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IN THE SUPREME COURT OF THE STATE OF IDAHO

BRAD C. CARR,	)	
	)	
Plaintiff/RESPONDENT,	)	Docket No. 40883-2013
	)	
vs.	)	
	)	
CRYSTAL EDGAR fka Crystal Pridgen,	)	
	)	
Defendant/APPELLANT.	)	
______________________________	)	

RESPONDENT'S BRIEF ON APPEAL

On Appeal from the Fourth Judicial District, County of Ada

The Honorable Kathryn A. Sticklen, District Judge, Presiding

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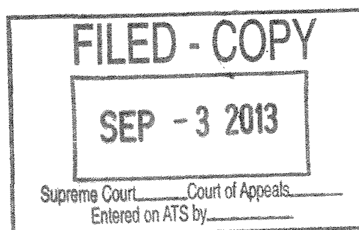

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RESPONDENT'S FURTHER STATEMENT OF CASE

I. NATURE OF THE CASE

This is a further appeal by a woman convicted in the magistrate division of two counts of criminal contempt for violation of child custody orders. The District Court affirmed the trial court in a detailed 24-page decision.

II. COURSE OF PROCEEDINGS BELOW

Respondent Brad Carr (Brad) filed a Motion for Contempt, supported by his Affidavit, against Respondent Crystal Edgar (Crystal), August 4, 2011. R. p. 121-129.

Trial was held in the magistrate division on November 3, 2011, and judgment was announced holding Crystal in contempt on counts I and III of the Motion, and pronouncing sentence. Tr. p. 98-100.

Crystal filed a Notice of Appeal to the District Court on November 28, 2011. R. p.154. The appeal was fully briefed during 2012, argued, and submitted to the District Court on appeal. A Memorandum Decision affirming the trial court was issued February 22, 2013. R. p. 256.

Crystal filed her Notice of Appeal to this Court on April 5, 2013.

III. STATEMENT OF FACTS

The parties are parents of D.C., born [redacted] They were never married, but have exercised joint and shared custody of D.C. under a Parenting Plan Agreement entered November 18, 2005, which was then adopted and entered as the court's order later, on May15,

2006. R. p. 34. The contempt trial, and this appeal, center on Crystal's conviction for two counts of contempt, the facts of which are essentially uncontradicted.

A. Crystal Unilaterally Enrolled the Child in a New School.

During 2010, after his kindergarten year, the parties' son apparently had to change to a new school. The parties disagreed about which grade school their son would move to; Crystal wanted him to attend Pepperidge Elementary, while Brad wanted the child to attend Grace Jordan Elementary. Tr. p. 11, l. 24-p. 12, l. 4. Crystal admitted she knew Brad did not agree with enrollment at Pepperidge both when she enrolled the child and started taking him there. Tr. p. 31, l. 20-22. These facts were made explicit by a letter from Crystal's attorney, dated August 18, 2010, to Brad's attorney. The letter was eventually admitted as Defendant's Exhibit C. Tr. p. 79, l. 2 (copy attached as Appendix A).

The last sentence on page 1 of the August 18, 2010 letter reads as follows:

> "If we do not hear from Brad we will assume he disputes all of this [i.e., enrollment at Pepperidge, etc] and litigation will be necessary to resolve these issues."

Exhibit C, emphasis added.

B. Crystal Denied Brad's Request for a Four-day Pre-deployment Visit with His Son.

At the time the enrollment process was being pursued unilaterally by Crystal, she also admitted Brad was on "lock down" at Gowen Field near Boise as a part of both his annual training exercises and preparation for being be sent to Mississippi, where he would have

pre-deployment training for departure to the war zone in Iraq for a year. Tr. p. 23, l. 19-25; p. 36, l. 18-24.

As a part of the pre-deployment training, the evidence showed both parties were well aware that Brad would have a chance to spend four days with his family before he deployed to the war zone in Iraq, and that such visit would be near where their training site in Mississippi. Tr. p. 8, l. 6-14. Crystal works for the Guard, and has a job where orders regularly pass over her desk, and she was aware Brad would have a window of time, just prior to leaving the U.S., when he would have a short period to spend with family. Tr. p. 32, l. 15 - p. 33, l. 15.

Brad made a specific request, through counsel, asking Crystal for permission for their son to travel so Brad could see him before his deployment into the war zone in Iraq. Tr. p. 88-89; p. 8, l. 6-23. Crystal refused Brad's request for permission for the visit, and testified she refused to give permission even before she was given any specific information about the duration of the trip or the requested visitation. Tr. p. 33, l. 4-16; p. 44, l. 1-23.

The trial court found the evidence to show beyond a reasonable doubt that Crystal was in contempt of the Court's Orders. Tr. p. 100, l. 12 - p. 101, l. 25; R. p. 157-165.

Crystal appealed to the District Court, which issued a comprehensive 24-page opinion on February 22, 2013 affirming the Magistrates' decision.

ATTORNEYS FEES ON APPEAL–ADDITIONAL ISSUES ON APPEAL

1. Respondent Brad is entitled to attorneys fees on appeal pursuant to Idaho Code Section 7-610.

2. Respondent Brad is also entitled to attorneys fees on appeal pursuant to Idaho Code Section 12-121.

ARGUMENT

I. STANDARD OF REVIEW

Under *Losser v. Bradstreet*, 145 Idaho 670, 183 P.3d 758 (2008), the Supreme Court "does not review the decision of the magistrate court...'[r]ather, we are procedurally bound to affirm or reverse the decision of the district court.'" *Pelayo v. Pelayo*, 154 Idaho 855, 303 P.3d 214, (2013) quoting *State v. Korn,* 148 Idaho 413, 415 n.1, 224 P.3d 480, 482, n. 1 (2009).

Losser provides the specific standard of review applicable to this case:

> 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. If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure.

Id., 145 Idaho at 672, 183 P.3d at 760 (2008).

Crystal's appeal involves a contempt sanction. The standard under which the Supreme Court reviews contempt sanctions was given in *State v. Rice*, 145 Idaho 554, 556, 181 P.3d 480, 482 (2008):

> "The sanction or penalty imposed under a contempt order is reviewed under an abuse of discretion standard. The determination of whether a sanction or penalty should be imposed is within the discretion of the trial court. This Court does not weigh the evidence, but rather reviews the district court's findings to determine [whether] they are supported by substantial and competent evidence. Evidence is regarded as substantial if a reasonable trier of fact would accept it

> and rely upon it in determining whether a disputed point of fact has been proven. When the trial court exercises its discretion, this Court will not interfere unless the lower court clearly abused its discretion . . . ."

Rice, supra, quoting *In re Weick,* 142 Idaho 275, 278, 127 P.3d 178, 181 (2005) (internal citations omitted).

In any consideration of whether an abuse of discretion has occurred, this Court considers whether (1) the court correctly perceived the issue as one of discretion; (2) the court acted within the boundaries of such discretion and consistently with legal standards applicable to specific choices; and (3) the court reached its decision by an exercise of reason. *Lee v. Nickerson,* 146 Idaho 5, 9, 189 P.3d 467, 471 (2008).

In the present matter, the decision of the trial court is supported by uncontradicted evidence as to the salient facts, the conclusions of law were soundly based on those facts, and the sentences imposed were well within statutory allowances. The District Court properly so found and should be affirmed.

II. CRYSTAL FAILED TO PROPERLY RAISE HER JURISDICTIONAL CLAIMS TO THE TRIAL COURT AND THOSE CLAIMS HAVE NO MERIT

The District Court found that Crystal failed to raise her jurisdictional claims to the trial court. She now, again, asserts those jurisdictional claims, which are essentially that the trial

court "lacked jurisdiction" to enter the contempt findings, based on alleged defects in the charging affidavit.[1] She has waived those claims, and they have no merit in any event.[2]

A. Crystal Waived Her "Jurisdictional" Claims.

The District Court found:

> ". . . Crystal's assertion that the '[t]he magistrate court did not have jurisdiction to enter the judgment of contempt [as to Count III] because neither the facts nor the legal theory upon which the judgment was entered were set forth with particularity in the Charging Affidavit (Appellant's Brief, at 12),' is a due process objection to the charging affidavit and, as such, was waived by her failure to assert this objection before the magistrate. *See Whittle v. Seehusen,* 113 Idaho 852, 856, 748 P.2d 1382, 1386 (Ct. App. 1987)..."

Memorandum Decision and Order, February 22, 2013, at p. 17 (R. p. 272). The district court did note that Crystal's attorney had included boiler-plate "affirmative defenses" in a general "Acknowledgment of Rights and Notice of Not guilty Plea and Asserting Affirmative Defenses" document filed August 9, 2011. R. p. 149. But that document only asserts generic defenses as "possible basis for defending against this action" [sic], and only states ". . . the Court lacks personal jurisdiction over the Defendant." *Id.* No argument was made at trial, or in any pre- or post-trial motion, to raise a specific defenses which Crystal argues on appeal.

In this further appeal, Crystal alleges essentially the same deficiencies in the original charging affidavit or in the evidence. Her language has changed slightly, but the underlying

---

[1]*See, e.g.,* Appellant's Brief filed July 17, 2013, at pp. 8-12.

[2]Crystal does not appear to assert in this appeal any error in the District Court's decision that she waived her due process claims by failing to raise them to the trial court. Respondent nevertheless will discuss why the District Court's decision was proper on that point.

claims are the same as those presented to the district court.[3] These are due process objections to the charging affidavit which were not presented or argued to the trial court; the district court committed no abuse of discretion in holding they cannot be raised for the first time on appeal.

B. Crystal's Jurisdictional Claims Are Without Merit.

As the District Court found, Crystal did not raise her due process challenges to the charging affidavit properly before the trial court and cannot raise those issues for the first time on appeal. *Taylor v. Herbold,* 94 Idaho 133, 483 P.2d 664 (1971). In addition, however, the District Court also recognized that even if Crystal's claims were to be regarded as asserting that the charging document failed to allege an offense at all, (which argument is "never waived"), the result would be the same. R. p. 272-273 (*Memorandum Decision* at n. 17).

The District Court was clear that Crystal's arguments were in the nature of due process objections, as to the factual specificity and legal theories on which she was convicted, as compared to the charging affidavit. *Id.* Such is also the case before this Court. Crystal claims before this Court she had insufficient notice of the facts or law constituting the violations she was convicted of,[4] yet she was able to "put up a vigorous defense to the contempt charges . . ." as the District Court observed. *Id.* She also claims she was convicted on a legal theory so materially different from the charging affidavit that the charging affidavit failed to confer

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[3]Crystal now states the judgment is "void" due to defects in the charging affidavit; she claims it fails to allege "specific factual and legal charges upon which [she] was found guilty. . ." thereby prejudicing her ability to present a defense, and that she was convicted on "legal theories" which were different from what was set forth in the charging affidavit. Appellant's Brief at p. 10-16.

[4]Appellant's Brief Section V(A)(2)(a).

jurisdiction,[5] yet ". . . she was aware that the key question as to Count III concerned whether she "unreasonably denied permission. . . [for visitation]'" as the District Court points out. *Id.*, at n. 19; R. p. 273. As to the "school enrollment" issue, (Count I) Crystal continues to claim a distinction between "enrollment" and "attendance" as a basis for a lack of jurisdiction, but she didn't argue this distinction to the trial court. *See, Memorandum Decision*, n. 21, R. p. 276.

But the District Court also properly found that, even if Crystal's arguments constituted a claim that the charging affidavit failed completely to charge any offense, that claim would also be without merit. The District Court cites *State v. Jones,* 140 Idaho 755, 759, 101 P.3d 699, 703 (2004) to note that:

> When an objection to the information was not timely raised before trial...the sufficiency of the charging document will 'be upheld unless it is so defective that it does not, by any fair or reasonable construction, charge an offense for which the defendant is convicted.' [citation] 'A reviewing court has considerable leeway to imply the necessary allegations from the language of the Information.'

Id., quoting State v. Robran, 119 Idaho 285, 287, 805 P.2d 491, 493 (Ct. App. 1991).

Here, the actions by Crystal, and the Orders which those actions violate, as alleged by the charging affidavit, were <u>admitted</u> by Crystal at trial. She <u>admitted</u> unilaterally enrolling the parties' son in a new elementary school when she knew Brad had objected and wanted their son to attend a different school. The Charging Affidavit of Brad Carr (R. p. 125) states this as a violation of paragraph 9 of the parenting plan incorporated into the May 15, 2006 Court Order. R. p. 41. At trial Crystal <u>admitted</u> refusing Brad's request for a brief last

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[5]Appellant's Brief Section V(A)(2)(b).

visitation with his son before his year-long deployment to combat in the Iraq war. The charging affidavit set forth the behavior she admitted to, and her personal knowledge of the orders such behavior violated. If there were any "defects" in the charging affidavit, the trial court properly construed them in favor of the validity of the charging affidavit, in compliance with Idaho law, and the District Court properly so found.[6] "'[D]efects which are tardily challenged are liberally construed in favor of validity.'" R. p. 272, *Memorandum Decision,* n. 17, *quoting State v. Jones, supra.*, 140 Idaho at 759, 101 P.3d at 703.

III. THE SENTENCE IMPOSED FOR THE CONTEMPT WAS NOT AN ABUSE OF DISCRETION

The sentences imposed in this matter were well within the trial court's discretion. As the Court stated in *State v. Jones, supra,*:

> "A sentence within the statutory limits will not be disturbed on appeal absent a clear abuse of discretion. *State v. Hedger,* 115 Idaho 598, 604, 768 P.2d 1331, 1337 (1989). The sentencing court will not be found to have abused its discretion unless the 'sentence was excessive under any reasonable view of the facts.' *State v. Brown,* 121 Idaho 385, 393, 825 P.2d 482, 490 (1992) (quoting *State v. Broadhead,* 120 Idaho 141, 145, 814 P.2d 401, 405 (1991))."

Id., 140 Idaho at 759, 101 P.3d at 703. Here, the trial court "did undertake a reasoned analysis of the evidence presented," as the District Court observed. R. p. 267. A trial court is not required to be gullible — forming judgments about the parties is at the heart of a judge's purpose at trial, as the District Court also observed. R. p. 269, n. 13.

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[6]Crystal continues to urge a distinction between a parent's unilateral school "enrollment" of a child, and the later "attendance" at that school, to suggest that only the latter (which wasn't specifically alleged, but did occur) would be a violation of joint custody. The District Court called this "specious, at best." R. p. 276, n. 21. The evidence was uncontradicted that Crystal did both (enrolled the child and took him to the school) without Brad's permission.

The trial court here had before an essentially uncontradicted factual record, and a joint custody parenting plan. At trial, essentially, Crystal admitted the behavior she was accused of, but sought to justify her actions by making what the trial court felt were unpersuasive arguments in mitigation. She claimed, among other things, that her refusal to allow a last visit prior to Brad's deployment was "reasonable" because their child (in the second grade) might miss school and the travel plans weren't clear. To the trial court, this was not reasonable, in part because of the trial court's personal experience with family disruptions inherent in military service. It is not evidence of error for a trial court to make reference to evidence admitted at trial in the sentencing process. *State v. Leavitt*, 121 Idaho 4, 9, 822 P.2d 523, 528 (1991).

In addition, Crystal argued that, while she was aware of Brad's objection to the enrollment at Pepperidge, she was permitted to take their son there because (as she now argues) her "preliminary, administrative act of enrollment" did not violate any terms of the court order, and, once enrolled there, she "continued to try to work with Bradley, through their respective attorneys, to obtain . . . approval..." *Appellant's Brief*, at p. 24-25. Both the trial court, and District Court, viewed these as irrelevant arguments[7] which completely missed the point of joint custody, as set forth in the parties' custody orders. The trial court's reasoned that Crystal's claimed justifications were intended to disguise actions taken in bad faith, and

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[7]The trial court repeatedly sustained relevance objections to Crystal's efforts to introduce evidence of her attorney "working with" opposing counsel. *See, e.g.*, Tr. p. 26, l. 3-p. 29, l. 23; *c.f.*, Rule 408, I.R.E.

concluded that a brief period of incarceration was reasonable under the circumstances, to impress on her the seriousness of her actions in denying visitation. Tr. p. 106-108. His sentencing decisions were not the result of any passion or prejudice, but "merely a normal prediposition that may arise in the course of a case." *Bach v. Bagley,* 148 Idaho 784, 791, 229 P.3d 1146, 1153 (2010), *citing Liteky v. U.S.,* 510 U.S. 540, 550-52, 114 S. Ct. 1147, 1154-56, 127 L. Ed.2d 474, 487-89 (1994). Moreover, "[t]here is nothing improper about [the] judge . . . examining the record and course of [defendant's] conduct to determine his credibility." *In re Weick,* 142 Idaho 275, 284, 127 P. 3d 178, 187 (2005).

IV. BRAD IS ENTITLED TO ATTORNEYS FEES FOR DEFENSE OF THIS APPEAL

A. Idaho Code Section 7-610 Should Be, and Has Been, Interpreted to Apparently Allow an Award of Attorneys Fees on Appeal.

This is a contempt action. Idaho Code Section 7-610 provides that ". . . the court in its discretion may award attorney's fees and costs to the prevailing party." Brad was the prevailing party on appeal to the District Court, and this appeal raises the same issues as were presented below. Brad admittedly does not seek review by cross-appeal of the District Court's denial of fees on the intermediate appeal.[8] However, he should be allowed his fees in this further appeal, and should not be foreclosed from seeking fees at this time by the lack of cross-appeal of the District Court's decision. *See,* Rule 15(a), Idaho Appellate Rules.

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[8]Mr. Herndon's withdrawal from this case by substitution of counsel on July 10, 2013, for health reasons, occurred well after the time for cross-appeal had expired in late April, 2013, pursuant to Rule 15(b), I.A.R.

Recent authority (released since the decision of the District Court in this case) suggests that an interpretation of Idaho Code Section 7-610 which only allows recovery to a prevailing party at the trial court level in contempt proceedings may be flawed. In the case of *Bald, Fat & Ugly, LLC v. Keane,* 154 Idaho 807, 303 P.3d 166 (2013), this Court had before it a contempt proceeding, in which both parties made requests for attorneys fees. The Court notes that fees on appeal, though requested, were not awardable because neither party properly cited Idaho Code Section 7-610 as a statutory basis for their claims.

Brad submits that the District Court's narrow view was not sound in view of this Court's later authority, and he should be granted his legal fees and costs if he prevails in this appeal.

B. <u>Idaho Code Section 12-121 Also Provides a Basis for an Award to Brad in this Case.</u>

The present appeal by Crystal merely invites the Court to second-guess the factual determinations properly made below, and raises no cogent legal argument for the reversal of the District Court. The arguments by Crystal in this appeal merely re-state the arguments which were dispatched by the District Court. Crystal also fails to even address the District Court's ruling that she failed to properly raise most of her issues to the trial court initially and was foreclosed from making the arguments which she now restates to this court.

Idaho Code Section 12–121 permits the award of attorneys fees to the prevailing party if the court determines the case was brought, pursued or defended frivolously, unreasonably or without foundation. *Commercial Ventures, Inc. v. Rex M. & Lynn Lea Family Trust,* 145

Idaho 208, 177 P.3d 955 (2008). While it's true that, under Idaho Code § 12–121, the entire course of the litigation must be taken into account, that standard on appeal refers to the appeal itself, and not the necessarily the entire proceeding below:

> In this case, Bertha is the prevailing party and we find that Pedro has pursued this appeal frivolously and without foundation. He has merely retreaded arguments made without success below. We are asked to second-guess decisions that were properly made by the magistrate judge and upheld by the district judge. Accordingly, Bertha is entitled to attorney fees under I.C. § 12–121.

Pelayo v. Pelayo, 154 Idaho 855, 303 P.3d 214, 225 (2013).

CONCLUSION

The District Court should be affirmed and Brad should be allowed his reasonable attorneys fees and costs.

RESPECTFULLY SUBMITTED this day of September, 2013.

BAUER & FRENCH

By ______________________
Charles B. Bauer, Attorneys for Respondent

CERTIFICATION OF SERVICE

I hereby certify that on the 3rd day of September, 2013, two true and correct copies of the foregoing was served upon:

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- ☐ First Class Mail
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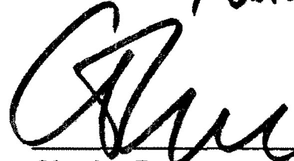

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(1931 – 2001)

SENT BY FAX FOLLOWED BY FIRST CLASS MAIL

August 18, 2010

Steven L. Herndon, Esq.
Attorney at Law
913 W. River Street, Suite 420
Boise, ID 83702
Fax: (208) 336-2059

Re: **Brad Carr v. Crystal Pridgen (nka Crystal Edgar)**
Ada County Case No CV DR 0302464D

Dear Steve:

It is my understanding that you still represent Brad Carr. I met with Ms. Pridgen (nka Ms. Edgar) last week who informed me our clients have some disagreements. First, Ms. Edgar informs me that Brad is 4 years behind on his child support payments of $77 per month and now owes $3,850. Is there a reason why he has not been paying this? If not, demand is now made for this past due amount. Failure to pay will result in contempt charges being filed.

Second, Ms. Edgar informs me tha[redacted]l be registered at Pepperidge Elementary today because the child has not been accepted off the waiting list in the school Brad wants the child to attend.

Third, Ms. Edgar invokes the right of first refusal claus[redacted]ill be caring for the child during Brad's upcoming deployment. Ms. Edgar will ensure [redacted] is available for Brad's military leave in September and his mid-tour leave. Please ask [redacted] let us know when his mid-tour leave is scheduled.

Lastly, I note the parties' incomes have significantly increased since 2006 and a child support modification is necessary. Attached hereto are child support calculations that I believe reflect what Brad's child support should be during his deployment. This will change slightly when he returns from his deployment. Would Brad stipulate to a modification before he leaves? Please advise and respond not later than August 28th. If we do not hear from Brad we will assume he disputes all of this and litigation will be necessary to resolve these issues.

APPENDIX
A
Respondent's Brief

Steven Herndon, Esq.
August 18, 2010
Page 2

Thank you for the time you spend reviewing this matter. I look forward to receiving your response.

With greatest respect,

M. Sean Breen

Encl: as stated

cc: Dean Livi

LtrHerndon 8-11-10.doc