

3-3-2015

Gordon v. Hedrick Augmentation Record Dckt. 42191

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In the Supreme Court of the State of Idaho

LAW CLERK

ROGER CARL GORDON,)	
)	ORDER RE: MOTION TO
Plaintiff-Respondent-Cross Appellant,)	AUGMENT
)	
v.)	Supreme Court Docket No. 42191-2014
)	Canyon County No. 2013-2118
SHANNON LEE HEDRICK,)	
)	Ref 15-78
Defendant-Appellant-Cross Respondent.)	

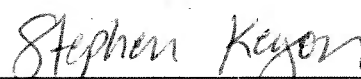
A MOTION TO AUGMENT THE CLERK'S RECORD UNDER I.A.R. 30(a) was filed counsel for Respondent/Cross Appellant on February 17, 2015, requesting that the Clerk's Record in this case be augmented. Therefore,

IT HEREBY IS ORDERED that Respondent/Cross Appellant's MOTION TO AUGMENT THE CLERK'S RECORD UNDER I.A.R. 30(a) be, and hereby is, GRANTED and the Clerk's Record in the above entitled appeal shall be augmented to include the Appellant's Opening Brief Supplement Regarding Fees And Costs attached to Motion.

IT FURTHER IS ORDERED that Appellant shall pay to this Court, the required fee \$12.00 in order for the requested documents to be added to the Clerk's Record pursuant to I.A.R. 30(b). The fee shall be paid within fourteen (14) days from the date of this Order. In the event the fee is not paid, Appellant's Motion to Augment will be denied.

DATED this 3 day of March, 2015.

By Order of the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record

AUGMENTATION RECORD

In the Supreme Court of the State of Idaho

ROGER CARL GORDON,)
)
Plaintiff-Respondent-Cross Appellant,)
)
v.)
)
SHANNON LEE HEDRICK,)
)
Defendant-Appellant-Cross Respondent.)

ORDER RE: MOTION TO
AUGMENT

Supreme Court Docket No. 42191-2014
Canyon County No. 2013-2118

Ref 15-78


A MOTION TO AUGMENT THE CLERK'S RECORD UNDER I.A.R. 30(a) was filed by counsel for Respondent/Cross Appellant on February 17, 2015, requesting that the Clerk's Record in this case be augmented. Therefore,

IT HEREBY IS ORDERED that Respondent/Cross Appellant's MOTION TO AUGMENT THE CLERK'S RECORD UNDER I.A.R. 30(a) be, and hereby is, GRANTED and the Clerk's Record in the above entitled appeal shall be augmented to include the Appellant's Opening Brief Supplement Regarding Fees And Costs attached to Motion.

IT FURTHER IS ORDERED that Appellant shall pay to this Court, the required fee of \$12.00 in order for the requested documents to be added to the Clerk's Record pursuant to I.A.R. 30(b). The fee shall be paid within fourteen (14) days from the date of this Order. In the event the fee is not paid, Appellant's Motion to Augment will be denied.

DATED this 3 day of March, 2015.

By Order the of Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record

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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

ROGER CARL GORDON

Plaintiff, Appellant

v.

SHANNON LEE HENDRICK,

Defendant, Respondent

Case No. CV 2013-2118

APPELLANT'S OPENING BRIEF
SUPPLEMENT REGARDING FEES
AND COSTS

The Plaintiff, Roger Carl Gordon, by and through his attorney of record Richard Hammond, hereby submits the following Supplement to Appellant's Opening Brief that was previously filed on or about the 3rd of January 2014.

Plaintiff, Appellant humbly seeks fees and costs against Defendant, Respondent and her attorneys of record under Idaho Code 12-123, 12-121, Idaho Rules of Civil Procedure 11(a)(1), 54(d)(1)(b) and (e)(1) and Idaho Rules of Professional Conduct 3.3. This request is made as Defendant and her counsels of record sought to remove Plaintiff from the birth certificate in violation of IRCP 11(a)(1) and IC 12-123 as such position was pursued without basis in law and in violation of Idaho rules of Professional Conduct 3.3(1 and 2) as they knowingly failed to

Exhibit "A"

disclose to the tribunal legal authority in the controlling jurisdiction and maintained such position after the controlling law was brought to their attention.

ARGUMENTS

Idaho Rules of Professional Conduct 3.3: CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;

Defendant and her counsels sought to remove Plaintiff from the birth certificate and to remove his visitation rights under the sole legal grounds he was not the biological father implying that such position is based in law and violated IRPC3.3 (1). Defendant and her counsels further failed to disclose to the tribunal known legal authority in the controlling jurisdiction known to the counsels to be directly adverse to the position of the Defendant namely Idaho Statute 7-1106(2), 15-5-213, 32-1705; *Stockwell v. Stockwell* 116 Idaho 297 (1989) and *Hernandez v. Hernandez*, 151 Idaho 882 (2011). Idaho Statutes and Case Law are contrary to Defendant's position as Defendant and her counsels knew Plaintiff lived with the Defendant and Mason since birth for more than two years.

Idaho Rules of Civil Procedure 11(a)(1) states

...the signature of an attorney or party constitutes a certificate that the attorney or party has read the pleadings, motion or other paper...and that after reasonable inquiry it is well grounded in fact and is warranted by existing law or 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.

...
If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an

incurred because of the filing of the pleading, motion or other paper, including reasonable attorney's fee.

Idaho Statute 12-123 regarding Frivolous Conduct in a Civil Case states:

(1) As used in this section:

(a) "Conduct" means filing a civil action, asserting a claim, defense, or other position in connection with a civil action, or taking any other action in connection with a civil action.

(b) "Frivolous conduct" means conduct of a party to a civil action or of his counsel of record that satisfies either of the following:

(i) It obviously serves merely to harass or maliciously injure another party to the civil action;

(ii) It is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

The Idaho Rules of Civil Procedure and the Idaho Rules of Professional Conduct, specifically rule 3.3, impose the duty of candor upon the parties and their counsels. Rule 11 requires reasonable investigation into the facts and law before signing pleadings. Rule 11 require that the pleading be (1) well grounded in fact, (2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (3) not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increases in the costs of litigation. I.R.C.P. 11(a)(1). An attorney is required to perform a prefiling inquiry into both the facts and the law involved to satisfy the affirmative duty imposed by Rule 11. *Sun Valley*, 119 Idaho at 95, 803 P.2d at 1001; *Stevens*, 116 Idaho at 532, 777 P.2d at 1205. "Reasonableness under the circumstances" is the appropriate standard to apply under I.R.C.P. Rule 11. *Durrant v. Christensen*, 117 Idaho 70, 74, 785 P.2d 634, 638 (1990). Under the "reasonableness under the circumstances" standard, the appropriate focus of the trial court should be whether the attorney conducted a "proper investigation upon reasonable inquiry" into the facts and legal theories of the case. *Hanf v. Syringa Realty, Inc.*, 120 Idaho 364, 369, 816 P.2d 320, 325 (1991) Defendant and her counsels knew that Plaintiff had lived with Mason and

the Defendant since the birth of Mason, v. s listed on the birth certificate since that date, and had filed an action for custody in CV 2013-6155-C; nevertheless they sought to remove Plaintiff from the birth certificate and remove all visitations rights on the sole grounds he was not the biological father in violation of Idaho Rules of Civil Procedure 7(b)(1) as they did not cite any authority to reflect that such gave the court to remove Plaintiff from the birth certificate and or remove any visitations rights.

Defendant and her counsels failed to cite any controlling statutes in violation of Idaho Statute 7-1106(2) and they further failed to case law which was contrary to Defendant's position namely Idaho Statute 15-5-213, 32-1705, and *Stockwell v. Stockwell* 116 Idaho 297 (1989) and *Hernandez v. Hernandez*, 151 Idaho 882 (2011). Defendant and her counsel further failed to give notice to the Plaintiff of their type of motion as it did not give Plaintiff adequate notice of the standard, burden, and time frame of 28 days to respond limiting his ability to research and appear as required by IRCP 56(c). A reasonable prefiling inquiry would have revealed the proper authority and necessary elements required to remove the Plaintiff from the birth certificate. It would also have revealed that the motion was in fact one for summary judgment and Plaintiff should have been given the proper time to respond under Rule 56.

To emphasize what is stated above, the responsibilities attendant upon signing a document pursuant to Rule 11 require the signer certify that he has "read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief after reasonable inquiry it is well grounded in fact and is warranted by existing law ... and that it is not interposed for any improper purpose...." I.R.C.P. 11 (a)(1). "If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction...." *Id.*

Rule 11's mandatory language regarding sanctions make it clear that courts should detect and enforce violations of the certification requirement. Accordingly, Rule 11 gives the courts discretion to tailor the sanctions to the violation. "The intent of the Rule is to grant courts the power to impose sanctions for discrete pleading abuses or other types of litigative misconduct." *Campbell v. Kildew and Daltoso*, 141 Idaho 640, 115 P.3d 731 (2005). Thereafter, the court's discretion includes that power to impose sanctions on the client alone, solely on the counsel, or on both. See I.R.C.P. 11 (a). Idaho Rule of Professional Conduct RPC RULE 3.3(a)(2) states that a lawyer shall not knowingly "fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel." Despite this rule Defendant's counsels elected not to bring such authority to the attention of the Magistrate.

Counsels for the Defendant brought a motion with no basis in law and without sufficient facts, mislabeled that motion so as to avoid giving Plaintiff the proper time to respond, and knowingly failed to disclose contrary authority in an attempt to lure the finder of fact to a hasty ruling based solely on the DNA test results. While this Court works to untangle the mess created by Defendant's counsels' actions, a child has been cut off from the only father he has ever known. Because this conduct is exactly the kind Rule 11 is meant to address, Plaintiff asks this Court to impose sanctions under I.R.C.P. 11(a)(1) against Defendant and/or her counsel and grant him attorneys fees. Finally, Defendant's Pre Trial Memorandum in CV 2013-6155-C filed on or about the 29th of August 2013 admitting that she knew since birth that Plaintiff that Plaintiff was not the biological father of Mason reflecting that she knowingly caused the issue herein to the detriment of Mason and Roger Gordon.

In an attempt to limit the disruption to Mason and to limit fees and costs, Plaintiff brought the above issues before the court in its Motion for Relief and Defendant and their counsels continued their position despite the issues presented herein contrary to established law.

CONCLUSION

The Plaintiff herein humbly request that the court rule that Defendant and her counsels actions and position herein were in violation of Idaho Statute 120123, IRCP 11(a)(1) and IRPC 33 (1 and 2) as they failed to cite any controlling authority to remove the Plaintiff from the birth certificate, took a position contrary to established law without basis in facts and or law, and failed to disclose contrary law to the tribunal causing unnecessary costs and fees to the Plaintiff herein.

Signed this 6 day of January 2014.


Richard L. Hammond
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was sent on the 6 day of January 2014, to the following party via fax:

Lovan Roker and Rounds, P.C.
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Fax: (208) 459-6908

Tamara L. Boeck
Stoel Rives, LLP
101 S. Capitol Blvd, STE 1900
Boise, ID 83702
Fax: (208) 389-9040

Signed this 6 day January 2014.


Richard L. Hammond