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Firmage v. Snow Respondent's Brief Dckt. 42141

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IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE MOTION)
FOR PERMISSIVE APPEAL)

HILARY BETH CANDLAND FIRMAGE)
fka HILARY SNOW,)
Plaintiff/Respondent,)

vs.)

HOWARD HUNTER SNOW,)
Defendant/Appellant.)
_____)

Supreme Court Docket No.: 42141-2014
Ada County No.: 2010-1270

Ref. No.: 14-254

RESPONDENT'S REPLY BRIEF

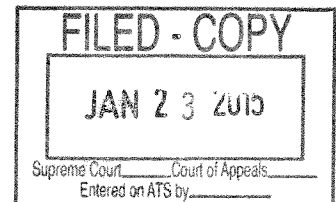
Appeal from the Magistrate Court of the Fourth Judicial District for Ada County
Honorable Russell A. Comstock, Magistrate Judge, presiding.

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RESPONDENT'S REPLY BRIEF - 1



I.

TABLE OF CONTENTS

Table of Cases and Authorities.....3
Statement of Case.....4
Argument.....4
Conclusion.....6

II.

TABLE OF CASES AND AUTHORITIES

Cases

Biggers v. Biggers, 103 Idaho 550, 556, 650 P.2d 692 (1982).....4

Butler Trailer Mfg. v. State (In Re Butler Trailer Mfg.), 132 Idaho 687, 690,
978 P.2d 247, 250 (Ct. App. 1999).....4

CUMIS Ins. Society v. Massey,155 Idaho 942, 946, 318 P.3d 932, 936 (2014).....5

Danti v. Danti, 146 Idaho 929, 934, 204 P.3d 1140, 1145 (2009).....5

Hershey v. Simpson, 111 Idaho 491, 495, 725 P.2d 196, 200 (1986).....4

Levin v. Levin, 122 Idaho 583, 586, 836 P.2d 529 (1992).....4

Pelayo v. Pelayo, 154 Idaho 855, 865, 303 P.3d 214, 224 (2013).....6

Silva v. Silva, 142 Idaho 900, 136 P.3d 371 (Ct. App. 2006).....5

Statutes and Rules

Idaho Rule of Evidence 706.....4

Idaho Code §12-121.....6

III.

STATEMENT OF CASE

On October 31, 2014, this Court remanded this case back to Judge Comstock to issue written findings and conclusions, regarding the best interests of the children. There was no requirement that Judge Comstock have any additional hearings.

Pursuant to this Court's remand Judge Comstock issued his written Findings of Fact and Conclusions of Law on December 1, 2014. Judge Comstock set forth his reasons for denying Howard's request to be released from his stipulation. (Findings of Fact and Conclusions of Law, ¶ 18). Judge Comstock also set forth his reasons for following Dr. Engle's recommendations. (Findings of Fact and Conclusions of Law).

IV.

ARGUMENT

When Judge Comstock accepted the parties' stipulation, Howard became bound by that agreement. *Butler Trailer Mfg. v. State (In Re Butler Trailer Mfg.)*, 132 Idaho 687, 690, 978 P.2d 247, 250 (Ct. App. 1999). Where the parties have compromised and settled a dispute, their agreement supersedes all prior claims and defenses. *Hershey v. Simpson*, 111 Idaho 491, 495, 725 P.2d 196, 200 (1986). In other words, Howard is not entitled to depose Dr. Engle pursuant to Idaho Rule of Evidence 706, because he agreed to be bound by Dr. Engle's recommendations.

The determination as to child custody is left to the discretion of the trial court. *Biggers v. Biggers*, 103 Idaho 550, 556, 650 P.2d 692 (1982); *Levin v. Levin*, 122 Idaho 583, 586, 836 P.2d 529 (1992). An abuse of discretion occurs when the evidence is insufficient to support a trial court's conclusion that the interests and welfare of the children would be best served by a particular custody

award or modification. *Silva v. Silva*, 142 Idaho 900, 136 P.3d 371 (Ct. App. 2006). When reviewing a magistrate's decision, this Court views the evidence in favor of the magistrate's decision and will uphold the magistrate's findings even if there is conflicting evidence. *Danti v. Danti*, 146 Idaho 929, 934, 204 P.3d 1140, 1145 (2009).

Judge Comstock was not bound to accept the parties' stipulation and he knew that he could reject Dr. Engle's recommendations. (Clarification Order on Remand). Judge Comstock considered Dr. Engle's report and found it appropriate and that the recommendations were in the best interest of the Snow children. (Findings of Fact and Conclusions of Law; Court's Exhibit 1). Dr. Engle's report provided Judge Comstock with substantial evidence supporting his decision that allowing Hilary to relocate to Utah with the three (3) youngest children was in the best interest of those children.

Howard wants to be released from his stipulation and have a trial. This Court reviews a trial judge's refusal to relieve a party from their stipulation for an abuse of discretion. *CUMIS Ins. Society v. Massey*, 155 Idaho 942, 946, 318 P.3d 932, 936 (2014). The three (3) areas of inquiry are: 1) did the court perceive the issue as discretionary; 2) did the court act within the outer boundaries of its discretion and consistently with applicable legal standards; and 3) did it reach its decision by an exercise of reason. *Id.*

Judge Comstock clearly realized that it was in his discretion to relieve Howard from the stipulation. (Clarification Order on Remand). Judge Comstock's decision not to relieve Howard from the stipulation was supported by the expert's written report and the procedural aspect of the case. Judge Comstock found that prejudice would have resulted to Hilary and the children if he granted Howard's request to be released from his stipulation. (Findings of Fact and Conclusions of

Law, ¶ 18). Judge Comstock did not abuse his discretion by refusing to relieve Howard from his stipulation.

Howard had a right to take the matter to trial. Instead he decided to rely upon Dr. Engle's recommendations and he agreed that the pending trial could be vacated. Judge Comstock did not arbitrarily bind Howard to his stipulation. Judge Comstock reviewed the record, considered Dr. Engle's report, determined that prejudice would occur if the stipulation were set aside, and found that the childrens' best interests were served by implementing Dr. Engle's recommendations.

Nothing in Howard's Supplemental Brief supports overturning Judge Comstock's decision. Howard's arguments miss the point and they are not supported by law or fact. This type of argument warrants the award of costs and fees to Hilary pursuant to Idaho Code §12-121. *Pelayo v. Pelayo*, 154 Idaho 855, 865, 303 P.3d 214, 224 (2013).

V.

CONCLUSION

Howard's claims are not supported by the facts or law. Judge Comstock did not abuse his discretion when he enforced the parties' agreement and entered a Judgment based on that agreement. Judge Comstock did consider the childrens' best interests and his decision is supported by substantial competent evidence. Hilary should be awarded her costs and fees pursuant to Idaho Code §12-121.

DATED This 23 day of January, 2015.

LUDWIG ♦ SHOUFLEER ♦ MILLER ♦ JOHNSON, LLP

By 

Daniel A. Miller,
Attorney for Plaintiff/Respondent

CERTIFICATE OF SERVICE


I hereby certify that on this 23 day of January, 2015, I caused a true and correct copy of the foregoing document to be served upon the following as indicated:

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