9-24-2013

Carr v. Pridgen Appellant's Reply 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 REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT.

HONORABLE KATHRYN A. STICKLEN, DISTRICT JUDGE PRESIDING.

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I. INTRODUCTION

Bradley argues that the judgment should hold because Crystal admitted the facts supporting the judgment while she presented a vigorous defense to the charges against her. Bradley's paradoxical interpretation of what occurred at trial all but proves Crystal's jurisdictional objections: Crystal was held in contempt for admitting to conduct that she had no reason to believe could or would form the basis of the judgment of contempt, while the magistrate court excluded as irrelevant the evidence supporting her defense to charges that could have formed the basis of a proper judgment.

Where an alleged contemnor makes admissions that she believes to be innocuous because (i) they admit to conduct that is not prohibited or (ii) they admit the truthfulness and existence of contextual facts alleged in the charging affidavit, and the trial court seizes upon those admissions as the basis of the judgment, excluding as irrelevant the alleged contemnor's defenses, it can be said with near certainty that the charging affidavit failed to fairly apprise the defendant of the basis of the judgment against her.

Crystal admitted to enrolling D.C. in school, but such conduct is not prohibited by the parenting plan. Because a judgment that is based on non-prohibited conduct cannot stand (even if the alleged contemnor admits to having engaged in the non-prohibited conduct) the judgment on Count I must be vacated.

Crystal admitted to denying Bradley's request before learning specifics because the Charging Affidavit provided the contextual details that were necessary to Crystal's decision (i.e., that the request to allow her seven-year-old son to travel out of state with a woman she did not trust at unspecified time and for an unspecified duration, when the child was supposed to be in school was an unreasonable and unacceptable request). Assuming, *arguendo,* that Crystal's

admission means what the trial court thought it meant, such admission supports the trial court finding facts which were not pled and applying those fact to find a violation of an agreement that was not pled. Because a judgment that is based on conduct and legal theories that were not alleged with specificity cannot stand, even if the alleged contemnor admits to having engaged in the non-alleged facts supporting the non-alleged legal theories, the judgment on Count III must be vacated.

For the reasons that follow, Crystal respectfully requests that this Court find that the magistrate court lacked jurisdiction to enter the judgment of contempt against Crystal, and enter an order reversing the decision of the district court and directing the magistrate court to vacate the judgment.

II. ARGUMENT

A. The Parenting Plan does not expressly prohibit Crystal from enrolling D.C. in school while continuing to work with Bradley regarding attendance.

On the school enrollment issue, this Court should reject Bradley's invitation to liberally construe the Charging Affidavit in favor of validity because to do so would not cure the specific jurisdictional defect at issue. Crystal's jurisdictional objection is that the Parenting Plan does not prohibit a parent from engaging in the preliminary, administrative act of enrolling the child in school while working in good faith with the co-parent regarding whether the child will actually attend that school. That is to say, the Charging Affidavit failed to state an offense and the judgment is based upon conduct that is not prohibited. In this regard, this case is similar to *State v. Luke*, where this Court found that a judgment finding defendant guilty of "attempted first degree murder" must be vacated because under Idaho law, there is no crime of "attempted first degree murder." 134 Idaho 294, 300-01, 1 P.3d 795, 801-02 (2000) (noting that the defendant's failure to raise at the trial court the jurisdictional issue of failure to state an offense does not

preclude the appeal and vacating the judgment because it was not clear whether the judgment was based on conduct that constituted a crime under Idaho law). Because the Parenting Plan does not prohibited Crystal from enrolling D.C. in school while continuing to work, in good faith, with Bradley regarding the attendance issue, it is not an offense that will support a judgment of contempt. Because Crystal cannot be held in contempt for engaging in conduct that is not prohibited, the judgment of contempt on Count I must be vacated.[1]

B. The judgment of contempt for Count III cannot be based on an order that does not prohibit the alleged conduct nor can it be based on an ambiguous order.

Similar to the school enrollment issue, the judgment of contempt entered on the out-of-state travel issue is based upon conduct that is not specifically prohibited by the Parenting Plan. App. Br. at 8. Additionally, and as another jurisdictional objection to the Mississippi travel issue, Crystal argued that a judgment for criminal contempt cannot rest on an order or decree that is ambiguous. App Br. at 19-20. Either of these jurisdictional defects, standing alone, is sufficient to vacate the judgment of contempt on the grounds that the magistrate court did not have jurisdiction to enter the judgment. *See In re. Elliott*, 145 Idaho 554, 556, 181 P.3d 480, 482 (2008). Bradley does not offer any argument or authority opposing these points. Accordingly, Crystal respectfully requests that this Court reverse the decision of the district court and enter an order directing the magistrate court to vacate the judgment of contempt because such judgment is not based upon a violation of a clear, unambiguous, prohibitory order.

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[1] In footnote 6, Bradley claims, without citation to the record, that "the evidence was uncontradicted that Crystal did both (enrolled the child and took him to the school) without Brad's permission." Resp. Br. at 9, n. 6. Other than this unsupported statement, Bradley does not argue that there is sufficient evidence to support the judgment of contempt on the grounds that Crystal caused D.C. to actually attend Pepper Ridge over Bradley's continuing objections. Accordingly, Crystal will rest on the arguments and authority detailed in her opening memorandum. App. Br. at 23-25 (regarding improper exclusion of relevant evidence regarding Bradley's agreement on the attendance issue) and App. Br. at 25-27 (regarding evidence supporting Crystal's claims that Bradley agreed—or led her to believe he agreed—to allow D.C. to attend Pepper Ridge).

C. The judgment of contempt for Count III cannot be based on factual allegations and legal theories that were not set forth with particularity in the Charging Affidavit.

In addition to the two jurisdictional defects cited above, Crystal cited two more jurisdictional defects regarding the out-of-state travel issue: First, that the judgment was based on facts that were not set forth with specificity in the Charging Affidavit (App. Br. 12-16) and, second, that the judgment was based on a legal theory that was not set forth with specificity in the Charging Affidavit (App. Br. 16-19). To the extent that Bradley's opposition can be fairly construed to have addressed either of these points, this Court should reject the jurisdictional cures he proposes.

The magistrate court was without jurisdiction to enter the judgment of contempt because the judgment is (i) based upon facts that were not alleged with specificity in the Charging Affidavit and that cannot, by any fair construction, be construed to have been referenced by the Charging Affidavit and (ii) based upon a legal theory that was not alleged in the Charging Affidavit. If a charging document cannot be liberally construed so that it can be fairly read to encompass both the factual and legal basis underlying the judgment entered, the magistrate court is without jurisdiction to enter the judgment and it must be vacated. App. Br. 10-12 (citing and discussing multiple authorities).

In both *Jones* and *Cahoon*, charging documents that were jurisdictionally defective because they lacked adequate factual specificity were upheld on appeal because they correctly referenced the code section upon which the judgment was based. *State v. Jones,* 140 Idaho 755, 758-59, 101 P.3d 699, 702-03 (2004); *State v. Cahoon*, 116 Idaho 399, 401, 775 P.2d 1241, 1243 (1989). In both cases, this Court found that the specific reference to the statutory provision that formed the basis of the judgment, combined with enough facts to detail the time, place, and location of the infraction, were sufficient to put the defendant on notice of the charges against

him, thereby saving the defective charging affidavits. *Jones*, 140 Idaho at 759, 101 P.3d at 703 (regarding the specific allegations in the charging document); *Cahoon*, 116 Idaho at 400, 775 P.2d at 1242 (regarding the specific allegations in the charging document).

This case is not like *Cahoon* or *Jones* because the Charging Affidavit does not reference the specific order upon which the judgment was based, nor does it otherwise contain an adequate reference to the facts underlying the judgment. Rather, the Charging Affidavit in this case cites a provision of the Parenting Plan that the magistrate court chose to ignore.[2] The order on which the magistrate court ultimately relied, the 2004 Agreement, was not referenced in the charging document and was not mentioned at trial. Moreover, unlike *Cahoon* and *Jones*, both of which had charging documents that generally referenced the correct time, date and location of the encounter that was the subject of the judgment, the Charging Affidavit in this case did not reference the events that formed the basis of the judgment. And, as Crystal has argued at length, the events that did form the basis of the judgment were logically incompatible with the facts that were alleged in the Charging Affidavit. App. Br. 12-16. In short, the Charging Affidavit in this case was so materially different from the judgment of contempt ultimately entered that the "liberal construction" cure that was available in *Cahoon* and *Jones* is not available in this case.

Without undertaking any analysis of what constitutes a liberal, yet fair, construction of a Charging Affidavit, Bradley asks this Court to blindly adopt the district court's construction of the Charging Affidavit which found that Crystal was on notice of the charges against her because she vigorously defended herself and, ultimately, knew that she was on trial for having unreasonably denied a request for visitation. Resp. Br. 7-8. By this proposed interpretation,

[2] To summarize, after finding that Paragraph 9 of the parenting plan created an ambiguity or conflict with the supplemental order, and after ignoring the conflict resolution provision of the supplemental order, the Magistrate Court resolved the fabricated conflict between Paragraph 9 and the Supplemental order by relying on the 2004 Agreement. *See* App. Br. at 16-19.

Bradley asks this Court to retroactively combine the Parenting Plan, the Supplemental Order and the 2004 Agreement into whatever manifestation might match the facts presented, delete from the Charging Affidavit reference to any facts that are inconsistent with the judgment entered, and then pretend that Crystal should have prospectively read the Charging Affidavit with this revisionist interpretation. This Court should reject Bradley's request because it all but removes any factual specificity from the charges lodged against Crystal and does not fairly point to any order she allegedly violated—rather, it retroactively rewrites the Charging Affidavit to allege a violation of an amorphous legal theory that does not exist in any order or agreement, and which has been crafted after the judgment only so that the judgment might be upheld. The proposed cure does not satisfy due process.

D. Crystal did not waive her jurisdictional defenses.

This Court should also reject Bradley's argument that the district court did not abuse its discretion in finding that Crystal waived her jurisdictional claims by failing to raise them at the trial court. In her opening memorandum, Crystal presented authority supporting her argument that the jurisdictional defects about which she complains are of the type that can be raised for the first time on appeal.[3] *See* App. Br. at 11 (citing *State v. Luke*, 134 Idaho 294, 300, 1 P.3d 795, 801 (2000) and *State v. Jones*, 140 Idaho 755, 758, 101 P.3d 699, 703 (2004)). Crystal also presented the appropriate legal authority for whether and when a charging affidavit could be liberally construed to cure jurisdictional deficiencies. App. Br. at 11 -12 (citing *State v. Cahoon,*

[3] With respect to the out-of-state travel issue, Crystal has always maintained that the first time she learned the standard upon which she would be judged was when the magistrate court entered its written judgment of contempt. R. 000201 n. 6; App. Br. 19. The potential conflict between the Parenting Plan and the Supplemental Order and the magistrate court's decision to resolve that conflict by reference to the 2004 Agreement was not made known by the Charging Affidavit and was not brought up during the trial in any regard. *See,* R. 000126, *see, generally,* Tr. Prior to having received that order, Crystal could not have known how far the magistrate court would go in its efforts to support the judgment of contempt entered against her and she could not be expected to object to the fact that the judgment of contempt did not fairly reflect the allegations in the Charging Affidavit until after she was able to read the judgment of contempt.

116 Idaho 399, 400, 775 P.2d 1241, 1242 (1989) *Bandelin v. Quinlan*, 94 Idaho 858, 860, 499 P.2d 557, 559 (1972), and *Hay v. Hay*, 40 Idaho 159, 232 P. 895 (1924) (string citation omitted)). Crystal then demonstrated that the Charging Affidavit could not be fairly construed to support the judgment of contempt entered. App. Br. 12-16 (regarding incurable factual deficiencies in the Charging Affidavit relating to the out-of-state travel issue); App. Br. 16-19 (regarding incurable legal deficiencies in the Charging Affidavit relating to the out-of-state travel issue); and App. Br. 23 (regarding legal deficiencies in the Charging Affidavit relating to the school enrollment/attendance issue). Bradley has not offered any argument or authority opposing Crystal's position that the jurisdictional defects at issue are the type that may be raised for the first time on appeal.[4]

This Court should also reject Bradley's invitation to review the district court's conclusion on this matter on an abuse of discretion standard. Resp. Br. at 7 ("the district court committed no abuse of discretion in holding [jurisdictional issues] cannot be raised for the first time on appeal"). As Crystal noted in her opening brief, the type of jurisdictional issues Crystal presents—i.e., whether a charging affidavit sufficiently confers jurisdiction that will support the judgment entered—is a question of law to be reviewed de novo. App. Br. at 7 (discussing standard of review on appeal from district court, generally) App. Br. at 11 (citing *State v. Robran*, 119 Idaho 285, 287, 805 P.2d 491, 493 (1991) (standard of review on jurisdictional issues)). Bradley has not offered any argument or authority supporting his position that abuse of discretion is the appropriate standard of review for this particular jurisdictional issue.

[4] At the bottom of page 6 of the Respondent's Brief, Bradley suggests that Crystal has done nothing more than change slightly the language used in presenting to this Court the exact same jurisdictional claims that were presented to the district court. This is not the case. Rather, having taken seriously the district court's conclusion that Crystal waived her jurisdictional objections by not raising them with the trial court, Crystal fully and fairly developed for this Court's consideration the legal authority showing that the types of jurisdictional claims raised by Crystal are the type of claims that can be raised for the first time on appeal. App. Br. 10-12.

III. CONCLUSION

Throughout her two appeals of this matter, Crystal has consistently maintained that the magistrate court was without jurisdiction to enter the judgment of contempt against her.

With regard to the school enrollment issue, the magistrate court lacked jurisdiction because the parenting plan does not specifically prohibit enrolling a child in school while continuing to work, in good faith, with a co-parent regarding attendance.

With regard to the out-of-state travel issue, her jurisdictional objections are multifaceted: the judgment was based on conduct that was not specifically prohibited by the parenting plan, the judgment was based on ambiguous orders, the judgment was based on facts that were not alleged with particularity in the Charging Affidavit, and the judgment was based on legal theories that were not alleged with particularity in the Charging Affidavit.

While the district court found that Crystal waived these jurisdictional defects by not raising them at the trial court, Crystal has presented both argument and authority on this appeal demonstrating that the type of jurisdictional defects raised by Crystal may be raised at any time, including for the first time on appeal.

Based on all of the foregoing, Crystal respectfully requests that this Court reject Bradley's argument that Crystal waived her jurisdictional objections, hold that the magistrate court did not have jurisdiction to enter the judgment of contempt on either Count I or Count III, and enter an order reversing the district court's decision and with instruction to vacate the judgment of contempt.

DATED this 24th day of September, 2013.

RAINEY LAW OFFICE

By _____
Rebecca A. Rainey – Of the Firm
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of September, 2013, I caused a true and correct copy of the foregoing **APPELLANT'S REPLY BRIEF** to be served by the method indicated below, and addressed to the following:

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