5-3-2016

Bonneville County Prosecuting Attorney v. Williams Respondent's Brief Dckt. 43253

IN THE SUPREME COURT OF THE STATE OF IDAHO

BONNEVILLE COUNTY PROSECUTING ATTORNEY, Plaintiff/**Respondent**, v. 1993 Harley Davidson, VIN 1HD1BJL4XPY022083, Defendant.	Docket No. 43253-2015
Cody M. Williams 2743 E. 65th N. Idaho Falls, ID 83402, Respondent/**Appellant**.	

RESPONDENT'S BRIEF

Appeal from the District Court of the Seventh Judicial District for Bonneville County, Case No.: CV-14-2991, District Judge Honorable Joel E. Tingey presiding.

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STATEMENT OF THE CASE

Appellant, the owner of the Defendant 1993 Harley Davidson, alleges the magistrate court and district court both abused their discretion in denying his Motion to Set Aside the Default Judgment. R. pp. 215 – 219.

The 1992 Harley Davidson Motorcycle was seized on May 25, 2014, by the Bonneville County Sheriff's Office as a conveyance in violation of Idaho Code § 37-2701 *et. seq*. R. pp 6 – 9. The County timely filed a complaint on May 29th, 2014 and served the same on Appellant together with a summons the same day at the Bonneville County Jail. R. p. 2.

Hearing nothing from Appellant, Bonneville County filed for default 21 days later on June 19, 2015, sending a copy of the default paperwork to Appellant. R. p. 10 – 16.

Thereafter, on or about June 24, 2014, presumably after receiving the default paperwork, Appellant filed an objection to the default (dated June 20, 2014), still failing to answer the Complaint. R. p. 17 – 18; Tr. p. 27:11 – 13.

A judgment was entered after a default hearing on July 8, 2015. R. p. 34 – 36. After the hearing, Appellant filed an Answer, but neither the Court nor opposing counsel received a copy of the same until after the default hearing and until after the Default Judgment had been entered. R. p. 34 – 39.

Appellant contended that his failure to respond was a permissible mistake because he believed he had 20 business days to respond and further he was rearrested approximately three days before the default hearing and allegedly could not have responded in a timely fashion. Tr. p. 17:9 – 25.

Both the magistrate and district court disagreed holding this error did not constitute a "mistake" or "excusable neglect" under I.R.C.P. 60(b). Appellant filed this appeal alleging that a lack of a criminal conviction constituted a meritorious defense but he fails to appeal both courts' holdings that he did not meet a requirement of Rule 60(b). Accordingly, he does not meet the burden of a motion to set aside and the holding of the lower courts should be affirmed.

ISSUES ON APPEAL

- Appellant only identifies the following issue on appeal:

  Does a pending criminal case constitute a meritorious defense to set aside a default judgment in a civil forfeiture proceeding?

- Appellant fails to allege the lower courts abused their discretion related to a requirement of of Rule 60(b) and the holding of the lower courts should therefore be affirmed.
- Appellant further raises new issues on appeal which should be disregarded by this Court.

STANDARD OF REVIEW

A default judgment only be set aside upon Appellant showing the lower court abused its discretion:

> Where discretionary grounds are invoked for relief from a judgment, the standard of review is abuse of discretion. *Knight Ins., Inc. v. Knight,* 109 Idaho 56, 704 P.2d 960 (Ct.App.1985). Whether a court has abused its discretion in ruling on a motion to set aside a judgment requires a determination of whether: (1) [t]he trial court made findings of fact which were not clearly erroneous; (2) the court applied the proper criteria under I.R.C.P. 60(b); and (3) the court's legal conclusions followed logically from the application of such criteria to the facts found. *Bull v. Leake,* 109 Idaho 1044, 712 P.2d 745 (Ct.App.1986).

Golay v. Loomis, 118 Idaho 387, 390, 797 P.2d 95, 98 (1990). In this case, Appellant fails to show either the magistrate court or district court abused their discretion and his appeal should be denied. *Accord Idaho State Police ex rel. Russell v. Real Prop. Situated in Cty. of Cassia*, 144 Idaho 60, 62, 156 P.3d 561, 563 (2007).

ARGUMENT

I. A CRIMINAL CONVICTION IS NOT A REQUIREMENT OF A CIVIL FORFEITURE AND THEREFORE A MERITORIOUS DEFENSE DOES NOT EXIST.

This Court properly denied Appellant's attempt to have this Court take judicial notice of and further consider the outcome of the related crime. In response to Appellant's request, the County reasoned as follows:

> Appellant suggests that civil forfeitures must be held in limbo until a disposition on a criminal proceeding is obtained. However, I.C. § 37-2744(c)(3) and (d) suggest otherwise, requiring a ***civil*** complaint be filed within thirty (30) days of the seizure. Further, the statute makes no mention that the outcome of a civil forfeiture is contingent on the outcome of the criminal proceeding.
>
> In fact, this Court has held that civil forfeitures are civil proceedings completely separate from criminal proceedings and bear an entirely different burden of proof. Even if the criminal charges were dismissed by the criminal prosecutor under Appellant's assumption that he/she could not prove guilt "beyond a reasonable doubt", the standard of proof in a civil forfeiture proceeding is a lesser one of "preponderance of the evidence". *See State v. McGough*, 129 Idaho 371, 374 (1996):
>
> > **Similarly, forfeiture procedures in Idaho are distinct from the criminal prosecution. Idaho Code Section 37-2744(d) provides in part: 'Forfeiture proceedings shall be civil actions against the property subject to forfeiture and the stand of proof shall be preponderance of the evidence.' The statute indicates that the Idaho legislature's intent was to make the forfeiture proceedings civil in nature.**
>
> With different burdens of proof and the requirement of separate case filings, the civil proceedings cannot be contingent on the disposition of the criminal proceedings. Therefore, the introduction of additional documents showing the dismissal of a criminal complaint is not relevant to this appeal.

Emphasis added. See Respondent's Objection to Motion to Take Judicial Notice and Objection to Motion to Augment dated January 19, 2016. **This Court agreed and denied evidence of the criminal outcome.** *See Order Denying Judicial Notice and Motion to Augment dated February 3, 2016.*

Even if this Court were to take judicial notice of Appellant's criminal outcome, Appellant's contention that a criminal conviction is necessary for a civil forfeiture

judgment completely subverts the plain language the legislature enacted in I.C. § 37-2744(c)(3) setting the applicable standard of proof as "preponderance of the evidence" and not "beyond a reasonable doubt."

Moreover, if this Court were to adopt Appellant's position, instead of deferring to the statute, such would empower criminals to use plea bargains as leverage for dismissal of civil forfeitures. A plea bargain or even a dismissal of a case may occur for any number of reasons including a dismissal of a lesser charge for conviction of a greater one, an expeditious conviction, an exchange for cooperation of the criminal defendant in another criminal matter, or where the evidence may meet the standard of preponderance of the evidence but not beyond a reasonable doubt. None of these scenarios mean a controlled substance violation (I.C. § 37-2701 *et seq.*) did not take place nor that a forfeiture would be inappropriate under a preponderance of the evidence standard. The legislature wisely recognized the need to set a different standard of proof to prevent abuse of the system that would restore the instrumentalities and proceeds of crimes to criminals those violating the controlled substances statutes.

Notably, neither I.C. § 37-2744 nor I.C. § 37-2744A mention the need for a criminal conviction, nor even the need for filing of a criminal complaint for a forfeiture to take place. The civil forfeiture is its own proceeding. Additionally, making the civil and criminal forfeitures contingent on each other can lead to the temptation to leverage the dismissal of a civil forfeiture in exchange for a criminal conviction or vice versa. The two actions must remain independent of each other to ensure each case is treated fairly under its own burden of proof.

This is not to say that a prosecutor may occasionally elect to dismiss a civil forfeiture if a defendant's innocence becomes abundantly clear before a judgment is entered in the forfeiture proceeding, nor does it mean that a prosecutor and respondent cannot *agree* to stay the civil proceedings and await the disposition of a criminal proceeding. However, each of these scenarios require voluntary consent of the prosecutor and neither is required by the statute.

Additionally, if the outcome of the criminal case and the civil forfeiture were necessarily tied together, defendants could abstain from presenting a defense altogether in the civil matter, as Appellant did and await the outcome in the criminal case. Tr. p. 20, ll.

3-5, 18-25. Instead, the civil forfeiture statute requires a defense. I.C. § 37-2744(d)(3)(D). The statute does not say to await a disposition of the criminal matter before entering a civil judgment. The two actions are separate from each other.

Appellant's ultimate criminal disposition further is not before this Court or any court below. Counsel for Respondent did not stay abreast of the criminal proceedings. The transcript regarding Respondent's knowledge of the status of the criminal proceedings is incorrect—citing Mr. Davis for Mr. William's response. Tr. pp. 41:15-19.[1] Further, the magistrate did not find that Mr. Williams had a meritorious defense; instead he stated that Mr. Williams, "***may***" have a meritorious defense, but because be could not find in favor of Appellant on Rule 60(b)(1), that analysis would not be necessary. *Id.* at pp. 41:20 – 42:4. Notably, Appellant has never pled any facts that would constitute a meritorious defense, instead relying wholly on the status of the underlying criminal act, which is not in the record of the Court.

Because a criminal conviction is not a prerequisite to a civil forfeiture judgment, a meritorious defense does not exist and therefore the holdings of the lower courts should be affirmed.

II. THE JUDGMENT MUST BE AFFIRMED WHERE APPELLANT FAILED TO ALLEGE ON APPEAL THAT HE MET A REQUIREMENT OF RULE 60(b).

Even if the Court were to somehow rule a meritorious defense exists, which it should not, Appellant must also show the facts surrounding the default meet a requirement of Rule 60(b). *See Baldwin v. Baldwin*, 114 Idaho 525, 527 - 528, 757 P.2d 1244, 1246 - 1247 (Ct. App. 1988) (holding that to set aside a default judgment, the movant must show (1) he meets a requirement of Rule 60(b); (2) he has a meritorious defense; **and** (3) he acted with reasonable diligence in moving to set aside the judgment). He must meet all three prongs to set aside the default.

On appeal, Appellant fails to demonstrate or even allege how the judges abused their discretion in holding that he had not met the requirements of I.R.C.P. 60(b) and the holding of the lower courts should therefore be affirmed.

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[1] Counsel for Respondent was not provided a copy of the hearing transcripts until April 25, 2016 (just two days ago) and was therefore unaware of this error to correct the transcript.

Regarding Rule 60(b), before the lower courts Appellant previously alleged that the judgment should be set aside on the basis of "mistake" and "excusable neglect". However, because he fails to raise this issue on appeal, the holding of the lower courts related to Rule 60(b) must be affirmed and this appeal dismissed as he fails to meet all three requirements of a motion to set aside under Rule 60(b).

Even though Appellant is held to the same standards as an attorney, out of an abundance of precaution however, and without waiving any objection that Appellant has failed to raise an abuse of discretion on appeal as it relates to Rule 60(b), the County argues as follows:

"The district court is deemed to have acted within its discretion if it applies the governing legal standards to the facts in a logical manner while keeping in mind the disfavored status of default judgments." *Bach v. Miller*, 148 Idaho 549, 552, 224 P.3d 1138, 1141 (2010). In this case, Appellant fails to show how either the district court or magistrate court abused their discretion as it relates to Rule 60(b).

A. <u>The Lower Courts Correctly Held Appellant Committed a Mistake of Law, Not of Fact.</u>

Appellant argued below that his failure to comprehend the laws of the State of Idaho and that he believed he had twenty (20) business days to answer the complaint instead of twenty (20) days constituted a mistake under Rule 60(b). Respondent briefed this issue for the magistrate and district court. For ease of reference, Respondent incorporates said argument as follows:

> To set aside a default judgment, the "mistake" alleged must be one of fact and not of law. *Hearst Corp. v. Keller*, 100 Idaho 10, 592 P.2d 66 (1979). A mistake of fact, is generally not one requiring a legal reading or interpretation of the law and not the type of mistake in this case. For example, the Idaho Supreme Court has found a mistake of fact exists where an essential witness fails to appear to a trial on time when the witness was notified that the trial would occur four hours later than the time it was actually scheduled. *Nelson v. Property Management Services*, 105 Idaho 578, 671 P.2d 1071 (1983). A mistake of fact was also found where a plaintiff took default against a defendant who took the complaint to an attorney for representation, and the attorney did not clearly inform the defendant prior to the default that the attorney had not agreed to represent the defendant. *Idaho State Police*, 156 P.3d at 563. In those cases, the defendants made factual mistakes rather than mistakes involving the interpretation of law.

R. p. 103.

> For a "mistake" to be sufficient to set aside a judgment under Rule 60(b), **the mistake must be of fact, and not of law**. *Idaho State Police v. Real Property Situated in the County of Cassia*, 144 Idaho 60, 156 P.3d 561, 563 (2007). Appellant's claimed "mistake" of not understanding the twenty (20) days to respond to include non-business days is a mistake of law. **However, the failure to read the applicable statute or rule, or the misinterpretation thereof constitutes a mistake of law**. *Washington Federal Savings and Loan Association v. TransAmerica Premier Insurance Company*, 124 Idaho 913, 865 P.2d 1004, 1008 (Ct. App. 1993). "Ignorance of the law or rules of procedure are generally inexcusable." *Id.* 124 Idaho at 917, 865 P.2d at 1008. Ignorance of the law can easily be remedied by seeking the assistance of legal counsel and for such reason, a mistake of law is not sufficient to set aside a judgment. *Id.* 124 Idaho at 918, 865 P.2d at 1009.
>
> To illustrate a mistake of law, the Supreme Court of Idaho has held that a defendant's mistaken belief that he could present testimony at a summary judgment hearing under Rule 43, instead of timely filing a verified statement in the court record to contradict plaintiff's motion, constituted a mistake of law, and such mistake was insufficient to set aside the judgment. *Golay, supra.* Similarly, the Idaho Court of Appeals has held a mistake of law exists where a defendant confused Idaho's 20 day period to respond stated in the summons with the 30 day period to respond in the defendant's home state of California. *Gro-Mor, Inc. v. Butts*, 109 Idaho 1020, 712 P.2d 721 (Ct. App. 1985). In that case, the default judgment was not set aside. *Id.* The Court of Appeals further held that a defendant's failure to understand the starting date of the 20 day period in the summons is the date of service, not on the date of an agent's receipt, constitutes a mistake of law and is an insufficient mistake to set aside a default judgment. *Washington Federal Savings, supra.*

R. p. 185 – 186. *Emphasis Added.*

The magistrate judge correctly agreed with Respondent. Tr. p. 39:10-17. The district court made a similar finding:

> William's mistake is a clear mistake of law, as the Idaho Rules of Civil Procedure do not distinguish between business days and non-business days, except when the final day to file an answer is on a weekend on holiday. I.R.C.P. 6(a). Because Williams mistake was a mistake of law, he cannot be granted relief of default judgment under the theory of mistake under 60(b)(1). The magistrate did not err or abuse its discretion in reaching this conclusion.

R. p. 198 - 199.

The law is clear on this point. Accordingly, the decision of the lower courts as it relates to a "mistake" under I.R.C.P. 60(b)(1) should be affirmed where Appellant's mistake is one of law, not fact.

B. The Court Acted Within Its Discretion In Holding Appellant's Failure to Respond in a Timely Fashion Did Not Constitute Excusable Neglect.

Appellant's failure to respond in a timely manner did not constitute "excusable neglect." "Excusable neglect" invokes a "reasonably prudent person under the circumstances" standard on those that neglect their responsibilities. *Washington Federal Savings*, 124 Idaho at 915-16, 865 P.2d at 1006-07. In other words, this is not simply a neglect standard, but an ***excusable*** neglect standard. The same standard of reasonableness is imposed on those committing a "mistake" of fact; the law does not condone willful ignorance. *Newbold v. Arvidson*, 105 Idaho 663, 664, 672 P.2d 231, 232 (1983) *disapproved of on other grounds by Shelton v. Diamond Int'l Corp.*, 108 Idaho 935, 703 P.2d 699 (1985). Pro se litigants are held to the same standards as an attorney. *Golay*, 118 Idaho at 392, 797 P.2d at 100.

In this case, the magistrate correctly recognized this standard and applied it in a logical manner in light of the default:

> [. . .] In looking at excusable neglect, the Court has to look at what a reasonable person would have done in similar circumstances. And I will readily admit that that is a difficult task because of the incarceration aspect of this because that doesn't happen very often in people's lives where they're in custody, in and out of custody, while these types of things are happening. The general population involved in civil cases don't have jail as an issue. So it's certainly an exacerbating factor for Mr. Williams.
>
> However, the Court notes that from June 2 through June 15th, that Mr. Williams was not in custody and had a significant period of time, 13 days in that period of time, in which he very well could have filed an answer, sought legal advice, or taken any action that he chose to have taken at that time, including getting replacement documents if he needed them. **After he's rearrested on the 15th, he still has a few days. And again, with an asset of this nature, it would seem that that would be a high priority to get the – to get an answer made.**
>
> **And so I look at those facts and as I weigh them, I can't say that the incarceration in and of itself raises this matter to the level of excusable neglect. And so I'll find that there's not excusable neglect based on that finding.**

Tr. pp. 40:5 – 41:1. Considering the circumstances of someone who is properly served and has notice of the documents, upon re-incarceration several days before the default deadline passed, the magistrate reasoned that a reasonable person would have reached out to save his motorcycle. When the County learned that Appellant no longer had a copy of the pleadings, the County immediately sent a copy of the same to Appellant. Tr. pp. 7:24 – 8:3, 31:19 – 23; R. p. 19 – 20. Mr. Davis did not learn Appellant did not have these documents or even that he was rearrested until after the County had already filed for default.

The district court similarly held as follows:

> In this case, Williams misunderstood his legal obligation, and made mistakes of law. Although unfamiliar with the rules of civil procedure, Williams had a duty to seek out legal counsel or educate himself as to his responsibilities. The magistrate court did not err or abuse its discretion in concluding that there was no excusable neglect.

R. p. 200. Both courts applied the governing law to the facts in a logical manner hence there was no abuse of discretion. Appellant must show the decision of the courts below did not flow logically from the facts. He has failed to do so or even allege this issue.

III. ISSUES RAISED FOR THE FIRST TIME ON APPEAL SHOULD NOT BE CONSIDERED.

Appellant alleges for the first time on appeal that Respondent failed to timely object to Appellant's Motion to Set Aside the Default and failed to raise affirmative defenses. This issue was not raised below. "This Court's longstanding rule is that it will not consider issues raised for the first time on appeal." *Unifund CCR, LLC v. Lowe*, 159 Idaho 750, 367 P.3d 145, 150 (2016) *citing KEB Enters., L.P. v. Smedley,* 140 Idaho 746, 752, 101 P.3d 690, 696 (2004). This issue should therefore not be considered by this Court.

Out of an abundance of caution, and in no way waiving the argument set forth above, I.R.C.P. 12 applies to answers to complaints and summonses, not to objections and responses to motions to set aside. Instead, I.R.C.P. 7(b)(3)(E) applies to responses to motions, requiring a response seven (7) days prior to the hearing. In this case, the hearing on Motion to Set Aside was held on September 11, 2014. Respondent filed its objection 7 days prior to the hearing on September 4, 2014. Respondent's objection was timely.

Furthermore, where Respondent was the Plaintiff in the underlying action and no counterclaim was filed, it has no reason to raise affirmative defenses.

Regardless, these issues were not raised below and therefore should not be considered by this Court.

REQUEST FOR ATTORNEYS FEES

Attorney fees will be awarded against a pro se appellant who brought or pursued the appeal frivolously, unreasonably, or without foundation. *King v. Lang,* 136 Idaho 905, 42 P.3d 698 (2002); *Bowles v. Pro Indiviso, Inc.,* 132 Idaho 371, 973 P.2d 142 (1999).

This appeal is nothing more than a request that the appellate court second-guess the magistrate and district courts. Appellant has set forth no basis upon which the lower courts abused their discretion. Appellant fails to allege on appeal that the courts erred in ruling a requirement of Rule 60(b) was not met. Without this critical ruling being reversed, even a reversal on a meritorious defense (if successful) does not meet the standard to set aside a judgment.

Furthermore, this Court has already ruled that civil forfeitures are independent of the criminal actions, and therefore a meritorious defense cannot exist. *State v. McGough*, 129 Idaho 371, 374 (1996). Additionally, the plain language of the state imposing a different standard of proof clearly demonstrates the frivolous, unreasonable, and foundationless nature of Appellant's argument.

Accordingly, attorneys fees should be granted on behalf of Respondent for having to respond to this appeal pursuant to I.A.R. 41 and I.C. §§ 12-117, 121, and 123 where Appellant fails to appeal with a reasonable basis in law or fact.

CONCLUSION

The holding of the magistrate and district courts should be affirmed where the failure to be convicted of the underlying crime does not constitute a meritorious defense. Further, the holding should be affirmed where the courts below clearly acted within their discretion and Appellant asks this court to do nothing more than second guess their ruling. Additionally, Respondent should be granted its attorney's fees pursuant to I.C. § 12-117.

DATED this 27th day of April, 2016.

WESTON S. DAVIS, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 27th day of April, 2016, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

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WESTON S. DAVIS, ESQ.

CERTIFICATE OF PARTIAL COMPLIANCE

The undersigned does hereby certify that the electronic brief submitted is in compliance with all of the requirements set out in I.A.R. 34.1. However, an electronic brief cannot be served on Appellant where Respondent is not aware of Appellant's email address, has not previously appeared electronically, and where he is incarcerated and perhaps will not have ready access to email. This electronic copy is submitted for convenience of the Court. A hard copy has been sent to this Court and to Appellant so as to ensure both the Court and Appellant receive a hard copy within the timeframe set forth by I.A.R. 34.

DATED and CERTIFIED this 27th day of April, 2016

WESTON S. DAVIS, ESQ.