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Bonner County v. Cunningham Respondent's Brief Dckt. 40642

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IN THE SUPREME COURT OF THE STATE OF IDAHO

BONNER COUNTY IDAHO,)
Plaintiff-Respondent,)
vs.)
MICHAEL C. CUNNINGHAM)
Real party interest,)
NINE THOUSAND FIFTY DOLLARS)
U.S. CURRENCY,)
Defendant-Appellant.)
_____)

Supreme Court Docket
No. 40642-2013

Bonner County Case
No. CV-2011-0776

RESPONDENT'S BRIEF

**Appeal from the District Court of the First Judicial
District for Bonner County.**

**HONORABLE JEFF M. BRUDIE,
District Judge presiding.**

LOUIS E. MARSHALL
Bonner County Prosecuting Attorney
127 South First Street
Sandpoint, ID 83864
(208) 263-6726

ATTORNEY FOR RESPONDENT

VAL THORNTON
Thornton Law Office
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017

ATTORNEY FOR APPELLANT

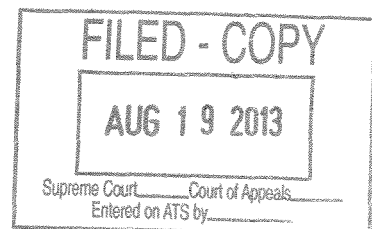


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I. STATEMENT OF THE CASE

On March 30, 2011, the Sandpoint City Prosecutor obtained a warrant to search the Defendant's residence for evidence of possession of a controlled substance as well as any items used in the potential sale or distribution of a controlled substance including, but not limited to, "scales, ledgers and/or receipts and/or currency." (R. at 148). When the search warrant was executed on March 30, 2011, several items of marijuana paraphernalia were seized from the bedroom in the Defendant's residence. (R. at 148). A locked "Husky" safe box was also found in the bedroom and seized. (R. at 148). When the box was opened by law enforcement it was found to contain nine-thousand and fifty dollars (\$9,050) in bills which were logged and secured by law enforcement on March 31, 2011. (R. at 148). Bonner County (hereinafter "the County"), by and through the County Prosecuting Attorney, filed forfeiture proceedings against the \$9,050 on May 3, 2011, thirty-four days after the seizure of the Defendant's money. (R. at 7-8). The forfeiture action was subsequently dismissed by the magistrate who found that the thirty (30) day requirement in I.C. § 37-2744(c)(3) was mandatory and not directory. (R. at 62-63).

The Defendant subsequently filed a motion for an award of attorney's fees and costs on September 12, 2011. (R. at 68-69). The County objected and a hearing was held on November 23, 2011. (R. at 90-91). The magistrate court not only denied the Defendant's request for attorney fees, but also stated that it had likely erred when it dismissed the forfeiture action. (R. at 100-102).

The Defendant appealed the magistrate's decision to the district court, on the ground that the denial of attorney fees was an abuse of discretion. (R. at 103-104). On November 30, 2012,

the district court issued an order affirming lower court's ruling. (R. at 147-151). The Defendant then appealed the decision of the district court affirming the denial of attorney fees. (R. at 153-155).

II. ISSUES ON APPEAL

- 1. Did the district court err in affirming the magistrate's denial of attorney fees?**
- 2. Is the Defendant entitled to attorney fees on appeal?**

III. ARGUMENT

- 1. The district court's decision affirming the magistrate court's denial of attorney fees should be affirmed.**

Before the Court is an appeal from a decision denying attorney fees, which was rendered by a district court acting in its appellate capacity. The appropriate standard of review is:

[w]hen reviewing the decision of a district court sitting in its appellate capacity, the Supreme Court reviews the magistrate court's 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 therefrom and if the district court affirmed the magistrate's decision, the district court's decision is affirmed as a matter of procedure.

Losser v. Bradstreet, 145 Idaho 670, 672 (2008).

This standard requires the Court to focus its review on the decision of the district court. However, the primary issues on appeal are based upon legal conclusions made by the magistrate court. Under *Losser*, however, this Court still reviews the magistrate's record to determine whether the factual findings are appropriately supported and the legal conclusions follow logically therefrom.

A. The district court's decision should be affirmed as a matter of procedure.

A review of the magistrate's record in this case shows that substantial and competent evidence supports the findings of fact and that the legal conclusions follow from those findings. Because the district court affirmed the magistrate's decision in accordance with the standard announced in *Losser*, this Court is therefore procedurally bound to affirm the decision of the district court.

i. The magistrates' findings of fact were substantial and competent.

In the order dismissing the forfeiture action against the Defendant, the magistrate found that the County initiated a forfeiture proceeding against the Defendant under I.C. § 37-2744 thirty-four (34) days after the seizure of the property occurred. (R. at 100). The forfeiture action was dismissed before the magistrate heard the merits of the case. The magistrate made no further findings of fact at the hearing on the Defendant's motion for attorney fees and costs, or in its order denying the same, except that the Defendant prevailed on the motion to dismiss the forfeiture. (R. at 99-100). These findings are not contested by either party and are supported by substantial, competent evidence. The Defendant, however, requests this Court to consider facts which are not part of the magistrate's record. Specifically, sections (1)(b)(ii) and (1)(b)(iii) of the Defendant's brief ask the Court to accept as fact that the property was not subject to forfeiture and that the proper forfeiture procedures were not followed, respectively. It would be error for the Court to consider these 'facts' because they were never reached by magistrate and the action was dismissed before the court had the opportunity to hear the merits from both parties.

Furthermore, the Defendant asks the Court to consider these ‘facts’ for the purpose of determining that the magistrate abused its discretion in denying attorney fees. Under *Losser*, however, this Court’s review is limited to the decision of the district court and, therefore, this argument should not be considered.

ii. The magistrate’s conclusions of law logically followed from the facts.

In addition to the substantial and competent evidence which supporting the findings of fact in this case, the magistrate’s conclusions of law follow therefrom. The magistrate ultimately concluded that attorney fees were inapplicable in this case because, although the County initiated the forfeiture proceeding four (4) days after the thirty (30) day period prescribed in I.C. § 37-2744, the County’s actions were reasonable. (R. at 101). The magistrate reached this conclusion by first observing that an award of attorney fees under I.C. §§ 12-117 and 12-121 requires a finding that a state agency, the County in this case, “acted without a reasonable basis in fact or law.” (R. at 100).

The magistrate noted that it likely erred when it dismissed the forfeiture under I.C. § 37-2744 because it initially interpreted the thirty day language as mandatory, and should not have dismissed the case without requiring the Defendant to demonstrate substantial prejudice. (R. at 100). Upon a reexamination of the statute, the magistrate determined that this was likely an issue of first impression and that it was not unreasonable for the County to interpret the thirty (30) day language as directory. (R. at 101).

Because the magistrate was unable to find any case law directly interpreting the thirty (30) day language, it consulted *State, Dept. of Law Enforcement v. One Willys Jeep V.I.N.*

573481691, 100 Idaho 150 (1979), a case which dealt with another section of the same statute. (R. at 100-101). That case instructs “procedural statutes should be liberally construed to promote a disposition on the merits” and “where the prescribed procedure is not the essence of the thing to be accomplished the statute is generally considered directory not mandatory.” *One Willys Jeep* 100 at 154. In light of those instructions, the magistrate found that the County could have reasonably interpreted the statute to be directory rather than mandatory and therefore the County did not act without a reasonable basis in law by bringing and defending the forfeiture action. (R. at 101). Thus, the magistrate’s conclusion that attorney fees were not applicable under I.C. §§ 12-117 and 12-121 follows from the conclusion that the County’s actions were reasonable under *One Willys Jeep*, which in turn follows from the factual finding that the forfeiture was initiated thirty-four days after the seizure of the subject property. (R. at 100-102).

The County acknowledges that this conclusion may rest on questionable grounds today, given that *One Willys Jeep* was abrogated by *Verska v. Saint Alphonsus Regional Medical Center*, 151 Idaho 889 (2011). It should be noted, however, that the decision in *Verska* was not announced until November 9, 2011 and the County initiated the forfeiture proceeding against the Defendant on May 3, 2011. Thus, *One Willys Jeep* was applicable at the time the County decided to initiate the forfeiture.

iii. The district court affirmed the decision of the magistrate.

The Defendant then appealed the denial of attorney fees under I.C. § 12-117 to the district court, which appropriately reviewed the magistrate’s decision for an abuse of discretion, under the standard of review in *City of Osburn v. Randel*, 152 Idaho 906, 908 (2012). (R. at

149). The district court affirmed the decision of the magistrate because it was unable to find that the magistrate abused its discretion “[g]iven the analysis made by the lower court, and the absence of a finding that the County acted without a reasonable basis.” (R. at 150).

The district court affirmed the magistrate’s ruling and the Defendant appealed that decision, as well. This Court, however, should affirm the decision of the district court as a matter of procedure because, as explained above, the magistrate’s conclusions of law followed from well supported factual findings and the district court affirmed the decision of the magistrate.

B. The district court did not abuse its discretion.

The Defendant argues that the district court abused its discretion in affirming the decision of the magistrate court because the magistrate did not comply with the applicable legal standards available to it. Specifically, the Defendant states “the clearly established legal standard is that it is not reasonable for an agency to attempt to establish a claim after the time to do so has passed, and that such action is a basis for awarding attorney fees mandated by § 12-117.”

i. I.C. § 37-2744 is ambiguous and can be read to allow forfeiture proceedings to be brought some time after thirty (30) days.

The only cases offered by the Defendant in support of this argument are *Idaho Dept. of Law Enforcement v. Kluss*, 125 Idaho 682 (1994), and *In Re Est. of Kaminsky*, 141 Idaho 436 (2005). However, neither case supports the Defendant’s position. In *Kluss*, the Department of Law Enforcement (DLE) failed to initiate forfeiture proceedings within ninety (90) days of the seizure of the subject property, as prescribed by I.C. § 37-2744A, and the Court found that the

Defendant was entitled to attorney fees under I.C. § 12-117 as the DLE had acted without a reasonable basis in fact or law. *Kluss*, 125 at 685. In *Kaminski*, the Department of Health and Welfare (DHW) attempted to establish a claim against an estate pursuant to I.C. § 56-218. *Kaminski*, 141 at 437. In that case, the Court found that the estate was entitled to attorney fees under I.C. § 12-117 on the ground that the DHW unreasonably attempted to establish the claim against the estate two (2) months after the two (2) year statute of limitations had lapsed. *Id.* at 440.

A close examination of these two cases reveals that they are distinguishable from the present case. In *Kluss*, the Court's decision was based on the real property forfeiture statute, which reads:

In the event of a seizure pursuant to subsection (a) of this section, a complaint instituting forfeiture proceedings under subsection (d) of this section shall be filed in the district court in the county in which the real property is situated within ninety (90) days of the date of the seizure...

I.C. § 37-2744A(c). While in *Kaminsky*, the pertinent statutory language reads:

The department may foreclose its lien, without probate, in any of the following circumstances:

(i)...

(ii)...

(iii) Where the real property taxes that are due and payable have remained unpaid for two (2) years and, after demand by the department, the heirs or successors, if any, have failed to seek appointment or pay the property taxes...

I.C. § 56-218(6)(c). The language of those two provisions is markedly different from the forfeiture statute presently at issue, which reads in pertinent part:

In the event of a seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(1)...

(2)...

(3) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted within thirty (30) days by the director or appropriate prosecuting attorney.

I.C. § 37-2744(c). *Kluss* and *Kaminsky* are distinguishable from the present case because the statutes present no ambiguous language. I.C. §§ 37-2744A and 56-218 establish the time within which a claim must be brought in plain, obvious, and rational language. There is no additional room for interpretation of those statutes. That is not the case with I.C. § 37-2744, which first requires that the proceeding be instituted “promptly,” but then goes on to require that it be instituted “within thirty (30) days.” While they may not be in direct conflict, there is ample room for more than one reasonable interpretation of this statute.

This Court has previously held that “in construing statutes, the plain, obvious and rational meaning is always to be preferred to any curious, narrow, hidden sense.” *Higginson v. Westergard*, 100 Idaho 687, 691 (1979). Furthermore, it has held that in determining the ordinary meaning of a statute “effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant.” *In re Winton Lumber Company*, 57 Idaho 131, 136 (1936). The two subsections of I.C. § 37-2744 are identical except that subsection (c)(3) replaces the word “promptly” with the phrase “within thirty (30) days...” If effect must be given to all the words of the statute, the ordinary meaning of “promptly” in this case must mean something other than thirty (30) days, because to hold otherwise would lead to an impermissible

result; it would mean that one of the provisions is void, superfluous, or redundant. However, it is possible to give effect to the word “promptly” so that it means something other than thirty (30) days without rendering the provisions redundant or superfluous. Given that the cases cited by the Defendant involve statutes of limitations in excess of the thirty (30) day period under I.C. § 37-2744(c)(3), it is not unreasonable to conclude that “promptly” means a period of time greater than thirty (30) days. Thus, the holdings in *Kaminsky* and *Kluss* are not as applicable to the situation before the Court as the Defendant attempts to argue.

The Defendant’s argument continues that, because a failure to comply with the ninety (90) day requirement in I.C. § 37-2744A(c) was held unreasonable in *Kluss*, I.C. § 37-2744 must be interpreted identically. However, no authority supporting that position is cited. Instead, we are offered a lengthy portion of dicta from *State Dept. of Law Enforcement By and Through Cade v. One 1990 Geo Metro, V.I.N 2C1MR2464L6012694*, 126 Idaho 675 (Ct.App. 1995). Although that case dealt with I.C. § 37-2744, it does not address the thirty (30) day requirement in I.C. § 37-2744(c)(3), nor does it support the contention that the two statutes must be interpreted identically. Apparently, this case is cited because a court in Pennsylvania held that appointment of counsel may be prudent in some circumstances in civil as well as criminal forfeiture proceedings. *Id.* at 683 (citing *Commonwealth v. \$9,847.00 U.S. Currency*, 161 Pa.Cmwlth. 548 (1994)). From there, the Defendant then makes the logical leap it is an established principal in Idaho that the personal property forfeiture statute must be interpreted identically to its real property forfeiture statute. Again, that is not the holding of *One 1990 Geo Metro*. In fact, the sentence following the Defendant’s ‘dispositive’ proof that this is a matter of

established law says; “We imply no agreement or disagreement with any of the foregoing decisions from other jurisdictions.” *Id.* at 683.

ii. Attorney fees under I.C. § 12-117 are not applicable where the state agency reasonably, but erroneously, interprets a statute.

While no case law exists to support the Defendant’s contention that it is *de facto* unreasonable for a state agency to attempt to establish a claim after the statutory period has passed, this Court has held that when a state agency’s interpretation of an ambiguous statute, or one that has not been interpreted, is reasonable but erroneous, attorney fees generally will not be awarded under I.C. § 12-117. *See, e.g. Cox v. Department of Ins.*, 121 Idaho 143, 148 (Ct.App.1991); *Idaho Potato Commission v. Russet Valley Produce*, 127 Idaho 654, 661 (1995).

This present case is comparable to *Cox* because it involved an ambiguous statute that had not been interpreted. *Cox*, 121 at 149. Although the Department of Insurance (DOI) incorrectly interpreted the anti-rebate statute at issue, and the Court found that the interpretation was a clear error, the Court held that the DOI’s interpretation of the statute was reasonable and not so egregious that it warranted punishment through the assignment of attorney fees. *Id.* Similarly, I.C. § 37-2744(c) has not been interpreted and, if it is not ambiguous, it is at least confusingly worded. Thus, the Defendant’s argument, that it is *de facto* unreasonable for a state agency to attempt to establish a claim after the statutory period has passed, is subject to this exception. The County’s interpretation of the forfeiture statute and its applicable timelines was therefore not wholly unreasonable, or so egregious, such that it warrants punishment through the imposition of attorney fees.

The Defendant's argument that it is *de facto* unreasonable for a state agency to attempt to establish a claim after the statutory period has passed and that such action is a basis for attorney fees under I.C. § 12-117 thus falls on its face. The Defendant has offered no authority supporting this position, nor has the County found any. The statute at issue is worded in such a way as to permit a reasonable interpretation that the proceedings may be initiated after the thirty (30) day period. Additionally, it has been shown that attorney fees are inapplicable under I.C. § 12-117 where a state agency interprets a statute erroneously, but reasonably.

iii. The district court's decision was not an abuse of discretion.

Therefore, contrary to the Defendant's claim, the district court did not abuse its discretion. It acted within the applicable legal standards available to it. The district court recognized I.C. § 12-117 is not a discretionary statute, and thus, that the magistrate's discretion was limited to the reasonableness of the County's actions. The district court affirmed the magistrate court because it found that the magistrate acted within the bounds of its discretion and that the magistrate reached its decision through an exercise of reason because there was "absence of a finding that the County acted without a reasonable basis," and the court agreed with "the analysis made by the lower court." This succinct conclusion was reasonable given that the magistrate's findings of fact were not in dispute on appeal and that it agreed with the magistrate's 'careful' legal analysis. For these reasons, this Court should affirm the district court's decision affirming the magistrate court's denial of attorney fees to the Defendant under I.C. § 12-117.

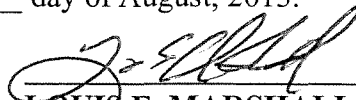
2. The Defendant is not entitled to attorney fees on appeal pursuant to I.C. § 12-117.

Where an appeal involves a matter of first impression, attorney fees will not be awarded on appeal. *See, e.g. Fuchs v. State, Dept. of Idaho State Police, Bureau of Alcohol Beverage control*, 152 Idaho 626, 632 (2012) (quoting *Lane Ranch P'ship v. City of Sun Valley*, 145 Idaho 87, 91 (2007)). This appeal involves a matter of first impression because I.C. § 37-2744(c) has not been interpreted by an Idaho court. The Defendant, the County, the magistrate, and district courts have all been unable to discover a case interpreting whether the thirty (30) day requirement is directory or mandatory, and legitimate questions have been presented to the Court upon appeal. Therefore, this Court should not award attorney fees on appeal to the Defendant pursuant to I.C. § 12-117.

IV. CONCLUSION

The County respectfully requests this Court to affirm the district court's decision affirming the magistrate court's denial of attorney fees under I.C. § 12-117. The magistrate's decision is supported by substantial, competent evidence and its conclusions of law follow therefrom. Because the district court affirmed the magistrate's decision and did not abuse its discretion in doing so, this Court should affirm the district court's decision as a matter of procedure as required by *Losser*. Lastly, the County respectfully requests this Court to deny the Defendant's request for fees and costs on appeal as this is a matter of first impression.

RESPECTFULLY SUBMITTED this 16th day of August, 2013.

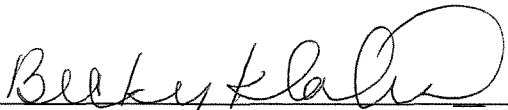


LOUIS E. MARSHALL
Bonner County Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on this 10th day of August, 2013, I caused to be served TWO (2) true and correct copies of the foregoing as addressed to the following:

VAL THORNTON
Thornton Law Office
4685 Upper Pack River Rd.
Sandpoint, ID 83864



BECKY KLAHS, Senior Legal Secretary