

1-2-2014

# Donoval v. City of Sun Valley Respondent's Brief 2 Dckt. 40853

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IN THE SUPREME COURT OF THE STATE OF IDAHO

JAMES R. DONOVAL,

Plaintiff/Appellant/Cross-Respondent

v.

THE CITY OF SUN VALLEY, IDAHO, an  
Idaho municipal corporation

Defendant/Respondent/Cross-Appellant

Case No: 40853

District Court Case No: CV12-600

**RESPONDENT'S/CROSS-  
APPELLANT'S REPLY BRIEF IN  
SUPPORT OF CROSS-APPEAL**

**APPEALED FROM THE DISTRICT COURT OF THE  
FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF BLAINE**

The Honorable Jonathan P. Brody, presiding

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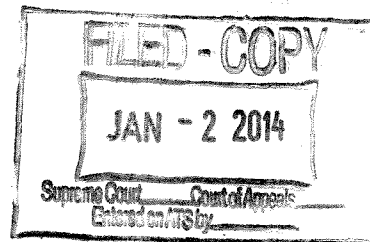


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## I. INTRODUCTION

Sun Valley previously argued that the District Court correctly ruled that Sun Valley complied with Donoval's public records requests. Nonetheless, the District Court erred in finding that Sun Valley was not entitled to its costs and attorney fees, under Idaho Code § 9-344(2), because the court incorrectly focused on whether the underlying basis of the action was frivolous. (*See* R. Vol. 3, p. 673.) The relevant issue under the statute, however, is whether the action was frivolously pursued. I.C. § 9-344(2). The record shows an ample basis to award costs and fees to Sun Valley under the correct standard and the matter should therefore be remanded for further proceedings related to costs and attorney fees.

In response briefing, Donoval ignores the specific issue of whether the District Court applied the correct legal standard. Rather, he merely counters that Sun Valley is not entitled to its costs and attorney fees because of its "own substantial errors and inappropriate actions". (Appellant's Br. at 41-42.) As shown below, however, this contention has no merit.

## II. ARGUMENT

### A. Donoval mischaracterizes the District Court's ruling.

Donoval states that the District Court found that "Sun Valley's own record keeping transgressions were a large, if not the main, reason for why Mr. Donoval was not provided the documents he sought, when he sought them." (Appellant's Reply Br. at 41.) This statement mischaracterizes the District Court's actual language. The court stated:

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It is unclear from the record whether the initial problems with providing all responsive documents was due to poor record-keeping on the part of [Sun Valley], ambiguous, confusing, or contradictory requests by [Donoval], or a combination of both.

(R. Vol. 3, p. 672.) The District Court went on to explain that, regardless of any potential initial confusion and consequent delays, the record showed Sun Valley:

. . . explained to Donoval that it copied all responsive documents it had in its possession. This Court cannot compel the Defendant to make available documents it does not have, nor does the Idaho Public Records Law give this Court the authority to order the Defendant to explain what happened to those records. This would go beyond the explicit remedy provided in I.C. 9-343(1).

(R. Vol. 3, pp. 672-673.) When addressing Sun Valley's motion for fees and costs, the court explained that the underlying basis of Donoval's action was not frivolous because "there was some evidence of poor record-keeping on the part of [Sun Valley] . . . ." (R. Vol. 3, p. 673.)

The District Court's actual words are far from Donoval's characterization. Plainly, the court did not place the lion's share of blame on Sun Valley, as Donoval implies. Further, the District Court's statements relate to Donoval's basis for bringing the lawsuit, not its ongoing pursuit. Donoval's mis-characterization of the court's language in an effort to blame Sun Valley and show that he acted reasonably in bringing and pursuing this lawsuit is disingenuous.

More so, Donoval's argument does nothing to address whether the District Court applied the correct legal standard, which is the central issue here. In fact, it underscores the court's error. Even assuming there was "some poor record keeping" by Sun Valley (or as the court also noted,

"ambiguous, confusing, or contradictory requests" by Donoval) that might have explained the underlying basis for the lawsuit, that has no bearing on why Donoval relentlessly pursued the case against Sun Valley even after:

- Adam King informed Donoval on August 7, 2012, that the "yellow sheets" provided are the only ones that exist and that originals were not in Sun Valley's possession due to an outside criminal investigation. (R. Vol. 1, pp. 25-251);
- King again informed Donoval on August 9 that Sun Valley did not have more documents in its possession. (R. Vol. 1, p. 115);
- the Attorney General's Office confirmed to Donoval on October 4 that it had original documents from Sun Valley, but had transferred them to the Blaine County Prosecutor's Office for a criminal investigation, which resulted in Donoval dismissing the Attorney General's Office. (R. Vol. 2, pp. 284-286, 263-268);
- the Blaine County Prosecutor's Office further confirmed to Donoval on October 12 that it had the original documents but would not release them due to a pending criminal investigation. (R. Vol. 2, p. 386);
- Donoval was allowed to inspect the original documents (the initial purpose of his lawsuit) on December 31, once the criminal investigation was complete, (Tr. pp. 14-15, 19:3-10, 22:6-13, 24:8-12, 25:18 - 26:9), which resulted in Donoval dismissing Blaine County Prosecutor's Office from the lawsuit. (R. Vol. 3, pp. 634-636, 665.)

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Each one of these dates is a clear point during the course of Donoval's pursuit of this action where his further pursuit of the documents via a Public Records Law action against Sun Valley was frivolous. This is so especially when considering that Donoval voluntarily dismissed other parties who had possession of the documents, one of whom (Blaine County Prosecutor's Office) actually provided Donoval the documents he sought. This conduct by Donoval, in addition to his conduct in this appeal, demonstrates his frivolous pursuit of this action.<sup>1</sup>

Donoval's argument also has no bearing on the fact that by the time of the District Court's decision, as the court found, "nearly all of the Plaintiff's requests for relief either cannot be granted by this Court or are now moot. . . ." (R. Vol. 3, p. 673) (emphasis added). The District Court's statement itself strongly implies that had it applied the correct standard, the court would have found that costs and fees were appropriate, as the pursuit of claims for relief that cannot be granted and/or moot claims is, by definition, frivolous.

**B. Donoval's personal belief that Sun Valley officials engaged in criminal misconduct does not vindicate his frivolous pursuit of this action.**

Donoval also argues that Sun Valley is not entitled to its costs and fees because he personally "enumerated a multitude of 'bad faith' actions on the part of Sun Valley which makes Sun Valley's continued pursuit of fees and costs to the Supreme Court frivolous in itself." (Appellant's Response Br. at 41.) Specifically, Donoval continues to make criminal allegations that some unidentified Sun

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<sup>1</sup>Specifically, as discussed further below, Donoval objected to Sun Valley's motion to augment the record and then moved to strike Sun Valley's appellate brief. *See infra*, § C.



Valley official destroyed and forged public records and therefore he had a right to pursue this lawsuit to find out what happened to those documents. (*Id.* at 41-42.)

Yet, as the District Court ruled, under the plain language of the Idaho Public Records Law, the Court does not have the authority to order Sun Valley to explain what happened to those records. (R. Vol. 3, p. 673.) Rather, as repeated numerous times below and in this appeal, the sole remedy under the Public Records Law is to mandate disclosure of improperly withheld documents. I.C. § 9-343(1). The statute also explicitly states what the court is to consider in ruling: "The court shall decide the case after examining the pleadings filed by the parties and such oral arguments and additional evidence as the court may allow." I.C. § 9-344(1) (emphasis added).

Despite the plain and unambiguous language of the statute, Donoval still maintains that he reasonably pursued this action, in that Sun Valley was required to explain itself against his criminal allegations, and that Sun Valley was required to do so through sworn-to statements, even though it is apparent that neither of these purported "requirements" exist in the Public Records Law. Had the District Court not been improperly focused on whether the underlying basis of Donoval's action was frivolous, Donoval's patently incorrect reading of the statute would have been relevant to determining whether he frivolously pursued this action.

**C. Donoval's conduct in this appeal further demonstrates his frivolous pursuit of this action.**

Donoval has made every attempt in this appeal to obfuscate the appellate record. First, in his Notice of Appeal, even though he requested all of the other relevant matters for the appeal, he conveniently omitted a request for the transcript of the January 15, 2013 hearing. This was the mandatory hearing required under Idaho Code § 9-343(1) and, significantly, where Donoval conceded he had seen the existing documents he was seeking. (Tr. pp. 14-15, 19:3-10, 22:6-13, 24:8-12, 25:18 - 26:9.)

Second, after Sun Valley moved to augment the record to include the statutorily required January 15 hearing transcript, Donoval vehemently opposed the motion by filing an eight-page objection, frivolously arguing primarily that the transcript is irrelevant because the hearing did not involve sworn testimony. (*See Appellant's Objection to Motion to Augment.*) Sun Valley's motion to augment was granted. (*Order to Augment the Record and Suspend the Briefing Schedule.*)

Third, Donoval attempted to strike Sun Valley's entire Respondent's Brief primarily for the same frivolous reason as his objection to the motion to augment, i.e., because it referred to matters in the record but which were not necessarily sworn-to. (*See Appellant's Motion to Strike Respondent's Appellate Brief.*<sup>2</sup>) This necessitated further review, analysis and response by Sun

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<sup>2</sup>Note that there were other, just as frivolous arguments made in support of the motion to strike, but the primary argument appears to be Sun Valley's reliance on matters in the record that were not necessarily sworn-to.

Valley. (*See Sun Valley's Opposition to Motion to Strike.*) Notably, Donoval also re-argued his points in support of his motion to strike in his appellate reply brief, thus showing the motion to strike was wholly unnecessary. (*See Appellant's Reply Br. At 3-23.*)

Once Sun Valley filed its opposition, Donoval then filed a motion to file a reply in support of his motion to strike, as well as the reply brief itself, even though no such briefing is expressly authorized by the appellate rules. (December 2 Motion to File Reply Brief and Memorandum in Support.) This again required Sun Valley to expend additional resources reviewing and analyzing that briefing (though Sun Valley did not ultimately file anything further). Of course, both of Donoval's motions were denied. (December 12, 2013 Order Denying Motions).

Overall, Donoval has devoted approximately 50 pages of additional briefing<sup>3</sup> on these frivolous matters, aside from his opening and reply brief, as well as about 23 pages in his reply brief re-arguing those same matters. In doing so, he has wasted everyone's time and money, including the judiciary's.

### III. CONCLUSION

As shown above and in Sun Valley's opening brief, the District Court erred in denying Sun Valley's motion for costs and attorney fees under Idaho Code § 9-344(2). There is ample evidence in the record from which the District Court could have found in favor of Sun Valley had it applied

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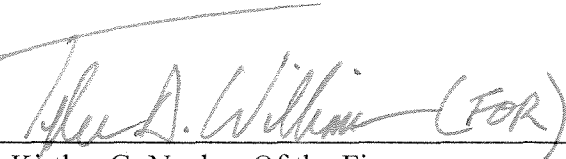
<sup>3</sup>Consisting of an eight page objection to Sun Valley's motion to augment, a five page motion to strike Respondent's brief, an eighteen page memorandum in support, followed by a three page motion to file a reply and a sixteen page reply brief.

the correct legal standard. Accordingly, this matter should be remanded for further proceedings for the award to Sun Valley of its costs and attorney fees for defending this frivolously pursued claim at the trial court. Sun Valley should also be awarded its fees and costs on appeal.<sup>4</sup>

DATED THIS 2<sup>nd</sup> day of January, 2014.

NAYLOR & HALES, P.C.

By

 (FOR)  
Kirtlan G. Naylor, Of the Firm  
Attorneys for Defendant/Respondent/Cross-Appellant

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<sup>4</sup>Sun Valley has requested its costs and attorney fees in responding to the motion to strike under Idaho Code § 12-117, regardless how the appeal and cross-appeal are resolved. (*See* Sun Valley's Opposition to Motion to Strike Respondent's Brief at 3, 7.)

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have on this 2<sup>nd</sup> day of January, 2014, caused a true and correct copy of the attached **SUN VALLEY'S REPLY BRIEF** postage prepaid, to the following parties:

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