to existing case law. It is well settled constitutional law that parties who are not members of a protected class have standing to challenge the constitutionality of a statute when the challenged discriminatory statute has disadvantaged the party challenging the statute. *See Haringfeld v. District Court of Seventh Judicial Dist. In and For Fremont County,* 95 Idaho 540 (1973); *RK Ventures, Inc. v. City of Seatle*, 307 F.3d 1045 (9th Cir. 2002). In fact, Respondents in their reply brief have admitted that "[a]ppellant correctly points out, this Court has recognized standing when a party has a 'personal stake' in the outcome of the litigation. This exception to being part of the class for challenge

purposes is found when the party requesting recognition of standing suffers" an injury, and there is a causal connection between the injury and the challenged conduct.[1]

In this case, as Respondents have correctly pointed out, the Court should find that CBEI has standing if the Court finds that CBEI has a "personal stake" in the outcome of this litigation and the injury suffered is the result of the challenged conduct or statute. In this regard, CBEI has a "personal stake" in the outcome of this litigation: CBEI will be directly and adversely affected if I.C. § 11-204 applies because CBEI will be precluded from collecting on property in partial satisfaction of its judgment. This injury to CBEI would be the direct result of the application of I.C. § 11-204 if it is found to be constitutional. Because CBEI will suffer a distinct injury as a result of application of I.C. § 11-204, CBEI has standing to challenge whether Section 11-204 is constitutional.

Respondents have incorrectly asserted that another "problem area" for CBEI is that there has not been a violation of any "constitutionally protected right." This argument is wrong. As stated above, the purpose of the Fourteenth Amendment is to secure every person from discrimination and to secure "equal protection" of the law. Thus, the right to "equal protection of the law" is a "constitutionally protected right." Respondent's argument is also circular. Respondents cannot logically argue that CBEI has no standing to challenge a "constitutionally protected right" because there has not been a violation of any "constitutionally protected right." If this were the case, then a statute could never be challenged on constitutional grounds because a person would have to prove a violation of a constitutionally protected right before he could make a challenge; yet, a person could not make the challenge unless he first had standing, which would require proof of a violation of a constitutionally protected right.

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[1] Brief of Respondents, p. 6.

Courts have consistently found parties to have standing to assert equal protection claims when the underlying action is the result of unequal protection of laws not related to an "enumerated" right. *See e.g. Haringfeld v. District Court of Seventh Judicial Dist. In and For Fremont County,* 95 Idaho 540(1973); *Peterson v. City of Greenville,* 373 U.S. 244 (1963). CBEI's constitutional challenge does not need to implicate an "enumerated right" beyond "equal protection." Therefore, CBEI has standing to challenge I.C. § 11-204 on equal protection grounds.

II.

IDAHO CODE SECTION 11-204 IS UNCONSTITUTIONAL AND DOES NOT BEAR ANY SUBSTANTIAL RELATION TO THE OB JECT OF THE LEGISLATION.

Appellant's Brief more fully explains that this Court has found that a statute that denies equal protection of the laws guaranteed in the Fourteenth Amendment is unenforceable if the basis for the different classification is arbitrary and not reasonable and the statute bears no rational relation to the object of the legislation. *See also, Suter v. Suter*, 97 Idaho 461 (1976). I. C. § 11-204 is unconstitutional because it results in the unequal treatment for a married woman and a married man in regards to their various properties. This unconstitutional treatment is apparent from a plain reading of I. C. §11-204 which states:

> 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 and owing for ***her*** personal services, is exempt form execution from ***her husband***.

(Emphasis added).

The only possible way that this statute could be found to be constitutional is to find that this unequal distinction rests on some ground or difference having a fair and substantial relation to the object of the legislation so that all persons similarly situated shall be treated alike. *Suter v.*

Suter, 97 Idaho 461 (1976). Although Respondents contend that Section 11-204 is constitutional they do not explain how it is constitutional from either a plain reading or from its relation to Idaho's community property system.

In fact, I.C. § 11-204 predates the enactment of Idaho's community property legislation, a fact Respondents point out in footnote number 1 of their reply brief. In 1881 when I.C. § 11-204 was enacted, the husband had the exclusive right to manage and control all of 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). In 1974, the Idaho State Legislature changed the Idaho's community property law so that "[e]ither the husband or the wife shall have the right to manage and control community property." *See* 1974 Idaho Sess. Laws ch. 194, § 2 and Idaho Code § 32-912. Therefore, as is explained more fully in Appellant's Brief, I.C. § 11-204 bears no relation and is actually contrary to Idaho's current system of property law having been enacted before enactment of Idaho's community property system and "equal management." Therefore, Section 11-204 is unconstitutional.

III.

RESPONDENTS HAVE NOT TIMELY FILED A CROSS-APPEAL AND THE ARGUMENTS CONTAINED IN SECTIONS C, D, F, AND G OF RESPONDENT'S BRIEF MUST BE DISMISSED.

This Court has explained the following rule:

> "Pursuant to I.A.R. 15 a respondent is required to file a cross-appeal if affirmative relief by way of reversal, vacation or modification is sought. Although a respondent can make any argument to sustain a lower court judgment, the respondent must timely file a cross-appeal in order to seek a change in the judgment. In Idaho, a timely notice of appeal or cross-appeal is a jurisdictional prerequisite to challenge a determination made by a lower court. Failure to timely file such notice shall cause automatic dismissal of the issue on appeal." (Internal citations omitted).

Miller v. Board of Trustees, 132 Idaho 244 (1998).

The District Court in this case determined that "Sandy's wages are community property and subject to garnishment, unless exempt." Specifically, the District Court held that "the separate antenuptial debts of either spouse are payable from community property" and that wages and salaries are community property." The District Court further held that *Miller v. Miller,* 113 Idaho 415 (1987) is inapplicable and that Jeff Lecheminant's "antenuptial debt is payable from Sandy's wages." Respondents did not file a cross-appeal on these issues but have sought to have the findings on these issues reversed by first raising them in their Respondent's brief. Because Respondents have not filed a cross-appeal, these issues are not properly before the court and should not be considered. Nevertheless, CBEI will briefly respond to each argument.

IV.

UNDER WELL-ESTABLISHED IDAHO LAW COMMUNITY PROPERTY CAN SATISFY THE SEPARATE DEBT OF ONE OF THE SPOUSES.

Respondents contend that I.C. § 32-912 does not allow garnishment in this case because the debt and judgment arose before the formation of the current community. Importantly, Respondents do not contend that I.C. § 32-912 does not establish a right in both husband and wife to manage and control the community property or that the wages of either spouse are not community property that either has the right to maintain and control. In fact, Respondents have conceded that "there is no doubt that wages earned from the parties during marriage are community property".[2] The only argument Respondents raise is that the debts which are the subject of the current judgment are not subject to garnishment because the debt was antenuptial. However, the Respondents have not cited any law to support this argument and that position is actually contrary to Idaho case law. There is a long line of Idaho cases that have held that the

2 Brief of Respondents at page 7.

separate antenuptial debts of either spouse are payable from community property. *Action Collection Services, Inc. v. Seele*, 138 Idaho 753 (Ct. App. 2003); *Bliss v. Bliss*, 127 Idaho 170 (1995); *Twin Falls Bank and Trust v. Joan F. Holley*, 111 Idaho 349 (1986); *Gustin v. Byam*, 41 Idaho 538 (1925); *Holt v. Empey,* 32 Idaho 106 (1919).

Respondents have attempted to distinguish these cases arguing they are the unfortunate result of a misapplication of dicta and that their uniform theme that community property is liable to satisfy a separate antenuptial debt was not intended to apply to this situation.[3] In support of this claim, Respondents cite to *Twin Falls Bank & Trust Co. v. Joan F. Holley,* 111 Idaho 34 (1986). *Twin Falls Bank* actually supports CBEI's position that a creditor can satisfy its judgment out of the judgment debtor's separate property "***or against the community property of***" the judgment debtor. *Id.* at 353.

Respondents argue that it is unfair to attach Sandy Moulton's wages because she was not a party to the collection action against her husband and his debt is antenuptial. Respondents focus on the garnished wages as belonging to "Sandy Moulton," not "Jeff Lecheminant." Respondents fail to understand that "community property" is not "her" or "his." Community property is "theirs" thus making her wages just as much "his" as "hers." If Sandy Moulton wanted a different result, she should have signed a prenuptial agreement making her wages "hers" before she married Jeff Lecheminant and if she wants a different result in the future, she could sign a postnuptial agreement opting out of Idaho's community property laws. Idaho Code Sections 32-922 and 923. Additionally, Respondents' argument is in direct contradiction with Idaho case law which has recognized that "parties often marry with separate antenuptial debts" and "those debts are payable from community property." *Action Collection Service, Inc. v. Seele, supra,* 138 Idaho 758 and *Bliss v. Bliss, supra,* 127 Idaho 173. Respondents further argue

3 Brief of Respondents at page 10.

that the garnishment is essentially unfair and in violation of Sandy Moulton's due process rights. However, Sandy Moulton has had the opportunity to object to the garnishment as this appeal demonstrates. Therefore, she has not had her due process rights violated.

Because Respondents did not file a cross-appeal raising this issue on appeal, the Court should not consider Respondent's arguments on this issue. However, should the Court find jurisdiction to hear this issue, the law in Idaho is clear that a spouses antenuptial debts are payable from the property of the community.

V.

NO REQUIREMENT EXISTS THAT A DEBT MUST BENEFIT THE COMMUNITY BEFORE IT CAN BE SATISFIED OUT OF COMMUNITY PROPERTY.

Respondents rely on *First Idaho Corporation* to argue that a debt must benefit the community before it can be satisfied out of community property. However, *First Idaho Corporation* is readily distinguishable from this case. In *First Idaho Corporation*, the debt at issue was a separate debt in the form of a mortgage note signed by the wife's deceased husband. When the husband defaulted, the bank sued the husband and wife, who had not signed the mortgage note. Importantly, the court dismissed the claim against the wife because she had not signed on the note and therefore had no personal liability. The court also dismissed the claim because the complaint seeking to hold the wife individually liable on a judgment did not allege that the debt was incurred for the benefit of the community.

Here, CBEI has not sued Sandy Moulton and does not seek a judgment against her. This fact makes the case of *First Idaho Corporation* readily distinguishable. If CBEI were to seek a judgment against Sandy Moulton, CBEI would be required to show that she has personal liability for the debt by either (1) showing that she agreed to pay the debt; or (2) showing that the debt was incurred for the benefit of the community. Rather than seek judgment against Sandy

Moulton, CBEI is simply seeking to satisfy Jeff Lecheminant's separate debt out of community property that exists in the form of Sandy Moulton's community wages. Stated differently, the court in *First Idaho Corporation* would have had a different holding if the bank had obtained a judgment against the husband only and then sought satisfaction of the judgment out of the community property held by the wife. Instead, the bank sought a personal judgment against the wife even though she was not personally obligated for the debt.

Obviously, *First Idaho Corporation* does not stand for the proposition that a debt can be satisfied from community property only when the debt is incurred for the benefit of the community. Otherwise, *First Idaho Corporation* would be contrary to *Gustin v. Byam*, 41 Idaho at 538 and *Holt v. Empey*, 32 Idaho at 106 where the Idaho Supreme Court applied the rule that a spouse's separate antenuptial debt could be satisfied out of community property. In these cases, community property was liable for a spouse's separate antenuptial debt that necessarily was not incurred for the "benefit of the community" because it was antenuptial. Moreover, the Idaho Supreme Court cited the rule in *Gustin* and *Holt* with approval and again applied the rule (without regard to whether the debt was incurred for the benefit of the community) in *Bliss v. Bliss*, 127 Idaho 170 in 1995—some six years after *First Idaho Corporation* was decided. Finally, the Idaho Court of Appeals applied the rule that a spouse's separate antenuptial debt could be satisfied out of community wages (without regard to whether the debt was incurred for the benefit of the community) as recently as 2003 in *Action Collection Service, Inc. v. Seele*, 138 Idaho at 753. Accordingly, respondents' argument is misplaced.

Because Respondents did not file a cross-appeal raising this issue on appeal, the Court should not consider Respondent's arguments on this issue. However, should the Court find

jurisdiction to hear this issue, the law in Idaho is clear that no requirement exists that a debt must benefit the community before it can be satisfied out of community property?

VI.

THE PRINCIPLE OF EXTENSION CANNOT BE APPLIED TO IDAHO CODE § 11-204.

Respondents contend that the principle of "extension" should be applied to this statute making Idaho Code § 11-204 apply equally to married men and women. While it is true that Idaho courts have approved the doctrine of "extension," "extension" does not apply here. Respondents rely on three Idaho cases to support the contention that extension should be applied to I.C. § 11-204. These cases deal with statutes that compelled only a husband to pay child support, allowed only a wife to receive alimony, and a different age of majority for males and females. Extension was practical in those situations because the court could simply extend the statutes to require a wife to pay child support, a husband to receive alimony, and change the age of majority for males to 18 rather than 21.

The cases Respondents cite focus on the legislative intent of the benefits the statutes provided. In those cases, the benefits were related to the then existing statutory schemes of providing assistance for raising children, dividing tangible and intangible marriage assets equitably, and allowing males and females of equal ages equal rights. Extending the statutes served the purpose for which the statutes were enacted. In this case, as explained elsewhere in this brief, the community property laws of Idaho have changed and I.C. § 11-204 does not fit into the current community property system. There is no public policy for extending application of a code section that does not fit into the current community property system. To do so would simply expand an already ill-suited statute for today's community property system.

Respondent further argues that the policy of an exemption also argues for the application of the extension doctrine. Respondent claims that the underlying policy of an exemption is that a person should be entitled to some minimum amount of property and income to maintain a subsistence level to lessen the risk of a person becoming a ward of the state. Respondents cite no law to support this assumption, but state that it "is the position of the instant author that havoc would result from the voiding of Idaho Code § 11-204." In fact, as explained in Appellant's Brief and previously in this reply, the purpose of I.C. § 11-204 was to provide the wife with the right to manage and control her earnings from her personal services because the then existing Idaho law gave complete control of the "marital finances" to the husband. Additionally, legal safeguards exist to prevent a person from being over garnished or from becoming a "ward of the state" including state and federal law that limits the garnishment of wages to 25%. 15 U.S.C. Section 1673 and Idaho Code Section 28-45-104. Since Idaho Code § 11-204 applies only to wages, the 25% wage garnishment limitation would always apply and thus havoc would not be the result of voiding Idaho Code § 11-204.

Finally, extending I.C. § 11-204 would encourage further marital bankruptcy. For example, if extended, I.C. § 11-204 would exempt from execution a husband's wages for the debts incurred by his wife. Therefore, if a wife were to contract for a big screen TV for her and her husband, but does not work and has no means to pay for it, the retailer could not sue the wife, get a judgment, and execute on the husband's wages to pay for the TV that he himself watches because his wages would be exempt from execution for her debt. Such a result would not further any legitimate legislative purpose or intent. This Court should not encourage "marital bankruptcy" by extending I.C. § 11-204 to husbands.

VII.

THE DISTRICT COURT WAS CORRECT IN ITS CONCLUSION THAT *MILLER v. MILLER*, 113 IDAHO 415 (1987) IS INAPPLICABLE TO THIS CASE.

Respondents' argument that under *Miller* garnishments of all types are not allowable upon persons who are not party to the judgment is incorrect. *Miller* is limited to its application to those cases involving an order of "continuous" garnishment and does not even address the issue of whether a judgment creditor can garnish the community wages of the judgment debtor's spouse by some vehicle other than a "continuous" garnishment. Specifically, the court in *Miller* based its decision on an interpretation of Idaho Code Section 8-509(b) which deals only with an order for "continuous" garnishment.

Again, Respondents did not file a cross-appeal raising this issue on appeal and the Court should not consider Respondent's arguments on this issue. However, should the Court find jurisdiction to hear this issue, the holding in *Miller* is clearly limited in its application to cases involving a "continuous" garnishment.

VIII.

THE WELL-ESTABLISHED RULE THAT SEPARATE ANTENUPTIAL DEBTS CAN BE SATISFIED OUT OF COMMUNTIY PROPERTY CONTROLS THIS CASE.

The reasoning of *Action Collection Service, Inc. v. Seele*, 138 Idaho 753 (Ct. App. 2003) and its progeny is valid and applies here. In *Action Collection*, it was the spouse with the separate antenuptial debt whose community wages were being garnished. The court allowed the garnishment because the wages being garnished were clearly community property. Although Sandy Moulton is not the judgment debtor in this case, her wages are clearly community property like those at issue in *Action Collection*. It is of no consequence who provides the "community wages" that become community property because Idaho community property has

never treated community property differently depending on whose effort produces the community property unless the parties have entered into a prenuptial agreement altering the nature or classification of wages earned during marriage. Accordingly, this Court should apply the rule that community property can be used to satisfy a spouse's separate antenuptial debt.

Again, Respondents did not file a cross-appeal raising this issue on appeal and the Court should not consider Respondent's arguments on this issue. However, should the Court find jurisdiction to hear this issue, the rule reaffirmed in *Action Collection Service, Inc.* should be applied.

IX.

CBEI IS ENTITLED TO ATTORNEY'S FEES UNDER IDAHO CODE SECTION 12-120(5).

Respondent argues that attorney's fees should not be awarded because the claim of exemption was filed by two parties who were not named defendants and who have not received demand letters. Apparently, Respondents assume that CBEI is seeking fees from EIRMC and Sandy Moulton. However, CBEI has never implied that it seeks fees from EIRMC or Sandy Moulton. The clear language of Idaho Code Section 12-120(5) requires a court to award reasonable attorney's fees and costs to a party for attempting to collect on a judgment. The statute does not differentiate between the costs incurred in collecting on the judgment based on the parties challenging the creditor's actions. Because attorney fees and costs have been incurred to collect on the judgment, attorney's fees should be awarded against Jeff and Lisa Lecheminant regardless of the outcome of this appeal.

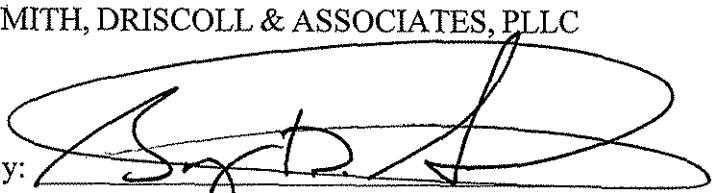
CONCLUSION

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 14th day of August, 2009.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of August, 2009, I caused a true and correct copy of the foregoing **Appellant's Reply Brief** 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:

Marvin M. Smith, Esq.	[ ] U. S. Mail
SMITH & BANKS, PLLC	[ ] Fax
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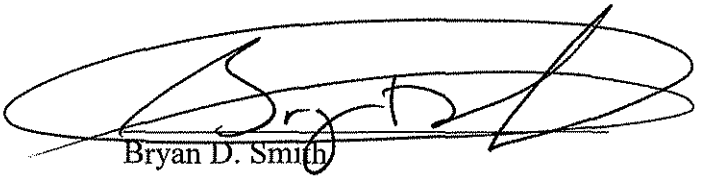
Idaho Falls, ID 83402	[✓] Hand Delivered



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