

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO)	
via assignment to)	
CDI AFFILIATED SERVICES, INC.,)	46129-2018
dba CBP Affiliated Services,)	46131-2018
)	46132-2018
Plaintiff-Respondent,)	
)	
v.)	APPELLANT'S BRIEF
)	
LANCE W. SCHALL,)	
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BANNOCK**

The Honorable Robert C. Naftz Presiding

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COMES NOW, the Respondent-Appellant, Lance W. Schall, by and through his attorney of record, Sara Archibald, of the Bannock County Public Defender's Office, and hereby submits the following Appellate Brief:

STATEMENT OF THE CASE

Nature of the Case

This is an appeal from a District Court decision concerning whether Plaintiff-Respondent had standing to appear in Defendant-Appellant's criminal actions.

Statement of the Facts and Course of Proceedings

Defendant-Appellant Lance W. Schall's (hereinafter "Schall") was sentenced in three misdemeanor criminal cases in Bannock County: CR-2009-12371-MD, CR-2010-9477-MD, and CR-2011-16113-MD. In each case, Schall was sentenced to a fine/fixed penalty, court costs, and a record check probation fee. For the 2009 case, the judgment was dated September 10, 2009. Schall's money judgments were reported to collections on December 3, 2009 and he was discharged from probation on September 10, 2010. In the 2010 case, the judgment was dated July 28, 2010. Schall's money judgments were reported to collections on October 21, 2010 and his discharge date from probation was July 28, 2011. In the 2011 case, the judgment was dated December 1, 2011. Schall's money judgments were reported to collections on March 22, 2012 and his discharge date from probation was December 1, 2012. Defendant's money judgments in the above criminal cases have never been paid.

Plaintiff-Respondent CDI Affiliated Services Inc., d.b.a. CBP Affiliated Services (hereinafter "Collection Agency") is a licensed collection agency assigned by Bannock County to collect public debts. In 2017, the Collection Agency petitioned the magistrate court to issue an order to garnishing wages from Schall's employer. On June 5, 2017, the magistrate court held a

hearing on the matter.

On August 30, 2017, the magistrate issued a Memorandum Decision and Order (hereinafter “Magistrate Court Decision”) concluding that it currently did not have jurisdiction to issue a writ of execution in the criminal cases given that Defendant’s criminal cases were closed and he was discharged from probation. The magistrate court also opined that the Collection Agency did not have standing because it was not a correct party to the criminal action. The Collection Agency appealed that decision. Oral arguments regarding the appeal were conducted on March 19, 2018 before the district court, and the matter was taken under advisement. Subsequently, the magistrate’s decision was vacated by the district court’s Memorandum Decision and Order (hereinafter “District Court Decision”) filed on May 10, 2018.

ISSUE

Whether the Collection Agency had standing to appear and file motions in Schall’s criminal cases when it is not a party in the criminal action?

ARGUMENT

A. As a non-party to the criminal action, the Collection Agency does not have standing to appear in Schall’s criminal cases.

Although standing is not an issue normally implicated in criminal law, nonetheless, standing is a jurisdictional issue. *In re Jerome Cty. Bd. Of Comm'rs*, 153 Idaho 298, 308, 281 P.3d 1076, 1086 (2012); *Haight v. Idaho Dep't of Transportation*, 163 Idaho 383, 414 P.3d 205, 209 (2018); *Christian v. Mason*, 148 Idaho 149, 151, 219 P.3d 473, 475 (2009). Importantly, “[t]he issue of whether a party has standing to assert a particular claim should be resolved before the merits of the claim are reached.” *Citibank (South Dakota), N.A. v. Carroll*, 148 Idaho 254, 259, 220 P.3d 1073, 1078 (2009).

There are two parties in a criminal action – the defendant and the State of Idaho. The defendant is the person charged with the offense and the crime is “prosecuted in the name of the state of Idaho, as a party...” Idaho Code §§ 19-104-105. Although case law concerning standing and proper parties in criminal actions is limited, in *City of Sandpoint v. Butigan*, 91 Idaho 855, 433 P.2d 125 (1967) the Supreme Court directly dealt with proper parties in a criminal case. There, when a defendant was charged with reckless driving, the complaint was made in the name of the City of Sandpoint as the plaintiff. *Id.* at 855, 433 P.2d at 125. The Court discerned that the trial court did not have jurisdiction of proper parties to the action because it “had been prosecuted in the justice court in the name of the City of Sandpoint.” *Id.* at 856, 433 P.2d at 126. It noted criminal actions against the laws of the state must be prosecuted in the name of the state. *Id.* “Municipal corporations are not given authority to prosecute such proceedings, except in the name of the state.” *Id.*

The Collection Agency filed its motion under Schall’s criminal case numbers. The Idaho Criminal Rules “apply to all criminal proceedings in the district courts and the magistrate division of the district courts of the state of Idaho.” I.C.R. 1.¹ The rule governing forms of pleading and documents, Rule 2.3, has requirements that apply to all documents filed with the court such as a document must contain a caption with the names of the parties, title of the court, and case numbers. I.C.R. 2.3(2). Rule 47 regarding motions, states that “a party applying to the court for an order must do so by motion.” I.C.R. 47. The Idaho Criminal Rules establish that any pleading filed in the criminal case must be filed by a party to the criminal action with a criminal case number. Likewise, the Idaho Code confirms there are only two parties in a criminal action –

¹ An exception to I.C.R. 1 is (c) Collection of Fines and Penalties, which is civil in nature. Other exceptions to Rule 1 are civil proceedings such as habeas corpus, juveniles under the child protective act, forfeiture of property, et al.

the defendant and the State of Idaho. The Collection Agency is neither, thus as a non-party, they cannot file any motions under Schall's criminal case numbers.

The district court erred in not addressing a crucial preliminary question of whether the Collection Agency had standing to appear in the criminal case. In its decision, the district court observed that an issue – whether the Collection Agency is a party – was raised by Schall's counsel during oral argument, which the court mistakenly stated was new and was not included in the *Respondent's Brief in Opposition of Motion for Writ and Continuing Garnishment* (hereinafter "Schall's Brief") to the district court. (R. 131). However, not only was the issue discussed during oral argument (Tr. p. 18-28), it was also presented in Schall's Brief. (See, R. 118-126). Specifically, the Brief stated:

The appropriate remedy is not [the Collection Agency] on its own initiative changing the heading of the case from "State of Idaho v. Lance W. Schall" to "CDI Affiliated Services, Inc. as assignee of State of Idaho – Bannock County v. Lance W. Schall" in an attempt to have the magistrate issue a writ of execution years after the [Schall's] probation expired. In addition, [the Collection Agency], does not have standing to raise this issue because as the magistrate pointed out, they are not a current party to the action. [The Collection Agency] cannot exercise the rights of Bannock County because Bannock County is not party to this case; the State of Idaho is the correct party. Neither [the Collection Agency] nor Bannock County is a party to any criminal case.

(R. 125). Moreover, the first paragraph of the Argument section of Schall's Brief adopted "all of the arguments and reasoning set out in the magistrate's Memorandum Decision and Order..." (R. 120). The Magistrate Decision expounded on the question of whether the Collection Agency is even a party to the criminal case:

The Court notes that neither Bannock County nor the Clerk of the Court is a party in any of these criminal proceedings. The State of Idaho and the Defendant are the only two parties in these cases. While the City of Pocatello or Chubbuck Prosecutor and/or the Bannock County Prosecutor represent the State of Idaho, it is still the State that is Party, not the County or the City. It is not the prosecutor that has assigned the collection of fees matters to the [Collection Agency], nor could it be because, as pointed out by the

[Collection Agency], it is up to the victim and/or the Clerk to determine how to collect. That does not give either one of them the right to file paperwork in a case to which they are not a party. The Court notes that the [Collection Agency] in these three actions has not paid a filing fee along with their appearance in the matters. The Court also notes that the [Collection Agency] has not brought a Motion to Intervene, nor could it, since the State of Idaho is the only entity that can prosecute [sic] a criminal case in Idaho.

It is also instructive to the court that in all three of the cases contained herein the Defendant was appointed a public defender and, in fact, the public defender appeared at the hearing on this matter to defend the Defendant. This Court does not believe the public defender should be in a position of having to represent a Defendant in a collection action, however they are the attorney of record in the criminal case. Had the Plaintiffs filed a separate civil action against the Defendant, the Defendant would have been required to defend the action himself or hire his own attorney to defend the action.

It is also instructive to the Court that in all three cases the Plaintiff has, without any Motion or Order from the Court, unilaterally changed the heading of the case from State of Idaho vs. Lance W. Schall, to CDI Affiliated Services, INC. as assignee of State of Idaho – Bannock County vs. Lance W. Schall. That is not the Proper Caption in these cases.

(R. 65-66). The District Court Decision was silent as to the question of whether the Collection Agency was a party in the criminal case, even though the Magistrate Court Decision came to the conclusion that the Collection Agency was not a party in the criminal case where an appointed public defender was appearing and the proper caption was not utilized.

During oral argument, counsel for the Collection Agency stated, “We’re just trying to enforce what was already there.” (Tr. p. 13, L. 2-3). There is no legal mechanism for the Collection Agency, or any debt collecting agency, to enforce a judgment in a criminal case. That is the precise role of the State as represented by the prosecutor. The Collection Agency was not represented by a prosecutor having jurisdiction in the criminal cases during these hearings, but by a private attorney employed by the Collection Agency. There is a reason the Collection Agency took its own initiative to change the heading on its *Application for Issuance of Continuing Garnishment*– it could not represent itself as the State of Idaho. (R. 29). Bannock

County hired the Collection Agency to collect debts under I.C. § 67-2358, however, Bannock County is not a party to a criminal case. The proper party is the State of Idaho. The Collection Agency has no authority to appear in a criminal action.

According to the District Decision, a court's jurisdiction to amend or set aside the judgment in a case is limited so one would assume allowing non-parties to appear in criminal cases would be prohibited. (R. 135). In order to allow a non-party "seeking enforcement of those judgments," the district court utilized I.C. § 19-5305, which permits allows the clerk to collect on an order of restitution on behalf of the victim (R. 137). This statute is not applicable in this case. Chapter 53 of Title 19 regards the Compensation of Victims of Crimes. There was no restitution ordered in any of Schall's criminal cases, only fines, court costs, and probation fees. (R. 25, 32). Therefore, the district court's conclusion that "the Plaintiff in this case was authorized to collect on the restitution orders entered against the Defendant" was in error because the Collection Agency does not have standing to participate in Schall's criminal cases.

CONCLUSION

The district court ignored the issue of whether the Collection Agency had standing to appear in the criminal case, which was raised in the Magistrate Decision, Schall's Brief, and during oral argument. As a non-party, the Collection Agency does not have standing to file any motion in the criminal action. Therefore, Schall requests this Court remand the case with instructions to dismiss the Collection Agency's petition to garnish Schall's wages or in the alternative, for the district court to address the issue of standing raised by Schall.

Dated: This 23 day of October, 2018.

_____/s/_____
SARA ARCHIBALD
Deputy Public Defender

CERTIFICATE OF SERVICE

I HEREBY Certify that on the 23 day of October, 2018, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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By depositing a copy thereof in the United States Mail, postage prepaid, by first class mail to said attorney at the above address.

_____/s/_____
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