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Bell v. Eagy Appellant's Brief Dckt. 41639

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IN THE SUPREME COURT OF THE STATE OF IDAHO

BRITANIE BELL,
Plaintiff/Respondent,

vs.

MICHAEL EAGY,
Defendant/Appellant.

Supreme Court Case No. 41639

Ada County No.: CV-DR-2011-12381

APPELLANT’S OPENING BRIEF

APPELLANT’S OPENING BRIEF

Appeal From The District Court Of The Fourth Judicial District Of the State Of Idaho, In
And For The County Of Ada, Siting As Appellate Court for the Magistrate Division Of The
Fourth Judicial District

The Honorable Michael McLaughlin, Senior District Judge, Presiding (the Honorable Judge
David E. Day Presiding In the Magistrate Court

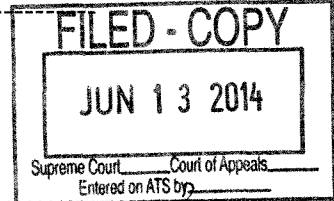


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STATEMENT OF THE CASE

This case involves contempt and summary judgment. The relevant portion of this case began when the Respondent herein, Britanie Bell, filed a Motion for Nonsummary Finding of Contempt and Entry of Judgment. Her motion was supported by the Affidavit of Britanie Bell in Support of Motion for Nonsummary Finding of Contempt and Entry of Judgment.

The parties have never been married but have four children together. The Court entered a Stipulated Decree Establishing Custody, Visitation and Child Support (“Stipulated Decree”) on April 10, 2012. The Stipulated Decree establishes a custody schedule between the parties and orders Mr. Eagy to pay support for the minor children. The Stipulated Decree also the divides work-related daycare costs and health care costs *pro rata* between the parties. As to health care and daycare costs, the Stipulated Decree also establishes a procedure for processing those costs between the parties. In her contempt action, Ms. Bell asserted Mr. Eagy had violated the decree by failing to pay health care costs and work-related daycare costs. Mr. Eagy responds that Ms. Bell did not do those acts necessary to establish an obligation on his part. That is, she did not satisfy the conditions precedent that are necessary to create an obligation.

As to health care costs, the Stipulated Decree provides:

14. PROCESSING OF HEALTHCARE (SIC) COSTS: If either party incurs any health care expenses for the benefit of the minor children, then such party shall notify the other as soon as possible and shall provide the other with a copy of any health care bill so incurred, immediately upon the receipt of such bill. The bill shall then be submitted without delay for processing under any health or other insurance plan that may be applicable, by the party providing such insurance coverage. The party submitting the bills for payment by insurance shall then be required to provide the other party with a copy of any correspondence from the insurer immediately and without delay, setting forth the action taken by the insurer in processing the claim. Each party shall then have fifteen (15) days in which to either pay in full directly to the health care provider any unpaid expenses to the extent insurance does not cover such charges, or to make satisfactory arrangements with the health care provider for pay of the percentage allocated to such party. . .

For the payment of work-related daycare costs, the decree provides:

15. CHILDCARE: Any work-related childcare expenses incurred for the benefit of the minor children of the party shall be divided between the parties in proportion to the income Each party shall make direct payment to the childcare provider and hold the other party harmless from liability for such childcare charges in excess of the other party's share of such expenses. If either party fails to comply with this provision, and the other party suffers financial loss or other arrangements for childcare have to be made as a result, then supplemental contempt proceedings may be initiated and all court costs and attorney fees thereby incurred shall be awarded to the prevailing party in such enforcement proceedings.

(Stipulated Decree).

In her motion, Ms. Bell asserted nine counts of contempt. Eight counts alleges Mr. Eagy failed to pay work-related child care costs. (Motion for Nonsummary Finding of Contempt and Entry of Judgment, Counts I-VIII). One count alleged he had failed to pay health care costs (Count IX). In her motion Ms. Bell asked for both civil and criminal sanctions. She also prayed for the entry of a judgment for the amounts she claimed were by Mr. Eagy.

In response, Mr. Eagy filed a Motion for Summary Judgment. In his supporting affidavit, Mr. Eagy made several factual assertions and clarified certain factual assertions that were ambiguous in the motion and affidavit filed by Ms. Bell.

Ms. Bell next filed two additional affidavits that are relevant to his appeal: The Affidavit of Britanie Bell, dated April 16, 2013 and the Affidavit of Jenny Shepherd also dated April 16, 2013. Those affidavits did not refute the specific, germane factual assertions by Mr. Eagy. Instead, Ms. Bell's affidavits and the affidavit of Jenny Shepherd made conclusory claims and ignored those facts established by Mr. Eagy which established his defense.

At the hearing on summary judgment, the following factual assertions in Mr. Eagy's affidavit were unrefuted. The original paragraph numbers are retained.

2. Prior to [emphasis added] the filing of the Plaintiff's Motion and Affidavit for Contempt, I was never presented any bill or receipt for child care expenses. I have never been asked to pay any child care provider directly.
3. Although the Plaintiff has made demands for payment that she claims is for child care, I have not seen any invoice or receipt.

4. In addition, I understand that the stipulated decree awards us joint legal custody. The Plaintiff has never involved me in any discussion regarding the daycare to be used for our children. I believe, although I am not entirely certain, that the person who occasionally provides care for our minor children is a friend of the Plaintiff.
5. Prior to the Plaintiff's filing of the Motion and Affidavit for Contempt, I have also never been asked to pay a healthcare provider directly. Again, the Plaintiff has made demands to me that are supported by a spreadsheet she emails to me. In email correspondence with the Plaintiff I have asked that she use the process identified in our stipulated decree for the payment of both daycare costs and healthcare costs

Although Ms. Bell, in her second affidavit, states that she has provided Mr. Eagy documentation of the child care costs. She fails to mention the date that she provided documentation. Of course, as will be discussed herein, if there are assertions by Ms. Bell in her second affidavit that, if unrefuted would save the contempt from summary judgment or dismissal for failing to state a cause of action, those statements would have had to have been contained in the initiating affidavit.

In granting summary judgment, Judge Day found that the initial Affidavit of Britanie Bell in Support of Contempt and the affidavits filed in response to Mr. Eagy's Motion for Summary Judgment failed to articulate or assert facts that would support a prima facie case for contempt. Judge Day also held that the Plaintiff was not entitled to a judgment for money damages. It has never been entirely clear from the Plaintiff's pleadings what she believes to be the basis for a money judgment. In her initial Motion for Nonsummary Finding of Contempt and Entry of Judgment, the Plaintiff appears to be asking that the Court enter a judgment as a remedy for the contempt. In a subsequent briefing, it would appear that the Plaintiff believes she is entitled to judgment even if she has failed to establish a contempt. In either event, Judge Day found that the Plaintiff had not established a basis for entry of a judgment against Mr. Eagy.

At the hearing on summary judgment, Ms. Bell's counsel conceded that the affidavits filed by Ms. Bell did not state that Ms. Bell had complied with the procedure described above as they related to health care costs. When asked by Judge Day to "pick any expense" and step through how the expense was processed under the decree, counsel conceded that "I did not articulate it in that speci – specificity." (Motion Hearing Transcript, April 30, 2013, page 21-22.)

Judge Day found that Ms. Bell's initiating affidavit did not allege facts which would constitute a contempt. (Motion Hearing Transcript, April 30, 2013, page 22.). Judge Day found that the claimed health care contempt was deficient in that it did not allege the specific process in the decree had been followed, and the Ms. Bell essentially conceded that point in the hearing before Judge Day.

Judge Day also found that the contempts alleging a violation for nonpayment of childcare costs failed to allege facts that would be necessary for contempt. Specifically, the affidavit in support of contempt failed to allege that Mr. Eagy had failed to pay the provider and that the decree did not allow one party to incur the expense and demand reimbursement.

Finally Judge Day held that a demand for a money judgment was not an available remedy in a contempt proceeding.

On appeal to District Court, Judge Michael McLaughlin, Senior District Judge, interpreted the provision of the decree dividing health care costs in the same manner as Judge Day and, therefore, affirmed that portion of the Judge Day's decision.

On the issue of daycare costs, however, Judge McLaughlin reversed. Judge McLaughlin found that the Stipulated Decree was unambiguous. Judge McLaughlin then cited the Affidavit of Jenny Shepherd and the Affidavit of Britanie Bell filed after Mr. Eagy filed his Motion for Summary Judgment as grounds for a defense to the summary judgment. Judge McLaughlin did not address the fact that the initiating affidavit on contempt did not contain all the facts assertions that would be necessary to establish contempt.

ARGUMENT

I. STANDARD OF REVIEW

a. Review of the District Court In Its Appellate Capacity Is An Independent Review

When the Court reviews a decision of the district court in its appellate capacity, the court reviews the magistrate's decision independently of the district court's decision. The Court of Appeals stated in Grecian v. Grecian, 140 Idaho 601 (2004):

In reviewing a decision of the district court rendered in its appellate capacity, we review the record of the magistrate court independently of, but with due regard for, the district court's decision. Worzala v. Worzala, 128 Idaho 408, 411, 913 P.2d 1178, 1181 (1996); McAffee v. McAfee, 132 Idaho 281, 284, 971 P.2d 734, 737 (Ct.App.1999).

Id at 602.

b. The Magistrate's Interpretation Of A Decree Is To Be Given Deference.

The issue before Judge Day required the interpretation of the stipulated decree. "A magistrate's interpretation of a divorce decree will be upheld on review if it is supported by substantial and competent evidence." Grecian v. Grecian, 140 Idaho 601 (App. 2004) citing Ireland v. Ireland, 123 Idaho 955, 958, 855 P.2d 40, 43 (1993).

Whether or not an affidavit initiating contempt is adequate to vest the court with jurisdiction is a question of law. In a case that is procedurally similar to this case, the Court of Appeal stated:

On review of a decision of the district court, rendered in its appellate capacity, we examine the record of the trial court independently of, but with due regard for, the district court's intermediate appellate decision. Hentges v. Hentges, 115 Idaho 192, 194, 765 P.2d 1094, 1096 (Ct.App.1988).

Muthersbaugh v Neumann, 133 Idaho 677 (1999) at 679.

The same court addressed the requirements for an initiating affidavit on contempt.

Idaho Code Section 7-603 provides that in the case of indirect contempt "an affidavit shall be presented to the court or judge of the facts constituting the contempt." The affidavit on which an indirect contempt proceeding is based constitutes the complaint, and its function is to apprise the alleged contemnor of the particular facts of which he or she is accused so that he or she may meet such accusations at the hearing. Jones, 91 Idaho at 581, 428 P.2d at 500. In a case of indirect contempt, when an affidavit of the facts constituting the contempt is required by statute, the court presiding over the contempt hearing acquires no jurisdiction to proceed until a sufficient affidavit has been presented. Bandelin v. Quinlan, 94 Idaho 858, 860, 499 P.2d 557, 559 (1972). Since contempt proceedings are quasi-criminal in nature, no intendments or presumptions may be indulged to aid the sufficiency of the affidavit. *Id*

Id at 679.

II.

THE UNDISPUTED FACTS ENTITLE MR. EAGY TO SUMMARY JUDGEMENT

a. The Affidavit Initiating Contempt Does Not Allege Facts Which Would Constitute Contempt.

As stated above, for the trial court to have jurisdiction in a contempt action, the initiating affidavit—the charging document—must allege those facts which if prove true constitute a contempt. This case began prior to adoption of the local Family Law Rules of Procedure, so Rule 75 of the Idaho Rules of Civil Procedure. The relevant portion of the rule provides:

(2) *Contempt Not Initiated by a Judge-Motion and Affidavit.* All contempt proceedings, except those initiated by a judge as provided above, must be commenced by a motion and affidavit. Contempt proceedings shall not be initiated by an order to show cause.

(3) *Factual Allegations.* The written charge of contempt or affidavit must allege the specific facts constituting the alleged contempt. Each instance of alleged contempt, if there is more than one, must be set forth separately. If the alleged contempt is the violation of a court order, the written charge or affidavit must allege that either the respondent or the respondent's attorney was served with a copy of the order or had actual knowledge of it. The written charge or affidavit need not allege facts showing that the respondent's failure to comply with the court order was willful.

In this case, the original affidavit Ms. Bell failed to allege facts which would constitute a contempt.

Much of the following argument was advanced in the Memorandum in Support of Motion For Summary Judgment.

1. Daycare Costs. Plaintiff alleges that certain daycare costs have been incurred. She then states: “Defendant has been informed of the charges for daycare . . . by emails sent to the Defendant informing him of the charges and his portion thereof.” The communication as alleged by the Plaintiff is only between the Plaintiff and Defendant. In the communication, Plaintiff never alleges that she provided an invoice, billing statement, or any other statement from a daycare provider to the Defendant. She does not allege that any daycare provider communicated the cost of daycare to the Defendant.

The decree in this case is somewhat unusual. The decree which the parties negotiated with the assistance of counsel, states that “Each party shall make direct payment to the childcare provider and hold the other party harmless from liability for such childcare charges in excess of the other party’s share of such expenses.”

The Plaintiff does not allege that Defendant has failed to pay a childcare provider directly. Nor does she allege any collection actions against her and, consequently, the need for the Defendant to hold her harmless. In the emails she attaches to her affidavit, she is clearly demanding to be reimbursed. She has apparently ignored the terms of the Stipulated Decree wherein she is required to have the Defendant pay the childcare directly. She does not even provide receipts. She provides only a spreadsheet of her creation and a demand for payment.

The provisions of the Stipulated Decree that govern payment of daycare costs is crafted in such manner as to require each party have a contractual relationship with the daycare provider. It, therefore, insures each party is involved in the selection of the daycare provider. Ms. Bell ignored that provision of the decree, selected and paid the daycare provider, and then sought reimbursement. This is the sort of action the decree was intended to avoid.

As Mr. Eagy said in his response affidavit, Ms. Shepherd is a friend of Ms. Bell's. He was never allowed to be involved in the selection of the daycare provider. (Aff of Defendant in Support of Motion For Summary Judgment at page 2.) Not only is Mr. Eagy joint legal custodian of the children, the decree requires he have a contractual relationship with the daycare provider. If he then breaches that contract and Ms. Bell is harmed financially, Ms. Bell can bring a contempt against Mr. Eagy.

2. Medical Expenses. Plaintiff again ignored the terms of the decree she claims the Defendant has violated. In that portion of the Stipulated Decree governing division of health care expenses, the decree delineates a process for handling medical expenses. The decree requires that a party who incurs a medical expense, first submit the bill for the expense to health insurance carrier. That party then "shall be required to provide the other party a copy of any correspondence for the insurer immediately without delay, setting forth the action taken by the insurer in processing the claim."

Only after a claim has been processed and correspondence from the insurer provided does the requirement for payment arise. Again, the payment is to be made "directly to the health care provider." In the alternative, the parent who owes money can make "arrangements with the health care provider for the payment of the percentage allocated to each party."

There is a hold harmless provision for medical expenses, but there is no indemnification provision.

In her affidavit, the Plaintiff alleges that the Defendant has been informed that the Plaintiff has incurred certain expenses. She then alleges—by incorporation of her correspondence to the Defendant--that Defendant has refused to provide her “reimbursement” for medical expenses. The Plaintiff has again ignored the protocol required for processing claims for medical expenses. Plaintiff also again fails to provide the Defendant with receipts for all the claimed expenses. (Aff of Defendant at 2).

b. The Affidavits Filed By Ms. Bell In Response To The Motion For Summary Judgment Do Not Cure The Deficiencies Of The Original Affidavit.

The Appellant can find no rule of case which would allow a deficient initiating affidavit to be cured by the filing of a supplemental affidavit on contempt. Even if such authority exists, however, the additional affidavits do not create a genuine issue of material fact. Those affidavits are somewhat evasive in that the assertions are conclusory. The material facts remain undisputed. Mr. Eagy was never asked to pay a health care provider directly, was never provided a bill and explanation of benefits, and never contracted to pay Ms. Bell’s friend to provide daycare. The only material fact established by the Affidavit of Jenny Shepherd is that Ms. Bell may be guilty of perjury in her initiating affidavit. In Ms. Bell’s first affidavit (AFFIDAVIT OF BRITANIE BELL IN SUPPORT OF MOTION FOR NONSUMMARY FINDIN OF CONTEMPT) she asserts that she has paid all the daycare for the children. In emails attached to her affidavit, Ms. Bell claims to have paid over \$2,000.00. In the body of her affidavit, she claims \$2,084.00 has been incurred for daycare.

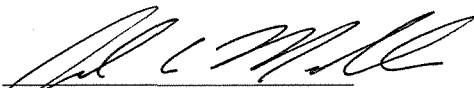
In the AFFIDAVIT OF JENNY SHEPHERD, we see that Ms. Bell has only paid one-half of the amount claimed. The party who is owed the alleged debt is Ms. Shepherd, the friend of Ms. Bell and the wife of the attorney pursuing the claim.

III. CONCLUSION

Judge Day saw this case for what is was. We have a decree which requires both parties to have relationship with a daycare provider. If one of the parties then breaches that agreement, the other can enforce payment by contempt. The decree is unusual, but it was intended to avoid the sort of circumstance now facing Mr. Eagy. A friend of Ms. Bell's claiming she is owed money by Mr. Eagy even though he never contracted with her. Ms. Bell demands reimbursement by falsely claiming she paid the expense. When Mr. Eagy refuses the demand, Ms. Shepherd has her husband file contempt against Mr. Eagy. Judge Day was correct in his interpretation of the decree and his analysis of the pleadings on this contempt action, and his decision should be affirmed.

DATED this 13th day of June, 2014.

MILLER & HARR
Attorneys for the Defendant/Appellant

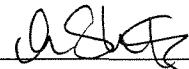
By: 
John A. Miller, of the firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13 day of June, 2014, I caused to be served a true and correct copy of the foregoing document by the method and address indicated below to the following:

Ron R. Shepherd
R. SHEPHERD LAW, PLLC
850 E. Franklin Rd. Ste. 404
Meridian, ID 83642

- U.S. MAIL
- HAND DELIVERED
- FACSIMILE: (208) 887-3443
- OVERNIGHT MAIL



Legal Assistant