7-17-2013

Carr v. Pridgen Appellant's Brief Dckt. 40883

IN THE SUPREME COURT OF THE STATE OF IDAHO

CRYSTAL EDGAR fka CRYSTAL PRIDGEN, an individual,

Defendant-Appellant,

vs.

BRAD C. CARR, an individual,

Plaintiff-Respondent.

Supreme Court No. 40883-2013
District Court No. CV-DR-03-02464

APPELLANT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT.

HONORABLE KATHRYN A. STICKLEN, DISTRICT JUDGE PRESIDING.

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TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

Cases

Statutes

Other Authorities

Rules

I. STATEMENT OF THE CASE

A. Nature of the Case.

This is the appeal of judgment of contempt entered against Appellant, Crystal Edgar ("Crystal")[1] for two alleged violations of a Parenting Plan by and between Crystal and Bradley Carr ("Bradley") regarding the duties of parenting their child ("D.C."). On one count, the magistrate court adjudged Crystal guilty of contempt for violating the Parenting Plan by unreasonably refusing Bradley's non-specific request to have D.C. travel to Mississippi with Bradley's wife because the magistrate court found that Crystal denied the request before learning specifics. On the other count, the magistrate court adjudged Crystal guilty of contempt for enrolling D.C. in a particular school even though, prior to the start date of school, Bradley ratified that action by consenting to allow D.C. to attend that school. Crystal appeals both judgments of contempt on the grounds that there was insufficient evidence to prove the charges made, the magistrate court did not have jurisdiction to enter the judgment entered, and that Crystal was denied the opportunity to present a defense.

B. Course of Proceeding Below.

Crystal was charged with and found guilty of contempt for two alleged violations of the Parenting Plan between her and Bradley. Crystal appealed the adverse decisions of the magistrate court, the Honorable Terry R. McDaniels presiding, to the district court, the Honorable Kathryn A. Sticklen presiding. The district court denied Crystal's request for relief. Crystal now appeals from the decision of the district court.

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[1] Because the transcript and the Judgment of Contempt referred to the parties by their first names, for the sake of consistency, first names will be used in this brief. No disrespect is intended by this naming convention.

C. Concise Statement of Facts.

1. Facts related to out of state travel

Bradley Carr and Crystal Edgar f/k/a Pridgen are parents of D.C., a minor child, and both are members of the Idaho National Guard. On or about August 4, 2011, Bradley brought a motion for contempt against Crystal on the grounds that Crystal violated paragraph 15 of their Parenting Plan. R. 000125-126. Paragraph 15 of the Parenting Plan provides: "We shall not remove our child/ren from the state of Idaho without advance agreement of both of us. We shall include the date we shall return our child/ren to Idaho in our written agreement." R. 000043. In the Charging Affidavit, Bradley alleged that he had made arrangements for D.C. to travel to Mississippi with Bradley's wife and that Crystal unreasonably denied permission. R. 000126.

During the trial of the matter, Bradley testified that his wife's travel arrangements were to drive to Mississippi with her other children. Tr. 44:15-17; 45:3-19. Bradley made the request for out of state travel two days prior to the family's planned departure. Tr. 45:6-13; 29:24-30:5. When made, the request did not contain any specific information about the duration of the trip or Bradley's four-day pass window. Tr. 33:10-16; 45:3-46:1; 88:22-89:9. Crystal testified she was unwilling to allow D.C. to travel to Mississippi with Bradley's wife by car because she was concerned about how long D.C. would be gone, concerned about D.C. missing school, and concerned about interstate custody issues. Tr. 9:19-11:6. Though it was not pled in the Charging Affidavit, in order to counter Crystal's legitimate explanations, Bradley testified that he had also considered making alternate arrangements to have D.C. fly to Mississippi, by himself, where he would meet up with the rest of the family. Tr. 44:16-17.; Tr. 45:3-5. Bradley did not testify that he made any attempt to make these alternate plans known to Crystal. *See, generally,* Tr.

The magistrate court found that Bradley's testimony proved that Bradley's plan was for D.C. to travel, by himself, on a plane, to meet up with the rest of the family. Tr. 102:13-17. The magistrate court found that Crystal unreasonably denied Bradley's request for D.C. to travel out of state before learning specifics regarding the visitation. Tr. 100:14-19. When issuing the judgment, the magistrate judge called Crystal "despicable" (Tr. 101:19-21), told her she should be ashamed of herself (Tr. 102:1-3), refused to allow her to present any mitigating evidence (Tr. 93:17-22; 102:18-20; 103:10-22), told her that he was a "navy brat" and that she "got the wrong [judge]," (Tr. 107:15-108:8) and then sentenced her to three days in jail, to be served immediately (Tr. 107:7-14).

Crystal served three days in jail and, on November 28, 2011, entered a notice of appeal. R. 000154-155. On December 12, 2012, the magistrate court entered a judgment of contempt explaining his prior decision. R. 000157-165. In the judgment of contempt, the magistrate judge changed his previous finding and now found that Bradley's wife drove to Mississippi only because Crystal had previously summarily denied Bradley's request and the family was attempting to save money. R. 000160. The magistrate court also found that Crystal denied Bradley's request for travel even though she knew the exact parameters and duration of any possible visit that might occur. R. 000161. The magistrate court then observed a potential conflict between the Parenting Plan and a "Supplemental Order," (R. 000159-160) and resolved that conflict by looking to a third order entered in the case (R. 000162-163). After reconciling these three different orders, the magistrate court concluded that the parties had an "intent to facilitate as much as possible each parent's access to D.C. before any military deployment" and that Crystal's failure to facilitate that visitation was a breach of "her implied good faith and fair

dealing [and] also breached any interpretation of common decency by not facilitating a son's possible last visit with his father." R. 000163.

2. Facts related to school enrollment

Bradley and Crystal spent the summer of 2010 disagreeing as to which school D.C. should attend the following fall. Bradley wished for D.C. to attend Grace Jordan, and D.C. was placed on a waiting list at that school. Crystal wished for D.C. to attend Pepper Ridge. The parties mediated the dispute, and the mediation was unsuccessful. Tr. 19:14-20:5. Bradley turned the matter over to his attorney. Tr. 52:4-9.

Sometime in August of 2010, Crystal learned that D.C. had not been taken off the waiting list at Grace Jordon (Tr. 11:13-23) and enrolled D.C. in Pepper Ridge Tr. 11:7-12:23. Crystal had her attorney draft a letter advising Bradley of these facts. Tr. 11:24-12:3; Trial Exhibit C. Crystal's attorney continued to work with Bradley's attorney to reach an agreement regarding which school D.C. would attend. Trial Exhibit B; Tr. 84:8-87:9. Bradley's attorney represented to Crystal's attorney that the matter had been resolved. Tr. 86:11-87:10. Bradley claims he did not object to D.C. attending Pepper Ridge at that time because he was too busy preparing for deployment and he did not want his wife to have to be involved with the legal issues. Tr. 36:11-24. Bradley did not voice any objection to D.C. attending Pepper Ridge on or after August 18, 2010. Tr. 18:10-19:8. When school started, D.C. attended Pepper Ridge. When Bradley had custody of D.C., he dropped him off at the school and picked him up without protest or objection. Tr. 49:22-50:13.

Upon returning from deployment Bradley charged Crystal of contempt for violating paragraph 8 of the Parenting Plan by enrolling D.C. in Pepper Ridge without his consent and over his protests. R. 000125-000126. Paragraph 9 of the parties' Parenting Plan provides that

"Major decisions about our child/ren's education (such as which school they will attend) will be made by Both Parents." R. 000041. The magistrate court admonished Crystal to not try to work things out through counsel but, before taking preliminary steps that are not pre-approved by Bradley, the proper course is to seek judicial intervention. Tr. 65:4-23; Tr. 28:7-12. Despite the fact that Bradley subsequently ratified Crystal's actions by agreeing to allow the child to attend Pepper Ridge, the magistrate court excluded this evidence and found Crystal guilty of contempt for undertaking the preliminary, administrative act of enrolling D.C. in that school without Bradley's prior approval. Tr. 98:25-99:25.

II. ISSUES PRESENTED ON APPEAL:

1. Whether there was substantial and competent evidence to support a conclusion that Bradley made a reasonable request for out of state travel which Crystal unreasonably refused.

2. Whether the magistrate court lacked jurisdiction to enter a judgment of contempt based on a finding that Bradley had made plans for D.C. to fly to Mississippi when the Charging Affidavit alleged that Crystal refused Bradley's request to allow D.C. to travel with Bradley's wife, and when the undisputed evidence shows that Bradley's wife was travelling by car.

3. Whether the magistrate court lacked jurisdiction to enter a judgment of contempt based on the magistrate court's reliance on a 2004 Agreement, which was not cited in the Charging Affidavit, to resolve a conflict that the magistrate court found to exist between the Parenting Plan, which was cited in the Charging Affidavit, and a Supplemental Order, which was not cited in the Charging Affidavit.

4. Whether the magistrate court lacked jurisdiction to enter a judgment of contempt based on ambiguous order(s) or decree(s).

5. Whether the presiding judge of the magistrate court was improperly influenced by passion and prejudice when sentencing Crystal to contempt for denying Bradley's request for out of state travel.

6. Whether the magistrate court lacked jurisdiction to find Crystal guilty of contempt for enrolling D.C. in a school where the Parenting Plan requires only mutual agreement as to which school D.C. will attend.

7. Whether the magistrate court improperly excluded relevant evidence speaking to the issue of whether the parties reached an agreement regarding which school D.C. would attend.

8. Whether Bradley proved beyond a reasonable doubt that Crystal willfully violated the Parenting Plan by causing D.C. to attend Pepper Ridge school over Bradley's objections.

9. Whether the award of attorney's fees entered against Crystal was in error.

III. ATTORNEYS FEES ON APPEAL

Crystal seeks attorney's fees on this appeal pursuant to paragraph 17 of the Parenting Plan, Idaho Code Section 7-610, Idaho Rule of Civil Procedure 83(x) and Idaho Appellate Rule 41.

IV. STANDARD OF REVIEW

Where the Supreme Court is asked to review a decision of the district court sitting in its appellate capacity, the "Supreme Court reviews the trial court (magistrate) 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." *Looser v. Badstreet*, 145 Idaho 670, 672, 183 P.3d 758, 760 (2008). Then, as a matter of procedure, the Supreme Court affirms or reverses the decision of the District Court. *Id.*

As the reviewing court, the Supreme Court "exercises free review over questions of law." *Barrett v. Barrett*, 149 Idaho 21, 23, 232 P.3d 799, 801 (2010). Questions of fact are left to the sound discretion of the trial court and will be upheld if they are supported by substantial and competent evidence. *State v. Doe*, 149 Idaho 353, 356, 233 P.3d 1275, 1278 (2010). Where the burden of proof at trial is clear and convincing evidence, the "substantial and competent" threshold required to uphold the trial court's findings of fact requires a "greater quantum of evidence" than that required where the burden of proof is by preponderance of the evidence. *In re. Doe*, 143 Idaho 188, 191, 141 P.3d 1057, 1060 (2006) (quoting *In Interest of Bush*, 113 Idaho 873, 876, 749 P.2d 492, 495 (1988)).

V. ARGUMENT

There are several reasons why both counts of the judgment of contempt entered against Crystal should be reversed. The judgment of contempt entered against Crystal for refusing Bradley's request to allow D.C. to travel to Mississippi should be reversed because (i) there was insufficient evidence establishing that Bradley made a reasonable travel request; (ii) the judgment ultimately entered by the magistrate court did not rely on either the facts or the legal theory pled in the Charging Affidavit, and (iii) the legal authority upon which the magistrate court did rely in the judgment of contempt—in addition to having not been pled—was too ambiguous to support a judgment of contempt. The judgment of contempt entered on the school enrollment issue should be reversed because (i) the parties' Parenting Plan does not expressly prohibit undertaking the preliminary, ministerial act of enrolling a child in school; (ii) the magistrate court committed reversible error by excluding all evidence that Bradley ratified Crystal's act of enrollment by agreeing to allow the child to attend Pepper Ridge, and (iii) Bradley failed to prove beyond a reasonable doubt that Crystal willfully violated the Parenting

Plan by causing D.C. to attend a particular school over Bradley's objection. As to both counts, any of the bases stated above is sufficient to overturn the magistrate court's judgment of contempt. Because the magistrate court erred in a multitude of ways in entering the judgment of contempt, Crystal respectfully request that this Court reverse the decision of the District Court and enter an order setting aside the judgment of contempt on both counts.

A. The judgment of contempt entered against Crystal for not allowing D.C. to travel to Mississippi should be reversed because it was based on insufficient evidence, did not reflect the factual or legal theories set forth in the Charging Affidavit, and relied on the magistrate court's resolution of ambiguous orders and decrees.

1. The magistrate court's decision is not supported by substantial and competent evidence proving beyond a reasonable doubt that Crystal violated Paragraph 15 of the Parenting Plan.

The judgment of contempt should be vacated because Bradley failed to prove, beyond a reasonable doubt, that Crystal violated paragraph 15 of the Parenting Plan. "To impose a sanction in a case involving criminal contempt, the trial court must find all of the elements of contempt beyond a reasonable doubt." *Steiner v. Gilbert*, 144 Idaho 240, 246, 159 P.3d 877, 883 (2007) (citing *Hicks v. Feiock*, 485 U.S. 624, (1988)). Paragraph 15 of the Parenting Plan provides:

> We shall not remove our child/ren from the state of Idaho without advance agreement of both of us. We shall include the date we shall return our child/ren to Idaho in our written agreement.

R. 000043. The only conduct prohibited by this section is removing the child from the state without prior approval of the other parent. Crystal did not engage in this conduct. Accordingly, she did not violate paragraph 15 of the Parenting Plan.

Assuming, *arguendo*, that an implied duty of reasonableness and/or good faith and fair dealing attaches and places upon Crystal the affirmative duty to not unreasonably withhold consent, the necessary correlation to such implied duty is that the requesting parent, Bradley, has

to first show that he presented reasonable travel arrangements, which Crystal then unreasonably refused. There is no evidence that Bradley presented to Crystal reasonable travel arrangements, as his alleged proposal lacked any specificity regarding the duration of the proposed trip and the specific dates of the pass time frame in which Bradley would be allowed to visit D.C. Tr. 60:9-14. Bradley also did not present evidence that he requested for Crystal to allow D.C. to fly Mississippi. *See, generally,* Tr. Rather, the facts set forth in the Charging Affidavit were that Bradley requested only that D.C. be allowed to travel to Mississippi with Bradley's wife. R. 000126. And, the only evidence in the record is that Bradley's wife was going to travel by car with her two other children. Tr. 44:12-19.

Conversely, Crystal put on substantial evidence regarding why she reasonably, and in good faith, denied Bradley's request for D.C. to drive to Mississippi with Bradley's wife. The undisputed evidence shows Bradley gave Crystal only two-day's notice before D.C. was to leave the state. Tr. 29:24–30:5; 45:6–13. At the time the request was made, it was so non-specific that it did not include any details regarding the duration of the trip or when D.C. would be returned. Tr. 33:8–12; 88:22-99:9. Crystal testified that, based on the information available to her at the time the request was made, she believed D.C. would be gone from a few days to a couple of weeks if he went to Mississippi.[2] Tr. 9:19–25. Crystal testified that she had concerns about D.C. missing school. Tr. 9:19–10:9. Crystal also testified that she was concerned about interstate custody issues based on a recent incident with Bradley's wife that required police intervention:

> Q (By Mr. Breen): Okay. Are there other reasons why you were hesitant to let D.C. go out of the state of Idaho?

[2] Given that the plan presented to Crystal was for D.C. to travel with Bradley's wife, and Bradley's wife's plan was to drive, it was entirely reasonable for Crystal to believe that D.C. would be gone a minimum of 8-10 days: four days for visitation with Bradley, and two to three days driving, each direction.

> A (By Crystal): Yes, August 26th, 2010, I allowed Shaun Carr to have Brad's visitation while he was out in the field doing army training, and she would not return him back to me at 9 o'clock, when I was supposed to get him back.
>
> My mother-in-law was helping with the transportation. And when I called the house and her cell phone and my mother-in-law and everybody, she would not answer. I passed her en route. I ended up calling the cops. I feared interstate custody issues if he were to go out of state with her.
>
> Q. And the police were called?
>
> A. Yes, sir.

Tr. 10:10–25.

Bradley had the burden to put on evidence that he made a reasonable request that Crystal unreasonably refused; he failed to meet this burden. Because the only evidence in the record demonstrates that Crystal had several reasonable, good faith bases upon which she denied Bradley's request for the child to travel to Mississippi with Bradley's wife, Bradley failed to prove, beyond a reasonable doubt, that Crystal willfully violated Paragraph 15 of the Parenting Plan by unreasonably withholding her consent to Bradley's request. Because there is insufficient evidentiary support for the charge of contempt set forth in the Charging Affidavit, the judgment should be vacated.

2. The judgment entered is void because the Charging Affidavit failed to allege with particularity the specific factual and legal charges upon which Crystal was found guilty of contempt, thereby failing to confer upon the magistrate court jurisdiction to enter such judgment.

Because there was insufficient support for the charge of contempt set forth in the Charging Affidavit, the magistrate court entered a judgment of contempt on legal and factual grounds that were not set forth in the Charging Affidavit. When a judgment of contempt does not fairly meet the factual allegations or legal theories set forth in the Charging Affidavit, a litigant may challenge the magistrate's jurisdiction to have entered such judgment. Whether

termed a challenge for failure to show jurisdiction or failure to charge an offense, this type of challenge may be raised by a litigant at any time during the proceedings—including for the first time on appeal. *State v. Luke*, 134 Idaho 294, 300, 1 P.3d 795, 801 (2000) (citing I.C.R. 12(b)(2)). *See also State v. Jones,* 140 Idaho 755, 758, 101 P.3d 699, 703 (2004) (noting that failure to show jurisdiction and failure to charge an offense are sometimes a distinction without meaning because an alleged failure to charge an offense can be jurisdictional error).

A Charging Affidavit for non-summary contempt proceedings must set forth, with particularity, the precise facts and legal theories that form the basis of the contempt charges. *Bandelin v. Quinlan*, 94 Idaho 858, 861, 499 P.2d 557, 560 (1972). "Since contempt proceedings are quasi-criminal in nature, no intendments or presumptions may be indulged in to aid the sufficiency of the affidavit." *Id.* at 860, 499 P.2d at 559. (string citation omitted). "If an affidavit is presented which fails to recite *on its face* the *substantive facts* which constitute, or might constitute, a contempt on the part of the accused, the court is without jurisdiction." *Id.* (string citation omitted). "Where the affidavit fails to allege all essential material facts such a deficiency cannot be cured by proof supplied at the hearing or by judicial notice of the court's own records." *Id.*

Though the requirements of a Charging Affidavit are stringent, if a litigant does not challenge the sufficiency of the Charging Affidavit prior to trial, the judgment will be upheld "unless [the Charging Affidavit] is so defective that it does not, by any fair or reasonable construction, charge an offense for which the defendant is convicted." *State v. Cahoon*, 116 Idaho 399, 400, 775 P.2d 1241, 1242 (1989). Whether [a Charging Affidavit] conforms to the requirements of law is a question subject to free review. *State v. Robran*, 119 Idaho 285, 287, 805 P.2d 491, 493 (1991).

The function of a Charging Affidavit in a contempt proceeding "is to apprise the alleged contemnor of the *particular* facts of which he is accused, so that [s]he may meet such accusations at the hearing." *Bandelin*, 94 Idaho at 860, 499 P.2d at 559 (citing *Jones v. Jones*, 91 Idaho 578, 428 P.2d 497 (1967); *Hay v. Hay*, 40 Idaho 159, 232 P. 895 (1924); and *Robinson v. City Court for City of Ogden*, 112 Utah 36, 185 P.2d 256 (1947)). One of the measures of sufficiency of a Charging Affidavit is whether the alleged contemnor was prejudiced in her ability to prepare and present a defense. *Robran*, 119 Idaho at 287-88, 805 P.2d at 493-494.

a. The factual differences between the Charging Affidavit and judgment of contempt were so material that Crystal was prejudiced in the preparation and presentation of her defense.

The judgment of contempt should be set aside on the grounds that the differences between the factual allegations set forth in the Charging Affidavit and the factual findings made by the magistrate court in the judgment of contempt are so materially different that the Charging Affidavit failed to confer jurisdiction. Further, the degree of the logical inconsistencies between the Charging Affidavit and the judgment of contempt entered prejudiced Crystal in the preparation and presentation of her defense.

The Charging Affidavit does not, by any fair or reasonable construction, charge the offense for which Crystal was convicted because the offense charged and the conviction entered are logical opposites. The Charging Affidavit alleged that Crystal unreasonably refused Bradley's specific request to allow D.C. to travel to Mississippi with Bradley's wife. R. 000126. The judgment of contempt convicted Crystal of being unreasonable by refusing Bradley's request to allow D.C. to travel out of state before Crystal learned any specifics. R. 000160. These two propositions cannot co-exist: If Crystal refused to learn any specifics of Bradley's request to allow D.C. to travel out of state, then Crystal could not have unreasonably rejected

Bradley's specific request to allow D.C. to travel out of state with Bradley's wife. Indeed, the Charging Affidavit admits facts which are antithetical to the judgment of contempt actually entered.

While Bradley may attempt to argue that the Charging Affidavit does not technically admit that he conveyed to Crystal his plan to have D.C. travel with Bradley's wife, such a construction is absurd. There is a material and meaningful distinction between the allegation that Crystal unreasonably refused a specific request for D.C. to travel with Bradley's wife and that Crystal unreasonably refused the request before learning any specifics. Accordingly, by the only fair and reasonable construction of the Charging Affidavit, Bradley's request to Crystal contained enough information to apprise Crystal that the plan was for D.C. to travel with Bradley's wife. Because the factual findings in the judgment of contempt were logically inconsistent with and antithetic to the facts alleged in the Charging Affidavit, the Charging Affidavit could not, by any fair or reasonable construction, have charged the offense for which Crystal was convicted.

The logical incompatibility of the facts alleged in the Charging Affidavit and the facts that formed the basis of the judgment of contempt demonstrably prejudiced Crystal in the preparation and presentation of her defense. Specifically, because the Charging Affidavit alleged that Crystal denied Bradley's request to travel with Bradley's wife, Crystal was prepared to explain to the magistrate court why she would not consent to D.C. travelling with Bradley's wife. Crystal's bases for denying Bradley's request were that (i) D.C. would be gone for too many days (Tr. 9:19-25); (ii) D.C. would miss "a chunk of school" (Tr. 9:23-25); and (iii) Bradley's wife had previously failed to timely return D.C., an event that resolved only after police intervention (Tr. 10:10-11:6). In short, Crystal was hesitant to allow D.C. to miss school for an

undefined period of time and was unwilling to allow D.C. to travel across the country with Bradley's wife by car for any period of time.

Crystal tried to defend against the allegations set forth in the Charging Affidavit. However, after Crystal testified, Bradley introduced flying as an alternative option, which was a material fact he had not previously alleged, thereby materially altering the context and meaning of one of Crystal's prior responses. This enormous contextual shift caused the magistrate court to jump to the erroneous conclusion that Crystal denied Bradley's request before she knew any specifics:

> Crystal attempted to claim to this court that she didn't want [D.C] to travel with Bradley's wife across country to Mississippi by car. However, Bradley said the only reason his wife eventually drove to Mississippi was because Crystal has summarily denied Bradley's permission to visit [D.C] and they decided to let her drive to save money.[3]

R. 000160. Contrary to the magistrate's conclusion, Bradley's wife always planned to travel to Mississippi by car. Tr. 44:12-18; 45:3-19. There is no evidence that Bradley's wife (and the rest of her family) ever contemplated flying and no evidence in the record that these plans changed as the result of Crystal denying Bradley's request.

In order to get an appreciation for the contextual shift that occurred during the hearing, which shift caused the magistrate court to jump to the wrong conclusion about what Crystal knew or did not know when she denied Bradley's request, the transcript must be analyzed in some detail. After Crystal presented a reasonable explanation as to why she did not agree to allow D.C. to travel with Bradley's wife (Tr. 9:19-11:6), Bradley's attorney attempted to challenge Crystal's stated objections. First, Bradley's attorney established that Crystal knew that

[3] Notably, this factual finding is different than the one made by the magistrate court during the hearing, where the magistrate court noted that Bradley's plan was for the family to drive and for D.C. to fly, by himself. "He testified this morning that the child was going to be put on a plane; he was old enough to travel on his own. And his wife was driving down with the other kids, and he would have paid for the plane." Tr. 102:13-17.

Bradley would not have a full three weeks off while in Mississippi (Tr. 32:5-33:12), and then Bradley's attorney asked Crystal if she said no before or after learning specifics. Her response: "Before sir." (Tr. 33:13-16). At the time Crystal responded to the question regarding "specifics," the only travel arrangement that had been discussed—and the only travel arrangement referenced in the Charging Affidavit—was for D.C. to travel to Mississippi with Bradley's wife.

After Crystal testified that she said no to Bradley's request to take D.C. out of state before "learning specifics," Bradley was called to the stand and testified to a new specific that was not set forth in the Charging Affidavit: to wit, as an alternative to D.C. driving with Bradley's wife, he also considered having D.C., who had turned seven only a month prior to the proposed travel, fly to Mississippi by himself, where they would pick him up to be with the rest of the family. Tr. 44:12-17. However, contrary to the conclusions stated on page four of the judgment of contempt, Bradley did not testify that the entire family was going to fly and that plans changed to save money after Crystal summarily denied the request. *Compare* R. 000160 *with* Tr. 102:13-17. Rather, the only travel plans that ever existed regarding Bradley's wife were that she was going to travel to Mississippi by car:

> Q (direct examination): And had you – had you made – what arrangements did you have in mind for visiting with your son before you left?
>
> A (by Mr. Carr): Either – if it was allowed and agreed upon, either to travel down with my wife, or we'd fly him out and pick him up and have him there with us.

Tr. 44:12-17.

> Q (cross examination): Sir, how were you going to fly him out there when your wife was driving with the other kids.
>
> A: (by Mr. Carr): At the time, he was old enough to fly.

Tr. 45:3-5. Accordingly, because the Charging Affidavit noted that Bradley had made plans for D.C. to travel with Bradley's wife, the necessary implication—and the only reasonable interpretation—was that Bradley planned for D.C. to travel by car. Accordingly, when Crystal provided her answer to the question regarding "specifics," the context was such that "specifics" referred to timing and duration of the proposed road trip. However, because the magistrate court subsequently took Crystal's answer to the question regarding "specifics" to mean that Crystal said no before knowing whether the plan was to fly or to drive, the Magistrate Court became demonstrably hostile towards Crystal and excluded as irrelevant her defense to the facts set forth in the Charging Affidavit.

Because the judgment of contempt found that Crystal denied Bradley's request before Crystal learned what Bradley's wife's travel plans were—a fact which was not alleged in the Charging Affidavit—Crystal was prejudiced in the preparation and presentation of her defense. Accordingly, the judgment of contempt should be set aside as void for want of jurisdiction.

b. The differences between the legal theories set forth in the Charging Affidavit and judgment of contempt were so material that the Charging Affidavit failed to confer jurisdiction for the judgment entered.

After concluding that Crystal was guilty of contempt for refusing Bradley's request before learning that Bradley's wife planned to travel by car, the magistrate court had to find some legal authority upon which it could base its decision. In order to reconcile its decision with the facts found, the magistrate court looked outside the Charging Affidavit for legal authority. Because a judgment of contempt can only be entered on the grounds cited with particularity in the Charging Affidavit, the magistrate court's reliance on orders and agreements that were not cited with particularity rendered it without jurisdiction and such judgment must be set aside.

The magistrate court was unable to base its judgment of contempt on the legal theory set forth in the Charging Affidavit because paragraph 15 of the Parenting Plan does not impose upon Crystal the affirmative duty to agree to—or seek information regarding—a request for out-of-state travel that contains no specifics. Rather, Paragraph 15 of the Parenting Plan provides:

> We shall not remove our child/ren from the state of Idaho without advance agreement of both of us. The date of the child/ren's return shall be set forth in the written agreement.

R. 000043. The magistrate court held that a reasonableness standard and/or an implied duty of good faith and fair dealing apply to any agreement, including this paragraph. Necessarily, both parties must be subject to any implied duties of reasonableness or good faith and fair dealing. Therefore, it is axiomatic that before Crystal can unreasonably deny a request for out of state travel a reasonable request—i.e., one which contains some specifics—must be presented to her for her consideration. However, because the magistrate court jumped to the conclusion that Crystal denied Bradley's request before she knew any specifics, it was left with the inescapable counterpart to that equation that Bradley's request did not contain any specifics. Paragraph 15 of the Parenting Plan—which places upon the requesting parent the duty to get agreement of the other parent before removing D.C. from the state of Idaho—was an incongruent fit and could not support the judgment of contempt that the magistrate court was determined to enter.

In an effort to excuse Bradley's failure to first make a reasonable request for out of state travel, the magistrate court created a conflict between the Parenting Plan and a Supplemental Order[4] and from such conflict rationalized that Bradley might not have needed to seek Crystal's

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[4] The magistrate court took judicial notice of paragraphs 4 and 10 of the Supplemental Order entered on May 15, 2006 ("Supplemental Order").

> [Paragraph 4] When the child/ren are in the care of a parent, that parent may take the child/ren to such reasonable places and engage in such reasonable activities as that parent may choose.

permission in the first place: "The three above provisions seem to create a conflict as to whether or not Bradley had to ask permission of Crystal to have [D.C.] visit him in Mississippi before his deployment." R. 000160. The magistrate court could have resolved this fabricated conflict by reference to page 1 of the Supplemental Order, which stated:

> If the provisions of any other current decree or order of this court conflict with the terms of this order, the terms of the other decree or order shall control.

R. 000057. However, the magistrate ignored this express conflict resolution provision and instead elected to take judicial notice of a third document: the Joint Custody Order entered August 13, 2004 (the "2004 Agreement"). R. 000163. The portion of the 2004 Agreement relied on by the magistrate court provides:

> Prior to deployment the parties agree that each parent would like to spend as much time with their child as possible. The parties agree to cooperate to allow both parents to have as much access with the child prior to deployment as possible.

R. 000163. The magistrate court then concluded that by the 2004 Agreement Crystal expressly agreed to an intent to "allow 'as much time with the child as possible' prior to deployment" (R. 000164) and that "[b]eing well aware of this intent as expressed by both parties in 2004, Crystal blatantly breached her obligation of good faith and fair dealing when she summarily denied Bradley's last chance to see his son before being sent to a war zone where many fathers have not returned." R. 000163.

Only after using the intent of the parties as gleaned from the 2004 Agreement to resolve the fabricated conflict between the Parenting Plan and the Supplemental Order could the

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> [Paragraph 10] The parent caring for the child/ren shall not allow the child/ren to be absent from that parent's residence for more than 48 hours without first providing to the other parent information about how the child/ren can be reached during the period of absence.

R. 000159-160.

magistrate court rationalize the logically inconsistent conclusions that Bradley was reasonable when he made a request containing no specifics but Crystal was "despicable" (Tr. 101:19-21) and should be ashamed of herself (Tr. 102:1-3)[5] for denying a request that carried with it no specific information.[6] Based on this unpled legal standard, the magistrate court found that Crystal did not act in good faith when she denied Bradley's request for out of state travel without first learning more specifics.

Critically for jurisdictional purposes, the Charging Affidavit did not reference either the Supplemental Order or the 2004 Agreement. Rather, the judgment of contempt (R. 000157)—which was entered 39 days after Crystal was sentenced to spend three days in jail (R. 000152-000153) and two weeks after she had filed a notice of appeal (R. 000154)—was the first time Crystal was made aware of the legal justification for her conviction. Because the Charging Affidavit did not make clear the standard upon which the magistrate court would judge Crystal, the Charging Affidavit failed to confer jurisdiction for the judgment ultimately entered. Accordingly, such judgment of contempt should be set aside as void.

c. A court cannot enter a judgment of contempt based on an ambiguous order or decree.

Another similar, yet legally distinct, basis for vacating the judgment is the magistrate court's determination that the "provisions of the decree entered in this case are ambiguous." R. 000162. It is well settled that to be guilty of contempt for violating a court order the order must be clear and unambiguous. *In re Elliot*, 145 Idaho 554, 556, 181 P.3d 480, 482 (2008) If an order is subject to differing interpretations, it cannot serve as the basis for a finding of contempt.

[5] "Of all people, I can't believe you would say that. Talk about bad faith. You ought to be ashamed of yourself, ashamed." Tr. 102:1-3.

[6] It must be remembered that the magistrate court's finding that Crystal denied the request without first learning specifics is not supported by the record. Crystal did have available to her the information that Bradley requested—two days before the departure date—to allow D.C. to drive to Mississippi with Bradley's wife. The specifics which were not available to Crystal were the proposed duration of the trip and the four-day pass time frame within which Bradley would actually be available to visit with D.C.

Id. (citing *Accord Terminal R. Ass'n of St. Louis v. United States,* 266 U.S. 17, 29 (1924)) (noting that courts cannot extend an order by implication or intendment when deciding whether a party is in contempt for violating that order) and *Kranis v. Kranis*, 313 So. 2d 135, 139 (Fl. Ct. App. 1975) (noting that a custody order providing for "reasonable visitation" was not so clear and definite "as to make a party aware of is command and direction, as applied to a given circumstance upon which such party is called upon to act, or refuse to act" and would not, therefore, support a judgment of contempt).

The fact that the magistrate tied together three separate agreements, two of which were not referenced in the Charging Affidavit, to support the judgment of contempt entered against Crystal demonstrates that legal authority upon which the judgment was entered is sufficiently ambiguous that it cannot support criminal contempt charges. The magistrate court expressly noted this ambiguity: "The question arises if the parties have conflicting provisions in the decree concerning visitation how is the court going to resolve the conflict?" R. 000161. Crystal cannot be expected to prepare a defense based upon how she might anticipate the magistrate court to resolve a conflict that she did not know existed between the Parenting Plan and a different order that was not even referenced in the Charging Affidavit. The legal authority upon which the magistrate court relied was too ambiguous to support a judgment of criminal contempt and the judgment should be set aside as void.

3. The magistrate court abused its discretion when the presiding judge relied on passion and prejudice rather than on a reasoned analysis of the facts before the court.

Finally, the presiding judge of the magistrate court abused his discretion when he relied on passion and prejudice in finding Crystal guilty of contempt and sentencing her. The sanction or penalty imposed under a contempt order is reviewed under an abuse of discretion standard. *Smith v. Smith*, 136 Idaho 120, 124, 29 P.3d 956, 960 (Ct. App. 2001). The determination of

whether a sanction or penalty should be imposed is within the discretion of the trial court. *Id.* When the trial court exercises its discretion, the reviewing court will not interfere unless the lower court clearly abused its discretion. *Id.*

"In exercising that discretion, the most fundamental requirement is reasonableness." *State v. Hooper*, 119 Idaho 606, 608, 809 P.2d 467, 469 (Ct. App. 1991) "Appellate review of judicial discretion should not be result-oriented. An appellate court should not focus primarily upon the outcome of a discretionary decision below, **but upon the process by which the trial judge reached his decision.**" *Sheets v. Agro-West*, 104 Idaho 880, 888, 664 P.2d 787, 795 (Ct. App. 1983) (Burnett, J. concurring) (emphasis added). "Judicial discretion 'requires an actual exercise of judgment and a consideration of the facts and circumstances which are necessary to make a sound, fair, and just determination, and a knowledge of the facts upon which the discretion may properly operate.'" *Id.* at 887, 664 P.2d at 794 (citing 27 C.J.S. *Discretion* at 289 (1959)).

In this matter the magistrate court did not reach its decision through an exercise of reason. Rather, the sentence imposed was based upon the erroneous conclusion that Crystal denied Bradley's request before she learned that Bradley's wife planned to travel by car, which erroneous conclusion fueled the passions and prejudices of the presiding judge. After sternly criticizing Crystal, the presiding judge cited his personal feelings and childhood experiences as the basis for his sentencing decision:

> **See, ma'am, the problem you have is I grew up in the military.** I'm a navy brat. I moved every two years, whether I needed to or not, for many years.
>
> * * *
>
> And the fact that you could feel it in your soul to go ahead and deny him this chance to see his child, I just can't believe that you would do that. **You got the wrong person here.**

Tr. 107:7-108:8 (emphasis added). Though acknowledging that he was unable to separate his past from Crystal's case and, despite his refusal to consider Crystal's concerns about interstate custody issues when Crystal had previously had to seek police intervention to get Bradley's wife to return D.C. to her, the judge sentenced Crystal to serve immediately three days in jail. The magistrate court's reliance on the presiding judge's personal history is improper and does not demonstrate that the sentence was reached through the exercise of reason and imposed by a neutral court. Accordingly, the court abused its discretion and the judgment and sentence should be vacated.

B. The judgment of contempt for Count I must be vacated because the Parenting Plan does not expressly prohibit either parent from enrolling D.C. in school; the magistrate court erroneously excluded evidence related to Crystal's defense; and Bradley failed to prove that there was no agreement about which school D.C. would attend.

Bradley and Crystal agreed that their child should be educated; this fact is undisputed. The overwhelming evidence offered by Crystal, but erroneously excluded by the magistrate court, is that Bradley agreed to allow D.C. to attend Pepper Ridge. The judgment of contempt is based on the fact that, prior to obtaining Bradley's express agreement to allow D.C. to attend Pepper Ridge, Crystal undertook the preliminary, administrative act of enrolling D.C. in that school so the parties could keep their options open while they continued discussions.

The magistrate court was without jurisdiction to enter the judgment of contempt because the Parenting Plan does not expressly prohibit one parent from undertaking a preliminary, administrative act of enrolling a child in school; rather, it provides only that the parents must reach an agreement on which school the child attends. Crystal was prepared to present evidence that, by the time D.C. began attending school at Pepper Ridge, Bradley agreed to the decision. The magistrate court, however, improperly excluded Crystal's entire defense as irrelevant because the magistrate court concluded that the act of enrolling D.C. in a school, in and of itself,

violated paragraph 9 of the Parenting Plan. The magistrate court's narrow focus regarding enrollment led to reversible error.

1. The magistrate court lacked the jurisdiction to find Crystal guilty of contempt for enrolling D.C. in school because such conduct is not expressly prohibited by the Parenting Plan.

The magistrate court lacked jurisdiction to find Crystal guilty of contempt for enrolling D.C. in Pepper Ridge because that act is a preliminary, administrative act that is not expressly prohibited by the Parenting Plan. In order to find Crystal guilty of contempt, she must have violated a clear and express provision of a court order. *In re Elliot*, 145 Idaho at 556, 181 P.3d at 482. Paragraph 9 of the Parenting Plan deals only with major decisions, such as those regarding attendance: "Major decisions about our child/ren's education (such as which school they will attend) will be made by Both Parents." R. 000041. The preliminary, administrative act of enrolling a child is not expressly prohibited by the Parenting Plan. Moreover, Bradley subsequently ratified that conduct by agreeing to allow D.C. to attend Pepper Ridge. Accordingly, Crystal did not violate an express provision of the Parenting Plan when she enrolled D.C. in Pepper Ridge without Bradley's prior consent.

2. The magistrate court erred by excluding evidence regarding whether the parties reached an agreement regarding attendance.

Paragraph 9 of the Parenting Plan provides only that both parents will make major decisions about a child's enrollment; it does not specifically define that which constitutes a "major decision" (though it lists school attendance as the sole example) and it does not specifically prohibit either parent from making preliminary inquiries or undertaking other preliminary, administrative tasks. Accordingly, Crystal was prepared to defend herself by showing that, by the time school started, Bradley had agreed to allow D.C. to attend Pepper Ridge. However, because the magistrate court improperly found that the preliminary,

administrative act of enrollment violated the Parenting Plan, it improperly excluded as irrelevant all evidence of the subsequent agreement.

Because the magistrate court believed Crystal was guilty of contempt for merely enrolling D.C. in school, it refused to hear and/or consider evidence regarding whether an agreement was reached regarding which school D.C. would actually attend. Tr. 63:13-65:23. On appeal, the reviewing court exercises free review over the determination of whether evidence is relevant. *State v. Nichols*, 124 Idaho 651, 654-655, 862 P.2d 343, 346-347 (Ct. App. 1993) Refusing Crystal the opportunity to present evidence showing that Bradley consented to D.C. attending Pepper Ridge—the only major decision of consequence in that chain of events—precluded Crystal from presenting a defense, thereby causing her to be convicted of an offense that is not expressly prohibited by the Parenting Plan, in violation of her fundamental due process rights. *See Taylor v. Illinois*, 484 U.S. 400, 409 (1988) (citing *Washington v. Texas*, 388 U.S. 14, 19 (1967)). Because the Parenting Plan requires both parents to make decisions regarding major issues, such as attendance, but does not require a parent to get pre-authorization or approval for undertaking preliminary, administrative tasks, such as enrollment, the evidence showing that Bradley ultimately agreed to allow Dylan to attend Pepper Ridge is highly relevant.

The magistrate court improperly excluded overwhelming evidence tending to show that Bradley agreed to allow D.C. to attend Pepper Ridge. Crystal offered evidence that (i) because Crystal understood that D.C. was not going to be allowed to attend Grace Jordan, Crystal undertook the preliminary, administrative act of reserving a place for D.C. at Pepper Ridge by enrolling him (Tr. 11:7-23); (ii) Bradley, apparently too busy to concern himself with which school D.C. would attend (Tr. 36:16-24), turned the matter over to his attorney (Tr. 52:6-9); (iii) Crystal continued to try to work with Bradley, through their respective attorneys, to obtain

Bradley's approval to allow D.C. to attend Pepper Ridge (Tr. 83:13-23); (iv) after receiving the information contained in Crystal's letter dated August 18, Bradley did not make any representations to Crystal that he objected to her act of enrolling D.C. in Pepper Ridge and/or that he objected to D.C. attending Pepper Ridge (Tr. 18:6-19:8); (v) Bradley's attorney represented to Crystal's attorney that the matter was resolved (Tr. 87:5-10); (vi) Bradley dropped off and picked up D.C. from Pepper Ridge without objection (Tr. 18:6-9); and (vii) Bradley's first objection to D.C. attending Pepper Ridge was in the form of a motion for contempt (Tr. 18:21-19:8).

All of this testimony evidences that Crystal continued working with Bradley to gain his approval before D.C. actually began attending the school, thereby demonstrating that Crystal did not willfully violate the Parenting Plan. Rather, Crystal undertook a preliminary, administrative action that kept the parties' options open, and then continued to work with Bradley—through their respective attorneys—to reach an agreement before D.C. actually began attending school. Because this evidence spoke to the only issue that could violate the Parenting Plan—i.e., whether Crystal intentionally caused D.C. to attend Pepper Ridge over Bradley's objections—the magistrate's exclusion of this evidence constitutes harmful error.

3. Bradley failed to meet his burden of proof regarding lack of agreement about which school D.C. would attend.

At the end of the day, the evidence overwhelmingly shows that Bradley agreed—or that Crystal reasonably believed Bradley had agreed—to allow D.C. to attend Pepper Ridge. The evidence demonstrating that Bradley agreed to D.C. attending Pepper Ridge is as follows: After the mediation regarding which school D.C. would attend was unsuccessful, he turned the matter over to his lawyer: "We continually argued about it, and then it – we ended up going through mediation about it. And from there, I turned it over to the lawyer, to my attorney" (Tr. 52:6–9);

Bradley's attorney represented to Crystal's attorney that the matter had been resolved. Tr. 86:11-87:10. Contrary to the allegations set forth in the Charging Affidavit, after Bradley learned that D.C. had been taken off the waiting list at Grace Jordan and Crystal had enrolled him in Pepper Ridge, Bradley did not continue protesting D.C. attending Pepper Ridge. Tr. 18:21-19:8. Notably, after Crystal informed Bradley that she had enrolled D.C. at Pepper Ridge, Bradley had twelve days before school started to make his objections known.[7] Tr. 12:11-23 (establishing that Bradley was informed on August 18th that D.C. had been enrolled in Pepper Ridge) and Tr. 49:25-50:2 (establishing that school started on August 30th). The undisputed (though improperly excluded) evidence shows that the parties continued to discuss the matter through their respective attorneys (Tr. 83:13-87:10) until Bradley's attorney advised Crystal's attorney that the issue had been resolved (Tr. 87:5-10).

Bradley's response to this overwhelming evidence was that even though Bradley did not agree to allow D.C. to attend Pepper Ridge, Bradley chose not to voice his objections because he did not want to burden his wife with the matter. Tr. 36:16-24. And, as per his attorney's claim, Bradley had no duty to expressly protest D.C. attending Pepper Ridge in any timely manner because the law allowed him to bring a motion of contempt any time within the year. Tr. 69:24-70:14. In short, both Bradley and his attorney admitted that they feigned consent to attendance while harboring a secret plan to charge Crystal with criminal contempt for undertaking the preliminary, administrative act of enrolling D.C. in school. In order to prove Crystal guilty of criminal contempt for violating the Parenting Plan, Bradley had to establish that Crystal knowingly caused D.C. to attend Pepper Ridge school over Bradley's objections. Bradley's admission that he did not voice his objection because he was going to just "deal with it later"

[7] Contrary to the allegations made in the Charging Affidavit, during the contempt hearing Bradley admitted that he was in Idaho from the date D.C. was enrolled in school and when D.C. began attending school. *Compare* R. 000125-000126 *with* Tr. 49:14–24.

conclusively establishes that Crystal was unaware that Bradley was not in agreement and did not, therefor, willfully violate paragraph 9 of the Parenting Plan.

VI. CONCLUSION

The magistrate court found Crystal guilty of contempt for acts that were not cited with particularity in the Charging Affidavit and for acts that were not prohibited by the Parenting Plan. The differences between the facts alleged in the Charging Affidavit and the conduct prohibited by the Parenting Plan and the judgment of contempt ultimately entered were so material that the magistrate court excluded Crystal's entire defense to both charges as irrelevant. The fact that the magistrate court considered Crystal's defenses to both counts to be irrelevant proves that the Charging Affidavit failed to apprise Crystal of the standards against which she would be judged, in violation of her fundamental due process rights. This led to a multitude of errors, each significant enough in itself to set aside the judgment of contempt. Accordingly, Crystal respectfully requests that this Court reverse the decision of the District Court and enter an order reversing the judgment of contempt entered against Crystal.

DATED this 17th day of July, 2013.

RAINEY LAW OFFICE

By _____
Rebecca A. Rainey – Of the Firm
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of July, 2013, I caused a true and correct copy of the foregoing **APPELLANT'S BRIEF** to be served by the method indicated below, and addressed to the following:

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Attorney for Respondent

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