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Doble v. Interstate Amusements, Inc. Appellant's Reply Brief Dckt. 42744

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Docket No. 42744

IN THE SUPREME COURT OF THE STATE OF IDAHO

H. PETER DOBLE, II, M.D., an individual residing in the State of Idaho;

Plaintiff/Appellant,

vs.

INTERSTATE AMUSEMENTS, INC., an Idaho corporation,

Defendant/Respondent.

APPELLANT'S REPLY BRIEF

Appeals from the Fifth Judicial District Court in and for the County of Twin Falls
The Honorable Randy J. Stoker, presiding.

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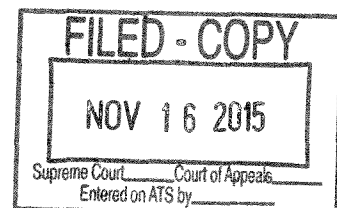


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INTRODUCTION

Respondent, Interstate Amusements, Inc.'s ("Interstate") Brief in Opposition is premised upon two flawed principles: (1) that Appellants, Dr. H. Peter Doble II ("Dr. Doble") presenting a claim drawn in conformity with the Idaho Consumer Protection Act and inspired by the well-developed laws of sister jurisdictions is somehow lacking in merit when the very essence of that claim and its basis is meritorious, and (2) an attempt to revive an issue previously decided by this Court: that Dr. Doble's initial agreement to a payment plan on the Judgment constitutes a waiver of the right to appeal; an argument that has been flatly rejected by this Court.

Dr. Doble will not reiterate previous arguments at length. The merits of Dr. Doble's underlying claim has been amply demonstrated in his Opening Brief. Moreover, the merits (or lack thereof, as the case may be) of Interstate's argument regarding Dr. Doble's waiver of his right to appeal has already been amply briefed for this Honorable Court's Benefit. The purpose of this Brief will be to focus on these issues in a more crystalline fashion for the sake of allowing this Court to move through the briefing phase of this appeal more expeditiously. Above all, however, Dr. Doble urges this Honorable Court to analyze the issues presented in this case in the context that motivating the filing of the action in the Lower Court in the first instance: the fundamental desire to correct an improper business practice that results in an unfair and economically imbalanced result that has been deemed

unlawful before and should be added to the list of improper business actions that the Idaho Consumer Act was enacted to protect against.

ARGUMENT

I. RESPONDENT’S BRIEF IN OPPOSITION DOES NOT NEGATE THE FACTS DEMONSTRATING THAT THE LOWER COURT ABUSED ITS DISCRETION IN DETERMINING THAT DR. DOBLE HAD FILED THE UNDERLYING ACTION UNREASONABLY, FRIVOLOUSLY OR WITHOUT ADEQUATE FOUNDATION.

As stated in Dr. Doble’s Opening Brief, this appeal turns on whether the Lower Court abused its discretion by making the finding that he [Dr. Doble] brought the underlying action unreasonably, frivolously, or without adequate foundation in awarding Interstate its attorney’s fees and costs of suit in that lower proceeding.

Dr. Doble’s Opening Brief walked this Honorable Court through the reasoning employed in articulating and presenting his claim against Interstate, the authority upon which it relied upon, and the Idaho case law supporting the reasoning and merits of Dr. Doble’s claim. Whether the Lower Court’s erred in determining that a violation of the Idaho Consumer Protection Act occurred is not at issue; rather, what is at issue is the Lower Court’s astonishing finding that Dr. Doble’s claim was brought for improper purposes or without legal support. The authority cited to *ad nauseum* to the Lower Court and now to

this Honorable Court cannot be refuted despite Interstate's attempts to dance around the validity of that authority.

Interstate's Brief in Opposition cites well established precedent stating the standard by which the Lower Court's ruling must be measured. *See* Brief in Opposition ("Opp") at p. 9. Interstate then picks out of the more contradictory statements made by the Lower Court in an astonishing attempt to strengthen its own argument, namely that the Lower Court recognizes that a social benefit may involve a *de minimis* monetary value yet that social benefit somehow does not exist because it is devoid of basis in law and fact (*see* Opp at p. 10) when Dr. Doble's briefing of the issue demonstrates the exact opposite! Further, Interstate attempts to make feeble arguments based around the number of times the Idaho Consumer Protection Act is mentioned in Dr. Doble's argument. *See* Opp at p. 11. Interstate's argument for counting the number of times the Act is explicitly mentioned is proof positive of the lengths to which it must stretch the boundaries of zealous advocacy for the sake of filling space in an appellate brief. Finally, and perhaps the most disdainful of arguments contained in Interstate's Opening Brief is its reliance on the flawed notion that the Lower Court ruled that Dr. Doble failed to present any evidence to show that the Idaho Consumer Protection Act was violated, citing the clearly advertised details of how the vouchers in question could be used, by when, and so forth. What Interstate and Lower Court seem to overlook is that this case has nothing to do with what the vouchers say or

don't say, it is whether Interstate acted lawfully in issuing such vouchers and then refusing to redeem them. *See Opp.* at pp. 12-13. There is a lack of perspective of the broader legal concepts demonstrated by the Lower Court and by Interstate, hence Dr. Doble's appeal to the superior reasoning of this Honorable Court.

The remainder of Interstate's Brief in Opposition is a mish-mash of arguments that make little to no sense and, should this Honorable Court wish for a rejoinder, one will gladly be provided by Dr. Doble at oral argument.

II. INTERSTATE'S CLAIM THAT DR. DOBLE HAS WAIVED HIS RIGHT TO APPEAL IS AN ISSUE THAT HAS BEEN DECIDED, IS PART OF THE LAW OF THIS CASE, AND INTERSTATE SHOULD THEREFORE BE COLLATERALLY ESTOPPED FROM WASTING FURTHER TIME IN ARGUMENT.

Interstate has shown not only a substantial degree of desperation in resurrecting an adjudicated issue, but a tremendous amount of disrespect to this Honorable Court as well.

Firstly, Interstate has had its bite at the proverbial "apple" of dismissal. Interstate filed a Motion to Dismiss appeal with this Honorable Court. The Court, acting properly and consistently with the prevailing law on this issue (highlights of which were presented to the Court by Dr. Doble in his opposition to Interstate's Motion to Dismiss), flatly denied Interstate's request.

Second, the legal basis upon which Interstate presents its argument remains as flawed as it was during the original request it made for dismissal. As stated in detail by Dr. Doble in his briefing submitted in opposition to Interstate's Motion to Dismiss Appeal: regardless of whether an agreement to make payments on the judgment was made, no payments were made, no right of appeal was waived implicitly or explicitly, and a bond has since been posted to stay collection activities. More fully developed than the authority upon which Interstate relies is the principle that the right to appeal is not lost where satisfaction is involuntary. *International Business Machines Corp. v. Lawhorn*, 106 Idaho 194, 677 P.2d 507 (Ct.App.1984). In the *Lawhorn* matter, the Idaho Court of Appeals determined that the judgment at issue was satisfied to prevent a scheduled execution sale of property subject to attachment in the State of Idaho. As such, the Court determined: "We hold that Lawhorn's satisfaction of the judgment, to save his property from being sold at a scheduled sheriff's sale, was involuntary." *Id* at 197, 677 P.2.d at 510. As this Honorable Court will recall, Dr. Doble faced imminent collection action and, given that he was being treated for cancer at the time, he was extremely limited by his circumstances and therefore could not handle fighting collection actions. Thus, even if Dr. Doble had paid the judgment, it would have been under duress and therefore involuntary, preserving his right to appeal nonetheless. As this Honorable Court will also recall, Interstate began collection activities entirely without notice to Dr. Doble and with a deliberate intention of

harassing Dr. Doble by depriving him of his vehicle in the days immediately before the Christmas holiday, despite knowing that Dr. Doble was a physician not only fighting his own medical battles but also serving his patients in his own practice and on an “on call” basis throughout the Magic Valley. Thus, the only thing Dr. Doble could do was post a cash bond pursuant to I.A.R. 13(b)(15) and halt collection activities so that the appeal could proceed without collection. *See* Order on Emergency Application, lodged with this Court. Interstate and its counsel behaved in the most appalling, unprofessional, and inhumane of fashions by taking the action they took to deprive Dr. Doble of his vehicle in satisfaction of judgment and it is the same lack of scruples that drive Interstate’s current, meritless and disrespectful attack on this Honorable Court’s own reasoning by (improperly) reviving its absurd claim that this Appeal should be dismissed. Finally, Interstate’s request does not present any facts or law that would justify reconsideration of this Honorable Court’s prior ruling and thus its present request should similarly be denied.

III. INTERSTATE SHOULD BE ORDERED TO PAY DR. DOBLE’S ATTORNEY’S FEES AND COSTS ON APPEAL.

Dr. Doble is entitled to an award of attorney fees if he is the prevailing party in this appeal. There are two legal theories that support such an award.

First, Dr. Doble is entitled to an award of fees on the same grounds as in the Lower Court proceeding, namely pursuant to Idaho Code § 12-120(3) (under contract or "commercial transaction").

Second, Dr. Doble is entitled to an award of fees on appeal under Idaho Code § 12-121. All issues raised by Interstate on appeal are controlled by the "abuse of discretion" standard. Interstate's arguments in this case are without reasonable legal or factual basis. The content and argument of Interstate's Briefing in Opposition are cursory, inaccurate, and misleading. The nature and presentment of Interstate's Briefing in Opposition goes beyond the limits of acceptable advocacy and has forced Dr. Doble to engage in substantial effort to refute what are essentially meritless arguments. This Honorable Court is being asked to waste its own precious time and resources to revisit an issue that is long since decided. Moreover, the frivolous nature of the opposition mounted to the merits of Dr. Doble's present appeal demonstrates Interstate's ongoing bad faith approach to this matter.

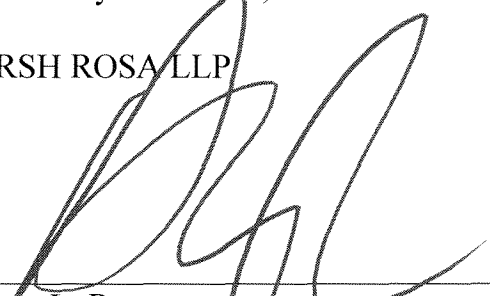
CONCLUSION

Based on the foregoing and the arguments stated in all of Dr. Doble's prior submissions to this Honorable Court, Dr. Doble respectfully re-submits that this Honorable Court should reverse the Lower Court's rulings and issue an Order vacating the order granting attorney's fees and costs to Interstate in this matter. Further, Dr. Doble

respectfully submits that this Honorable Court order Interstate to pay his attorney's fees and costs of suit incurred in connection with this appeal as stated above.

DATED: 15 November 2015 Respectfully Submitted,

MARSH ROSA LLP



Angelo L. Rosa
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 16 November 2015, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

David W. Gadd
WORST FITZGERALD & STOVER, PLLC
P.O. Box 1428
Twin Falls, Idaho 83303-1428

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Signed  _____
Angelo L. Rosa