5-6-2013

Hausladen v. Knoche Appellant's Reply Brief Dckt. 40274

IN THE SUPREME COURT OF THE STATE OF IDAHO

Frank William Hausladen, Jr. Petitioner/Appellant vs. SHARI COLENE KNOCKE Defendant JOHN SAHLIN (Former Parenting Coordinator Judgment Creditor/Respondent (Nonparty)	)	S.Ct. No. 40274-2012 Koot.Cty. # 2000-5967

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the First Judicial District for Kootenai County

Honorable John Patrick Luster. District Judge Presiding

Frank William Hausladen, Jr., Appellant
516 ½ Oak Street
Sandpoint, Id 83864

John Sahlin, Respondent
P.O. Box 194
Coeur d'Alene, Id 83816

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STATEMENT OF THE CASE & FACTS

See Appellant's original brief filed with this Court.

ISSUES

Misrepresentations by Sahlin

Although it has occurred time and time again during the litigation of the Parenting Coordinator Issue, Sahlin has a bad habit of making intentional misrepresentations to the court. Sahlin's misrepresentations[1] continue since this wrongful conduct has never been punished and most often, especially in Kootenai County, been rewarded.

In the second paragraph of page five of Sahlin's brief, he states: "(1) the issue of standing has been implicitly or inherently decided[2] at every appellate level of this case, even though Hausladen **never raised** the issue himself until after the decision by the Supreme Court." (emphasis added). This statement by Sahin is an absolute purposeful, material misrepresentation (which is perplexing because jurisdictional matters can be brought up at any time and is of no legal effect and is apparently intended for propaganda purposes). The issue of standing/authority/jurisdiction has been brought up by Appellant at every level of this litigation/appeal/remand/appeal – including the "trial":

[1] For example, Sahlin continuously argued in the past that Appellant did not object to Sahlin's "ultra vires" acts until the order to show cause hearing (what equates to the "trial" in this case) – which the record clearly shows was an intentional, material mispresentation (See Clerk's record pages 255 as well as all of the objections filed by Appellant in October – December, 2005 (some of which are on pages 126, 131, 134, 140, and 143 of the Clerk's Record on Appeal.

[2] Although Sahlin argues the newly adopted (by Sahlin) "implicit or inherent ruling doctrine" as a pillar of his legal reasoning, Sahlin failed to cite one authority that has recognizes or has adopted this view.

1. The original show cause hearing/"trial" which occurred on June 5, 2006.[3]

2. On June 20, 2006, Appellant presented a Corrected Order & Judgment Re: Former Parent Coordinator (Hearing on 6-5-06) which stated: "4. John Sahlin is not a party to this case and has no standing to file an order to show cause."[4] This order was rejected by Judge Watson but illustrates the arguments set forth at the hearing/"trial" as referenced on the transcript that occurred on June 5,2006.

3. On March 7, 2007, Appellant set forth the "no standing" argument in his brief to the district court (initial appeal to district court).[5]

4. On February 27, 2008, Appellant set forth the "no standing" issue in his brief to the Idaho Court of Appeals. [6]

5. On January 29, 2009, Appellant set forth the "no standing" issue in his response brief to the Idaho Supreme Court.[7]

6. In addition, this does not include the multiple times this issue was brought up by Appellant during oral argument at various times during the appeal.

7. The standing/jurisdictional issue was specifically argued in front of Judge Luster in district court when Appellant was attempting to have the district court follow the Idaho Supreme Court order for the

[3] Page 65, Line 4 – Page 69, line 6 of Exhibit 1 to Appellant's Statement/Affidavit in Support of Motion for Augmentation of the Appellate Record for Supreme Court No. 34728 (this is the transcript that was not included in the Clerk's Record for said appeal that was later "filed" by Appellant).
[4] Clerk's Record on Appeal, page 154.
[5] Clerk's Record on Appeal, page 170.
[6] Clerk's Record on Appeal, pages 217 – 218.
[7] Clerk's Record on Appeal, pages 246

district court to "make the determination" on remand. Judge Luster stated something to effect that the standing/jurisdictional issue would be visited when the issue was on appeal again.[8]

In the first footnote on page five of Sahlin's brief, Sahlin appears to "complain" that he has apparently received no copy of the Clerk's Record or Reporter's Transcript. First of all, no "new" Reporter's transcript has been prepared and Sahlin was given a copy of the only transcript prepared during the litigation of the Parenting Coordinator Issue almost six (6) years ago. As this court is fully aware, Appellant has no power over the preparation or distribution of the Clerk's Record – only burdened with the financial obligations of paying for it. The copy of the Clerk's Record that Sahlin deems an ownership interest was most likely sent by the Kootenai County Clerk to Richard Kochansky – counsel for the only other party in this case as the rules require the Kootenai County Clerk to do. It is Appellant's assumption that the copy sent to Mr. Kochansky was eventually given to Sahlin since Mr. Kochansky and Sahlin are somewhat close. Irregardless of where the other copy of the Clerk's Record currently is, Appellant has no authority of distribution regarding it or obligation to Sahlin for delivery. I suggest Mr. Salin lodge his "complaint" with the Kootenai County Clerk and/or Mr. Kochansky.

Alleged Inconsistencies Set Forth by Sahlin

A purview of the lengthy record on appeal of the Parenting Coordinator Issue would lead most reasonable people to believe that something is going on behind the scenes in this case. Are the questionable rulings being made to protect the individual

[8] Which, incidently, means Judge Luster assumed that Appellant would lose after the issue was remanded to the magistrate court (which he did).

who formerly acted as the Parenting Coordinator? Are the questionable rulings being made to punish Appellant because he dared to question the court's authority and appeal a decision that he believed was contrary to law? Only one with a crystal ball or a key to the backrooms of the Kootenai County Courthouse would know for sure (which Respondent has neither).

Sahlin alleges that several arguments set forth by Petitioner are inconsistent. In general (as set forth in Petitioner's brief) Sahlin is correct (but nor for his reasons) – this entire case is inconsistent because the foundation of the case – the "trial" is based on rulings outside of law. Almost everything relating to the Parenting Coordinator Issue has been contradictory since the magistrate court lacked authority/jurisdiction to rule on a "lawsuit" by a nonparty within an ongoing custody case. Most recently, the biggest "catch 22" to date is Judge Luster's dismissal of Appellant's appeal. Taken to its logical conclusion, if a nonparty is allowed by a trial court to intercede (outside of law) in a case and acquires a judgment against a party, the party is then precluded from appealing. Although the Idaho Rules of Civil Procedure, Idaho statutes and case law does not "back" this holding, the courts in Kootenai County have somehow been anointed with the power to legislate, enact, enforce and interpret the law in any way that they, in their sole and absolute discretion, deem fit.

The original ruling that started the Parenting Coordinator Issue is irreconcilable with the law on many layers. Magistrate Watson lacked the authority to rule on a lawsuit within a custody case by a non party. Magistrate Watson lacked the authority to rewrite the Idaho Rules of Civil Procedure to allow a motion for order to show cause into a motion to determine fees (with no notice, etc.) (see Parkside Schools, Inc. v. Bronco Elite

Arts & Athletics, LLC, 145 Idaho 176 (2008).[9] As in Parkside, the magistrate's courts actions (failure to follow the Idaho Rules of Civil Procedure and various statutes) prejudiced Petitioner. Petition showed up to simply object to jurisdictional (standing) and procedural defects of Sahlin's motion. At worst, Petitioner expected the magistrate court to issue an order to show cause which could be denied at a later, properly scheduled hearing. Instead, Petitioner was forced to proceed with what equated to a civil trial for collection of an alleged debt. How more prejudicial can a ruling be – Petitioner was barred from discovery, notice that a trial would take place (unable to have witnesses available, evidence, etc.) right to jury trial,[10] as well as all other basic Due Process protections.

The recent dismissal of Appellant's appeal mirrors Parkside as well. Although Appellant's previous brief clearly shows that Judge Luster appears to have no legal basis for dismissing the appeal, the appeal was dismissed unilaterally by the district court (Respondent did not even have to file any motion or objection). The district court deemed that Appellant's appeal had multiple flaws – since the flaws did not exist, they could not be remedied, therefore Appellant was barred from proceeding with an appeal. At some point, "strange" rulings are not mere coincidence, it begins to appear intentional.

Cases from Jurisdictions Outside Idaho

The following is a list of cases and brief summary of case law outside Idaho that support the authorites set forth in Appellant's original brief:

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[9] The Idaho Supreme Court ruled that a trail court's discretion does not include ignoring Idaho Rules of Civil Procedure (such as I.R.C.P. 7(b)(3) in Parkside).

[10] If Sahlin had properly pursue his claim, it is assumed he would have filed in small claims court (no jury trial) but Petitioner would have had the case removed to magistate court in order to have a jury trial.

Void judgments are those rendered by a court which lacked jurisdiction, either of the subject matter or the parties. Wahl v. Round Valley Bank, 38 Ariz. 411, 300 P. (1931); Tube City Mining & Milling Co. v. Otterson, 16 Ariz. 411, 146 P. 203 (1914); Milliken v. Meyer, 311 U.S. 457, 61 S. Ct. 339 (1940).

A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999).

A void judgment is one which from the beginning was complete nullity and without any legal effect. Hobbs v. U.S. Office of Personnel Management, 486 F. Supp. 456 (M.D. Fla. 1980).

Void judgment is one that, from its inception, is complete nullity and without legal effect. Holstein v. City of Chicago, 803 F. Supp. 205, reconsideration denied 149 F.R.D. 147, affirmed 29 F. 3d 1145 (N.D. Ill 1992).

Void judgment is one where court lacked personal or subject matter jurisdiction or entry of order violated due process. Triad Energy Corp v. McNell, 110 F.R.D. 382 (S.D.N.Y. 1986).

Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. Klugh v. U.S., 620 F.Supp. 892 (D.S.C. 1985).

A judgment is a simulated judgment devoid of any potency because of jurisdictional defects only, in the court rendering it and defect of jurisdiction may relate

to a party or parties, the subject matter, the cause of action, the question to be determined, or relief to be granted. Davidson Chevrolet, Inc. v. City and County of Denver, 330 P.2d 1116, cert. denied 79 S. Ct. 609 (Colo. 1958).

Void judgment is one entered by court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter particular order involved and such a judgment may be attacked at any time, either directly or collaterally. People v. Wade, 506 N.W.2d 954 (Ill. 1987).

A void judgment is one which has merely semblance, without some essential element, as when court purporting to render has no jurisdiction. Mills v. Richardson, 81 S.E. 2d 409, (N.C. 1954).

Void judgment is one which has no legal force or effect whatever, it is an absolute nullity, its invalidity may be asserted by any person whose rights are affected at any time and at any place and it need not be attacked directly but may be attacked collaterally whenever and wherever it is interposed. City of Lufkin v. McVicker, 510 S.W. 2d 141 (Tex. Civ. App. – Beaumont 1973).

A void judgment is a judgment, decree, or order entered by a court which lacks jurisdiction of the parties or of the subject matter, or lacks the inherent power to make or enter the particular order involved. State ex rel. Turner v. Briggs, 971 p.2d 581 (Wash. App. Div. 1999).

Res judicata consequences will not be applied to a void judgment which is one which, from its inception, is a complete nullity and without legal effect. Allcock v. Allcock, 437 N.E. 2d 392 (Ill. App. 3 Dist. 1982).

No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the oldwovund and once more probe its depths. And it is then as though trial and adjudication had never been. Fritts v. Krugh, 92 N.W.2d 604 (S.Ct. 1958).

A court may not render a judgment which transcends the limits of its authority, and a judgment is void if it is beyond the powers granted to the court by the law of its organization, even where the court has jurisidiction over the parties and the subject matter. Thus, if a court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void. The lack of statutory authority to make a particular order or a judgment is akin to lack of subject matter jurisdiction and is subject to collateral attack. 46 Am. Jur. 2d, Judgments Section 25, pp. 388-89.

A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court. Old Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8 (1907).

All in all, a major legal defect such as a court's lack of jurisdiction or authority or a litigant's lack of standing must be addressed by this Court and results in determination that Sahlin's judgment is void.

Appellant's Worst Case Scenerio

Even if for some unknown reason, Judge Luster's dismissal of Appellant's appeal is correct (that Appellant appealed a judgment that was not "final" for filed an appeal prior to the "final judgment" being issued), the district court still improperly dismissed

Appellant's appeal. As set forth in Spokane Structures, Inc. v. Equitable Investment, LLC, 226 P.3d 1263 (2010), Idaho Appellate Rule 17(e)(2) merely "tolls" the notice of appeal filing date under a situation such as this case, it is not a "fatal" mistake resulting in the dismissal of an appeal. In this case, the magistrate court entered an oral ruling on the change of custody petition (the newest "final order") about a week prior to entering its order and judgment relating to the Parenting Coordinator Issue. As in Spokane Structures and IAR 17(e)(2), the filing of a Notice of Appeal after a "final judgment" is rendered orally but before it is "entered" is not a basis for dismissal of an appeal.

Several custody trials have taken place in this case. As analyzed in Appellant's original brief, litigation relating to the Parenting Coordinator Issue stems from a "final order" entered in 2005 (the order appointing Sahlin). The original appeal of the Parent Coordinator Issue occurred **after** the "final judgment" (appointing Sahlin) was "entered". None of the apparent legal hurdles that resulted in the dismissal of Appellant's appeal have "come up" in the past even though the facts and law have not changed. Therefore, the order and judgment in magistrate court in February of 2012 relating to the Parenting Coordinator is either a final order by itself (and appealable) or entered after a "final judgment" (since 2012 comes after 2005) and an appeal as of right.[11] Even if this analysis is somehow not applicable in a child custody case and a subsequently filed Petition for Change of Custody changes a "final order" into an un-"final order", Appellant's appeal is only "stayed" until the "new" "final order" is entered. However, the above-analysis shows the outrageous flaws in legal reasoning that would be required to determine that the Parenting Coordinator Issue was not a "final order" on its own or appealed after a "final order" was entered.

[11] IAR 11(a)(7) & IRCP 83(a)(2).

CONCLUSION & RELIEF SOUGHT

For some unknown legally implausible reason, Respondent believes that even though case law clearly requires this court to address the multiple layers of jurisdictional "problems" with this case now, it is better to ignore the law and prolong this case. After all, Respondent knows that if this case is sent back to Kootenai County for a "determination", he will be deemed the victor – history continues to prove this assumption true. Common sense and most importantly, the law, requires this court to address the jurisdictional "problems" now and correct the injustice that has continued for almost eight (8) years. The trial court had no jurisdiction over the Parenting Coordinator Issue, Respondent has never had standing, therefore, all orders, rulings and judgments relating to the Parenting Coordinator Issue are void and must be legally determined as void at this time.

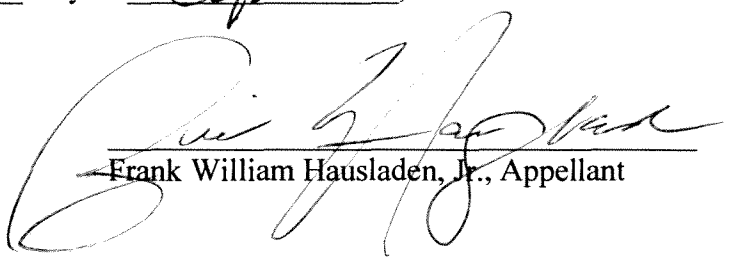
As analyzed above and in Appellant's original brief, the reasons for the district court's dismissal of Appellant's appeal are erroneous and have resulted in a mistake in law. More importantly, "The Parenting Coordinator Issue" should never had been decided within the confines of this custody case and decisions/rulings/orders/judgments related to the former Parenting Coordinator (Sahlin) following his removal are void/voidable for lack of jurisdiction (on multiple levels as analyzed above). Appellant requests this Court to rule that all orders and/or judgments entered by the magistrate court following the dismissal of the Parenting Coordinator are void and are therefore vacated.

In the alternative, Appellant requests that the district court's ORDER DISMISSING APPEAL dated 6/14/12 (and entered 6/20/12) (including the two

Conditional Orders of Dismissal on which said Order of Dismissal is based) be vacated and Appellant be allowed to go forward with the appeal in district court.

Appellant requests any and all costs and attorney fees allowed pursuant to I.A.R. 40 and I.A.R. 41.

Dated this 22ND day of April, 2013.

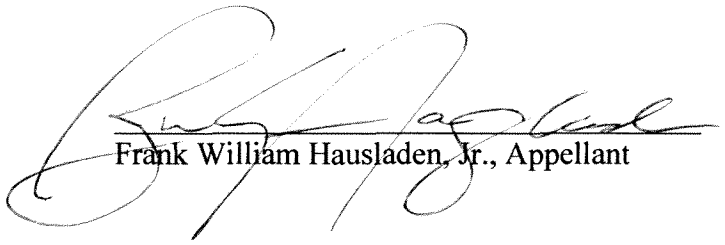


Frank William Hausladen, Jr., Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April, 2013, I served a true and correct copy of the foregoing on the individuals listed below by U.S. Mail, postage prepaid:

John Sahlin, Respondent
P.O. Box 194
Coeur d'Alene, Id 83816



Frank William Hausladen, Jr., Appellant