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Medical Recovery Services, LLC v. Carnes Appellant's Brief Dckt. 36500

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IN THE SUPREME COURT OF THE STATE OF IDAHO

MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company,

Plaintiff/Appellant,

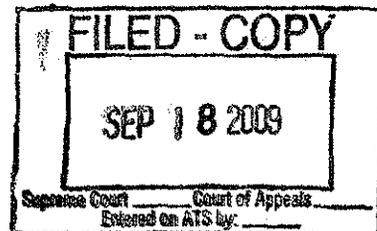
v.

BILLY M. CARNES,

Defendants/Respondent.

Supreme Court Docket No. 36500-2009

APPELLANT'S BRIEF



Appeal from the District Court of the Seventh Judicial District for Madison County.
Honorable Peter D. McDermott, District Judge, presiding.

Bryan D. Smith, Esq., residing at Idaho Falls, Idaho, for Appellant.
Kenneth E. Lyons, Esq., residing at Pocatello, Idaho, for Respondents.

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STATEMENT OF THE CASE

This action arises out of a might be called a “typical collection case.” Plaintiff, Medical Recovery Services, LLC (“MRS”), sued Billy Carnes (“Carnes”) for a debt. Carnes appeared at a supplemental examination where he paid \$1,640 cash to counsel for MRS during the supplemental examination. Later, Carnes claimed that he was not given the opportunity to file a *claim of exemption*. The magistrate court concluded that Carnes made the payment voluntarily and therefore did not get to claim any exemptions for the money he paid. Carnes appealed to the district court that concluded counsel for MRS and/or the magistrate court should have informed Carnes of his possible exemption rights and further concluded that Carnes’ payment was not “voluntarily” thus requiring that MRS return the money to Carnes.

STATEMENT OF FACTS

The facts in this case are undisputed and contained in the Transcript of Debtor’s Exam Hearing.¹ The portion of the Transcript of Debtor’s Exam Hearing that is relevant to this appeal reads as follows:

Q: Okay. How much money do you have on you right now?

A: I’m not sure. I’ve got few hundred dollars on me.

Q: Okay. Open up your wallet. How much is in the account?

A: It looks like about \$1540.

Q: Where does that money come from?

A: That’s just money I’ve saved.

Q: To pay for this?

A: Well, not necessarily, it’s just money over the last year I’ve a few dollars here and there just for.

* * *

A: I’m not trying to hide anything.

¹ R Vol. I, pp. 49-63.

Q: I know you're not. I need to have you turn that over to me and we'll apply it to your judgment. *If you don't want to do that we can wait, the judge is in a hearing right now and we'll ask him to order you to do it, so, the choice is yours.*²

A: Well, I've never, you know, run out on a debt in my life that I figured I owed.

Q: I know.

A: But he's charging me, none of this doesn't have being here not there or nothing like that, but he's charging me partly for a bill I've already paid.

Q: The problem is it's already been ruled by the Court that we've passed that. The Judgment in the case is \$1,816.72.

A: I thought it was \$1,700.00 something.

Q: Well, there's been some additional costs and interest so \$1,816.72, so if you pay \$1,540.00 right now, the balance will be \$276.72. *So, you can either pay for me or we can wait around for the judge to come back and let him deal with this. It's your choice.*

A: Couldn't give me a break or something on it?

Q: No. I had to come all the way down here from Idaho Falls. You didn't call me, didn't try to set up any payments.

A: I didn't know I was supposed to.

Q: I know. So, the answer is, no, I can't.

A: All right. [Carnes hands counsel the money.]

Q: Do you want me to count it out for you? Do you want to count it?

A: Yeah.

Q: Do you agree with me it's one, two, three, four, five, six, seven, eight, nine, 10, 11, 12, 13, 1400, 1450, 60, 70, 80, 90. Any more?

A: I must have miscounted.

Q: Here's another hundred right there, so, let's recount it. Anything else in there?

² Idaho Code Section 11-506 authorizes the judge to order any money of the judgment debtor in the hands of such debtor to be applied toward the satisfaction of the judgment. (Emphasis added.).

A: No, you can check if you want. I didn't see that other when you were counting it.

Q: Okay. One, two, three, four, five, six, seven, eight, nine, 10, 11, 12, 13, 14, 15, 1640. Do you agree?

A: Yep.

Q: Is that a yes?

A: Yep.

Q: Okay. We'll apply 1640 on your account, sir, and you're free to leave.³

COURSE OF PROCEEDINGS

On January 15, 2007, MRS sued Carnes seeking to recover amounts due on an open account and for services provided.⁴

On February 12, 2007, Carnes filed an answer to MRS' complaint.⁵

On July 17, 2007, MRS filed its' Motion for Summary Judgment with a supporting brief and affidavit.⁶

On September 4, 2007, the court held a hearing on MRS' motion for summary judgment and granted MRS' motion, the order was filed in September 20, 2007, and judgment was entered in favor of MRS for the amount of \$1,748.10 on October 11, 2007.⁷

On December 5, 2007, the court granted MRS' application for order of examination and the order of examination is filed and served.⁸

On February 20, 2008, the Debtors Exam Hearing was held and Carnes turns \$1,640 over to plaintiff's counsel.⁹

³ R Vol. I, pp. 58-62. (Emphasis added).

⁴ R Vol. I, pp. 12-14.

⁵ R Vol. I, pp. 16-18.

⁶ R Vol. I, pp. 19-27.

⁷ R Vol. I, pp. 28-32.

⁸ R Vol. I, pp. 33-34.

⁹ R Vol. I, pp. 47-63.

On April 18, 2008, Carnes filed a Motion to Return Money Wrongfully Taken By Plaintiff's Attorney From Defendant.¹⁰

On April 23, 2008, MRS filed a Reply to Objection to Application for Award of Supplemental Attorney Fees, Motion for Trial and Motion to Return Money Wrongfully Taken by the Plaintiff's Attorney From the Defendant.¹¹

On July 3, 2008, Carnes filed a Counterclaim and Demand for Jury Trial claiming MRS unlawfully took the funds paid by Carnes.¹²

On July 14, 2008, the court held a hearing on defendant's Motion for Trial and Motion to Return Money Wrongfully Taken by the Plaintiff's Attorney From the Defendant where the magistrate court ordered that the transcript of the supplemental exam be prepared.¹³

On July 25, 2008, the Court Reporter filed with the court the transcript for the supplement exam.¹⁴

On August 5, 2008, MRS filed its Response to Defendant's Motion for Trial and to Return Money and an Affidavit in Support of Response to Defendant's Motion for Trial and to Return Money and accompanying attachment.¹⁵

On August 15, 2008, Carnes filed his Brief in support of his motion to have funds returned.¹⁶

On August 19, 2008, the magistrate court entered its Order finding that the funds were voluntarily paid and denying Carnes motion for return of funds.¹⁷

On September 30, 2008, Carnes filed a Notice of Appeal to the District Court.¹⁸

¹⁰ R Vol. I, pp. 35-37.

¹¹ R Vol. I, pp. 38-40.

¹² R Vol. I, pp. 43-45.

¹³ R Vol. I, p. 46.

¹⁴ R Vol. I, p. 47.

¹⁵ R Vol. I, pp. 64-88.

¹⁶ R Vol. I, pp. 89-93.

¹⁷ R Vol. I, pp. 94-95.

On April 14, 2009, the district court filed its Memorandum Decision and Order vacating the magistrate court's decision, awarding attorney's fees and costs to Carnes as a "prevailing party" under Idaho Code Section 12-120(3), and remanding the case to determine whether the funds paid were exempt.¹⁹

On April 28, 2009, Carnes filed a Memorandum of Costs and Fees claiming \$3,710.00 in attorney's fees and \$53.00 in costs.²⁰

On May 8, 2009, MRS filed an Objection to Defendant's Memorandum of Costs and Fees.²¹

On May 11, 2009, MRS filed a Notice of Appeal for this appeal.²²

On May 14, 2009, the district court entered a Judgment awarding \$53.00 in costs and \$2,678.00 in attorney's fees to Carnes.

On June 1, 2009, MRS filed an Amended Notice of Appeal to correct an inadvertent request that a non-existent document be included in the record.

ISSUES PRESENTED ON APPEAL

1. Was the magistrate's finding that Carnes voluntarily paid the \$1,640 supported by substantial competent evidence?
2. Did the district court commit reversible error by applying Idaho Code Section 11-506 when there has been no court order?
3. Did the district court commit reversible error by finding that the plaintiff's attorney and the court had a duty to inform Carnes of exemption rights when there had been no garnishment or court order to turn the funds over to plaintiff?

¹⁸ R Vol. I, pp. 96-99.

¹⁹ R Vol. I, pp. 130-144.

²⁰ R Vol. I, pp. 145-153.

²¹ R Vol. I, pp. 154- 156.

²² R Vol. I, pp. 157-161.

4. Is Carnes entitled to attorney's fees before the district court on appeal as a prevailing party within the meaning of I.C. §12-120(3) when the magistrate court found plaintiff to be the prevailing party in the underlying matter, and the plaintiff is attempting to enforce the judgment within the meaning of I.C. §12-120(5)?

5. Is the plaintiff entitled to attorney's fees on appeal?

ARGUMENT

I.

THE DISTRICT COURT SHOULD HAVE AFFIRMED THE FINDING OF THE MAGISTRATE COURT THAT CARNES VOLUNTARILY PAID THE MONEY BECAUSE SUBSTANTIAL AND COMPETENT EVIDENCE SUPPORTS THE FINDING.

A. Standard of Review.

This Court has explained the standard of review that applies to this case as follows:

The Supreme Court reviews the trial court (magistrate) record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. If those findings are so supported and the conclusions follow there from and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure.

Losser v. Bradstreet, 145 Idaho 670 (2008).

This Court has stated that “[s]ubstantial evidence is more than a scintilla of proof, but less than a preponderance. It is relevant evidence that a reasonable mind might accept to support a conclusion.” *Jensen v. City of Pocatello*, 135 Idaho 406 (2000). “[F]indings are to be liberally construed in favor of the judgment entered.” (Citations omitted). *Nguyen v. Bui*, 146 Idaho 187 (Ct. App. 2008).

B. The Transcript Reveals That Carnes Voluntarily Paid The Money To Counsel.

MRS has not been able to find Idaho case law that squarely addresses when payment on a debt is voluntary. Other jurisdictions have stated that “payment should ordinarily be deemed

voluntary unless the circumstances present some constraint or compulsion of such a degree as to impose a necessity of payment sufficient to overcome the mind and will of a person of ordinary firmness.” *Hassen v. Mediaone of Greater Florida, Inc.*, 751 So.2d 1289 (Fla.App. 1 Dist., 2000) (Citations omitted).

The record establishes that counsel for the MRS told Carnes twice that he had a choice. Carnes could either pay the money to counsel for MRS who would apply it to the judgment or counsel would ask that the court order that he pay the money and that it be applied to the judgment. The choice to pay the money was Carnes’ and Carnes’ alone. And counsel for MRS gave Carnes the choice twice. Rather than have any further dealings with the court, Carnes chose to pay the money without court involvement. This is relevant evidence that the magistrate court accepted to support its conclusion that Carnes made the payment voluntarily. Moreover, Carnes said, “he’s charging me [referring to the underlying doctor creditor] partly for a bill I’ve already paid.”²³ This statement is a recognition that Carnes owes something for the services of the physician who treated him just not as much as the entire bill. In other words, Carnes did not dispute he owed at least part of the money judgment MRS sought. Acknowledging that he owed at least part of the money MRS sought, Carnes said, “Well, I’ve never, you know, run out on a debt in my life that I figured I owed.”²⁴ Believing that he owed something and that he would not “run out” on the debt he figured he owed, Carnes then handed the money over to counsel for MRS who applied it to the judgment. Thus, substantial and competent evidence exists to support the magistrate’s finding that Carnes made the payment voluntarily.

Rather than simply review the record for substantial and competent evidence to support the magistrate’s finding, the district court substituted its judgment for the judgment of the

²³ R Vol. I, p. 61.

²⁴ Id.

magistrate court. The district court specifically stated that “the facts indicate no intent on the part of the Appellant to waive his potential exemption rights. The Appellant should have been informed of those rights. Because he was not, the Appellant certainly did not have knowledge of all the facts; therefore, the evidence does not support a finding that the Appellant *voluntarily* relinquished the money from his wallet.”²⁵

The district court wrongly considered that Carnes lacked intent to waive his potential exemption rights because exemption rights apply only to property attached by court order and not to voluntary payments. See Idaho Code Sections 11-506 and 11-601 *et seq.* Here, there was no court order requiring Carnes to pay the money. Thus, Carnes had no exemption rights, potential or otherwise, to waive. Without citation to any law, the district court further wrongly concluded that counsel for MRS and/or the magistrate court owed Carnes a duty to inform him of potential exemption rights. To the contrary, Counsel for MRS would have violated Idaho Rules of Professional Conduct Rule 4.3 if he had advised Carnes on what to do because counsel represented MRS, not Carnes who was acting *pro se*. The magistrate court would have violated Idaho Code of Judicial Conduct Cannon 3(B)(6) if he had advised Carnes because a judge must remain impartial and in fact has no duty to advise *pro se* litigants. See *e.g. Piler v. Ford*, 542 U.S. 225, 231 (2004); *Citibank South Dakota, N.A. v. Schmidt*, 744 N.W. 2d 829, 832 (S.D. 2008). Moreover, Idaho law is clear “that persons acting *pro se* are held to the same standards and rules as those represented by attorneys.” *Huff v. Singleton*, 143 Idaho 498, 500 (2006.) MRS is unaware of any Idaho law that a court owes counsel a duty to provide legal advice. Therefore, in order for the district court to reach its conclusion that “the evidence does not support a finding that the Appellant *voluntarily* relinquished the money from his wallet,” the district court had to act without any applicable law, ignore ethical rules applicable to counsel for

²⁵ R Vol. I, p. 140.

MRS and the magistrate court, and further ignore well-established Idaho law applicable to *pro se* litigants.

II.

THE DISTRICT COURT COMMITTED REVERSIBLE ERROR BY ERRONEOUSLY APPLYING IDAHO CODE SECTION 11-506 WHEN THERE HAS BEEN NO COURT ORDER.

In establishing that the money Carnes turned over to counsel for MRS was subject to a possible exemption, the district court applied Idaho Code § 11-506 which states that “[t]he judge or referee may order any money or property of a judgment debtor not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment.”²⁶ The district court further relied on the Idaho Code §§ 11-603 and 11-604A(3) to support the position that the money may have been exempt from execution.

By its express terms, Idaho Code § 11-506 applies only when a judge orders money to be applied toward the satisfaction of the judgment. Additionally, Section 11-506 is titled “APPLICATION OF JUDGMENT DEBTOR’S PROPERTY TO SATISFACTION OF EXECUTION.” The title and the text of Section 11-506 make it clear that it applies only when there has been an execution and an order by a judge. This section does not state that money voluntarily paid must be money that is not exempt from execution. In fact, an individual is free to use any property legally owned to satisfy a judgment. In this case, there has been no order to turn over the money that Carnes paid and there was no execution. Because § 11-506 does not apply, the district court erroneously relied on its application to reverse the decision of the magistrate court.

Further, the district court’s reliance on I.C. §§ 11-603 and 11-604A(3) for the proposition that the money may have been exempt do not apply unless there has been an attachment or levy.

²⁶ R Vol. I, p. 135.

Chapter 6 Title 11 of the Idaho Code is titled “EXEMPTION OF PROPERTY FROM ATTACHMENT OR LEVY.” A plain reading of this code section shows that it applies only when there has been an attachment, levy, or some kind of court order to turn over money. In this case, there has been no such attachment, levy, or order to turn over money. Because I.C. §§ 11-506, 11-603 and 11-604A(3) apply only when there has been a court order, levy, or attachment, the district court erroneously relied on these code sections to reverse the decision of the magistrate court.

III.

THE DEFENDANT IS NOT ENTITLED TO ATTORNEY’S FEES UNDER I.C. §12-120(3).

A. Standard of Review.

Whether Carnes should be awarded attorney’s fees depends on the interpretation of Idaho Code Section 12-120(3). The standard of review to be applied when deciding an award of attorney’s fees based on the interpretation of statute is as follows:

When an award of attorney fees depends on the interpretation of a statute, the standard of review for statutory interpretation applies. *Stout v. Key Training Corp.*, 144 Idaho 195, 196, 158 P.3d 971, 972 (2007). The interpretation of a statute is an issue of law over which we exercise free review. *Zener v. Velde*, 135 Idaho 352, 355, 17 P.3d 296, 299 (Ct.App.2000). When interpreting a statute, we will construe the statute as a whole to give effect to the legislative intent. *George W. Watkins Family v. Messenger*, 118 Idaho 537, 539-40, 797 P.2d 1385, 1387-88 (1990); *Zener*, 135 Idaho at 355, 17 P.3d at 299. The plain meaning of a statute will prevail unless clearly expressed legislative intent is contrary or unless plain meaning leads to absurd results. *Watkins Family*, 118 Idaho at 540, 797 P.2d at 1388; *Zener*, 135 Idaho at 355, 17 P.3d at 299.

Action Collection Services, Inc., v. Bigham, 146 Idaho 286 (Idaho App., 2008).

B. Carnes Cannot Be Entitled To Attorney’s Fees Where MRS Was The Prevailing Party In The Underlying Matter And Was Attempting To Enforce Its Judgment.

The district court awarded Carnes attorney’s fees as prevailing party under I.C. § 12-120(3) which mandates an award of attorney’s fees to a prevailing party in an action “to recover

on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law.”

Here, Carnes appeal to the district court for return of funds cannot be classified as an *attempt to recover* on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction. By its express terms, Section 12-120(3) does not apply to the facts of this case because the proceeding before the magistrate court was an *attempt to recover on a judgment*, not an *attempt to recover* on “an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law.” Accordingly, the decision of the district court awarding Carnes attorney’s fees should be reversed even if this Court does not reverse the district court’s decision on merits of the appeal.

IV.

MRS IS ENTITLED TO ATTORNEY’S FEES AND COSTS ON THE PRESENT AND INTERMEDIATE APPEALS.

A. Standard of Review.

Whether CBEI should be awarded attorney’s fees depends on the interpretation of Idaho Code Section 12-120(5). Therefore, the standard of review stated in the previous section of this brief should apply.

B. Idaho Code Section 12-120(5) Entitles MRS To An Award Of Attorney's Fees And Costs Incurred During The Intermediate Appeal And This Appeal Because The Magistrate Court Found That MRS Was Entitled To Attorney's Fees And Costs Under Idaho Code Section 12-120(1) And 12-120(3) In The Underlying Proceeding.

Under I.C. § 12-120(5) a party is entitled to post-judgment attorney's fees for attempting to collect on a judgment. Section 12-120(5) reads as follows:

In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party shall also be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties for hearing.

Idaho Code Section 12-120(5).

Courts have held that “[t]his section provides a basis for an award of reasonable attorney fees and costs incurred during post-judgment attempts to collect on the judgment if the party was entitled to attorney fees and costs under the statute in the underlying proceeding that resulted in the judgment.” *Action Collection Services, Inc. v. Bingham*, 146 Idaho 286 (Idaho App., 2008).

In *Action collection Services, Inc.*, the court dealt with an issue similar to the issue in this case. In that case, the plaintiff filed a motion to contest a claim of exemption but the majority of the funds were held to be exempt. *Id.* The plaintiff then filed a motion requesting post-judgment attorney's fees and the court held that the plaintiff was not entitled to attorney's fees because it was not the prevailing party. *Id.* On appeal, the court reversed the lower court and held that because the plaintiff was entitled to mandatory attorney's fees and costs under Idaho Code Sections 12-120(1) and 12-120(3) in the underlying proceeding, Idaho Code Section 12-120(5) entitled *Action Collection Services, Inc.* to an award of attorney's fees and costs incurred in its attempt to collect on the judgment. *Id.* The court further awarded the plaintiff “reasonable attorney fees and costs incurred on intermediate appeal and present appeal” under Idaho Code Section 12-120(5.) *Id.*

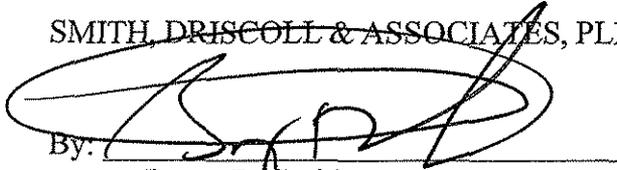
The facts of this case are similar to those of *Action Collection Services, Inc.* In the underlying proceedings, MRS sought and was awarded costs and attorney's fees under Idaho Code Sections 12-120(1) and 12-120(3).²⁷ MRS has been forced to defend itself on the intermediate appeal and bring this appeal following an attempt to collect on its underlying judgment. Therefore, MRS is entitled to attorney's fees as MRS has brought this appeal as a post-judgment attempt to collect on the judgment against Carnes. MRS should be awarded attorney's fees and costs under 12-120(5) for both the current appeal and the intermediate appeal regardless of whether MRS prevails on this appeal because the prevailing party analysis does not apply under Idaho Code Section 12-120(5.) Additionally, if MRS prevails on appeal, MRS should be entitled to an award of attorney's fees under Idaho Code Sections 12-120(1) and 12-120(3) in addition to Idaho Code Section 12-120(5) and costs under Idaho Appellate Rule 40.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's Memorandum Decision vacating the decision of the magistrate court that found that the Carnes voluntarily paid the money. Additionally, this Court should reverse that portion of the district court's Memorandum Decision awarding Carnes attorney's fees and grant MRS request for attorney's fees for both the current appeal and the intermediate appeal.

RESPECTIVELY SUBMITTED this 16th day of September, 2009.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 

Bryan D. Smith
Attorneys for Appellant,
Medical Recovery Services, LLC

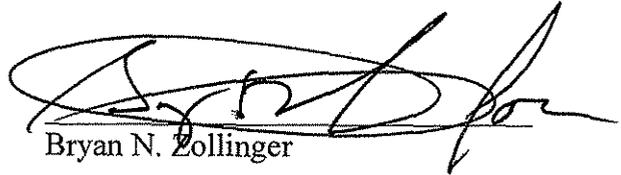
²⁷ R. Vol. I, p. 30.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of September, 2009, I caused a true and correct copy of the foregoing **APPELLATE BRIEF** to be served, by placing the same in a sealed envelope and depositing in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Kenneth E. Lyons, Esq.
P.O. Box 4866
Pocatello, ID 83206

U.S. Mail
 Fax: (208)232-8867


Bryan N. Zollinger