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Baird-Sallaz v. Gugino Respondent's Brief 1 Dckt. 41301

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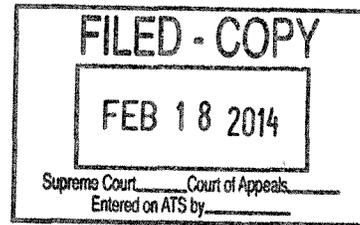
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IN THE SUPREME COURT OF THE STATE OF IDAHO

RENEE L. BAIRD-SALLAZ)
)
 Plaintiff-Respondent)
)
 JEREMY J. GUIGINO, Chapter 7)
 Bankruptcy Trustee for the Bankruptcy)
 Estate of Renee L. Baird)
)
 Intervenor-Respondent)
)
 v.)
 DENNIS J. SALLAZ,)
)
 Defendant-Appellant)

SUPREME COURT NO. 41315-
 41301
 Fourth Dist. Case NO. CV DR 04-01075M



PLAINTIFF-RESPONDENT'S OPENING BRIEF

Appeal from the District Court of the Fourth Judicial District
 For the County of Ada

Honorable Kathryn A. Stricklen, District Judge, Presiding

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 Boise, Idaho 83702

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PLAINTIFF-RESPONDENT

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Jeremy J. Gugino -Chapter 7 Trustee

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2. Whether, if Sallaz’s arguments are to be believed, any party to a marriage can repudiate the existence of a marriage an infinite number of years after the marriage was conducted and an infinite number of years after a divorce was entered without any responsibility for adhering to normal court rules and established principles affecting the finality of court orders.
3. Whether the massive public policy consequences of not allowing marriages and divorces in Idaho to receive presumptive regularity and validity, including the filing of joint tax returns, the legitimacy of children, and the ordering of community property, outweigh alleged technical and remediable defects in the filing of a marriage certificate by a marriage officiate.
4. Whether the conduct of Sallaz and his attorney in filing and prosecuting this appeal give rise to an award of attorney’s fees under Idaho Code sec. 12-121, Idaho Rule of Civil Procedure 11 and/or Idaho Appellate Rule 11.2 based on the fact that the appeal is frivolous, unreasonable, and without foundation on its face, or whether the signing of the Notice of Appeal was interposed solely for the purpose of delaying recovery on a community property judgment or for another purpose, including harassment of Baird or the Trustee or to create unnecessary delay or needless increase in the cost of litigation.

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I.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

The subject appeal is, contrary to that stated by Appellant Dennis Sallaz (hereinafter “Sallaz”), not an appeal brought from the 2012 community property judgment but is rather an untimely appeal from the magistrate court’s 2005 decree granting Plaintiff-Respondent Renee L. Baird (hereinafter “Baird”). Sallaz, an experienced attorney, never raised the invalidity of the marriage during the 2004-2005 litigation on the divorce decree and did not do so until after the Bankruptcy Trustee sought to recover on a community property judgment issued in 2012. Inasmuch as the underlying issue, the validity of the marriage, should have been raised by Sallaz some seven years earlier, his belated and frankly desperate attempt to now raise it when the Trustee has sought to recover on the 2012 judgment is nothing other than a transparent attempt to find an issue to avoid a recovery sought by the Trustee for the benefit of Baird’s creditors.

B. COURSE OF PROCEEDINGS BELOW

Even if Sallaz correctly states that Baird had no requirement to plead the existence of a valid marriage in her initial Complaint for Divorce, she did so (R. 13). Of greater significance perhaps is that Sallaz ADMITTED the reality of the 1996 marriage in his Answer and Counterclaim. (R. 17). The Magistrate Judge in this matter entered a Partial Decree of Divorce on August 24, 2005 (R. 23-24). The Partial Decree, which was drafted by Sallaz’ attorney, implicitly found that the parties were validly married and granted the parties a divorce on the ground of irreconcilable differences. The Partial Decree also included a Rule 54 (b) certificate certifying that the Partial decree was a final judgment on that issue, upon which an appeal could be taken as provided by

the Idaho Appellate Rules. No appeal was ever taken by Sallaz to that Partial Decree. Even if Sallaz allegedly “discovered” new information that would have possibly been useful to determine the validity of the marriage, Sallaz failed to file a Rule 60(b) motion with the magistrate court by February, 2006, six months after the entry of the Partial Decree with the Rule 54(b) certificate.

C. RESTATEMENT OF FACTS

Sallaz conveniently omits critical facts in his Brief that the Magistrate Court and the District Court found to be somewhat dispositive on the issue of whether there was a valid marriage that lawfully gave rise to these proceedings. **First**, Sallaz omits that he admitted the validity of the marriage in his Answer and Counterclaim to the Complaint seeking divorce. (R. 13 and R. 17). **Second**, Sallaz admits that he testified to the validity of the marriage under oath by deposition given on March 31, 2005 (Sallaz Deposition, March 31, 2005, pp. 7-8, R. 284) **Third**, during the course of a 16 day trial on community property issues starting on November 15, 2005 through July 27, 2006, while the issue of the marriage was repeatedly raised, Sallaz never disputed or denied the existence of the marriage. (R. 284).

The “evidence” that Sallaz relies on to show notice of an alleged non-existent marriage is a self-serving Affidavit that references unnamed “friends” of Baird with no testimony from these friends or opportunity for cross-examination. It is hearsay of the lowest order and no court should give any credibility to the Sallaz affidavit.

II.

ADDITIONAL ISSUES PRESENTED ON APPEAL

1. Whether Sallaz, despite his years of legal training, waived his ability to argue or is estopped from asserting an alleged deficiency in the marriage proceedings when those alleged deficiencies were never raised before the Magistrate Court, and when no proper post-judgment motion was filed, and when no timely appeal was filed, and when Sallaz admitted in pleadings and in testimony to the existence of a valid marriage.
2. Whether, if Sallaz's arguments are to be believed, any party to a marriage can repudiate the existence of a marriage an infinite number of years after the marriage was conducted and an infinite number of years after a divorce was entered without any responsibility for adhering to normal court rules and established principles affecting the finality of court orders.
3. Whether the massive public policy consequences of not allowing marriages and divorces to receive presumptive regularity and validity, including the filing of joint tax returns, the legitimacy of children, and the ordering of community property, outweigh alleged technical defects in the filing of a marriage certificate by a marriage officiate.
4. Whether the conduct of Sallaz and his attorney in filing and prosecuting this appeal give rise to an award of attorney fees under Idaho Code sec. 12-121, Idaho Rule of Civil Procedure 11 and /or Idaho Appellate Rule 11.2 based on the fact that the appeal is frivolous, unreasonable, and without foundation on its face, or whether the signing of the Notice of Appeal was interposed solely for the purpose of delaying recovery on

a community property judgment or for another improper purpose, including the harassment of Baird or to create unnecessary delay or needless increase in the cost of litigation.

III,

I. SUBJECT MATTER JURISDICTION WAS PROPERLY ASSERTED AND HELD VALID IN THE MAGISTRATE COURT WHEN BOTH PARTIES ADMITTED TO THE VALIDITY OF THE SUBJECT MARRIAGE

A. There Is No Credible Evidence That The Sallaz-Baird Marriage Was Invalid

Sallaz makes no credible argument in either his Affidavit or Brief that his marriage to Baird was invalid. As the record clearly demonstrates and as the District Court below found, Sallaz admitted in judicio the existence of the marriage both in his responsive pleadings and in testimony. (R. 352, fn. 3) A hundred people attended the ceremony on July 4, 1996. A video of the wedding is in existence. The only argument Sallaz makes is his naked assertion, supported without any corroborating testimony from a third party, that Rick Willard, who performed the wedding nearly two decades ago, was not authorized to perform it as, according to Sallaz and Sallaz alone, Willard was neither a judicial officer, county clerk or member of the clergy in Oregon. There is no independent evidence, outside of Sallaz himself, who makes these claims. As the District Court held in rejecting Sallaz argument on appeal: “[Sallaz], an attorney, has not explained why he was not concerned, at the time or for nearly two decades after the marriage ceremony was performed, that the person who was obviously (to him) not a judicial officer, county clerk, or clergy member, was authorized to conduct a valid marriage ceremony. Instead [Sallaz] essentially argues that it was reasonable for no suspicions to have arisen concerning the authority of this unidentified person, until the time of this appeal.” (R. 351).

On August 24, 2005, a magistrate entered a partial Decree of Divorce along with a Rule 54 (b) certificate. No timely appeal was taken from this judgment. (R. 351)

B. Sallaz Is Estopped From Asserting Before The Magistrate That The Divorce Decree Should Be Granted and Subsequently Asserting, Many Years Later, That It Was Error For The Magistrate To Grant His Request

Consistent with the positions that Sallaz took in pleadings before the Magistrate, Sallaz clearly supported the Magistrate's issuance of a Partial Decree of Divorce, stating in his Memorandum of Law Relative to the Court's Authority to Grant a Partial Decree of Divorce, that he "wants over on in his personal life...Renee is involved with another man. Dennis is involved with another woman...Dennis has postponed surgery to get this trial behind him and alleviate stress...the parties' financial entanglements will continue to exist if the Court does not grant a divorce now...Both parties agree that a divorce should be entered on this matter. The issue is not disputed. The parties have been living separately and apart from each other for more than one year. There is no possibility of reconciliation...Given that both parties have requested a divorce, the only issues before the Court are valuation an division of the parties' assets and divisio0n of the debts...Entry of a decree of divorce in this case will not serve to obscure, confuse or convolute the remaining simplify the remaining issues. On the contrary, entry of a divorce decree will serve to simplify the remaining issues...The *Ross* decision clearly confirmed the procedure whereby a partial summary judgment will be granted in a divorce, while property, custody, and other similar issues were reserved for trial...the court can certify that judgment as final...there is no reason to delay the entry of the divorce. Both parties have asked the court for a divorce on the grounds of irreconcilable differences. The parties are living apart from one another and there is no hope for reconciliation. The only issues for trial are the division of the community debts and assets." (R. 351)

Citing *Ross v. Ross*, 103 Idaho 406, 408-09, 648 P. 2d 1119, 1121-22 (1982), the very case also cited by Sallaz, the District Court quoted the language of *Ross*: “[W]e...hold that following the principles of quasi estoppel plaintiff is stopped from alleging that error occurred in the trial court’s granting of the decree of divorce...she is estopped to deny its validity.” *See also Swope v. Swope*, 112 Idaho 974, 979, 739 P.2d 273, 278 (1987) (“In *Ross* we held that the wife was estopped from denying the finality of an uncertified partial summary judgment granting a divorce.” In *Indian Springs LLC v. Indian Springs Land Investments, LLC*, 147 Idaho 737, 748, 215 P. 3d 457, 468 (2009), this Court held: “The doctrine of judicial estoppels prohibits ‘a party from assuming a position in one proceeding and then taking an inconsistent position in a subsequent proceeding’...Generally, when a litigant, through sworn statements ‘obtains a judgment, advantage or consideration from one party, he will not thereafter, by repudiating such allegations and means of inconsistent and contrary allegations or testimony, be permitted to obtain a recovery or a right against another party, arising out of the same transaction or subject matter.’”

The District Court also noted that the issue of the validity of the marriage was raised for the first time on appeal and, generally, the Court will not consider issues which are raised for the first time on appeal and which were not raised before the trial court. *Bauchman-Kingston Partnership v. Haroldsen*, 149 Idaho 87, 233 P. 3d 18 (2008). Sallaz continues to assert that the information he relied upon in asserting that the marriage was never valid was “surfaced only by information revealed by a close friend of Ms. Baird, after the Amended Final Judgment was filed, and the verification was sought of that fact as to the ‘marriage’ from the State of Oregon, as identified in the appendix of the opening brief.” (R. 353 fn. 5). Sallaz does not provide any other details where this revelation occurred, the identity of this person, or what the information

they provided consisted of and he did not comply with the rules concerning augmentation of the record. *See* I.R.C.P. 83 (q); I.A.R. 30. (R. 353, f. 5)

The District Court below concluded on appeal that subject matter jurisdiction relates to the power of the court to entertain a certain type of action. *Department of Health and Welfare v. Housel*, 140 Idaho 96, 90 P.3d 321 (2004). The District Court concluded that “[c]learly the magistrate had subject matter jurisdiction to hear this case and determine whether the parties were married.” *See I. R. C.P. 82(c) (2)(C)* and *Dire v. Dire-Blodgett*, 140 Idaho 777, 102 P. 3d 1096 (2004)

C. Oregon Law Does Not Invalidate The 1996 Marriage

Sallaz argues that the alleged non-existence of a filed marriage license renders his 1996 marriage invalid, despite his previous admission that he was married. Oregon’s law states, in pertinent part, that “the person presiding or officiating in the religious organization shall deliver to the county clerk who issued the marriage license he application, license and record of marriage in accordance with ORS 106.170.”

Under ORS 106.170, the statute provides in pertinent part that “[a] person solemnizing a marriage shall, within 10 days after the marriage ceremony, complete the original application, license and record of marriage form and deliver the form to the county clerk who issued this marriage license.”

Based on Sallaz’s untimely argument, it would appear that the only “defect”, *arguendo*, is the possible failure to file the form within 10 days. If Rick Willard, the officiate, failed in this ministerial duty, that defect alone is not, according to Oregon law, “fatal” to the marriage, as Sallaz now asserts. In fact, Oregon decisional law indicates that a lawful marriage presumes that

the parties undertook efforts to satisfy Oregon's requirements for a valid marriage, one of which is to obtain a marriage license. ORS sec. 106.041 (1) 2003. *See, e.g., Johnson v. Baker*, 142 Or. 404, 20 P.2d 407 (1933).

Given that there is no evidence of record that Baird failed to obtain a marriage license, the only alleged "defect" is possibly Willard's neglect in filing the record with the court clerk. If that is true, there is no prohibition against Willard filing that license or a substitute **now** and correcting the deficiency. **It is absurd to suggest, as Sallaz does, that an officiate who either loses the document or files it on the 11th day following the wedding creates a void marriage for the parties to that marriage.** The 10 day rule is a guideline but does not render an otherwise valid marriage void. Nor does Sallaz cite any Oregon authority stating that such a marriage is void. In any case, this Court should certainly not be interpreting the intent of Oregon law before the Oregon Supreme Court does so.

II. IF APPELLANT'S ARGUMENTS ARE ACCEPTED BY THIS COURT, DIVORCE LITIGATION WOULD LACK ALL FINALITY AND CHAOTIC UNCERTAINTY WOULD PERVADE BOTH MARRIAGES AND DIVORCES

A. All Litigation Is Entitled To Finality And Appellant's Approach Threatens Finality to All Divorce Litigation

Sallaz, in his arguments to the District Court on Appeal and to this Court, maintains that regardless of whatever admissions in pleadings or testimony are made, all of this can be recanted, despite years of living in a married state, if uncorroborated "rumors" made years after a wedding ceremony took place, and give rise to a suspicion that an officiate to a wedding did not make a timely filing of a marriage certificate. In essence, whatever finality the Magistrate Court's Partial Decree presumably had in 2005, based on the admissions of Sallaz himself, all of this can be "voided" upon the entry of an unfavorable property order entered seven years later, if

Sallaz suspects, but does not prove, the marriage in 1996 lacked legitimacy. If Sallaz ever suspected that his marriage was void ab initio, he had a duty to check out the underlying facts and either get the marriage certificate filed, if he wished to remain married, or timely contest a divorce complaint with the facts showing “no marriage.” He did neither.

All Sallaz has done is advance an argument that, if accepted by this Court, would force all parties seeking a divorce to produce a marriage certificate with the filing of a divorce complaint, regardless of whether the marriage was eight years old or fifty years old. Under Sallaz theory, no Magistrate could ever sign a divorce decree in the absence of such a license, as according to Sallaz, stipulations, admissions and testimony offered by both parties as to the legitimacy of the marriage would carry zero weight.

B. Untold Public Policy Consequences Would Flow From Disturbing The Regularity Of Marriage And Finality of Divorce Proceedings

If no marriage certificate could be produced by a plaintiff in a domestic proceeding, the defendant could immediately move to declare the marriage void and walk away without any obligations or property division to the plaintiff. Multiple years of tax returns, where the parties filed jointly during decades of putative marriage, would have to be amended with untold financial liabilities to both parties. Children born during the years of putative marriage, who formerly deemed were to be legitimate, now would suffer the ignominy of illegitimacy. Property and assets that were created during the decades of putative marriage would now have to be resolved through partition proceedings for which the evidence of one parties’ contributions to the creation of the assets may be unavailable. This is the world Sallaz conceives and urges this Court to adopt.

It is chaotic to suggest that if one party is dissatisfied with a property order entered years later, as in the subject case, he should be allowed to challenge the validity of a marriage that happened 16 years earlier and for which he testified was legitimate. Sallaz should not be permitted, for the sake of the people of Idaho, to force this bizarre view of lack of finality upon parties who have every reason to believe that their marriages were legitimate and lived as married people for decades.

III. ATTORNEYS FEES SHOULD BE ASSESSED AGAINST SALLAZ AND HIS ATTORNEY FOR PROSECUTING THIS FRIVOLOUS AND UNREASONABLE APPEAL

The Plaintiff-Respondent in this case is not an attorney has no attorney representing her in this appeal. However, the Trustee, an Intervenor-Respondent, does have an attorney and Baird supports the Trustee's right to recover attorneys fees that have been expended in defending Judge Stricklen's Order on this Appeal. To not award attorneys' fees would do nothing but cause a diminution of the bankruptcy estate to the detriment of all of Baird's creditors.

Attorneys' fees should be awarded against Sallaz and his attorney pursuant to Idaho Code section 12-121, Idaho Rule of Civil Procedure 11, and/or Idaho Appellate Rule 11.2. Fees and costs should be awarded under Idaho Code section 12-121 based on the fact that this appeal is frivolous, unreasonable, and without foundation. The sole issue on appeal is the validity of the parties' marriage, which Sallaz did not properly appeal (based on the issuance of a Rule 54(b) certificate with the Partial Decree) or even contest in the lower court. As the appeal is so clearly untimely and without merit, it is unreasonable and without foundation.

Fees and costs can be awarded under I.R.C.P. 11 or I.A.R. 11.2 based on the same facts. The Signing of a Notice of Appeal, or motion or brief or other document, constitutes a

certification “that to the best of the signor’s knowledge, information and belief after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” *See, e.g., I.A.R. 11.2(a)*. Here, it is clear that the issue of marriage is untimely. Sallaz makes no legitimate argument that existing law should be modified or reversed. The existing law on timeliness of appeals is well-known and long-standing. There cannot be a reasonable argument for the modification or reversal of those long-standing and existing standards. Rather, Sallaz has pursued this appeal for the improper purpose of delaying or needlessly increasing the cost of litigation. *See, e.g., Ada County Case No. CV 11-07253* (trial delayed while Sallaz pursues this appeal); United States Bankruptcy Court for the District of Idaho, Adversary Case No. 12-06038-JDP (same). Because the appeal is untimely, not well-grounded in fact and not warranted by existing law or a modification of existing law, but is pursued exclusively for the purpose of delaying other litigation meant to recover assets from Sallaz for the benefit of the Debtor’s estate and creditors, sanctions should be awarded against Sallaz and his attorney related to this appeal.

Additionally, sanctions should be awarded against Sallaz and his attorney for the ruthless harassment and toll it has taken on Plaintiff-Respondent. The level of outrage that should be directed at Sallaz has no confining limits. For Sallaz to advance this appeal on the basis of unsupported innuendo 16 years after a marriage ceremony took place in Oregon, which everyone present, including Sallaz, deemed to be valid, is nothing more than harassment of the highest order and for this Plaintiff-Respondent, who has no means to hire a private attorney to represent her, it is the ultimate harassment. Sanctions should take the form of an award of attorney fees

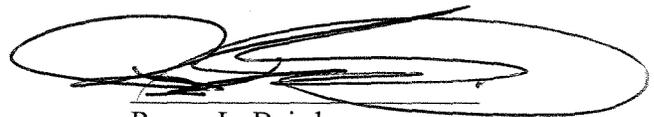
and costs to the Trustee for all work and costs related to this appeal so the creditors will not bear this burden.

**IV.
CONCLUSION**

The Magistrate, based on the facts and law presented to him, entered a valid Partial Decree of Divorce for which no timely appeal was filed. No timely post-judgment relief was filed by Sallaz. The basis that Sallaz even initiated his collateral attack on the Partial Decree seven years after the entry of the Decree is specious and disingenuous. The logic of abandoning principles of finality to decrees of divorce after the appeal time has lapsed is untenable. The consequences of adopting Sallaz' warped view of challenging marriages decades after they occurred is warped and produces chaotic and disastrous results for the people of Idaho. For these reasons, among others, the Judgment of the District Court should be AFFIRMED and this appeal should be DISMISSED. Because this appeal is so fraught with unreasonableness and outright frivolity, attorney's fees are manifestly necessary to compensate the Trustee and the estate and to deter Sallaz from repeating this charade ever again.

This 18th day of February, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Renee L. Baird', enclosed within a large, hand-drawn oval.

Renee L. Baird
Plaintiff-Respondent

CERTIFICATE OF SERVICE

This is to certify that I have on this 18th day of February, 2014, served two and correct copies of the foregoing BRIEF OF PLAINTIFF-RESPONDENT upon the following:

Matthew T. Christensen
ANGSTMAN JOHNSON
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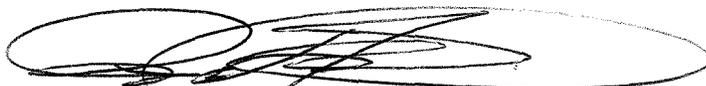
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Attorney for the Intervenor-
Respondent Jeremy J. Gugino,
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Vernon K. Smith
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Boise, Idaho 83702

By First Class Mail

Attorney for Appellant

A handwritten signature in black ink, appearing to read "Renee L. Baird", enclosed within a hand-drawn oval border.

Renee L. Baird