

5-9-2014

Cook v. Arias Appellant's Reply Brief Dckt. 41745

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

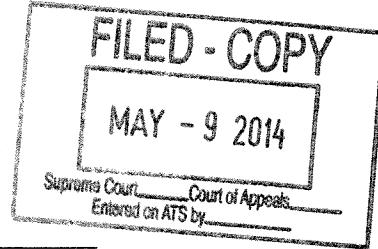
"Cook v. Arias Appellant's Reply Brief Dckt. 41745" (2014). *Not Reported*. 1787.
https://digitalcommons.law.uidaho.edu/not_reported/1787

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

DALRIE COOK)
Plaintiff/Appellant,)
)
vs.)
)
HUGO MARCELO ARIAS CASTRO,)
Defendant/Respondent.)
_____)

Docket No. 41745



APPELLANT'S REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT FOR
BONNEVILLE COUNTY

HONORABLE STEVEN A. GARDNER
Magistrate Judge, presiding

AARON J. WOOLF, ESQ.
Thompson, Smith Woolf & Anderson, PLLC
3480 Merlin Drive
Idaho Falls, Idaho 83404
Attorney for Plaintiff/Appellant

NEAL S. RANDALL, ESQ.
P.O. Box 50800
1335 E. 17th Street
Idaho Falls, Idaho 83405
Attorney for Defendant/Respondent

IN THE SUPREME COURT OF THE STATE OF IDAHO

DALRIE COOK)
Plaintiff/Appellant,) Docket No. 41745
vs.)
HUGO MARCELO ARIAS CASTRO,)
Defendant/Respondent.)
_____)

APPELLANT'S REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT FOR
BONNEVILLE COUNTY

HONORABLE STEVEN A. GARDNER
Magistrate Judge, presiding

AARON J. WOOLF, ESQ.
Thompson, Smith Woolf & Anderson, PLLC
3480 Merlin Drive
Idaho Falls, Idaho 83404
Attorney for Plaintiff/Appellant

NEAL S. RANDALL, ESQ.
P.O. Box 50800
1335 E. 17th Street
Idaho Falls, Idaho 83405
Attorney for Defendant/Respondent

TABLE OF CONTENTS

	Page
a. TABLE OF CONTENTS	1
b. TABLE OF CASES AND AUTHORITIES.....	2
c. REPLY TO HUGO’S STATEMENT OF THE CASE.....	3
d. REPLY TO HUGO’S ARGUMENTS.....	4
e. CONCLUSION.....	5

TABLE OF CASES AND AUTHORITIES

<u>STATUTES and RULES</u>	PAGE
Idaho Code §12-120.....	5
Idaho Code §12-121.....	5
IRCP Rule 60(b)(6).....	4 and 5

I. REPLY TO HUGO'S STATEMENT OF THE CASE

Dalrie wishes to correct and/or explain certain portions of Hugo's *Statement of the Case*, as follows:

1. Hugo, on page 3. of his Brief states that at the time of trial, it was Dalrie's intention to marry her then fiancé, though he fails to cite to the record regarding these facts. These facts do not appear in the record. At the time of trial, Dalrie was married to Hugo, she was not engaged to be married, and she had no intentions of becoming married.

2. Hugo, on page 4. of his brief refers to two Motions to Reconsider filed February 18, 2011, which were filed after her *Statement of Unequivocal Desire*. It appears that Hugo is arguing that Dalrie must not have had a desire to remain in Idaho, when she filed her *Statement of Unequivocal Desire*, due to the filing of her Motions to Reconsider. This is simply not true, and there is no evidence to support this argument. Dalrie simply filed her *Statement of Unequivocal Desire* in the time Judge Blower requested¹, and then she filed her two Motions to Reconsider, which are standard filings and allowed to be filed by the Idaho Rules of Civil Procedure.

3. Hugo, on page 4. and 5. of his Brief asks a question to this Court, that being, "It should be concerning to this Honorable Court that if Appellant believed she had full custody of the children then why would she need to modify the prior court orders in the first place?" The obvious reason, is that the visitation schedule, as ordered by Judge Blower in the *Supplemental Order*, would not allow Dalrie and the children to live in Utah, without Dalrie being in violation of said Order. R. p. 125-128. Thus, she was required to file a Petition to Modify.

¹ R. p. 99 and 108.

II. REPLY TO HUGO'S ARGUMENTS

Hugo argues that Judge Gardner acted appropriately by changing custody of the two minor children to Hugo, pursuant to IRCP Rule 60(b)(6), as it allowed Judge Gardner to recognize that Dalrie had filed a falsehood with the court and/or to establish custody as Judge Blower originally intended. These arguments must fail.

As argued previously, there is no substantial and competent evidence that Dalrie made a deliberate misrepresentation to the Court when she filed her *Statement of Unequivocal Desire* on February 11, 2011.² Dalrie was asked to make a decision as to where she would reside. She did so on February 11, 2011. Thereafter, her circumstances changed. There was no misrepresentation, and there is no substantial and competent evidence to support such a finding.

Hugo (and Judge Gardner), rely, in large part on Judge Blower's *Findings of Fact and Conclusions of Law* entered February 4, 2011. R. p. 61. The trial upon which Judge Blower entered his *Findings of Fact and Conclusions of Law* was held on January 6, 12, and 13 of 2011. R. p. 63. On April 29, 2011, Judge Blower entered his *Supplemental Order*, wherein he ordered, as follows:

Because Dalrie filed her Statement of Unequivocal Desire on February 11, 2011—advising the court that she will continue to reside in the Idaho Falls area—the children shall reside with Dalrie except as provided below:

R. p. 125. Once Judge Blower entered this Order, the custody matters were fully and finally resolved. Thereafter, the only way to modify the same is to file a Petition to Modify, as argued by Dalrie, previously. It is not appropriate for Judge Gardner to rely on evidence from a trial

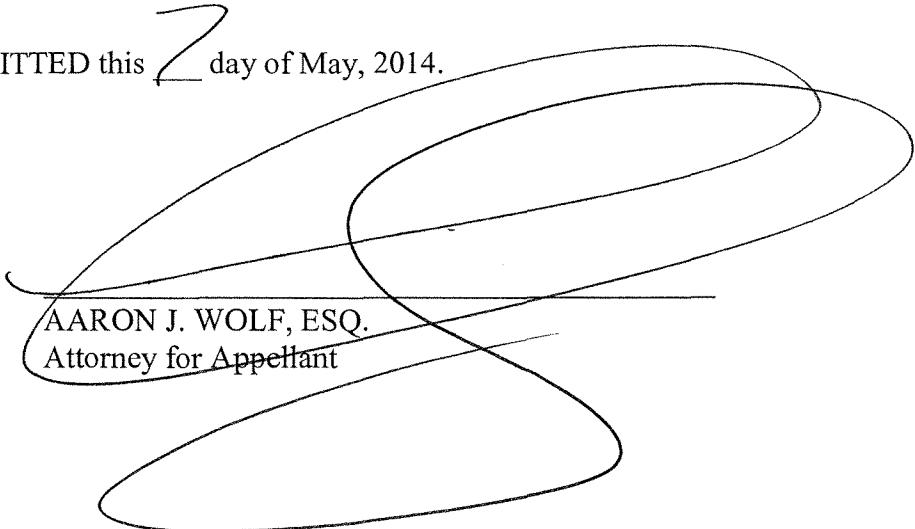
² In fact, Hugo (along with Judge Gardner) appears to concede this issue on page 5. of his Brief wherein he states as follows: "It appears that Dalrie has filed this petition because she regretted signing the "Statement of Unequivocal Desire" or thought to work around it after a very short period of time by changing her circumstances." (emphasis added) .

held in January, 2011 and findings made by Judge Blower in February, 2011, in changing custody to Hugo. The rationale behind this argument is illustrated when this Court considers the fact that [REDACTED] has absolutely no relationship with Hugo and Dalrie has moved to Salt Lake City, Utah. R. p. 178-182 and p. 217-233. There is no way a Magistrate can ignore these facts and attempt to rely on a decision entered in February, 2011, in changing custody. If this is appropriate, then Magistrates can simply change an old custody Order under the guise of IRCP Rule 60(b)(6) any time they feel it is appropriate. Such is not the law in Idaho.

III. CONCLUSION

Based upon the issues raised in this appeal, the decision of the Magistrate to change custody (along with the decision to order Dalrie to pay child support), pursuant to IRCP Rule 60(b)(6), must be set aside, and the *Supplemental Order* entered on April 29, 2011, shall be determined to be the current Order of the Court related to custody matters, visitation matters, and child support issues. Further, the Magistrate's award of attorney fees pursuant to I.C. §12-120 must be set aside, and Dalrie should be awarded her attorney fees for pursuing this appeal pursuant to I.C. §12-121.

RESPECTFULLY SUBMITTED this 2 day of May, 2014.



AARON J. WOLF, ESQ.
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a licensed attorney in Idaho, with my office in Idaho Falls, and that on the 2 day of May, 2014, I served a true and correct copy of the following-described document on the parties listed below, by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

DOCUMENT SERVED:

APPELLANT'S REPLY BRIEF

PARTIES SERVED:

Neal S. Randall, Esq.
P.O. Box 50800
1335 E. 17th Street
Idaho Falls, Idaho 83405
Fax: 1-866-769-3817

Mailed Hand Delivered Faxed



AARON J. WOOLF, ESQ.