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## Bell v. Eagy Respondent's Brief Dckt. 41639

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IN THE SUPREME COURT OF THE STATE OF IDAHO

BRITANIE BELL,

Plaintiff-Respondent,

v.

MICHAEL EAGY,

Defendant-Appellant.

---

**RESPONDENT'S BRIEF**

Appeal from the District Court of the Fourth Judicial District for Ada County.

Honorable Michael McLaughlin, District Judge presiding.

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Supreme Court No. 411639.

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**In the Supreme Court of the State of Idaho**

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BRITANIE BELL,	)	
	)	RESPONDENT’S BRIEF
Plaintiff-Respondent,	)	
	)	Supreme Court Docket No. 41639-2013
v.	)	Ada County Case No. CV-DR-2011-12381
	)	
MICHAEL EAGY,	)	
	)	
Defendant-Appellant.	)	
	)	
	)	

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The above-named Plaintiff/Respondent, Britanie Bell, by and through her counsel of record, Ron R. Shepherd of the law firm of R. Shepherd Law, PLLC, submits the following Respondent’s Brief.

**STATEMENT OF THE CASE**

Plaintiff-Respondent, Britanie Bell (“Bell”), and Defendant-Appellant, Michael Eagy (“Eagy”), conceived four daughters together but were never married. Clerk’s Record on Appeal p. 36, L. 1-4. In June 2011, Bell filed a Complaint to Establish Custody, Visitation and Child Support. R. pp. 9-20. The parties ultimately came to terms on all issues regarding custody, visitation and child support, and entered a stipulation that led to the entry of a Stipulated Decree Establishing Custody, Visitation and Child Support (“Stipulated Decree”), which was entered on April 10, 2012. R. pp. 35-44.

Paragraph 15 of the Stipulated Decree requires the parties to share work-related childcare expenses with each party paying 50%. Specifically, the Stipulated Decree reads as follows:

CHILDCARE: Any work related childcare expenses incurred for the benefit of the minor children of the parties shall be divided between the parties in proportion to their income, with the Plaintiff paying 50% and the Defendant paying 50%. Each party shall make direct payment to the childcare provider and hold the other 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.

R. pp. 42-43.

The Stipulated Decree awarded Bell with primary physical custody of the parties' four minor children. R. p. 36 at ¶ 3. Bell was required to place the minor children in daycare while Bell was at work. R. pp. 51, 52, 54-61. No time prior to the contempt action filed in the Magistrate Court did Eagy ever pay any work-related child care or medical cost to Bell or to the respective child care or medical providers directly. R. pp. 50-51.

Bell requested Eagy to pay his pro rata portion of work-related child care on several occasions but Eagy refused. R. pp. 50 at ¶ 8, 54-61. After Bell incurred several thousand dollars of work-related child care costs and medical expenses for the minor children and Eagy refused to pay his share, Bell sought relief from the Court by filing a contempt action on January 31, 2013. R. pp. 46-66. Bell's contempt action sought both criminal and civil sanctions and a money judgment for the amount due from Eagy to Bell. R. pp. 47-48.

On March 19, 2013, Eagy filed a motion for summary judgment seeking dismissal of the contempt action. R. pp. 75-76. Eagy argued to the Magistrate Court that Bell had not sufficiently

pled the elements of contempt. R. p. 84. Eagy's motion for summary judgment came on for hearing on April 30, 2013. The Honorable Judge Day presided and entered his decision orally on the record. The Magistrate Court granted Eagy's motion for summary judgment and subsequently entered an order dismissing the action. R. pp. 138-139. Bell timely filed a notice of appeal in the District Court. R. pp. 140-143.

Both parties filed appellate briefs in the District Court appeal. R. pp. 146-158; 159-167. Oral argument was held on October 10, 2013, and the District Court entered its Memorandum Decision and Order on October 16, 2013. R. pp. 174-185. The District Court reversed in part and affirmed in part the Magistrate Court's decision. Specifically, the District Court reversed the Magistrate Court's decision that Bell had no remedy under the Stipulated Decree in the event Eagy failed to pay his portion of the parties' childcare obligation. R. p. 179. The District Court also reversed the Magistrate Court's decision that Bell could not, under any circumstances, obtain a money judgment in the amount of child care costs owed under the Stipulated Decree. R. pp. 182-184. The District Court affirmed the Magistrate Court's decision related to Bell's contempt action for Eagy's failure to pay his share of medical expenses incurred for the benefit of the parties' minor children. R. p. 136. Bell did not file a cross-appeal to challenge the District Court's decision on this issue. Additionally, the issue of medical expense reimbursement is moot because (1) after the contempt action was filed, Eagy paid the amount owed for medical reimbursement; and (2) the parties have stipulated to a modified decree that changed the language related to reimbursement for medical expenses. As such, Bell will not address the issue of medical reimbursement further.

Left at issue in this case is whether Eagy may be held responsible through contempt proceedings for his failure to pay his share of work-related child care expenses, totaling the amount of \$2,084.00 over an eight-month period (R. p. 50), pursuant to the Stipulated Decree to which Eagy agreed. R. pp. 35-44.

### **ISSUES PRESENTED**

Eagy has failed to clearly state the issues presented, as required under Idaho Appellate Rule 35(a)(4). Bell, therefore, presents the following additional or other issues presented as contemplated under I.A.R. 35(b)(4).

1. Whether Eagy has waived his claim that the District Court erred where he failed to state in his brief the issue presented on appeal in short and concise terms, as required under I.A.R. 35(a)(4).

2. Whether Eagy waived appellate review of any alleged errors made by the District Court where (a) Eagy has failed to support his legal arguments with statutory or case law authority; (b) Eagy has failed to cite this Court to support in the record for his allegations of fact made in his brief; and (c) Eagy has failed to include in the record a transcript of a hearing held in the magistrate court upon which Eagy heavily relies in his argument.

3. Whether the District Court's decision should be affirmed where Eagy has failed to affirmatively show errors allegedly made by the District Court.

4. Whether Bell is entitled to an award of costs and attorney fees on appeal.

### **STANDARD OF REVIEW**

For nearly two decades the Idaho Supreme Court has repeated that, when this Court is reviewing a decision of the district court acting in its appellate capacity, this Court will review the record and the magistrate court's decision independently of, but with due regard for, the district court's decision. *See Losser v. Bradstreet*, 145 Idaho 670, 672, 183 P.3d 758, 760, (2008)



(citing *Carter v. Carter*, 143 Idaho 373, 378, 146 P.3d 639, 644 (2006)). This standard, however, has been clarified. The *Losser* Court stated as follows regarding this standard:

Thus, for nearly two decades, we have effectively ignored the structure of our appellate rules and issued opinions in which we have directly addressed the decision of the magistrate. Indeed, we have done so recently. *See Barmore v. Perrone*, 145 Idaho 340, 179 P.3d 303 (2008), 2008 Ida. LEXIS 25, 2008 WL 400347 (Feb. 15, 2008) (vacating the magistrate court's grant of partial summary judgment). We have determined that this practice represents an erroneous conflation of our standard of appellate review with the structure of our appellate rules. In this decision, and henceforth, our decisions will reflect our application of the Idaho Appellate Rules.

*Id.*

*Losser* and its progeny make it clear that it is no longer proper for the Supreme Court to review magistrate court decisions directly, effectively bypassing the district court's intermediate review of the magistrate court's decision. When the Supreme Court or Court of Appeals is reviewing a district court's decision rendered in its appellate capacity, the Supreme Court or Court of Appeals is to review the district court's decision and affirm or reverse such a decision rather than reviewing the magistrate court's decision directly. *See State v. Doe*, 322 P.3d 976, 977-978, 2014 WL 527211 (Idaho 2014); *Bailey v. Bailey*, 153 Idaho 526, 529, 284 P.3d 970, 973 (2012) (holding that this Court does not review the magistrate court's decision where it is reviewing a district court's decision made in its intermediate appellate capacity); *State v. Korn*, 148 Idaho 413, 415, 224 P.3d 480, 482 n.1 (2009) (“[The Supreme Court is] procedurally bound to affirm or reverse the decisions of the district court.”).

In his opening brief, Eagy misstates the legal standard to be applied in this appeal as did the appellant in *Korn, supra*. 148 Idaho at 415, 224 P.3d at 482, n.1. As a result, Eagy has predominantly focused his argument on the decision of the Magistrate Court rather than on the decision of the District Court, an error that is fatal to Eagy’s appeal.

### ARGUMENT

1. **Eagy Waived Any Claim That The District Court Erred By Failing To Provide A Short And Concise Statement Of The Issues Presented On Appeal As Required Under I.A.R. 35(a)(4).**

I.A.R. 35(a)(4) states that the appellant’s brief “shall contain”, among other things, “a list of the issues presented on appeal, expressed in terms and circumstances of the case but without unnecessary detail.” The rule further states that the statement should be “short and concise, and should not be repetitious.” This rule has been interpreted to mean “that an appellant must identify specific issues to be presented on appeal and present supporting argument with citations to the authorities, statutes and parts of the transcript and record upon which he relies.” *Drake v. Craven*, 105 Idaho 734, 736, 672 P.2d 1064, 1066 (Ct. App. 1983) (citing *Cox v. Mountain Vistas, Inc.*, 102 Idaho 714, 719 (footnote 4), 639 P.2d 12, 17 (1981)).

In *Drake*, the appellant attempted to state an issue on appeal, but the Court found it was nothing more than an invitation for the Court to search the record for error, an invitation the Court has repeatedly refused to do. *See id; see also, State v. Crawford*, 104 Idaho 840, 841, 663 P.2d 1142, 1143 (Ct. App. 1983) (“the appellate rules require that an appellant identify the specific issues to be considered on appeal and present argument with citations to the authorities, statutes and parts of the transcript and record upon which the appellant relies . . . . It is implicit

in Rule 35 and in *Smoot* [99 Idaho 855, 590 P.2d 1001 (1978)] that we will not search a trial record for unspecified errors.”) “Assertions of error which are not supported by argument or authorities cannot be considered on appeal.” *Crawford*, 104 Idaho at 841, 663 P.2d at 1143 (citing *State v. Smoot*, 99 Idaho 855, 590 P.2d 1001 (1978)).

Eagy’s brief does not provide anything that could reasonably be construed as a short and concise statement of the issues presented. Additionally, Eagy’s brief does not contain a “division” or “appropriate heading” to help identify the list of issues presented, as required under I.A.R. 35(a).

Because Eagy has failed to comply with I.A.R. 35(a)(4), Bell and this Court are left having to comb through Eagy’s opening brief to try to discern what error(s) Eagy contends was made by the lower court. The problem is compounded because Eagy is apparently operating under the incorrect legal standard. Eagy’s opening brief clearly focuses on the decision of the Magistrate Court and makes almost no mention of the decisions made by the District Court. Bell simply cannot identify what error(s) Eagy contends were made by the District Court. As such, Bell cannot properly respond.

This same problem existed in *Korn*. The appellant in *Korn* misstated the standard of review where the Supreme Court was reviewing an intermediate appeal to the district court. As a result, the appellant in that case identified only the decisions of the magistrate court, rather than those of the district court, as issues on appeal. *See Korn*, 148 Idaho at 415, 224 P.3d at 482, n.1. The *Korn* Court stated that under such circumstances, I.A.R. 35(a)(4), provides that the appellant waives any claim that the district court erred. *See id.*, (citing *State v. Prestwich*, 116 Idaho 959,

961, 783 P.2d 298, 300 (1989), overruled on other grounds by *State v. Guzman*, 122 Idaho 981, 842 P.2d 660 (1992)). The *Korn* Court recognized that this presents a problem because, under *Losser*, the Supreme Court is procedurally bound to affirm or reverse the decisions of the district court only. *See id.*

In short, Eagy provides no short and concise statement of issues presented. To the extent one can discern the issues presented on appeal, they are issues with the Magistrate Court, not the District Court. As such, Eagy has waived any claim of error made by the District Court. This Court must therefore affirm the District Court's decision.

2. **Eagy Waived Any Claim That The District Court Erred By Failing To Cite The Court To Authorities Statutes Or Parts Of The Transcript And Record Relied Upon, As Required Under I.A.R. 35(a)(6).**

I.A.R. 35(a)(6) requires the appellant's brief to include an argument section that "shall contain the contentions of the appellant with respect to the issues presented on appeal, the reasons therefor, with citations to the authorities, statutes and parts of the transcript and record relied upon."

The appellant has the responsibility to include exhibits and transcripts of hearings in the record before the appellate court. *See Student Loan Fund v. Duerner*, 131 Idaho 45, 54, 951 P.2d 1272, 1281 (1997) (citing *Jones v. Jones*, 117 Idaho 621, 625, 790 P.2d 914, 918 (1990)). When the record on appeal does not contain the evidence taken into account by the district court, the Supreme Court "must necessarily presume that the evidence justifies the decision and that the findings are supported by substantial evidence." *Id.* (quoting *Nash v. Hope Silver Lead Mines*, 79 Idaho 137, 142, 314 P.2d 681, 683 (1957)).

Eagy's opening brief makes many bald assertions of fact and attempts to paraphrase what the Magistrate Court stated in its decision. Eagy does not, however, cite this Court to the record for support of such factual assertions. To be sure, Bell contends that many of such factual assertions are subject to dispute, but because the Magistrate Court disposed of this case on summary judgment, Bell has been deprived of her right to a trial to address these factual issues. The Court should disregard all factual assertions made in Eagy's opening brief that are not specifically cited in the record.

Additionally, Eagy has failed to request the transcript of the summary judgment hearing held in the Magistrate Court on April 30, 2013. Eagy is responsible to make sure that everything Eagy intends to rely on in support of his argument is in this Court's record. Because Eagy has failed to request the transcript of such hearing, this Court should disregard any reference Eagy makes to what "Judge Day" or the Magistrate Court said because this Court's record does not contain the Magistrate Court's transcript.

In summary, Eagy has not met his burden to (1) include in the record the necessary transcripts to support his argument; and (2) cite this Court to authority, statute and the record for support of Eagy's argument. The presumption is that, absent an affirmative showing, the District Court did not err. Eagy has failed to meet his burden to affirmatively show that the District Court erred. The District Court's decision should therefore be affirmed.

3. **The District Court Correctly Stated The Law And Applied The Law, So Its Decision Should Be Affirmed.**

Because Eagy has failed to identify specific errors the District Court allegedly made, Bell is not in a position to respond accordingly.<sup>1</sup> It appears Eagy has by and large cut and pasted the arguments he made in his Memorandum in Support of Summary Judgment (R. pp. 85-86) into his appellate brief (Appellant's Opening Brief pp. 10-12). To the extent the Court feels obligated to comb the record to find an error, or is able to discern the issues Eagy raises with the District Court's decision, Bell refers this Court to the argument and authority in Bell's Memorandum in Opposition to Motion for Summary Judgment (R pp. 91-99) as it provides a comprehensive response to the same arguments raised in Eagy's opening brief.

Bell agrees with the District Court's legal analysis as it relates to the parties' obligation to pay work-related child care expenses, and agrees with the District Court's interpretation of the Stipulated Decree. Eagy has failed to identify any err of the District Court and no error should be presumed. As such, the District Court's decision should be affirmed.

4. **Bell Is Entitled To An Award Of Costs And Attorney Fees Incurred In This Appeal.**

Bell is entitled to an award of costs under I.R.C.P. 54(d) and I.A.R. 40, Idaho Code § 7-610 and the Stipulated Decree entered in this matter. Bell is likewise entitled to an award of

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<sup>1</sup> Bell had a similar problem responding to Eagy's motion for summary judgment filed in the Magistrate Court because it was unclear what Eagy was arguing in support of summary judgment. See Memorandum in Opposition to Motion for Summary Judgment, p. 3, R. p. 93. In this appeal Eagy simply cut and pasted almost the same argument, adding only a couple of paragraphs, which do not find any support in the record. Eagy's lack of clarity in what he is arguing makes it very difficult for Bell to respond clearly and concisely to Eagy's issues.

attorney fees incurred in this appeal under the Stipulated Decree at ¶ 15; I.A.R. 41; I.R.C.P. 54(e) and 75(m); Idaho Code §§ 7-610 and 12-121.

**A. The Stipulated Decree Requires That Bell Be Awarded Costs And Fees If She Prevails In This Appeal.**

The Stipulated Decree entered in this matter provides a specific attorney fee provision applicable in this case. More specifically, the paragraph of the Stipulated Decree that addresses child care expenses states, “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.” R. pp. 42-43. This appeal is part and parcel of an “enforcement proceedings” to enforce Eagy’s obligation to pay his share of child care costs. As such, the mandatory language used above requires that Eagy pay Bell’s attorney fees incurred in this appeal if Bell prevails.

**B. Idaho Code § 7-610 and I.R.C.P. 75(m) Authorize An Award Of Attorney Fees To Bell On Appeal.**

Idaho Code § 7-610 provides that in a contempt proceeding, “the court in its discretion, may award attorney’s fees and costs to the prevailing party.” I.R.C.P. 75(m) states that “[i]n any contempt proceeding, the court may award the prevailing party costs and reasonable attorney fees under Idaho Code § 7-610.”

This appeal stems from the dismissal of a non-summary contempt action filed by Bell against Eagy, and the District Court’s subsequent reversal of such dismissal. R. pp. 138-140; 174-185. As such, Idaho Code § 7-610 and I.R.C.P. 75(m) squarely apply to this case, and

authorize this Court to award the prevailing party attorney fees and costs. The amount in controversy is relatively small, and Eagy has failed to support his appeal with authority or an adequate record. The Court should therefore exercise its discretion and award Bell her costs and attorney fees under this statute to the extent Bell prevails in this appeal.

**C. Attorney Fees Are Also Warranted Under Idaho Code § 12-121.**

Idaho Code § 12-121 allows the Court to award attorney fees to the prevailing party if the Court finds that the appeal was brought or pursued frivolously, unreasonably or without foundation. I.R.C.P. 54(e)(1). The Supreme Court has also held that Idaho Code § 12-121 “allows the award of attorney fees in a civil action if the appeal merely invites the Court to second guess the findings of the lower court.” *Bach v. Bagley*, 148 Idaho 784, 797, 229 P.3d 1146, 1159 (2010); *Turner v. Turner*, 155 Idaho 819, 827, 317 P.3d 716, 724 (2013); *Etcheverry Sheep Co. v. J.R. Simplot Co.*, 113 Idaho 15, 19, 740 P.2d 57, 61, (1987); *Booth v. Weiser Irrigation Dist.*, 112 Idaho 684, 735 P.2d 995 (1987). In *Bach*, the Court awarded the respondent attorney fees under Idaho Code § 12-121 reasoning that the appellant had provided no argument or authority on which reversal of the district court could be based and was merely asking the Supreme Court to second guess the district court’s decision.

When an appellant fails to present a cogent argument as to why he should prevail, an award to his opponent is appropriate. See *Turner v. Turner*, 155 Idaho 819, 827, 317 P.3d 716, 724 (2013) (citing *Chicoine v. Bignall*, 127 Idaho 225, 228, 899 P.2d 438, 441 (1995)).

Failure to follow the established appellate rules may justify an award of attorney fees on appeal. See *Jensen v. Doherty*, 101 Idaho 910, 911, 623 P.2d 1287, 1288 (1981) (citing



I.A.R. 41; I.C. § 12-121; *Minich v. Gem State Developers, Inc.*, 99 Idaho 911, 591 P.2d 1078 (1979)).

Eagy has failed to follow the appellate rules, which makes it exponentially more difficult for Bell to figure out the best way to respond to the present appeal. It also makes it difficult for the Court to identify and analyze the issues.

Additionally, Eagy has merely asked this Court to second guess the District Court by essentially affirming the Magistrate Court without regard to the decision of the District Court. The best evidence of Eagy's request for this Court to second guess the lower court is that Eagy has literally cut and pasted his arguments from his Memorandum in Support of Motion for Summary Judgment into his opening brief. *C.f.* R. pp. 85-86; Appellant's Opening Brief, pp. 10-12. Assuming, *arguendo*, it is proper for this Court to bypass the District Court decision and analyze the Magistrate Court decision directly, Eagy has failed to meet his burden to request a transcript of the pertinent Magistrate Court hearing, effectively leaving this Court blind as to what the Magistrate Court decided.

Finally, Eagy has provided no new legal authority for his argument on appeal. The only legal authority cited anywhere in Eagy's opening brief is under the heading standard of review, and that legal authority is at best questionable and at worst completely overruled as shown by the cases cited under the standard of review section of this brief.

For these reasons and more, Bell is entitled to an award of attorney fees on appeal under Idaho Code § 12-121.

## CONCLUSION

Based upon the foregoing and the record before the Court, Bell respectfully requests that the Court affirm the District Court's decision and award Bell her costs and attorney fees incurred in this appeal.

DATED this 10<sup>th</sup> day of July, 2014

R. SHEPHERD LAW, PLLC

A handwritten signature in black ink, appearing to read 'R. Shepherd', written over a horizontal line.

RON R. SHEPHERD

Attorneys for Plaintiff-Respondent, Britanie Bell

**CERTIFICATE OF DELIVERY**

I hereby certify that on the 18<sup>th</sup> day of July, 2014, I caused a true and correct copy of the foregoing RESPONDENT'S BRIEF to be emailed and faxed to the email address and facsimile identified below, and two (2) true and correct copies of the foregoing RESPONDENT'S BRIEF to be served by mail and addressed to the following:

John A. Miller  
MILLER & HARR  
3363 North Lakeharbor Lane  
Boise, ID 83703

- U.S. Mail, Postage Prepaid
- Certified Mail/Return Receipt
- Hand Delivered
- Facsimile 331-6618
- Email: *johnmiller@millerharr.com*



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RON R. SHEPHERD