

8-9-2012

# Davidson v. Soelberg Appellant's Reply Brief Dckt. 39595

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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.

---

**APPELLANT'S REPLY BRIEF**

---

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

---

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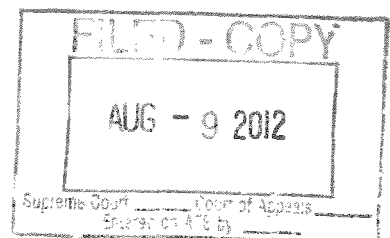
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ATTORNEYS FOR RESPONDENT



**IN THE SUPREME COURT OF THE STATE OF IDAHO**

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## ARGUMENT

### **Wife, like the court below, simply refuses to address the genuine issue of material fact that precludes summary judgment for plaintiff.**

Neither the court below nor wife in her respondent's brief seem to "get" the problem with what has occurred here: The stipulation was for entry of a decree "in the form *attached*." The form physically attached when husband signed the stipulation provided for merger of the entire mediation agreement (including its spousal support provision). This form was removed and replaced with a form that deleted that provision, leaving in place only the exclusion from merger of the spousal support provision before the stipulation was submitted to the magistrate for entry.<sup>1</sup>

By the wooden analysis of the lower court and wife in her brief, it should present no hurdle to justice if the parties stipulated to adoption of an *attached* mediated equal division of property, whereupon one of the parties then substituted a completely different document that provided for the switcher to receive the entire community estate. The duped party, their argument goes, should not be heard to complain because he stipulated to adoption of the "attached" document and the *now*-attached document does, after all, do "exactly" what he's now screaming about. Inasmuch as the entire foundation for the magistrate's decree was simply what form was physically attached to the stipulation when presented to him, the genuine issue of fact as to whether that form was the one physically attached to the stipulation when it was presented to husband for signature is obviously a very material one. Summary judgment based on husband's supposed "agreement" to the form of decree actually presented by wife's then-counsel

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<sup>1</sup> The two different forms were intended to be attached to husband's opening brief as Appendix A and Appendix B for convenience, but were not. They are so appended here. In addition, Appendix C is the stipulation itself.

to the magistrate was erroneous. Wife's repeated citations to an article entitled "How to Make Contracts Illegible" is singularly ironic.

Wife and the lower court miss the point on another aspect of the case, too: Great emphasis is placed on the fact husband supposedly let the form-switch "slide" for fully five years before making an issue of it, instead of leaping to correct the decree within six months of its entry. But as husband's papers in opposition to summary judgment show, he had no *reason* to, until his financial circumstances changed materially when his businesses failed. The issue here isn't whether husband agreed to pay wife \$264,000 over ten years. He did so agree and he was perfectly willing to perform his agreement – and did – for as long as he was financially able. It was only when he became financially *unable* to make the payments that the merger/non-merger bomb – carefully planted by wife's attorney – went off.

Finally, the "gotcha" essence of wife's entire campaign in this matter can be gleaned from the remarkable frailty of the following, with which she actually opens her brief:

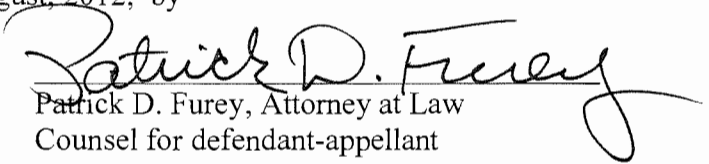
"Soelberg persists in a troublesome conspiracy theory that he was tricked into signing an agreement that didn't represent his true understanding of the terms. Judge Norton's decision on January 18, 2012 diplomatically dispenses with this absurdity by pointing out how Soelberg's own businesses were highly successful legal document preparation companies, and that Soelberg himself – although not law trained – made a successful living out of reviewing legal documents."

Respondent's Brief at 4-5. Husband's businesses had nothing to do with "reviewing legal documents," they had nothing to do with "legal document preparation" and the issue isn't whether the document he signed represented his true understanding – which the first page, at least, *did* – the issue is whether the document presented to the magistrate for entry was the same one he signed.

**CONCLUSION**

Summary judgment for wife, entered below on the erroneous basis that the decree entered was the one to which husband had in fact stipulated, should be reversed.

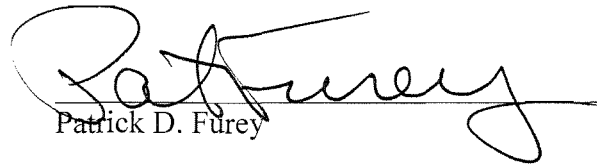
Respectfully submitted this 9th day of August, 2012, by

  
Patrick D. Furey, Attorney at Law  
Counsel for defendant-appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August, 2012, I served two true and correct copies of the following on the following by United States mail:

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WOOLF MITCHELL, PLLC  
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ANNETTE L. SOELBERG,  
Plaintiff,  
v.  
JOSEPH L. SOELBERG,  
Defendant.

Case No. CV DR 0613448

**JUDGMENT AND DECREE OF  
DIVORCE**

Based upon the Stipulation of the parties, IT IS HEREBY ORDERED ADJUDGED AND  
DECREEED as follows:

1. **DIVORCE**: The Plaintiff (hereinafter referred to as "Annette") and the Defendant (hereinafter referred to as "Joseph") were married on May 20, 1988, at Salt Lake City, Utah. The parties are granted a divorce from one another on the grounds of irreconcilable differences. Each is restored to the status of a single person.

2. **MEDIATION AGREEMENT**: The Mediation Agreement dated March 9, 2007 is hereby approved and made an integral and non-separable part of this decree of divorce and



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Attorneys for Plaintiff

FILED  
MAR 14 2007  
J. DANIEL WILSON, CLERK  
BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ANNETTE L. SOELBERG,  
Plaintiff,

v.

JOSEPH L. SOELBERG,  
Defendant.

Case No. CV DR 0613448

**JUDGMENT AND DECREE OF  
DIVORCE**

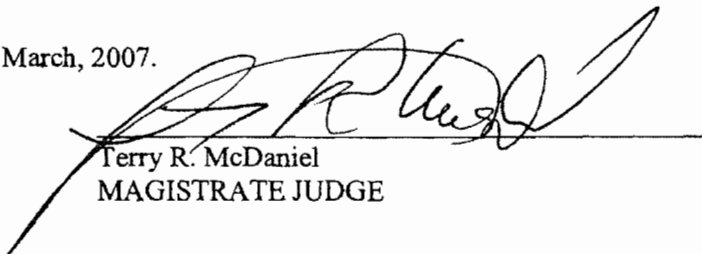
Based upon the Stipulation of the parties, IT IS HEREBY ORDERED ADJUDGED AND  
DECREED as follows:

1. **DIVORCE**: The Plaintiff (hereinafter referred to as "Annette") and the Defendant  
(hereinafter referred to as "Joseph") were married on May 20, 1988, at Salt Lake City, Utah. The  
parties are granted a divorce from one another on the grounds of irreconcilable differences. Each  
is restored to the status of a single person.

ORIGINAL

2. **MEDIATION AGREEMENT**: 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.

DATED This 14 day of March, 2007.



Terry R. McDaniel  
MAGISTRATE JUDGE

MAR 12 2007

J. DAVID NAVARRO, Clerk  
By L. AMES  
DEPUTY

STANLEY W. WELSH ISB #1964  
MACKENZIE E. WHATCOTT #6774  
COSHO HUMPHREY, LLP  
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
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ANNETTE L. SOELBERG,  
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v.

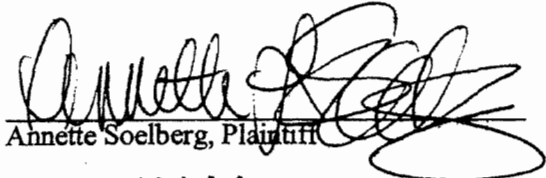
JOSEPH L. SOELBERG,  
Defendant.

Case No. CV DR 0613448

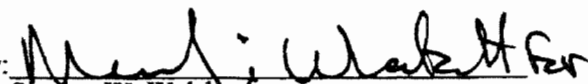
**STIPULATION FOR ENTRY OF  
JUDGMENT AND DECREE OF  
DIVROCE**

THE ABOVE NAMED parties and their attorneys stipulate that the Court may enter a Judgment and Decree of Divorce in the form attached to this Stipulation. The parties waive entry of findings of fact and conclusions of law.

DATED this \_\_\_\_ day of March, 2007.

  
Annette Soelberg, Plaintiff

COSHO HUMPHREY, LLP

By:   
Stanley W. Welsh  
Attorneys for Plaintiff

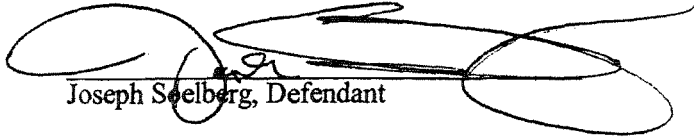
**ORIGINAL**  
STIPULATION FOR ENTRY OF JUDGMENT AND DECREE OF DIVROCE P-1-  
19394-001/229214 SWW/MEW/jib 3/12/07

APPENDIX C

1 of 4

CF EX-137 II

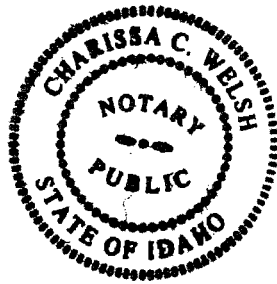
isw

  
Joseph Soelberg, Defendant

STATE OF \_\_\_\_\_ )  
  )ss.  
County of \_\_\_\_\_ )

On this 12<sup>th</sup> day of March, 2007, before me, the undersigned notary public in and for said State, personally appeared JOSEPH SOELBERG, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that she/he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Charissa C. Welsh  
Notary Public for State of Idaho  
Residing at Kuna, ID  
Commission expires 8-17-11