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

IN THE SUPREME COURT OF THE STATE OF IDAHO

CREDIT BUREAU OF EASTERN IDAHO, INC., an Idaho corporation, Appellants, vs. JEFF D. LECHEMINANT and LISA LECHEMINANT, Respondents.	)	Docket No. 36381-2009 **BRIEF OF RESPONDENTS, SANDY MOULTON AND EASTERN IDAHO REGIONAL MEDICAL CENTER**

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

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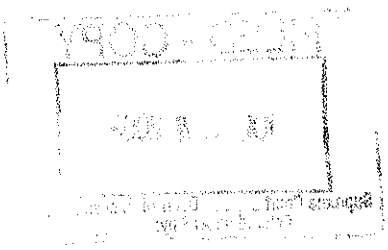

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STATEMENT OF THE CASE

Plaintiff/Appellant, Credit Bureau of Eastern Idaho (CBEI) has appealed from the District Court's Memorandum Decision affirming the decision of the Magistrate Court in denying the Plaintiff/Appellant's Motion to Contest Exemption and granting the Defendant's Claim of Exemption. The Plaintiff/Appellant is appealing the District Court's decision as to whether Plaintiff/Appellant has standing to constitutionally challenge an exemption statute (Idaho Code § 11-204) and whether a constitutional right of Plaintiff/Appellant has been violated, together with the issue of the denial of Plaintiff/Appellant's request for attorney's fees.

As a backdrop to the central issues identified above, are the issues of the operation of the community property system, as found in Idaho statutes, and the interplay of that community property system with creditor-debtor rights in the State of Idaho.

COURSE OF PROCEEDINGS

The beginnings of the instant case was the filing of a Complaint by CBEI, the instant Plaintiff/Appellant, in the Magistrate Division of the District Court of Madison County. The Complaint was filed on February 14, 2006. R. pp. 7-9. The Complaint generally alleged that moneys were due and owing by the Defendants, Jeff D. Lecheminant and Lisa Lecheminant in the sum of $391.16. The Complaint alleged that the Defendants were "husband and wife, who incurred the debts, as alleged herein, for community purposes." R. p. 8, p. 4

The Magistrate Court entered default in favor of the CBEI on March 26, 2006, in the sum of $833.16. R. pp. 11-12.

Thereafter, CBEI attempted collection of the Judgment by means of a Continuing Garnishment. See, e.g., R. pp. 14-18.

The Magistrate Court, per Judge Mark Rammell, rescinded his Order for Continuing Garnishment and instructed CBEI that a continuing garnishment order would not be entered by the Magistrate Court. See, e.g., R. p. 47.

Thereafter, CBEI served a Writ of Execution and a Notice of Garnishment on Eastern Idaho Regional Medical Center to garnish the wages of Sandy Moulton, the current wife of Jeff D. Lecheminant. The garnishment was served on or about September 26, 2007. R. p. 48.

A Claim of Exemption was asserted by EIRMC for itself and on behalf of Sandy Moulton, stating that an exemption was being claimed pursuant to Idaho Code § 11-204. R. p. 25.

CBEI filed a Motion to Contest Claim of Exemption on October 17, 2007. R. pp. 21-23.

The Magistrate Court held a hearing on the Motion to Contest the Claim of Exemption and upon the claim of exemption. Said hearing was conducted on October 23, 2007. Thereafter, the Magistrate Court entered an Order denying the Motion to Contest the Claim of Exemption and Granting the Claim of Exemption. R. pp. 53-54.

CBEI filed its Notice of Appeal (from the Magistrate Court) with the District Court on February 28, 2008. R. pp. 56-59.

The District Court issued an Order Governing Procedure on Appeal (R. pp. 60-62). The District Court conducted a hearing and issued an opinion on February 11, 2009. R. pp. 100-103.

The Plaintiff/Appellant, CBEI filed a Notice of Appeal on March 12, 2009. R. pp. 105-108.

STATEMENTS OF FACTS

The instant case was initiated by Complaint docketed on February 14, 2006, wherein Credit Bureau of Eastern Idaho, Inc. (CBEI) sued Jeff D. Lecheminant and Lisa Lecheminant for the sum of $391.16. R. pp. 7-9. In the Complaint, CBEI alleged that Jeff D. Lecheminant and Lisa Lecheminant were "husband and wife, who incurred the debts . . . for community purposes." R. p. 8. A default judgment was entered in favor CBEI on March 28, 2006 in the sum of $833.16. R. pp. 11-12.

Subsequent to the default judgment, the Lecheminants divorced and thereafter Jeff Lecheminant married Sandy Moulton, who was and is employed by Eastern Idaho Regional Medical Center (EIRMC). CBEI first attempted to obtain an Order of Continuing Garnishment. R. pp. 14-18.

The Magistrate Court, per Judge Rammell, rescinded the Order of Continuing Garnishment and advised the CBEI that orders of continuing garnishment would not be issued by the Magistrate Court. See R. p. 18 and R. p. 47.

CBEI then resorted to a Writ of Execution, listing the Defendants as Jeff D. Lecheminant and Lisa Lecheminant, with a Notice of Garnishment to EIRMC. R. pp. 51, 52. As stated, the Notice of Garnishment was directed to the employer of Sandy Moulton, EIRMC, a general acute care hospital located in Idaho Falls, Idaho. Sandy claimed an exemption, pursuant to Idaho Code § 11-204. R. pp. 25-26. A Claim of Exemption was docketed on October 15, 2007 by EIRMC

and by Sandy Moulton. Upon the hearing of the Claim of Exemption, the Magistrate Court upheld the exemption contained in Idaho Code § 11-204. R. pp. 53-54. CBEI appealed the Magistrate's decision to the District Court. After hearing and considering the arguments, the District Court entered its Memorandum Decision, which was docketed on February 11, 2009. The Memorandum Decision of the District Court upheld the decision of the Magistrate Court. R. pp. 100-104. Thereafter, CBEI filed its Notice of Appeal on March 12, 2009. R. pp. 105-108.

ISSUES PRESENTED ON APPEAL

1. CBEI does not have standing to assert that Idaho Code § 11-204 is unconstitutional.

2. Idaho Code § 11-204 is a valid constitutional statute that has never been repealed.

3. I.C. § 32-912 does not allow the garnishment in this case.

4. The debt was not incurred for the benefit of "this" community.

5. The principle of extension protects the wages of Sandy Moulton.

6. Sandy Moulton's wages are not subject to garnishment per the Idaho Supreme Court's holding in *Miller v. Miller*, 113 Idaho 415 (1987).

7. The case of *Action Collection Services, Inc.*, is not controlling in the instant case.

8. The Plaintiff/Appellant is not entitled to attorney's fees.

ARGUMENT

A. CBEI DOES NOT HAVE STANDING TO ASSERT THAT IDAHO CODE § 11-204 IS UNCONSTITUTIONAL.

In the usual course, this Court has set out the procedure for a challenge to the constitutionality of a statute based on an equal protection argument. This Court has stated as follows:

> "In addressing equal protection violations, the Court must first identify the classification being challenged and, second, it must determine the constitutional standard of review. Id. The Statute will only be found to deny equal protection under the rational basis test if: (1) the classification is totally unrelated to the state's goals, and (2) there is no conceivable state of facts that will support the state's classification." *Venter v. Sorrento Delaware, Inc.*, 141 Idaho 245, 251, 108 P.3d 392, 398 (Idaho 2005); *See also, Arel v. T&L Enterprises, Inc.*, 146 Idaho 29, 189 P.3d 1149 (Idaho 2008).

In the District Court, the District Court Judge identified two problems that CBEI had with its challenge to the constitutionality of Idaho Code § 11-204. Those two problem areas are: (1) CBEI does not fit into the classification of those excluded from the benefits of Idaho Code § 11-204 and (2) CBEI had not identified the constitutional right that it possessed that had been violated by the statute.

As to classification, it cannot be argued that CBEI is a married man, attempting to protect his separate property and the "special" classification of community property established in Idaho Code § 11-204 ("The rents, issues and profits of separate property and compensation due and owing for his personal services) from execution against his wife. The District Court, though not fully articulating the argument, recognized by his ruling that CBEI did not fit into this classification.

The second problem area for CBEI recognized by the Court is the violation of some constitutionally protected right. Rights that have been enumerated in the Constitution (e.g., free speech, free exercise of religion, right to counsel, etc.) have been held to be protected from government interference. In addition to the rights enumerated in the Federal and State Constitutions, other rights have been found to be protected under the umbrella of equal protection. Some of those rights that have been found to be protected are: The right to travel, the right to privacy, which encompasses the right to marry, the right to educate children, right to abortion, and the right to procreation. Other rights that have "won" protection are the right to vote, the rights of the mentally ill, freedom of association, housing, and contraception. See, e.g., *Tarbox v. Tax Commission*, 107 Idaho 957, 695 P.2d 342 (1985).

In the instant case, there has been no delineation or recognized reservation of a constitutional right or of a statutory right of a creditor to execute against certain property that has the protection of an exemption created by legislative fiat.

As the Appellant 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 a "distinct, palpable injury and there is a fairly traceable causal connection between the claimed injury and the challenged conduct." See, e.g., *Miles v. Idaho Power Company*, 116 Idaho 635, 778 P.2d 757 (Idaho 1989). For purposes of this case, this Court must determine that CBEI has a personal stake in the outcome of this litigation and that the distinct injury that it suffers from has a causal connection between the claimed injury and the challenged conduct. This means this

Court must conclude that the inability of CBEI to execute against the community property of a non-party, non-debtor married woman is a distinct palpable injury and which is specific to CBEI (as opposed to the general population) and that this injury is the result of the operation of I.C. § 11-204.

For reasons stated elsewhere in this Brief, it is the contention of the Respondent that CBEI does not have the specific right to execute; but in the alternative that the doctrine of extension ought to be employed in the instant case, with the benefit of the legislation in question being extended to the excluded class – married men. This argument should end the discussion of injury and causal connection to the injury.

Based upon the foregoing, the Respondent would urge this Court to conclude that the Appellant has not met the classification requirements for standing and has not met the "exceptional case" exception for standing in the instant case.

B. IDAHO CODE § 11-204 IS A VALID CONSTITUTIONAL STATUTE THAT HAS NEVER BEEN REPEALED.

In order to place the remainder of this section in context, it is necessary to complete a short review of community property tenants and principles.

To begin with, there is no doubt that wages earned from the parties during marriage are community property. Idaho Code § 32-906(1) states:

> All other property acquired after marriage by either husband or wife is community property. The income of all property separate or community, is community property unless the conveyance by which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income from all or the specifically designated property shall be the separate property of one of the spouses of the income from

> all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the spouse owning the property and shall not be liable for the debts of the other member of the community.

Idaho statutes are also clear that the separate property of either spouse is not liable for the debts of the other spouse that were contracted or incurred before marriage. Unfortunately, as many commentators have stated, these statutes only provide what property is not liable and do not state what property is liable. There is no express statutory statement as to whether community property is liable for antenuptial debts. See, e.g., Idaho Code § 32-910 (separate property of husband not liable for debts of wife contracted before marriage) and Idaho Code § 32-911 (separate property of the wife is not liable for debts of her husband, but is liable for her own debts contracted before or after marriage).

Idaho Code § 11-204 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 or owing for her personal services, is exempt from execution against her husband.

This statute creates a special kind of community property. Professor of law, W.J. Brockelbank, noted in his 1962 book, *The Community Property Law of Idaho* at pp.265-66 as follows:

> The Idaho legislature of 1881 set up a special kind of community property, *viz.*, "rents, issues and profits" of the wife's separate property and "all compensation due or owing for her personal services" (both of which are community property in Idaho) and provided that this special kind of community property should be "exempt from execution against her husband." (See fn1 on page 21 of this brief)

The Idaho Supreme Court, in *McMillan v. United States Fire Ins. Co.*, 48 Idaho 163, 270 P.220 held:

> As to the earnings of a married woman, not living separate and apart from her husband, on account of her personal services, **the exemption applies only to such earnings as are *due* and *owing*. After the earnings have been paid, or converted into other property, the exemption granted by said section no longer obtains.**

Id. at 280 P. 222 (emphasis added).

Now for the devilment. This Court, in *Bliss v. Bliss*, 127 Idaho 170, 898 P.2d 1081 (1995) stated in dicta as follows: "Parties often marry with separate ante-nuptial debts, and those debts are payable from community property." The court cited to two ancient cases, *Holt v. Empey* and *Gustin v. Byam*. This mischief was then taken up by the appeals court in the case of *Action Collection Service, Inc. v. Seele,* 138 Idaho 753, 69 P.3d 173 (Ct. App. 2003). The sad part of this commentary is that the Court of Appeals understood exactly what they were doing and what the *Bliss* case actually was precedent for, given the issues in that case. In the *Action* case, the Court of Appeals stated:

> Both *Holt* and *Gustin* were decided at a time when the husband was given sole power to manage and control the community property by statute. In 1974, the legislature amended I.C. § 32-912, giving the husband and wife equal management and control of the community property. *See* 1974 Idaho Session Laws, Ch. 194 Section 2. Despite the change in the management and control of the community property, and in spite of any doubt concerning the continued vitality of *Holt* and *Gustin*, those cases were cited with approval by our Supreme Court in *Bliss v. Bliss*, 127 Idaho 170, 898 P.2d 1081 (1995).
>
> In that case, the court recognized that parties often marry with separate antenuptial debts. Citing *Holt* and *Gustin*, the court observed in dicta that the separate antenuptial debts of a husband or wife are payable from community property.

> Although the court in *Bliss* was not presented with the situation facing us in this case, where a judgment creditor is attempting to garnish one spouse's community property wages to satisfy that spouse's separate antenuptial debt, the court's holding was not limited to the facts of that case and we perceive no reason to do so. To prevent Action from levying against Seele's wages to collect on its judgment and to allow Seele to avoid her responsibility for the debts encompassed by Action's judgment would result in marital bankruptcy, particularly if Seele has insufficient separate property to justify the judgment. Hence, although Seele argues to the contrary, she remains responsible for the unpaid debts constituting Action's judgment and her community property wages should not be placed beyond Action's reach to satisfy its judgment. *Id.* at 138 Idaho 753, 178. (emphasis supplied)

Therefore, dicta which did not apply to the controverted issues in the original cited case, is expanded by the Court of Appeals into a rule of law that is now supposed to govern the instant action, even though in *Seele* the spouse (Seele) was a member of the original marital community as opposed to the situation in the instant case, where Sandy Moulton is not the original contracting or judgment debtor spouse.

If one wishes to stretch precedent beyond the bounds of the original case, a better reference would be to the case of *Twin Falls Bank &Trust Co. v. Joan F. Holley*, 111 Idaho 349, 723 P.2d 893 (Idaho 1986). In that case, this Court ruled that:

> Generally speaking, a creditor must obtain a judgment to collect on a debt, whether it is based on contract, tort or other obligations. The exception would be if the obligation were secured by a mortgage or some other form of security interest. Once a creditor obtains a judgment, he is able to obtain on his debt by execution on the debtor's assets. "These judicial procedures do not change whether dealing with a single or married debtor. The difference is the type of property that is subject to execution or attachment for the debt involved." (Citation omitted). Under the facts of this case, a debtor-creditor relationship existed only between the bank and respondent's ex-husband, John Holley. The debt evidenced by the June 26, 1981 promissory note was incurred by John Holley for the benefit of the marital community. However, respondent Joan

> Holley, not having signed the note, was not contractually liable for the debt evidenced by the promissory note; only John Holley signed and is liable for the note. . . .The phrase "community debt" is correct terminology insofar as it is used to signify a debt incurred for the benefit of the marital community. However, to the extent the phrase is used to imply the existence of a "community debtor," the phrase is in-precise and misleading. The marital community is not a legal entity, such as a business partnership or corporation. (Citations omitted). While one may properly speak of a "corporate debtor," there is no such entity as a community debtor. *See, Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1977); (Citations omitted). To the extent a lending institution enters into a creditor-debtor relationship with either member of the marital community or with both members, it does so on a purely individual basis. Thus, the lending institution may have a creditor-debtor relationship with either spouse separately or with both jointly. As stated earlier, the community property system does not affect the fundamental principles governing such a relationship and the procedures required of a creditor in order to collect upon his debt. Rather, the community property system merely affects the type or kinds of property which the creditor may look for satisfaction of his unpaid debt. . . .
>
> The debt upon which the bank is asserting this claim against Mrs. Holley was evidenced by the promissory note executed solely by Mr. Holley on June 26, 1981, which had renewed an earlier note. At the time the bank had a claim against Mr. Holley, which it could satisfy by judgment and execution against either Mr. Holley and any separate property which have had, or against the community property of Mr. and Mrs. Holley. *Id.* at 111 Idaho 349, 352 – 353. (emphasis supplied)

By analogy, Sandy Moulton in this case was not a party to the obligation that was incurred that gave rise to the initial complaint in this matter. Ms. Moulton also was not a member of the marital community to which the obligation attached, as alleged in the initial complaint. As in the *Twin Falls* case, in the instant case there was no connection between Ms. Moulton and the underlying obligation or the judgment that was obtained evidencing the underlying obligation.

Assuming arguendo the absence of Idaho Code § 11-204, Idaho recognizes not only the equal management and control of the community property by either spouse (Idaho Code § 32-912); it also recognizes that each spouse has an undivided one-half interest in all community property. *See, e.g., Suchan v. Suchan*, 113 Idaho 102, 741 P.2d 1289 (Idaho 1986); *Mason v. Pelkes*, 57 Idaho 10, 59 P.2d 1087 (Idaho 1936). To extend the logic of the *Twin Falls* case, Ms. Moulton, though she had equal management and control of the present community property, she did not have any management or control of the previous marital community of Lecheminants. Ms. Moulton was a complete stranger to the judgment obtained by CBEI and there is no evidence that there was any disclosure of said judgment by Mr. Lecheminant to Ms. Moulton of the judgment. To allow the execution and garnishment of Ms. Moulton's interest in the community property she earned by her labor is to imply that upon her marriage to Mr. Lecheminant she consented to all of his ante-nuptial debts and that her share of the community property could be executed upon – the equivalent of implied or constructive consent. This conclusion flies in the face of what should be sound public policy. In the teachings of the *Twin Falls* case, it was noted that creditors should follow the usual procedures for collections of their debts, i.e. judgment and judgment debtor. The *Twin Falls* case also points out what should be inherent in this case; that the creditor should seek to satisfy the debt from the property of the debtor spouse and from the property of Lisa Lecheminant. In this case, there has been no showing that the creditor first attempted to satisfy the debt from the separate property of the judgment debtors (Jeff Lecheminant and Lisa Lecheminant) or from non-exempt community property of the judgment debtors. Under the teachings of the *Twin Falls* case cited supra, the

debt ought to follow the property of the judgment debtors. Likewise, there have been no allegations of any fraudulent transfers of property by Mr. Lecheminant or by Lisa Lecheminant to prevent recovery for CBEI.

In this case, the judgment creditor is seeking a windfall upon the formation of a new marital community. As stated, the separate property of the judgment debtors and the non-exempt community property of the new community is still available to the judgment creditor for satisfaction of this debt. This exact situation is why the exemption was created (no knowledge, no control and no management). The logic is reinforced if this Court, by the doctrine of extension, provides the same cove of protection to married men.

C. I.C. § 32-912 DOES NOT ALLOW THE GARNISHMENT IN THIS CASE.

Appellant has asserted that pursuant to I.C. § 32-912 the antenuptial debts of one spouse binds the community property and thus makes the community assets available for execution. This section states that "Either the husband or the wife shall have the right to manage and control the community property and either may bind the community by contract . . ." The Appellant's argument is misplaced since the debt and judgment arose prior to the inception and existence of the present community (with Ms. Moulton). The debts at issue in this case were not incurred during the existence of this community. The non-debtor spouse (Sandy Moulton) was not a party to the collection action against her husband and yet the Appellant has attempted to execute on the non-party, non-debtor's spouse's interest in the present community property in violation of her due process rights. Sandy Moulton did not have any notice of this debt and did not have any opportunity to contest its validity. The only procedural safeguard was the exemption supplied by

I.C. § 11-204 and the attendant exemption hearing. But for the exemption hearing, her property interests would have been unilaterally taken. Her property would have been taken without CBEI posting a bond, without an application to a judge (the garnishment is signed by the County Sheriff) (the Writ of Execution only refers to the defendants, not to Sandy Moulton) and no showing of probable cause (to prevail). The dicta of *Bliss* now reveals itself in real life and extended to maturity in the hands of a zealous collector.

D. THE DEBT WAS NOT INCURRED FOR THE BENEFIT OF "THIS" COMMUNITY.

Since the Appellant in this case attempted to garnish Ms. Moulton's wages, which are exempt community per I.C. § 11-204, the question then becomes whether or not a judgment creditor can attach the exempt community property of Ms. Moulton to satisfy the antenuptial debt of Ms. Moulton's present husband where she was neither a party nor judgment debtor to or in the original case or in the original debtor marital community. Courts in Idaho have held that if the debt was incurred for the benefit of the community then the debt can be paid from the community property. The debt which gave rise to this action arose before the present marital community of Ms. Moulton and Mr. Lecheminant was formed and was not incurred for the benefit of the community of Ms. Moulton and Mr. Lecheminant. The present community, therefore, is not obligated to repay such debts from this particular community property (wages), which is the exempt community property of Ms. Moulton under I.C. § 11-204.

The United States Ninth Circuit Court of Appeals (applying Idaho law) in a matter regarding a foreclosure action stated, "Only if the debt is incurred for the benefit of the

community does I.C. § 32-912 allow satisfaction of the unpaid debt from the community property." *First Idaho Corporation v. Davis*, 867 F.2d 1241, 1243 (9th Cir. 1989). In *Freeburn v. Freeburn*, 97 Idaho 845, 849, 555 P.2d 385, 389 (1976) the Court held "The character of an item of property as community or separate vests at the time of its acquisition." (Citations omitted). This is the logic that must be followed here, that the debt acquired by Mr. Lecheminant is separate in character since it was vested prior to the formation of the new community; or the debt is a community debt of a former community that cannot be satisfied out of the "present" special kind of community property created by I.C. § 11-204.

E. THE PRINCIPLE OF EXTENSION PROTECTS THE WAGES OF SANDY MOULTON.

Upon reviewing Idaho case law, none have addressed the specific question as to whether or not the special kind of community property created by I.C. § 11-204, including wages, can be attached by a judgment creditor to satisfy an antenuptial debt of the debtor spouse. However, there is case law indicating that community property classified under I.C. § 11-204 cannot be used for that purpose. The subject debt was not incurred for the benefit of this present community, the debt was not acquired during the existence of this present community, and its very nature is separate in character in regard to the present community.

Further, "[a] party challenging a statute on constitutional grounds bears the burden of proving the statute is unconstitutional and must overcome a strong presumption of validity." *In Re: Karel*, 144 Idaho 379, 162 P.3d 758, 762 (2007).

Idaho Code § 11-204 (the main portion in existence since 1864) has never been totally stricken by the Idaho Legislature or overturned by this Court. By symmetry of reasoning it must be assumed that I.C. § 11-204 applies equally to married men as it does married woman. This principle of extension has been approved in Idaho law. *See e.g.*, *Murphey v. Murphey*, 103 Idaho 720, 653 P.2d 441 (Idaho 1982); *Neveau v. Neveau*, 103 Idaho 707, 652 P.2d 655 (Ct. App. 1982); *Harrigfeld v. District Court*, 95 Idaho 540, 511 P.2d 822 (1973). In the *Murphey* case, this Court, in addressing a similar situation (alimony statute in favor of women) stated:

> It is apparent that the legislature would have intended that the benefits of the alimony statute should be extended to the excluded class, rather than taken from the benefitted class, and we should therefore extend those benefits in order that the legislative will, albeit not gifted with omniscience, should be carried out.
>
> If an important congressional policy is to be perpetuated by recasting unconstitutional legislation, the analytically sound approach is to accept responsibility for [the] decision. Its justification cannot be by resort to legislative intent, as that term is loosely employed, but by a different kind of legislative intent, namely the presumed grant of power to the courts to decide whether it more nearly accords with congress' wishes to eliminate its policy altogether or extend it in order to render what congress plainly did intend, constitutional. *Welch v. United States*, 398 U.S. 333, 355-56, 90 S.Ct. 1792, 1804, 26 L.Ed.2d 308 (1970) (Harland, J., concurring).
>
> The court in *Orr* implicitly recognized that alimony statutes are to be considered as providing a benefit to the receiver of the alimony when it is stated that . . ., as the state could respond to a reversal by neutrally extending alimony rights to needy husbands as well as wives. (Citations omitted).
>
> On remand from the Supreme Court, the Alabama Court of Appeals in fact responded to reversal by neutrally extending alimony rights to needy husbands as well as wives. (Citations omitted) *Id.* at 103 Idaho 720, 723-24.
>
> In *Harrigfield* cited above, this Court stated:

> A holding that a statutory classification scheme constitutes a denial of equal protection because it unconstitutionally grants a benefit to one class while denying it to another, does not necessarily mandate a denial of the benefit to both classes. *Harrigfeld v. District Court*, 95 Idaho 540, 545, 511 P.2d 822, 827 (1973).

If one reviews the legislative history and intents and purposes of the overall domestic relation scheme in Idaho, one can conclude that extension naturally should flow in and to the instant situation. As already observed in this brief, and as observed by the Appellant in its brief, the idea and outgrowth of the exemption is tied to the management and control of the marital community and that the exemption ought to be linked to the management and control of the marital community, or a portion of the marital community. From 1915 to 1974, by statute, a wife had the exclusive management and control of her earnings, not her husband. Therefore, there was a linkage between management and control and the exemption as found in Idaho Code § 11-204. In 1974, we had the advent of mutual management and control of the community by the marital partners (I.C. § 32-912). It is inherent in equal management and control that there is an implied consent by and between the marital partners that either partner can bind the marital community. In the instant case, Sandy Moulton did not have any knowledge of, let alone any implied consent as to the antenuptial debt that is present in this case. Given the implications of knowledge, consent, management, and control, should it be validly concluded that the benefits that are provided by Idaho Code § 11-204 should be terminated to married women in a subsequent marital community who now benefit by the statute? It is our argument that the benefit should not be terminated. The clear legislative purpose was to link knowledge, consent, management and control to this "special kind of community property." It was to provide a

married woman with some protection from debts that she had no control over or had no input in regard to the creation of said debt. The statute is to provide help to the spouse without knowledge or control over the debt and preserve the economic status of the marriage, pending further developments. The purposes of the statute would be thwarted by an invalidation of Idaho Code § 11-204. However, by extending the statute's benefit to married men in the same situation, the legislative purposes of Idaho Code § 11-204 would be effectuated. *See, e.g., Peters v. Narick*, 270 S.E.2d 760, 767 (W.Va. 1980).

The policy of an exemption also argues for the application of the extension doctrine. 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 that person becoming a ward of the state. The recognition of how important wages and earnings are to the financial viability of a person is found in the Federal Wage Garnishment Law, Consumer Protection Credit Acts, Title III (CCPA) (*See, also,* Idaho Code § 28-45-104 (Limitation on Garnishment)).

It is the position of the instant author that havoc would result from the voiding of Idaho Code § 11-204 in respect to earnings, inasmuch as the voiding would impose as much a hardship on husbands similarly situated as with wives. Why would this Court wish to impose economic and social hardship upon any class, when it would appear that with the passage of the 1974 equal management and control of community property, that the legislature intended to extend the benefits to husbands as well as to wives in the situation posed by the instant case.

The exemption provided by I.C. § 11-204 is to be construed liberally in favor of the debtor. *See e.g., In Re Moore*, 269 BR 864 (BR D. Idaho 2001). In this case the exemption should be construed even more liberally in favor of Ms. Moulton and be extended to married men. For Ms Moulton, because she is not the debtor, or a party to this suit, and was not even married to Jeff Lecheminant when the debt was incurred. For married men because many will find themselves in the same situation as Ms. Moulton without any procedural safeguard but for the exemption. If Appellant's argument is accepted and Ms. Moulton is not granted the exemption given to her per I.C. § 11-204, married women and men will effectively have no management and no control over their earnings when in a new marital community and will without any procedural safeguards as to the garnishment of their wages.

F. SANDY MOULTON'S WAGES ARE NOT SUBJECT TO GARNISHMENT PER THE IDAHO SUPREME COURT'S HOLDING IN *MILLER V. MILLER*, 113 IDAHO 415 (1987).

In *Miller v. Miller*, 113 Idaho 415, 420, 745 P.2d 294, 299 (1987) this Court stated and held:

> After the entry of the district court's judgment for damages against E. Paul, Pete filed pursuant to I.C. § 8-509 (Supp. 1987) a motion for continuing garnishment against the wages of E. Paul's spouse, Paula Miller. Following a hearing, the court denied the motion on the ground of Pete's failure to name Paula as a party defendant. The district court reasoned that allowing a garnishment of Paula's wages without having been made a party defendant, and with the judgment having been entered only against her husband, would deny her due process of law. We agree with the district court's conclusion that the joinder of a spouse as a party defendant was a necessary prerequisite, under I.C. § 8-509(b) . . .
>
> The language of I.C. § 8-509 is specifically limited to a "judgment creditor" and a "judgment debtor." "A well-settled rule of construction is that the words of a statute must be given their plain, usual and ordinary meaning in the absence of

> any ambiguity." (Citations omitted). A judgment debtor according to *Black's Law Dictionary* (5th ed. 1979), p. 758 is, "A person against whom judgment has been recovered, and which remains unsatisfied." Paula, having not been a named party defendant, clearly did not qualify as a judgment debtor and, hence, was not within the scope of I.C. § 8-509(b).

The *Miller* case is closely analogous to the matter at hand. In this case, Sandy Moulton was not a party defendant and is not a "judgment debtor" just as Paula Miller in the *Miller* case. If this Court would not allow a continuing garnishment against someone who is not a "judgment debtor" then why would it allow a notice of garnishment against someone who is not a "judgment debtor" and a stranger to the debt? It is Moulton's and EIRMC's position that *Miller* stands for the proposition that garnishment of any type can only be effected against persons who are actually party defendants in a suit and are judgment debtors. Therefore, because Sandy Moulton was not a party defendant in this matter and no judgment was entered against her, the wages of Sandy Moulton cannot be garnished.

In the District Court's opinion, citation is made to Idaho Code § 11-201. Based upon the Court's language in its citation to this statute, it is assumed by this author that the Court was referring to Idaho Code § 11-201 for its definition of what property was subject to seizure (all goods, chattels, moneys and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property, seized and held under attachment in the action, are liable to execution) (emphasis supplied). What the District Court overlooked is the legislative history of Idaho Code § 11-201. It was passed and enacted at the same time and in the same legislative act as Idaho Code § 11-204. This means that both statutes would have to be viewed as a legislative whole. *See e.g., St. Lukes Regional Medical*

Center v. Board of County Commissioner of Ada County, 146 Idaho 753, 203 P.3d 683 (2009). The legislature completely understood that they had created a special type of property for women and that 11-201 could not be used to seize that property, when 11-204 specifically shielded it from seizure. Therefore, given the legislative history and intent of what property is liable for seizure and what property is not liable to seizure, the special type of property shielded from seizure in § 11-204 would not be subject to garnishment in this action, either by operation of legislative construction or by the operation of the doctrine of extension.[1]

G. THE CASE OF *ACTION COLLECTION SERVICES, INC.*, IS NOT CONTROLLING IN THE INSTANT CASE.

The case of *Action Collection Services, Inc. v. Seele*, 138 Idaho 753, 69 P.3d 173 (Ct. App. 2003) does not aid the court in its determination of the instant appeal.

There are multiple factual and legal differences between the case at the bar and the *Action Collection Services, Inc.* case. Most of these issues have been addressed in previous sections; however, to recapitulate those differences, the court should consider the following:

1. In *Action Collection Services, Inc.*, Seele was the judgment debtor.

2. Seele did not dispute that she was contractually liable for the debts encompassed by the Action judgment.

3. There is absolutely no discussion in the *Action Collection Services, Inc.* case of the exemption granted by I.C. §11-204.

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1 The act that gave the Idaho Territory both present code sections 11-201 and 11-204 were actually passed in Idaho's first territorial session as Sections 220 and 221. *See* General Laws of Idaho, Title VII, §§ 220 and 221, respectively (Dec. 1863 to Feb. 1864). This means the exemption in § 11-204 predates community property in Idaho. My regrets to Professor Brockelbank.

4. In the instant case, Sandy Moulton is not the judgment debtor.

5. Sandy Moulton is not liable for the underlying debts that encompass the judgment in the instant case.

What the Appellant wants is a simple equation: the earnings in dispute are community property and community property is subject to garnishment. This is not true in all cases under all circumstances. The *Miller* case cited above indicates that the mechanism of obtaining garnishment is limited to judgment creditors and judgment debtors in certain circumstances. Sandy Moulton does not fit into the category of a judgment debtor, indeed, Sandy Moulton is in the same situation of the judgment debtor's new husband who was not named in the *Action Collection Services, Inc.* case. There is a reason for that: garnishment would not work in regard to an individual not responsible for the underlying debt and not named as a party (judgment debtor) in the judgment.

In summary, the *Action Collection Services, Inc.* case only serves to show the complete disconnect in the instant case between a judgment creditor and a party who is not responsible for the debt and is not susceptible to garnishment in as much as the individual is not a judgment debtor.

H. THE PLAINTIFF/APPELLANT IS NOT ENTITLED TO ATTTORNEY'S FEES.

In approaching the question of attorney's fees, the Court is aware that Idaho follows what is commonly known as the American Rule, "that attorney's fees are to be awarded only where they are authorized by statute or contract." *Hiller v. Cenarusa*, 106 Idaho 571, 578, 682 P.2d 525 (1984). The party asserting the claim for attorney's fees has the burden of directing the

Court's attention to either a statute or a contract between the parties authorizing the award of attorney's fees.

In the instant case, the Plaintiff/Appellant places special emphasis upon Idaho Code § 12-120(5). The basis for the award of attorney's fees in the Complaint are identified as Idaho Code §§ 12-120(1) and 12-120(3).

A close reading of both subsection (1) and (3) of Idaho Code § 12-120 reveals that attorney's fees cannot be awarded in this case, inasmuch as the person who filed the Claim of Exemption and has followed through with this case is Sandy Moulton and EIRMC, not one of the named defendants in the instant case. See R. p. 25. See R. p. 40. Neither Sandy Moulton or EIRMC received a demand letter in regard to the amounts claimed by the Plaintiff/Appellant, as required under Idaho Code § 12-120(1). Indeed, neither Sandy Moulton or EIRMC was a party to the action initiated by the filing of the Complaint in the instant matter.

Likewise, neither Sandy Moulton or EIRMC was the object of the Plaintiffs in seeking to recover on an open account, account stated, note, bill, negotiable instrument, guarantee or contract relating to the purchase or sale of goods . . . . (I.C. § 12-120(3))

Therefore, the underlying predicates for the triggering of Idaho Code § 12-120(5) are not found in the instant case.

In the instant case, you have two complete strangers to the judgment, Sandy Moulton and EIRMC, who filed the Claim of Exemption and thereafter opposed the collection of Sandy Moulton's community property from her employer.

Based upon the foregoing, the Respondents, Sandy Moulton and EIRMC, respectfully request that Plaintiff/Appellant's attorney fee request be denied.

CONCLUSION

Based upon the analysis, case law precedent, and statutes set forth above, Sandy Moulton and EIRMC respectfully requests that this Court deny appellant's appeal in all respects.

DATED this 23rd day of July, 2009.

SMITH & BANKS, PLLC

By: _____
Marvin M. Smith
Attorneys for Respondents
Sandy Moulton and Eastern Idaho Regional Medical Center
(Claim of Exemption)

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document upon the following this 23rd day of July, 2009.

Bryan D. Smith
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