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Garner v. Garner Respondent's Brief Dckt. 41898

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IN THE SUPREME COURT OF THE STATE OF IDAHO

MONICA GARNER,)	
)	Supreme Court Docket 41898-2014
Appellant,)	Payette Case No.: CV 2010-000586
)	
v.)	RESPONDENT'S BRIEF
)	
CHRISTOPHER GARNER,)	
)	
Respondent.)	

RESPONDENT'S BRIEF

Appeal from the District Court of the Third Judicial District for Payette County, to the

Supreme Court of the State of Idaho

The Honorable D. Duff McKee, Judge Presiding

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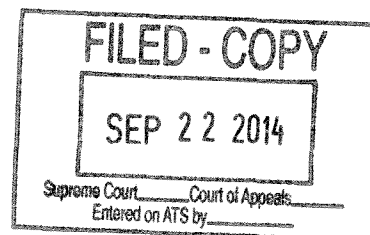


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STATEMENT OF CASE

Procedural History

June 3, 2010: Monica Garner (Appellant) files for divorce against Chris Garner (Respondent)

October 26, 2010: Stipulated Decree of Divorce enters

March 16, 2012: Respondent files Motion to Modify Decree of Divorce

October 31, 2012: Court dismisses Motion to Modify after trial based upon Respondent's failure to show a substantial and material change of circumstances

November 7, 2012: Appellant files Motion to Modify Decree of Divorce (child support)

November 13, 2012: Appellants files Motion for Attorney's Fees and supporting documentation

November 20, 2012: Respondent files Motion to Dismiss Appellant's Motion to Modify

November 27, 2012: Respondent files Objection to Appellant's Motion for Attorney's Fees

February 19, 2013: Court Orders an award of attorney's fees to Appellant in a reduced amount

February 26, 2013: After hearing, the Court dismisses the Appellant's Motion to Modify

March 1, 2013: Respondent files Motion for Attorney's Fees and supporting documentation

March 8, 2013: Court enters written Order to Dismiss Appellant's Motion to Modify

March 15, 2013: Appellant files Objection to Attorney's Fees

March 29, 2013: Appellant files District Court appeal

April 26, 2013: Court awards Respondent's Attorney's Fees

05/15/2013: Order Granting Attorney's Fees for \$1,012.50

05/20/2013: Notice of Appeal filed by Appellant regarding Attorney's Fees granted on
02/24/2014: Appealed To The Supreme Court
06/13/2014: Order Granting Attorney Fees (from District Court)
06/17/2014: Amended Notice of Appeal (including Attorney's fees)

Factual History

This appeal arises out of a Motion to Dismiss a Motion to Modify, an award of a reduced amount of attorney's fees from a Motion to Modify, an award of attorney's fees on the Motion to Dismiss and an award of attorney's fees on appeal.

In this case, the Appellant and Respondent obtained a divorce in 2010. Respondent, Christopher Garner, filed a *pro se* Motion to Modify on March 16, 2012. After hearing, the trial court ruled that Respondent had failed to show a substantial and material change of circumstances and dismissed Respondent's petition. Appellant filed a request for attorney's fees in an amount in excess of \$18,000. In the Appellant's Motion for Attorney's Fees, it is clear that counsel for the Appellant recognized this matter could be dismissed early on and even billed Appellant for preparation of a Motion to Dismiss. However, instead of filing said Motion, Appellant chose to take the matter to trial and have it dismissed after the Respondent's case in chief was presented. In responding to Appellant's Motion for Attorney's Fees, the Respondent did not deny that an award of fees should enter, but objected to the amount of Appellant's attorney's fees. Each party submitted written argument and the trial court entered an award of attorney's fees in the amount of \$2,500.00, noting that the case was not particularly complicated and could have been disposed of at a much earlier time.

Immediately after the court dismissed Respondent's Motion to Modify, Appellant filed a Motion to Modify Child Support. Respondent filed a Motion to Dismiss the Appellant's new Motion. After briefing and oral argument, the trial court ruled that Appellant had failed to show a substantial and material change in circumstances and dismissed Appellant's Motion. Appellant appealed the magistrate's decision to the District Court, and the District Court ruled in favor of Respondent. Appellant now appeals to the Supreme Court.

ISSUES ON APPEAL

1. Whether the District Court properly dismissed Appellant's Petition to Modify.
2. Whether the District properly upheld the award of attorney's fees as set by the Magistrate,
3. Whether Respondent is entitled to attorney's fees on appeal.

STANDARD OF REVIEW

1. Standard of Review for an Order to Modify a Child Support Award at the Trial Level and Appellate level

The decision of the trial court on a motion to modify child support is reviewed for an abuse of discretion on appeal. The standard of review on an appeal from a child support award is whether the court abused its discretion. A support award will not be disturbed on appeal absent a manifest abuse of discretion. *Atkinson v. Atkinson*, 124 Idaho 23, 25, 855 P.2d 484, 486 (Ct.App.1993). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the court reached its decision by an exercise of reason. *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991). However, any interpretation of the I.C.S.G. is a question of law and will be reviewed freely. *Robertson Supply, Inc. v. Nicholls*, 131 Idaho 99, 101, 952 P.2d 914, 916 (Ct.App.1998). Where, as here, the trial court sat without a jury, an appellate court liberally construes the trial court's findings of fact in favor of the judgment entered. *Wilson v. Wilson*, 131 Idaho 533, 535, 960 P.2d 1262, 1264 (1998).

Where the district court has acted in an appellate capacity and a further appeal is taken, this Court independently reviews the complete record before the magistrate, but with due regard

to the district court's decision. *Keeler v. Keeler* , 131 Idaho 442, 444, 958 P.2d 599, 601 (Ct.App.1998).

2. Standard of Review for Attorney's Fees.

The decision to award attorney fees is discretionary with absent an abuse of the discretion, a trial court's grant or denial of attorney's fees will not be disturbed on appeal. *Antil v. Antil*, 127 Idaho, 954, 958, 908 P.2d 1261, 1265 (Ct.App. 1996). A district court may award attorney's fees on appeal under Idaho Code Section 12-121 only if the appeal was brought frivolously, unreasonably or without foundation. *Gustaves v. Gustaves*, 138 Idaho 64, 57 P.3d 775 (2002).

ARGUMENT

1. The Magistrate Correctly Dismissed the Appellant's Petition and the District Court Correctly Upheld the Magistrate's Decision.

This issue is actually two separate issues: Whether this court should overturn the district court's ruling based upon public policy and, if not, whether the Appellant showed a substantial and material change of circumstances when bringing the petition.

Before addressing the legal strengths of Respondent's case, it must be noted that Appellant attempted to support her argument with supposition and made-up "facts." The Appellant opines about the motivation behind the Respondent's decision to request a dismissal. The argument set forth is neither factual nor based upon any legal justification. The opinions of Appellant that Respondent is a bad father and a terrible person are incorrect and inappropriate for a brief submitted to the Idaho Supreme Court. The Court should not consider the slanderous words and Respondent respectfully requests the rebuttal brief contain only arguments that have a factual basis in the record or are based upon solid legal arguments.

a. The Argument was Not Properly Brought Before the Magistrate.

Appellant failed to assert the public policy argument before the magistrate. As the district court stated, in addition to failing to bring this issue before the magistrate, there is no evidence in the record to support it. As a general matter, "[i]ssues not raised below and presented for the first time on appeal will not be considered for review." *Izaguirre v. R&L Carriers Shared Services, LLC*, 155 Idaho 229, 308 P.3d 929, 933 (2013).

b. The agreement does not violate public policy

In *Verska v. St. Alphonsus Regional Medical Center*, 265 P.3d 502, 151 Idaho 889 (Idaho 2011), the court found that the public policy of legislative enactments cannot be questioned by the courts and avoided simply because the courts might not agree with the public policy so announced. The Court stated that “indeed, the contention that we could revise an unambiguous statute because we believed it was absurd or would produce absurd results is itself illogical.

In *Verska*, the court was considering an appeal from an order of the district court holding that the statute making peer review records privileged applies, by its terms, to a lawsuit brought against a hospital claiming that the hospital acted in bad faith in refusing to renew a physician’s privileges. In that case, Plaintiff argued that the statement of purpose accompanying that legislation indicated that it was intended to apply only to medical malpractice actions. The statement of purpose was not enacted into law. The Court held that “there is no wording in section 39-1392b that limits its scope to peer review records sought in a medical malpractice action. In that respect, the legislation is unambiguous. The asserted purpose for enacting the legislation cannot modify its plain meaning . . . If the statute as written is socially or otherwise unsound, the power to correct it is legislative, not judicial.” (Citations Omitted). The interpretation of a statute “must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole.”

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Idaho Code Section § 32-709 states as follows:

“The provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification *and only upon a showing of a substantial and material change of circumstances.*”

The statute is not ambiguous. Even if this court believes the stipulation is wrong and was done in contravention to public policy, it is still bound to follow the law. It is not like the Appellant did not have protections. However, as discussed more fully below, she did not avail herself to those safeguards.

Another factor to consider is the terms of the stipulation. Child support is paid to a parent for the purpose of ensuring a child’s needs are met. In this case, the Respondent contributed directly to the children’s needs. The decree requires Respondent to assist in paying for clothing, food, school supplies and extracurricular activities. Those are the types of items that child support would normally cover. That the parties simply chose a more direct path for supplying these items to the children justified a deviation from the child support guidelines. The Appellant failed to make any showing at the hearing that the children’s needs were no longer adequately met. Also, the stipulated agreement did not contain any language that *in any way* limited either party's support obligation. It fixed what the obligation was to be, in accordance with their agreement, and this agreement was approved by the court.

In the case at bar, the trial court considered all relevant factors, including the fact that Respondent pays a flat monetary sum to the Appellant, in addition to contributing toward clothing, school supplies, food and extracurricular activities. The mere fact that the Appellant

now has decided she doesn't like the agreement made at the time of the original decree does not magically relieve her of the legal burden of proving a material and substantial change in circumstances.

The guidelines are just that - guidelines. They may be modified or used differently depending upon circumstances. As the district court pointed out, "the guidelines were in place at the time of the original judgment. The parenting plan that was incorporated into the decree has a number of facets. Both sides were represented by competent counsel, and there is no argument or evidence that either side was misled or coerced into the agreements that were made. There is no suggested basis to set aside the trial court's original approval of the child support levels for any reason. The mere fact that the dollar amount of child support deviated from the guidelines at the time of the original judgment is irrelevant at this juncture."

Another factor to consider when determining whether deviation from the child support guidelines is a per se violation of public policy is the fact that both sides were represented by counsel. It should be noted that Appellant was not only represented by an attorney at all stages of the proceeding, but that her attorney was Stanley Welsh, who is a well-known and highly respected family law attorney, lecturer and author. It should also be noted that the decree of divorce was prepared by Appellant's attorney, including the child support amount.

Appellant argued vigorously that her agreement put her in an impossible position. However, when considering public policy, the court should also consider the options Appellant had from which to choose. First, she could have exercised her right to litigate the issue of child support and custody in lieu of entering into a stipulation. Second, if she felt she had not chosen

wisely at the time of the original decree, she was given a second chance to litigate the issue when the Respondent brought forth a modification motion. Instead of allowing the Respondent the opportunity to argue the merits of his request to spend more time with his children, the Appellant fought the Motion and, eventually, won. Had she chosen to file a Counter Claim for increased child support, both parties would have had the opportunity to get what they desired – the Respondent more time with his children and the Appellant more money.

- c. Even if Magistrate Lee's decision was in error, the Appellant failed to argue it within the time prescribed by law or in the manner prescribed by law.

The Appellant is requesting this court make a collateral attack of the original judgment, which is improper. In *Levin v. Levin* 122 Idaho 583 (Idaho 1992), the father was awarded primary custody and the mother was ordered, by stipulation, to pay \$1000 per month in child support. However, the mother was quite wealthy, raking in about \$13,000,000 from a trust. Eventually, the mother sought custody. The father opposed the change in custody and moved to increase child support. The court found no material change of circumstances and denied the mother's motion, but granted father's request for increased child support to \$10,000 per month. The trial court held that the award of \$1,000 per month was overly restrictive and did not take into account the factors required by 32-706. The Idaho Supreme Court overturned the trial court's decision stating: "The trial court's portrayal of the prior magistrate's support award as being overly restrictive and not giving adequate weight to the 1980 amendments to I.C. § 32-706, amounted to a collateral attack on the earlier court's judgment which had not been appealed."

In this case, the Appellant should have brought a Motion pursuant to IRCP, Rule 60, which states

“ On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than six (6) months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. Such motion does not require leave from the Supreme Court, or the district court, as the case may be, as though the judgment has been affirmed or settled upon appeal to that court. This rule does not limit the power of a court to: (i) entertain an independent action to relieve a party from a judgment, order or proceeding, or (ii) to set aside, as provided by law, within one (1) year after judgment was entered, a judgment obtained against a party who was not personally served with summons and complaint either in the state of Idaho or in any other jurisdiction, and who has failed to appear in said action, or (iii) to set aside a judgment for fraud upon the court.”

As the district court noted “A motion to modify child support should not be a substitute for a timely objection or challenge to the support issue in the trial court before the entry of judgment, or to a timely challenge to the judgment itself under I.R.C.P. 60 or its equivalents, or to a timely appeal from the judgment. See *Waller v. State*, 146 Idaho 234, 239, 192 P.3d 1058, 1063 (2008) (“The trial court found, and we agree, that I.R.C.P. 60(b) is the only identifiable legal basis for Waller's request to set aside or vacate the child support order ... by exercise of the court's equitable powers.... I.R.C.P. 60(b) also recognizes the district court's authority to entertain an independent action to relieve a party from a judgment on the basis of equity.

The Appellant could have also appealed the judgment. Idaho Appellate Rule 11 grants "an appeal of the matter of right from certain judgments and court orders." Pursuant to IAR 14 appeals are made effective "only by physically filing a notice of appeal with the clerk of the District Court within 42 days from the date evidenced by the filing stamp of the clerk of the court on any judgment order or decree of the District Court appealable as a matter of right in any civil or criminal action." The Appellant did not file an appeal and the time to file such an appeal has expired.

2. The magistrate properly dismissed Appellant's petition for her failure to show a substantial and material change of circumstances.

The well-established law in Idaho is that while the court does have continuing jurisdiction over the matter of child support, once support is fixed by final decree of a court it is subject to modification only upon a showing of a permanent and substantial change in circumstances. *Kornfield v. Kornfield*, 134 Idaho 383, 385, 3 P.3d 61, 63 (Ct.App.2000). The decision of the trial court on a motion to modify child support is reviewed for an abuse of discretion on appeal. The party seeking modification carries the burden of proof. *Humberger v. Humberger*, 134 Idaho 39,42-43,995 P.2d 809, 812-13 (2000).

There does not appear to be any bright line rule as to how much of an increase in income constitutes a "substantial" change. However, the words used in the statute, "material" and "substantial", are easily defined. Substantial is defined as "of real worth or importance; of considerable value; valuable." Black's Law Dictionary, 6th edition. Material is defined as "important; more or less necessary; having influence or effect." Black Law Dictionary, 6th

edition. In the absence of a concrete rule, the legislature and the higher courts have clearly left a large amount of discretion with the trial judge.

In this case, had the Respondent paid the suggested support as set forth by the guidelines, the increase would have been negligible. Appellant is trying to convince this court that the difference in child support is \$711.50. If the Court agrees with this argument, litigants can make any deal about child support and then turn around the next day and file a motion to modify, not based on a substantial change of circumstances, but based upon the fact they simply changed their mind. This is ludicrous. If the parties had agreed to the amount recommended by the guidelines instead of the more direct agreement they did enter into, the Respondent's increase in child support would have nominal and not substantial in the least.

As noted in the District Court's opinion, the evidence was not in dispute that the only change in circumstances since the entry of judgment that applied to child support was a change of approximately \$3,000 per year in the difference between the parties' annual earnings - which amounted to an approximate 7% change overall. The District Court found that "If applied . . . , this would have meant a change of less than \$4 per month."

The district court went on to explain that

"Plaintiff relies upon Section 5 of the Idaho Child Support Guidelines, I.R.C.P. 6(c)(6), which provides that "the amount of child support provided for under these Guidelines may constitute a substantial and material change of circumstances for granting a motion for modification for child support obligations" (emphasis added). I think the only consistent way to read this provision is that the adoption of the rule could be a "change in circumstance" if the amount of support under the rule differed from an existing level of child support. Further if the guidelines as a whole are amended up or down, the event of such amendment might constitute a change supporting modification.

Here, it appears that the rule establishing the support guidelines was in existence when the original divorce degree was entered into, and there is no claim or evidence that the guidelines have been changed in any material fashion in the interim. To argue that a statute or rule that was in existence at the time of an event can be used to demonstrate a substantial change in circumstance after entry of a final judgment on that event would make no sense and flies in the face of the principle of finality of judgments and decrees

In any event, because Section 5 uses the term "may," there is no basis for this court to conclude that the trial judge, in the exercise of his discretion, erred finding that the plaintiff had not established a substantial and material change of circumstances. See *Rife v. Long*, 127 Idaho 841, 848, 908 P.2d 143, 150 (1995) ("When used in a statute, the word 'may' is permissive rather than the imperative or mandatory meaning of 'must' or 'shall'.")

3. The Magistrate did not abuse his discretion when he awarded Appellant Attorney's Fees in the amount of \$2500 and Respondent fees in the amount of \$1012.50.

In *Woods v. Sanders*, 244 P.3d 197, 150 Idaho 53 (Idaho 2010), the magistrate found that the "factors have been met as set forth in Idaho Code § 12-121 for an award to Plaintiff of his reasonable attorney's fees in this matter." At trial, the magistrate stated: "Based on the answer provided by Ms. Sanders and the documents she has filed, I am going to grant your motion based on 12-121. Because Sanders did not provide any admissible evidence to support her defense against the modification for child custody other than the unsupported allegations presented in her affidavit, and because she failed to attend the trial or any other hearing, the magistrate had sufficient evidence to conclude that Sanders acted unreasonably in defending the modification motion. Therefore, the magistrate did not abuse its discretion and this Court affirms the award of attorney fees."

A magistrate may also reduce the amount of attorney's fees requested. Idaho Rules of Civil Procedure, Rule 54(e)(1) states in pertinent part that "In any civil action the court may award *reasonable* attorney fees . . ." (emphasis added). The Court is to consider the factors set

forth in Idaho Rules of Civil Procedure, Rule 54(e)(3), but is not required to address each one or make written findings. See *US Bank v. Kuenzli* 134 Idaho 222 (2000); *Perkins v. US Transformer* 132 Idaho 427 (1999).

In this case, the court reasonably found that at the trial level, Appellant's Motion to Modify was unsupported and frivolous. The Appellant failed to prove there was a permanent and material change in circumstances which would justify a change in support. In this instant case, the Respondent was the prevailing party as defined by Idaho Civil Rule 54(d)(1)(B.) When requesting attorney's fees, the Respondent submitted a reasonable amount of fees and addressed all relevant factors as follows:

“(A) The time and labor required: The approximate amount of time spent in the defense of this matter was seven (7) hours. The hours are itemized in the memorandum of costs filed concurrently herewith.

(B) The novelty and difficulty of the questions: There was no novel or particularly difficult issues raised.

(C) The skill requisite to perform the legal service properly, the experience and ability of the attorney in the particular field of law: This is a case easily handled by an attorney versed in matters of family law. Attorney Kelso was licensed in 1996 and has worked in the general practice of law for approximately seventeen (17) years.

(D) The prevailing charges for like work: The amount billed was \$150 per hour. It is believed this amount is equal to the fees charged by local counsel.

(E) Whether the fee is fixed or contingent: The fee was hourly.

(F) The time limitations imposed by the client or the circumstances of the case: There were no unusual time limitations or unusual circumstances of this case.

(G) The amount involved and the results obtained: The total time put into this case by counsel was approximately seven (7) hours, not including the preparation of the Motion for Fees and attendant documents. The Defendant was the prevailing party and the court ruled the plaintiff has no basis in law for filing the modification.

(H) The undesirability of the case: This case was no more undesirable than any other case.

(I) The nature and length of the professional relationship with the client: This was counsel's first representation of this particular client (concurrent with the objection to attorney's fees filed after the Defendant's Petition for Modification was dismissed.)

(J) Awards in similar cases: Unknown.

(K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case: One (1) hour of research was performed for the purpose of providing case law to the Court regarding the need for a party to show a substantial change in circumstances and to determine if an Idaho Court had ruled on what constitutes a material change with regard to increased salaries for purposes of calculating child support."

In *Johannsen v. Utterbeck*, 196 P.3d 341, 146 Idaho 423 (Idaho 2008), the court awarded a reduced amount of attorney's fees. The higher court found that the District Court did not reduce it in the proper manner. The court held that "The amount of attorney's fees to be awarded under I.C. § 12-120(3) is committed to the district court's discretion. (Citations

omitted). The burden is on the party opposing the award to demonstrate that the district court abused its discretion. *Eastern Idaho Agricultural Credit Ass' v. Neibaur* 133 Idaho 402, 412, 987 P.2d 314, 324 (Idaho 1999) . . a trial court does not abuse its discretion if it (1) recognizes the issue as one of discretion, (2) acts within the boundaries of its discretion and applies the applicable legal standards, and (3) reaches the decision through an exercise of reason. (citation omitted). When awarding attorney's fees, a district court must consider the applicable factors set forth in I.R.C.P. 54(e)(3) and may consider any other factor that the court deems appropriate." (citations omitted). Though it is not necessary for the court to address all of the I.R.C.P. 54(e)(3) factors in writing, the record must clearly indicate the court considered all of the factors. *Id.* However, the bottom line in an award of attorney's fees is reasonableness."

In this case, the magistrate properly reduced Appellant's attorney's fees. When reducing the Appellant's award of fees from over \$18,000 to \$2500, Magistrate Frates wrote a detailed opinion found in the record at pages 158 through 163. It properly considered all the criteria set forth in rule 54. When ordering the Respondent attorney's fees of a approximately \$1000, Judge Frates did not write a detailed order but clearly stated the justification on the record and noted the oral statements in the judgment.

The Appellant, in her request for attorney's fees, asked the court for an award totaling approximately \$18,000. The Court properly considered several factors, including the short lifespan of the case, the ease of trial, and the fact the defendant was *pro se*. In addition, it was clear at the pretrial held September 17, 2012. the Court did not believe a material change in circumstances had occurred. (See Pre-Trial Transcript, p. 7, lines 18-21; and p. 8, l. 17-20). At

that point (or even at some earlier point), it would have been prudent and efficient for the Appellant to file a Motion to Dismiss. In fact, as stated in the Respondent's Objection to Attorney's Fees, Appellant actually prepared a Motion to Dismiss but never filed it. Had Appellant done so, the case would have been summarily dismissed without need for further expenditures.

In addition, the attorney's fees sought by Appellant were excessive and unreasonable. Both Appellant and Respondent sought a modification. Both parties lost due to their failures to show a material and substantial change of circumstances. Ironically, the parties virtually identical issues had identical outcomes. However, the difference in cost to get there was over \$17,000.

The magistrate did not abuse his discretion in awarding fees to the Respondent, nor did he abuse his discretion in reducing the award to Appellant.

With regard to the award of fees as the district court level, that too is reasonable.

ADDITIONAL ISSUES ON APPEAL - ATTORNEY FEES

Pursuant to Rule 41 of the Idaho Appellate Rules, Respondent is asserting his claim for attorney's fees for the defense of this appeal. This appeal was brought furiously and without merit. It was not based upon legal justification and the facts failed to support any of the Appellant's arguments.

CONCLUSION

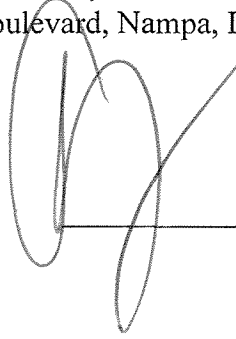
The Appellant's arguments for overturning the magistrate and district court are without a legal basis or justification. The trial court and district court provided sound legal justification for the entry of two awards of attorney's fees to the Respondent and a reduced amount of attorney's fees for the Appellate. In addition, the courts correctly held that the Appellant had failed to show a material and substantial change of circumstances and correctly dismissed her petition. Furthermore, this appeal is frivolous and without merit, justifying an award of attorney's fees and costs to the Respondent. Therefore, Respondent respectfully requests this court deny Appellant's appeal, uphold the lower courts and award Respondent Attorney Fees and Costs for defense of this appeal.

September 18, 2014

AMK/80
Attorney for Respondent

CERTIFICATE OF SERVICE

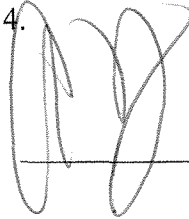
I HEREBY CERTIFY that a true, full, complete and correct copy of the foregoing instrument was on the 18 day of September 2014, was mailed via federal express, postage prepaid, to Richard Eismann, 3016 Caldwell Boulevard, Nampa, ID 83651.


A handwritten signature in dark ink, consisting of a large, stylized 'R' followed by a horizontal line extending to the right.

CERTIFICATE OF COMPLIANCE

The undersigned does hereby certify that the electronic brief submitted is in compliance with all of the requirements set out in I.A.R. 34.1, and that an electronic copy was served on each party at the following email address(es): counsel@eismannlaw.com

Dated and certified this 18 day of September, 2014.

A handwritten signature in black ink, consisting of a large, stylized 'M' or 'W' shape, positioned above a horizontal line.