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Bills v. Bills Respondent's Brief Dckt. 42978

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IN THE SUPREME COURT OF THE STATE OF IDAHO

LINELL BILLS,)
)
 Plaintiff/Respondent,)
 vs.)
)
 JON LOREN BILLS,)
)
 Defendant/Appellant.)
 _____)

3C# 42978
CASE NO. CV-2012-260

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RESPONDENT'S BRIEF

Appeal from the District Court of the Seventh Judicial District for
Lemhi County

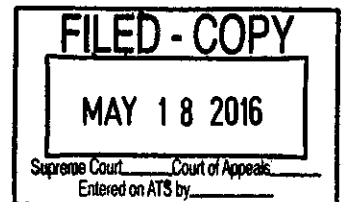
Honorable Alan C. Stephens, District Judge

ATTORNEYS FOR
Plaintiff/Respondent

Steven J Wright, Esq.
Wright Law Offices, PLLC
477 Shoup Avenue, Suite 109
P.O. Box 50578
Idaho Falls, ID 83405-0578

PRO SE
Defendant/Appellant

Jon Loren Bills
P.O. Box 154
Concho, AZ 835924



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STATEMENT OF THE CASE

Linell Bills (“Linell”) disputes Jon Loren Bills’ (“Loren”) Statement of the Case and Statement of Facts which are not supported by the Record.

Beginning in 2003, shortly after the passing of her husband, Linell operated a ranch with her son, Loren. In 2011, Loren abandoned the operation. After several unsuccessful attempts to divide the cattle and other assets with Loren, Linell instituted an action in equity for an accounting and to wind up of the joint venture.

Loren countersued alleging breach of contract and seeking damages from Linell. Linell responded with a second claim in equity asserting unjust enrichment.

A jury found in favor of Linell as to Loren’s claims for breach of contract. The Court then issued its Decision and Order and Judgment, distributing the assets. Linell was found to be the prevailing party and was awarded attorney’s fees incurred defending against Loren’s counterclaim.

ADDITIONAL ISSUES ON APPEAL

Linell seeks recovery of her attorneys’ fees incurred responding to Loren’s appeal pursuant to Idaho Code § 12-120(3).

ARGUMENT

A. Loren has Waived the Only Issue He Raises on Appeal.

Loren raises only one issue on appeal, apparently to address whether the court should have considered certain expenses in winding up the joint venture. However, Linell cannot fairly respond because Loren has provided no citations to the Record and relies on information which is not in the Record.

Loren has elected to proceed *pro se* on his appeal. As such, he is held

“to the same standards and rules as those litigants represented by an attorney.”
Clark v. Cry Baby Foods, LLC, 155 Idaho 182, 185, 307 P.3d 1208, 1211 (2013).
Pro se litigants, like all other litigants, must comply with the Idaho Appellate
Rules and standards of appellate practice.

Fed. Home Loan Mortg. Corp. v. Butcher, 338 P.3d 556, 559-60 (Idaho 2014), *reh'g denied*
(Dec. 12, 2014).

The Idaho Appellate Rules require that Loren present his argument “with citations to the
authorities, statutes and parts of the transcript and record relied upon.” I.A.R. Rule 35(6).
However, Loren’s argument offers no citations whatsoever. “[A]n assignment of error is too
indefinite on appeal if ‘an appellant fails to assert his assignments of error with particularity and
to support his position with sufficient authority.’” *Fed. Home Loan Mortg. Corp. v. Butcher*, 338
P.3d 556, 560 (Idaho 2014), *reh'g denied* (Dec. 12, 2014) quoting *Bach v. Bagley*, 148 Idaho
784, 790, 229 P.3d 1146, 1152 (2010).

This Court has stated repeatedly that it will not “search the record on appeal for
unspecified error.” *Bach v. Bagley*, 229 P.3d 1146, 1152 (Idaho 2010) (citation omitted). Nor
should Respondent be expected to do the same. Without relevant argument and authority, this
Court has stated it will not consider the appellant’s claim. *See e.g. id.* (citation omitted).

Rather than appropriate citations, Loren has simply attached documents to his brief. The
documents attached are not documents from the Record, as they appear to contain Loren’s
handwritten annotations. However, this Court is “bound by the record and cannot consider
matters or materials not part of or contained therein.” *Mc Lean v. Cheyovich Fam. Trust*, 283
P.3d 742, 747-48 (Idaho 2012) quoting *State ex rel. Ohman v. Ivan H. Talbot Family Trust*, 120
Idaho 825, 827, 820 P.2d 695, 697 (1991). Items attached to a party's opening

brief are not part of the record and cannot be considered. *Kootenai County v. Harriman-Sayler*, 293 P.3d 637, 640 (Idaho 2012). See also *McLean v. Cheyovich Family Trust*, 153 Idaho 425, 430–31, 283 P.3d 742, 747–48 (2012); *Goodman Oil Co. v. Scotty's Duro-Bilt Generator, Inc.*, 147 Idaho 56, 59, 205 P.3d 1192, 1195 (2009).¹

As a result of the preceding, this Court is left with a “general attack on the findings and conclusions of the district court, without specific reference to evidentiary or legal errors [which] is insufficient to preserve an issue.” *Bach*, 148 Idaho at 790, 229 P.3d at 1152 (citation omitted). Consequently, that issue is waived. See *Suitts v. Nix*, 141 Idaho 706, 708, 117 P.3d 120, 122 (2005); *Bach*, 229 P.3d at 1152 (Idaho 2010).

Having preserved no issue, Loren’s appeal must be dismissed.

B. Linell Is Entitled To An Award Of Attorneys’ Fees On Appeal Because A Commercial Transaction Was The Gravamen Of The Claims, including the Claim Raised by Loren on Appeal.

The District Court found Linell to be the prevailing party. If Loren’s appeal is dismissed, Linell is entitled to attorneys’ fees on appeal.²

Idaho Code § 12-120(3) mandates the recovery of attorney’s fees “in any commercial transaction.” See Idaho Code §12-120(3). “[W]hether a party can recover attorney fees under Idaho Code section 12–120(3) depends on whether the gravamen of a claim is a commercial

¹ There appears to be at least one instance in which Loren argues from a document that does not exist in the Record. The Court’s Decision and Order incorporates by reference a portion of Loren’s “post-trial brief” R. p. 231 paragraph 38(a)(i). However, this pleading was never made part of the Record.

² Linell recognizes that the District Court awarded Linell attorney’s fees only as it relates to the counterclaim brought by Loren. See R. p. 239 paragraph 17 Linell specifically chose not to appeal this issue. However, for the reasons stated herein, Linell is entitled to recovery of attorneys’ fees incurred on this appeal.

transaction.” *Sims v. Jacobson*, 342 P.3d 907, 912 (Idaho 2015) quoting *Great Plains Equip., Inc. v. Nw. Pipeline Corp.*, 136 Idaho 466, 472, 36 P.3d 218, 224 (2001).

“A gravamen is “the material or significant part of a grievance or complaint.” *Merriam Webster's Collegiate Dictionary* 509 (10th ed.1993). To determine whether the significant part of a claim is a commercial transaction, the court must analyze whether a commercial transaction (1) is integral to the claim and (2) constitutes the basis of the party's theory of recovery on that claim (citation omitted).

Id.

In this matter, all claims arose directly out of the operation or winding down of the joint venture between the parties. As such, the joint venture was both integral to and the basis for, all claims at issue in this matter. It was clearly the “gravamen” of the dispute. Given that “[t]he term ‘commercial transaction’ is defined to mean all transactions except transactions for personal or household purposes,” there is no reasonable question that the joint venture was a commercial transaction under of Idaho Code Section 12-120(3). This does not change simply because the two parties to this commercial transaction were related.

Significantly, when claims, even in equity, are based on a commercial transaction, the prevailing party is entitled to an award of attorneys’ fees for these claims as well. See *Sims*, 342 P.3d at 912 (addressing claim for quantum meruit). As such, Linell is entitled to an award of attorneys’ fees incurred in this appeal. See e.g. I.A.R. 41(c).

CONCLUSION

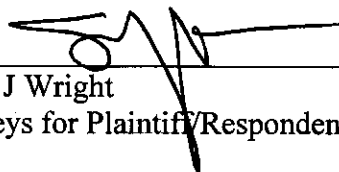
Loren brought this appeal but has failed to meet the minimum threshold to preserve the issue he sought to address. Not only has the Court made clear it will not consider an issue in this context, but Linell cannot be expected to substantively respond.

Linell respectfully requests that Lore's appeal be dismissed and that she be awarded her attorneys' fees incurred in this appeal, pursuant to Idaho Code 12-120(3).

RESPECTFULLY SUBMITTED.

DATED May 17, 2016

WRIGHT LAW OFFICES, PLLC

A handwritten signature in black ink, appearing to read 'S. J. Wright', is written over a horizontal line. The signature is stylized with a large 'S' and a 'W'.

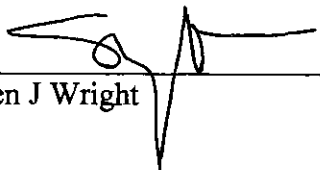
Steven J Wright
Attorneys for Plaintiff/Respondent

CERTIFICATE OF SERVICE

I hereby certify that two (2) true and correct copies of the above and foregoing were served on this 17th day of May 2016 upon the following:

Jon Loren Bills
P.O. Box 154
Concho, AZ 835924

Mail Facsimile Hand Delivery



Steven J Wright