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Freer v. Freer Appellant's Reply Brief Dckt. 42057

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IN THE SUPREME COURT OF THE STATE OF IDAHO

JANICE FREER,

Appellant/Plaintiff,

vs.

CODY FREER,

Respondent/Defendant.

Supreme Court No: 42057-2014

Bonner County Case No. CV13-0197

Appeal from the District Court of the First Judicial District
Of the State of Idaho, in and for the County of Bonner

Honorable Barbara Buchanan, Presiding

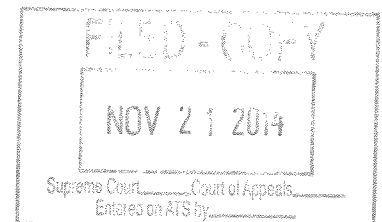
APPELLANT'S REPLY BRIEF ON APPEAL

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RESPONDENT, PRO SE



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RESPONDENT, PRO SE

TABLE OF AUTHORITY

Cases

Madison v. Craven, 141 Idaho 45, 48, 105 P.3d 705, 708 (Ct. App. 2005)3

Respondent, Cody Freer, makes numerous misrepresentations of the record to this Court as follows:

In Resp't's Br. on Appeal, p.2, end of ¶1, Cody Freer states:

“At no point did Cody ever make any direct or indirect acknowledgement that any gifted monies were to be repaid or that any kind of oral agreement ever existed.”

In Resp't's Br. on Appeal, p.5, ¶B.1. Cody Freer argues that:

[t]he only evidence provided by Janice to support her claims of monies being a loan came from her personal journal entries and letters she had written Cody.

Additionally, Cody Freer represents in Resp't's Br. on Appeal, p. 8:

Throughout the entire process Cody never once expressly acknowledged that any monies sent to him by Janice was a loan or that any of it was to be repaid.

Cody Freer is intentionally misleading the Court as to the contents on this record. On March 17, 2011, Cody Freer wrote the following in an e-mail:

. . . i [sic] do want to emphasize that i [sic] hope you know your generosity and kindness is most definatly [sic] appreciated!! i [sic] never did get the impression from you [Janice] that this was something that was not to be paid back. ive [sic] assumed that it would the whole time, so no worries there, we are on the same page. (Pl.'s Ex. 2.)

Clearly this is evidence of the parties' understanding as to whether these funds were to be repaid.

But more egregiously, Cody Freer has misrepresented the contents of a key piece of evidence in this case at Pl.'s Ex. 22, which is a letter from him to Janice Freer. Cody Freer states the following in his response brief regarding the letter:

Cody responded by letter stating that he would not be able to comply to Janice's request and that she should perhaps put some ideas down on paper in the form of a contract so that Cody and Janice could be on the same page with what was now expected. (Resp't's Br. on Appeal, p.2, ¶3.).

Later in Resp't's Br. on Appeal, p. 9, Cody Freer purports to actually quote from Pl.'s Ex.

22 stating:

The sooner I am out and working the sooner I can and will be sending you monthly payments. Perhaps we should put some ideas to paper in regards to a contract. That way we have a more 'in stone' understanding as to what is expected, opposed to our own understanding.

What Cody Freer actually said in the letter to which he refers contains his acknowledgment of an oral agreement between him and Janice Freer. His changing of the wording removes his acknowledgment of the oral agreement. This is highly relevant evidence to one of the central issues of this case to which Cody Freer has misrepresented its contents. The letter actually reads:

Perhaps we should put some ideas to paper in regards to a contract. That way we have more 'in stone' understanding as to what is expected, opposed to our own understanding **of the oral contract.** (Pl.'s Ex. 22.) (Emphasis added.)

Cody Freer may not consider the evidence he is ignoring above as proving anything, but that does not excuse misrepresenting the record.

Lastly, the only facts in the record to support the entire first full paragraph of Resp't's Br. on Appeal, p.7 is the following:

Unfortunately, as I am incarcerated right now and have been this entire time through the whole process of this complaint, I haven't had any access to any of the personal letters that the plaintiff sent to me while I was incarcerated. They're not here. (Tr.48, Ln. 5-10)

What Cody Freer said in his brief was:

From the date that this lawsuit was filed on February 11, 2013 until the date it went to trial on November 8, 2013, Cody was incarcerated in Bonner County Jail, Sandpoint Idaho, Kootenai County Jail, Coeur D' Alene Idaho, Nez Perce County Jail, Lewiston Idaho, Clearwater County Jail, Orofino Idaho, Idaho State Correctional Institution, Boise Idaho, Ada County Jail, Boise Idaho, and finally Federal Correctional Institution Sheridan, Sheridan Oregon. During this time Cody had absolutely no access

to any sort of legal resource or any of the personal letters or emails written to him by Janice where she directly states that she was intending to make a monetary gift to Cody. Not only was there no access to a legal library regarding civil law for Idaho, but during all listed transports, Cody was not allowed to bring along any paperwork with him to the next housing facility. Janice argues that during the time between when the complaint was filed until trial that Cody could have easily obtained this evidence, however being incarcerated in county jails, state prison, and federal prison, such a thing is literally impossible. (Resp't's Br. on Appeal, p.7, ¶2.)

This statement is not supported in the record. Furthermore, Cody Freer had access to any documents he needed for his defense. “Inmates have a constitutional right of access to the courts. That access must be adequate, effective, and meaningful.” Madison v. Craven, 141 Idaho 45, 48, 105 P.3d 705, 708 (Ct. App. 2005) citing *Bounds v. Smith*, 430 U.S. 817, 821, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977); *Drennon v. Hales*, 138 Idaho 850, 853, 70 P.3d 688, 691 (Ct.App.2003). Cody Freer had access to any documents he needed to prove his case, but those documents just did not exist.

The only evidence that Janice Freer intended to gift money to Cody Freer came from Cody Freer himself at trial and that evidence was inconsistent with his prior statements of understanding. Cody Freer’s misrepresentation of the record to this Court only makes his trial testimony seem less trustworthy than it already did.

DATED this 19th day of November, 2014.



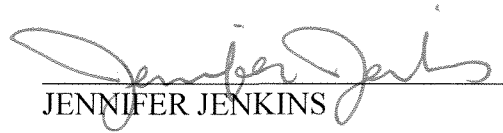
ARTHUR M. BISTLINE
Attorney for Appellant/Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 2014, I served a true and correct copy of the following APPELLANT'S REPLY BRIEF by the method indicated below, and addressed to the following:

Cody J. Freer
6640 Rude Street
Coeur d'Alene, ID 83815

- | | |
|-------------------------------------|------------------|
| <input checked="" type="checkbox"/> | Regular mail |
| <input type="checkbox"/> | Certified mail |
| <input type="checkbox"/> | Overnight mail |
| <input type="checkbox"/> | Facsimile |
| <input type="checkbox"/> | Interoffice Mail |
| <input type="checkbox"/> | Hand Delivered |



JENNIFER JENKINS