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IN THE SUPREME COURT OF THE STATE OF IDAHO

Supreme Court Case No. 39595

ANNETTE LLOYD DAVIDSON,
Plaintiff-RESPONDENT,

vs.

JOSEPH LLOYD SOELBERG,
Defendant-APPELLANT.

RESPONDENT'S RESPONSE BRIEF

Appeal from the District Court of the Fourth Judicial District for Ada County
Case No. CV OC 2011-07685

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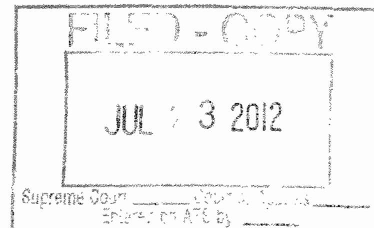

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STATEMENT OF THE CASE

Nature of the Case

We respectfully offer this alternative version of the Nature of the Case.

This case turns on whether a five-year old spousal support agreement is an enforceable contract; or whether it was merged into the final decree of divorce between the parties-litigant.

This question was considered by the District Court, Judge Lynn G. Norton, who issued a researched memorandum decision January 18, 2012, finding that the spousal support question could be decisively answered: Joseph SOELBERG (Appellant here) was obligated under contract to pay Annette DAVIDSON (Respondent here) $2,200 per month for a period of ten years.

Judge Norton found that this obligation was by now a settled, separate and enforceable contract, not modifiable as a domestic support provision within a final divorce decree, and that SOELBERG was in breach of that contract.

SOELBERG appeals, on grounds that the underlying agreement was invalid, void, or voidable.

DAVIDSON responds that the District Court decided all legal standards and questions properly, and that Judge Norton's thoroughly researched decision should stand.

RESPONSIVE ARGUMENT

1. **The District Court's summary judgment in favor of DAVIDSON was appropriate, because there were no genuine issues of material fact.**

SOELBERG persists in a troublesome conspiracy theory that he was tricked into signing an agreement that didn't represent his true understanding of the terms. Judge Norton's decision on January 18, 2012 diplomatically dispenses with this absurdity by pointing out how

SOELBERG's own businesses were highly successful legal document preparation companies, and that SOELBERG himself – although not law trained – made a successful living out of reviewing legal documents. It simply fails in credibility that he would fail to review something as important as his own pleadings and papers during his own dissolution. Beyond a failure in credibility, it is patently absurd that SOELBERG would have languished for five years without challenging the legal effect of his agreements.

SOELBERG appears to be asserting a claim that it was a mistake in contract because he signed an agreement he hadn't read or understood. Under the well-settled duty to read under the objective theory of contacts, [*Ricketts v. Pennsylvania R.R. Co.*, 153 F.2d 757, 760 (2nd Cir. 1946) (L. Hand, Jr.); Restatement, Second, Contracts § 20, Comment d; 1 Williston § 35; see Whittier, The Restatement of Contracts and Mutual Assent, 17 Calif.L.Rev. 441 (1929)], SOELBERG would be assumed to have read and understood the entire contents of the document that constitute the agreement. However, SOELBERG asserts exceptions in this case, to avoid the traditional rule, including that the contract term was not sufficiently called to his attention as a stand-alone contract.

2. The spousal support agreement was and is an integrated stand-alone contract.

SOELBERG alleges that the integration of the contract term was not called to his attention, as an exception to the Duty to Read (*supra*). There is no such bright line rule to avoid enforcement of a contract term; except for the axiomatic "reasonable person" approach. The question is whether a reasonable person, considering all circumstances of the case, would know that such a term was intended as a separate contract. Mellinkoff, How to Make Contracts Illegible, 5 Stan.L.Rev. 418, 430-31 (1953). District Court Judge Norton provides great help to this Court in the instant appeal, because she has already conducted the reasonable person

analysis, which presents a clearer picture of reality than the convoluted explanation offered by the Appellant in this appeal. Concisely put,

> In this case, [SOELBERG] insinuated fraud or misrepresentation stating that [DAVIDSON's] former counsel "slipped in" language in the divorce decree that he either did not agree to or did no appreciated, and which ultimately had a different legal effect than he now says he intended. ... [SOELBERG's] allegation of trickery ***is not supported by the record because he signed the stipulation with the propose divorce decree <u>attached</u>.*** Although [SOELBERG's] counsel argues about different formatting of another page 1 attached as Exhibit 1 to [DAVIDSON's] Affidavit, the draft clearly ended with the word "and" which the Court concludes shows there was more to the agreement than [SOELBERG] now claims to recall. ... Like the parties raising the issue of fraud in [*McDonald v. Barlow*, 109 Idaho 101, 104, 705 P.2d 1056, 1059) (Ct. App. 1985)], if there was a misrepresentation by [DAVIDSON's] attorney in this case, [SOELBERG] was not diligent in uncovering the alleged fraud or in subsequently opposing the judgment excepting support from merger with the decree. [SOELBERG] has likewise not pursued a correction of the judgment within six months (as required under reason (3) under I.R.C.P. 60(b)) or even raised this issue before the Magistrate's Court in subsequent proceedings.

MEMORANDUM DECISION AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, Case No. CV-OC-20117685, Jan. 18, 2012, at 6; certain internal citations omitted, emphasis added.

SOELBERG's issue of fraud or trickery is simply invalid on its face, but fails also as an issue on appeal, because it was never part of the original challenge at the trial court.

SOELBERG's statement that Idaho law presumes that spousal support agreements are merged in the decree unconditionally misses the mark. Idaho *does* presume a merger when the decree is silent. Here, the parties' decree is *not silent*, thus, *Keeler v. Keeler* is inapplicable. Judge Norton properly identified the *Borley* case for the proper rule in this circumstance:

> "The proper analysis is to look first *only* to the four corners of the divorce decree. If the language of the decree clearly and unambiguously holds the property settlement agreement is not merged, the inquiry is at an end. The Court's inquiry will move beyond the four corners of the decree to the property settlement

> agreement only when the decree is ambiguous and reasonably susceptible to conflicting interpretations."

Borley v. Borley, 149 Idaho 169, at 177, 233 P.3d at 108 (2010).

The parties divorce decree is unambiguous in its language: "The Mediation Agreement dated March 9, 2007 is hereby merged and incorporated into this decree of divorce, **except for Paragraph L which is not merged and shall remain a separate contract between the parties."** (Emphasis added). This language is only open to one interpretation and the Court properly did not look beyond the "four corners" of the divorce decree.

Judge Norton also identified that The Supreme Court has already held in *Borley* that when,

> ... the court's decree is unambiguous, but mistaken, with respect to merger, the parties have an inherent safeguard in the form of the Idaho Rules of Civil Procedure 60(a) pursuant to which a party may request the court to correct a clerical mistake. With this protection already in place, there is no reason for a court to consider the language of a property settlement agreement when there is an unambiguous decree stating that the agreement is not merged. Neither party moved to correct the Decree here, so we must assume no mistake was made.

Id. (internal citations omitted). Here, SOELBERG did not move to correct the decree, and the language stating that Paragraph L is not merged is unambiguous. A spousal support contact that is not merged in to the divorce decree is not modifiable by a court because it is a separately enforceable contract. *See Terteling v. Payne,* 131 Idaho 389, 394, 957 P.2d 1387, 1392 (1998) (distinguishing the express terms of a spousal support agreement from a modifiable obligation to pay alimony). Here, the spousal support agreement is a separate contract, and thus, not modifiable in the family division of the magistrate's court.

3. The District Court properly exercised jurisdiction of the contract breach.

Magistrate Judge Day properly found that the magistrate court did not have jurisdiction over the spousal support contract because it was not merged into the divorce decree, and was thus *not* modifiable in the magistrate court. The District Court then properly exercised its jurisdiction over the spousal support contract and found that it is a separate contract that is not subject to post-decree modification. The District Court properly exercised jurisdiction over this case because of the fundamental nature of the dispute is breach of contract, not a modifiable domestic support order.

4. The Spousal Support agreement was supported by consideration.

SOELBERG argues that any agreement or contract should be void for lack of consideration; however, his own attorney acknowledges in his opening brief, during his Statement of Facts, at 7, that the "provision for 'spousal support' quoted by plaintiff in her complaint … was intended by the parties to equalize her community property interest in what were, … income-producing businesses." SOELBERG's contradictory argument that there was no consideration is therefore not only untimely as a challenge to the underlying contract, but lacking in integrity or consistency.

SOELBERG makes alternative arguments to challenge the enforceability of the contract, should this Court affirm the District Court decision which found a valid contract. SOELBERG's theories could each be answered by competing theories of DAVIDSON to preserve the validity of the contract, including detrimental reliance; etc.

5. DAVIDSON properly withdrew her claim in divorce court because that court does not have jurisdiction to modify or terminate a separate contract.

SOELBERG mistakenly asserted that had plaintiff "chosen" to maintain her claim at the Magistrate's Court [Family Division], it would have been subject to termination for the extreme hardship that it would be on the defendant (SOELBERG). This argument is false and flawed on every level. In Idaho, a Breach of Contract claim cannot originate at the family court level. The Family Court would have dismissed plaintiff's claim as it did to the Defendant's Motion to Terminate Spousal Support that he brought on May 24, 2011. As Judge Norton noted, Judge Day ***did*** consider the issue of whether the support was merged or integrated and held that it was NOT merged into the decree. Judge Day then dismissed SOELBERG's motion for lack of jurisdiction, which is what would have happened had DAVIDSON tried to continue her claim in that same court.

6. SOELBERG makes one final flawed assertion in his Issues on Appeal: whether an attorney fee award was appropriate.

This issue, although alleged, was utterly ignored in SOELBERG's own brief. DAVIDSON points to Judge Norton's decision, and the well-reasoned conclusion that attorney fees were properly awarded.

CONCLUSION

The spousal support contract was clear and unambiguous that it would be a separate contract that is not merged with the divorce decree. Judge Day and Judge Norton have ruled already on this issue, finding that the obligation was one of a separate and enforceable contract.

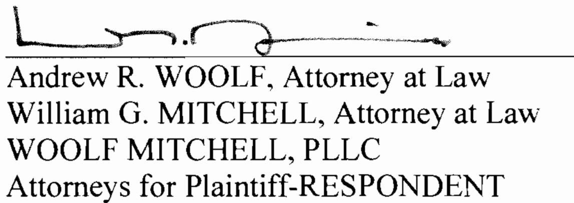
Additionally SOELBERG could have requested this to be clarified after he received the divorce decree from the court. If there was a mistake in the decree, SOELBERG had safeguards

in place to challenge it. He did nothing, missing not only a procedural deadline, but also allowing five years to pass before making any case for a change to the obligation.

SOELBERG's arguments were not raised at trial, are flat, and flawed, and give no reason to disturb the decisions of the District Court.

SOELBERG's appeal ought to be denied.

Respectfully submitted this 23rd Day of July in the Year 2012, by,



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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd Day of July in the Year 2012, I serviced two true and correct copies of the foregoing on the following by the pre-paid U.S. Post:

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