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# De Geus v. De Geus Respondent's Brief Dckt. 39931

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IN THE SUPREME COURT OF  
THE STATE OF IDAHO

JESSICA LYNN DEGEUS

Plaintiff/Respondent,

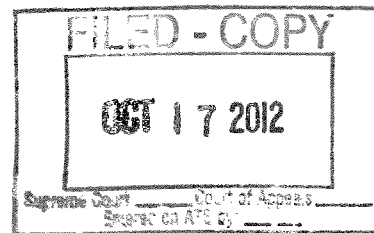
vs.

EDWARD K. DEGEUS,

Defendant/Appellant.

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CASE NO. 039931-2012



RESPONDENT'S BRIEF

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Appealed from the District Court of the Third Judicial District for the State of Idaho, in and  
for Owyhee County

Honorable Susan E. Wiebe, District Judge

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## TABLE OF CONTENTS

I.	STATEMENT OF CASE .....	4
A.	NATURE OF THE CASE .....	4
B.	COURSE OF PROCEEDINGS .....	4
II.	ISSUE ON APPEAL .....	6
III.	ADDITIONAL ISSUE PRESENTED ON APPEAL .....	6
IV.	STANDARD OF REVIEW .....	6
V.	ARGUMENT .....	6
A.	<b>The error in the calculation of Mr. Degeus’s child support is not clerical in nature and falls outside the remedial realm of Idaho Rule of Civil Procedure 60(a).</b> .....	6
B.	<b>Ms. DeGeus should be awarded her Attorney Fees in Defending this Action.</b> .....	10
VI.	CONCLUSION .....	11

## TABLE OF AUTHORITIES

### Cases

<u>Blanton v. Anzalone</u> , 813 F.2d 1574 (9 <sup>th</sup> Cir. 1987) .....	6
<u>Brooks v. Brooks</u> , 864 S.W. 2d 645, 647 (Tex.App. 1993) .....	9
<u>Dewitt v. Medley</u> , 117 Idaho 744 (Idaho App. 1990). ....	6
<u>Excel Leasing Co. v.Christensen</u> , 115 Idaho 708, 712, 769 P.2d 585, 589 (Ct.App. 1989) .....	11
<u>Minich v. Gem State Developers, Inc.</u> , 99 Idaho 911, 591 P.2d 1078 (1979).....	11
<u>Silsby v. Kepner</u> , 140 Idaho 410 (2004).....	6,7,8
<u>Spomer v. Spomer</u> , 580 P.2d 1146 (Wyo. 1978).....	9
<u>Troche v. Gier</u> , 118 Idaho 740 (Ct. App. 1990) .....	11
<u>Wolff v. Weber</u> , 1997 SD 52; 563 N.W. 2d 136, 139 (1997).....	10

### Rules

I.R.CP. 60(a) .....	7,8,9
Idaho Appellate Rule 41 .....	10

## **I. STATEMENT OF CASE**

### **A. NATURE OF THE CASE**

This is an appeal of the decision of the District Court to uphold the magistrate's decision to deny Appellant's Motion to Correct Clerical Error due to the fact that Appellant did not file an affidavit in support of the Motion and/or present testimony to support the Motion.

### **B. COURSE OF PROCEEDINGS**

The Appellant, Edward Degeus, and the Respondent, Jessica DeGeus were parties to a divorce action which was finalized nearly four years ago. A stipulated Judgment and Decree of Divorce entered on the 5<sup>th</sup> day of October, 2007. (R. 47) The original Judgment and Decree contained an order for Mr. DeGeus to pay child support to Ms. DeGeus. (R. 50) The Decree assigned the tax exemptions to Ms. DeGeus and the language of the Decree indicated that "said exemptions have been factored into the monthly child support obligation, attached as Exhibit 1. (R. 50) Exhibit 1 consists of an Idaho Child Support worksheet which contains a "Tax Exemption Compensation" amount of \$92.30 subtracted from Mr. DeGeus' overall child support obligation to offset the award of the tax exemptions to Ms. DeGeus. (R. 55)

Subsequent to the entry of the final order, Counsel for Ms. DeGeus filed a Motion to Amend; Or In The Alternative, Motion To Reconsider based on the fact that Ms. DeGeus's income was mistakenly overstated in the calculation of child support. (R. 65-81) Ms. DeGeus's motion and accompanying affidavit of counsel for Ms. DeGeus prayed for child support to be awarded in the recalculated amount of \$612.00 per month. (R. 65-81)

Ms. DeGeus's motion was heard on the 5th day of November, 2007 by the magistrate judge. Mr. DeGeus did not appear at the motion hearing. Neither did Mr. DeGeus file any

objection to the motion. The magistrate granted the motion to amend the judgment and decree and signed the Amended Judgment and Decree of Divorce submitted to the Court at the hearing. The resulting Order required Mr. DeGeus to pay child support in the amount of \$612.00 which was an increase of \$261.00 from the original Stipulated Judgment and Decree of Divorce. The Amended Judgment and Decree of Divorce awarded both tax exemptions to Ms. DeGeus and stated “said exemptions have been factored into the monthly child support obligation, attached as Exhibit 1” (R. 84) Exhibit 1 consisted of an Idaho Child Support worksheet which showed a “Tax Exemption Compensation” amount of \$120.78 *added* to Mr. DeGeus’s overall child support obligation. (R.89)

On August 4, 2011, nearly four years after the entry of the Amended Judgment and Decree of Divorce, Mr. DeGeus filed a Motion to Correct Clerical Error. Mr. DeGeus’s Motion alleged that the child support order contained in the Amended Judgment and Decree of Divorce did not contain an offset against his overall monthly child support obligation for the award of the tax exemptions to Ms. DeGeus. (R. 122) Mr. DeGeus’s motion contends that the error in the configuration of child support in the Amended Judgment and Order was a clerical error subject to correction under Idaho Rule of Civil Procedure 60(a).

Mr. DeGeus did not file a supporting affidavit for the Motion to Correct Clerical Error. Neither did Mr. DeGeus appear in person and testify or offer any other testimony at the hearing for the Motion to Correct Clerical Error which would support his request for relief. Instead, Mr. DeGeus’s Motion relied solely on the “face” of the Amended Judgment and Decree and its child support attachments as a basis for the relief sought. (R.122)

The hearing for Mr. DeGeus’s Motion to Correct Clerical Error took place on the 14<sup>th</sup> day of September, 2011. After oral argument, the magistrate denied Mr. DeGeus’s Motion To

Correct Clerical Error citing that “[d]efendant filed his Motion to Correct Clerical Error without a supporting affidavit and offered no testimony in support thereof”. (R. 160)

Mr. DeGeus appealed the magistrate’s decision to the District Court. The District Court affirmed the decision of the magistrate. Mr. DeGeus now brings the instant appeal.

## **II. ISSUE ON APPEAL**

Whether or not the Amended Order presents a Clerical Error Subject to Relief Under I.R.C.P. 60(a).

## **III. ADDITIONAL ISSUE PRESENTED ON APPEAL**

Whether or not Ms. DeGeus is entitled to an award of attorney fees on appeal for defending this matter on appeal.

## **IV. STANDARD OF REVIEW**

In Silsby v. Kepner, 140 Idaho 410, (2004) this Court used the 9<sup>th</sup> Circuit’s construction of Rule 60(a) found in Blanton v. Anzalone, 813 F.2d 1574 (9<sup>th</sup> Cir. 1987) which reviewed a District Court’s decision on a Rule 60(a) issue according to the abuse of discretion standard. As to questions of law, the Appellate Court exercises free review. Dewitt v. Medley, 117 Idaho 744 (Idaho App. 1990).

## **V. ARGUMENT**

### **A. The error in the calculation of Mr. Degeus’s child support is not clerical in nature and falls outside the remedial realm of Idaho Rule of Civil Procedure 60(a).**

In the instant matter, the error in the calculation of Mr. DeGeus’s child support obligation is not clerical in nature. The error is of a more substantial nature. Therefore, the error in the

child support award entered in the Amended Decree and Judgment is not entitled to correction under Idaho Rule of Civil Procedure 60(a).

Rule 60(a) states,

Clerical mistakes in judgment, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

Rule 60(a) only applies to an oversight or omission that is immediately recognizable from the record. “Rule 60(a) applies to those errors in which the “. . . type of mistake or omission [is] mechanical in nature which is apparent in the record and which does not involve a legal decision or judgment by an attorney. “ Silsby v. Kepner, 140 Idaho 410, 411 (2004). “Rule 60(a) can only be used to make the judgment or record speak the truth and cannot be used to make it say something other than what originally was pronounced.” Id. Errors of a more substantial nature are to be corrected by a motion under Rules 59(e) or 60(b). Dursteler v. Dursteler, 112 Idaho 594, 597 (App. 1987). Rule 60(a) does not apply to instances where “a legal or factual mistake” was made in the original determination. See Silsby, 140 Idaho at 412. See also Blanton v. Anzalone, 813 F.2d 1574 (9<sup>th</sup> Circ. 1987). Such mistakes are outside the remedial scope of Rule 60(a).

In the instant case, the record demonstrates that the magistrate judge entered a child support order exactly as requested by Ms. Degeus and the resulting Amended Decree and Judgment reflects the amount prayed for. There is no indication on the record that the magistrate judge intended to order any other amount of child support than what was reflected in the Amended Decree and Judgment and which was requested by Ms. DeGeus. The amount entered in that Amended Judgment does not comply with the mandates of the Idaho Child Support



Guidelines regarding the award of tax exemptions. However, this type of error is substantive in nature. The determination of Mr. DeGeus's child support obligation involves a mathematical exercise, in which the application of a formula takes into account many numerical figures that have a symbiotic relationship to one another as evidenced by the differing "offsetting" amounts found in the separate Child Support Worksheets attached to the original Decree, the Amended Decree, and Mr. DeGeus's Motion to Correct Clerical Error that are all part of the record. The process of correcting the child support order in the Amended Decree and Judgment involves much more than a mere mechanical correction that can be determined as a result of reviewing the record. The determination of Mr. DeGeus's child support obligation requires the application of law to facts that would result in a substantive change in the support Order that was prayed for and entered by the Court as part of the Amended Decree and Judgment. As a result, Mr. DeGeus is not entitled to relief from the child support award entered in the Amended Judgment and Decree pursuant to Rule 60(a). Rather, this substantive error must be addressed pursuant to other available authority such as an appeal or a Rule 60(b) motion.

In Silsby v. Kepner, 140 Idaho 410 (2004), the Supreme Court analyzed a situation that was entirely similar to the instant situation. In Silsby, the order for child support entered in the Decree of Divorce against Mr. Kepner was the result of a default judgment due to Mr. Kepner's non-appearance in the matter. The orders of the Decree awarded the tax exemptions to Ms. Silsby without any offset to the Mr. Kepner's child support obligation. Mr. Kepner filed a motion to correct a clerical error under I.R.C.P. 60(a) "asserting that the Decree incorrectly calculated the child support amount" that he was ordered to pay. Id. at 411.

The Court ultimately ruled that the "error" in the calculation of child support was a legal error that was not "entitled to correction under Rule 60(a)". Id. at 412.

“The basic distinction between “clerical mistakes” and mistakes that cannot be corrected pursuant to Rule 60(a) is that the former consist of “blunders in execution” whereas the latter consist of instances where the court changes its mind, either because it made a legal or factual mistake in making its original determination”. Id. at 412.

This case is factually similar to the Silsby matter. Like in Silsby, the net result of the child support award is that Mr. DeGeus did not receive an offset for the award of the tax exemptions to the other party. Both cases present a situation wherein a legal or factual mistake led to the resulting error in the calculation of child support. Further analysis must be performed before the error can be remedied. Just as in Silsby, this Honorable Court may determine that the error in the child support calculation in this matter should be treated as a legal error and ineligible for relief pursuant to I.R.C.P. 60 (a).

Other jurisdictions have grappled with the distinction between clerical errors and errors of a more substantial nature.

“The key factor is whether or not the court reached a decision in the intentional or purposeful exercise of its judicial function. If the pronouncement reflects a deliberate choice on the part of the court, the act is judicial; errors of this nature are to be cured by appeal...Clerical mistake refers to the type of error identified with mistakes in transmission, alterations, or omission of a mechanical nature” Spomer v. Spomer, 580 P.2d 1146 (Wyo. 1978);

“A judicial error is one made by the court in rendering judgment, as opposed to the *entering* of the judgment in the record” which qualify as errors of a clerical nature. Brooks v. Brooks, 864 S.W. 2d 645, 647 (Tex.App. 1993) (emphasis added). The South Dakota Supreme Court in Wolff v. Weber explains “The problem is essentially one of characterization. It must be

determined whether a substantive change or amendment was made or whether the amended conclusions and judgment were in the nature of corrections.” Wolff v. Weber, 1997 SD 52; 563 N.W. 2d 136, 139 (1997). The Court went on to rule “[d]etermination of a party’s child support obligation requires application of the law to the facts of the case and affects the substantive rights of the parties. Such a process can never be held to be merely clerical”. Id. “The law is that the court cannot amend its judgment to conform to what it now believes it should have done” Id.

The magistrate judge did not err in denying the Mr. DeGeus’s Motion to Correct Clerical Error. The error in the child support award entered in the Amended Judgment and Decree was not clerical, but was more substantial in nature. The record did not support a mechanical correction to the Amended Judgment and Decree and was not sufficient basis to allow the magistrate judge to grant Mr. DeGeus relief . Mr. DeGeus presenting nothing more in support of his position that he was entitled to relief from the Amended Judgment and Decree. The magistrate did not abuse his discretion in denying Mr. DeGeus’s motion due to the fact that there was insufficient basis to grant relief on the motion. The magistrate’s decision to deny Mr. DeGeus’s motion was not erroneous and should be upheld.

**B. Ms. DeGeus should be awarded her Attorney Fees in Defending this Action.**

Ms. DeGeus is entitled to an award of her attorney fees and costs incurred in defending this action herein pursuant to Idaho Code section 12-121 and Idaho Appellate Rule 41. Mr. DeGeus’s appeal of the magistrate’s denial of the Motion to Correct Clerical Error seeks only to apply settled law to the facts of this matter and fails to present any significant issue.

“An award of attorney fees to the prevailing party may be granted under I.C. § 12-121 when the Court is left with the belief that the appeal has been brought or defended frivolously,


unreasonably, or without foundation. Excel Leasing Co. v. Christensen, 115 Idaho 708, 712, 769 P.2d 585, 589 (Ct.App. 1989) (review denied), citing Minich v. Gem State Developers, Inc., 99 Idaho 911, 591 P.2d 1078 (1979). Where the appellant fails to present any significant issue on appeal regarding a question of law, where no findings of fact made by the trial court are clearly or arguably unsupported by substantial evidence, where we are not asked to establish any new legal standards or modify existing ones, and where the focus of the case is on the application of settled law to the facts, the appeal is deemed to be without foundation. Under those circumstances, attorney fees should be awarded.” Troche v. Gier, 118 Idaho 740 (Ct. App. 1990).

## **VI. CONCLUSION**

The child support award in the Amended Judgment and Decree of Divorce is not the result of a clerical error. The error is more substantial in nature and is the result of a legal and/or factual mistake. It requires the application of law to facts in order to be remedied which takes it outside of the remedial realm of Idaho Rule of Civil Procedure 60(a). Without any further particulars from Mr. DeGeus in the form of supporting facts, the magistrate was not in a position to grant Mr. DeGeus any relief. This decision was neither an abuse of discretion nor erroneous. The magistrate’s decision should be upheld.

WHEREFORE, Ms. DeGeus respectfully requests that the District Court decision upholding the magistrate’s ruling denying Mr. DeGeus’s Motion to Correct Clerical Error be UPHOLD and Ms. DeGeus should be awarded her attorney fees and costs incurred herein.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of October, 2012.

TUCKER & KNOX, LLP  
  
COURTNIE TUCKER  
Attorney for Respondent

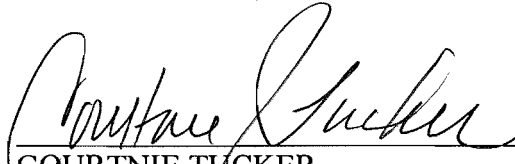
**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing document was served by the following method indicated below to each of the following:

Jim Rice  
2805 E. Blaine St., Ste. 140  
Caldwell, ID 83605

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<u>      </u>	Telecopy/fax (208)

DATED this 17<sup>th</sup> day of October, 2012.

  
COURTNIE TUCKER