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Crossroads Neighborhood Ass'n v. Erickson Respondent's Brief Dckt. 44075

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Attorneys for Respondent

IN THE SUPREME COURT OF THE STATE OF IDAHO

<p>CROSSROADS NEIGHBORHOOD ASSOCIATION, INC., an Idaho non-profit corporation, Plaintiff and Respondent, vs. RICK A ERICKSON Defendant and Appellant</p>	<p>RESPONDENT'S BRIEF</p> <p>Supreme Court Docket No. 44075</p> <p>Ada County Case No. CV-OC-2013015568</p>
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APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

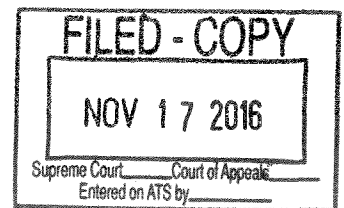
**The Honorable JUDGE GERALD F. SCHRODER
District Judge**

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IN THE SUPREME COURT OF THE STATE OF IDAHO

CROSSROADS NEIGHBORHOOD
ASSOCIATION, INC., an Idaho non-
profit corporation,

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vs.

RICK A ERICKSON

Defendant and Appellant

RESPONDENT'S BRIEF

Supreme Court Docket No. 44075

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The Honorable JUDGE GERALD F. SCHRODER
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RESPONDENT’S BRIEF

Respondent, Crossroads Neighborhood Association, Inc. (the “Association”) submits this brief in appeal before this Court.

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STATEMENT OF THE CASE

This case was initially brought by Respondent Crossroads Neighborhood Association, Inc. (the “Association”), to enforce compliance with the Association’s protective covenants and address a number of outstanding violations on Appellant Rick Erickson’s property. *R.* p. 2-7. The Complaint included a request for declaratory relief and specific performance, as well as an award of attorney’s fees incurred in the enforcement action, pursuant to the protective covenants. Appellant Rick Erickson (“Erickson”), rather than answering the Complaint, filed a flurry of motions, challenging the Magistrate Court’s jurisdiction, among other things. *Id.* The Association, after a number of the motions were filed and considered by the Magistrate Court, filed a Notice of Intent to Default, and requested and was granted a Default Judgment after the requisite time period had passed and Erickson had still failed to file an Answer to the Complaint. *Id.*; *R.* p. 8.

Following entry of that Default Judgment, Erickson filed a litany of Motions with the Magistrate Court, including a Motion to Set Aside Default Judgment. *R.* p. 2-7. Ultimately, Erickson filed an appeal with the District Court, prior to the resolution of his Motion to Set Aside Default Judgment. *R.* p. 2-7. The District Court entered an Order Governing Procedure on Appeal on September 12, 2014. *R.* p. 11. That Order laid out the procedure and timelines for the appeal, in accordance with the Idaho Rules of Civil Procedure, and required Erickson to order and pay for the cost of the transcript within 14 days of the filing of the notice of appeal. *Id.*

Erickson failed to comply with that Order when he did not pay for the transcript in accordance with the timelines included in the Order. *R.* p. 16. The District Court dismissed the appeal conditionally, giving Erickson fourteen additional days to take the steps necessary to pay

for and properly order the transcript. *R.* 16. Erickson then paid the transcript fee and the District Court reinstated the appeal and updated the briefing schedule in an Amended Order Governing Procedure on Appeal, entered on October 30, 2014. *R.* p. 18; 21; 23.

After a hearing with the parties, the District Court determined that Erickson's Motion to Set Aside Default Judgment had not been resolved by the Magistrate Court, and that the appeal was improperly taken. *R.* p. 26. The District Court then stayed the appeal, pending a decision on the Motion to Set Aside Default Judgment, and remanded the case back to the Magistrate Court. *R.* p. 26. That Motion, along with Erickson's Motion for More Definite Statement, was considered and then denied by the Magistrate Court, and the District Court, after reviewing the Magistrate Court's Order, also determined the appeal had no valid basis, and dismissed it accordingly. *R.* p. 67; 2-7; 71.

After the Magistrate Court denied a number of Erickson's additional motions, finding them frivolous and not based in fact or law, Erickson again appealed to the District Court. *R.* p. 79; 82. The District Court held a hearing on November 19, 2015, and after consideration decided to reinstate Erickson's appeal. *R.* p. 2-7; *Tr.* p. 11, L.10 – p.13, L.15. The Court, at that hearing, requested that counsel for the Association submit a formal order reinstating the appeal and lifting the previous stay, which was filed with the Court and signed on December 17, 2015, even though the Court had ruled in the hearing on November 19, 2015 that the appeal was reinstated for the limited purpose of determining whether the Default Judgment was properly entered. *R.* p. 86. *Tr.* p. 11, L.10 – p.13, L.15.

The District Court, on November 20, 2015, entered an Amended Order Governing Procedure on Appeal, clearly stating that Erickson, as the Appellant, had to file and serve his

brief by December 24, 2015. *R.* p. 82. On December 29, 2015, Erickson had failed to file or serve his brief, and the Association filed a Motion to Dismiss Appeal. *R.* p. 88. That Motion was granted in an Order Dismissing Appeal, entered by the Court on January 4, 2016 and an Order to Dismiss entered by the Court on January 8, 2016. *R.* p. 90-92. Overall, from the date of entry of the Amended Order Governing Appeal to the date of the Order Dismissing Appeal, Erickson had 45 days to file and serve his brief, and failed to do so. The deadline for filing his brief was clearly and explicitly laid out in the Amended Order Governing Appeal, and he failed to comply with that deadline. *R.* p. 82.

After filing a Petition for Rehearing and having that Petition denied, Erickson filed the present appeal, which has also had a relatively non-typical procedural path to date. *R.* p. 93-105. After filing the Notice of Appeal, Erickson filed a Motion to Compel with the Magistrate Court, alleging that the Association and/or the Magistrate Court had failed to serve him with copies of a number of filings related to the Association's attempts to execute on the original Default Judgment. *R.* p. 116. That Motion to Compel was denied by the Magistrate Court on May 16, 2016, after it found that Erickson could obtain copies of the pleadings by requesting them from the Clerk of the Court. *R.* p. 122. Erickson then filed a Motion to Extend Settlement Period for Court Record, a Motion to Augment and Objection to Record, and an Objection to Transcript and Motion to Correct, all of which were disposed of by the District Court on June 9, 2016. *R.* p. 111-112. Erickson's brief is silent with regards to these issues, so they are assumed to be waived.

ADDITIONAL ISSUES PRESENTED ON APPEAL/ATTORNEY FEES ON APPEAL

The statement of Issues on Appeal presented in Erickson's Brief appears satisfactory to the Association, and the Association has no objection. The Association does, however, take issue with Erickson's assertion that he is entitled to an award of attorney fees on appeal if he is successful. Erickson has no valid legal basis for an award of attorney fees. It is well established by this Court that attorney fee awards cannot be granted to *pro se* litigants as a general rule. *Bowles v. Pro Indiviso, Inc.* 973 P.2d 142, 148 (Idaho 1999) (citing *Swanson & Setzke, Chtd. v. Henning*, 774 P.2d 909, 910-911 (Idaho Ct. App. 1989)). Erickson has appeared on his own behalf throughout the entirety of these proceedings, and therefore is not entitled to an award of attorney fees. "Out of pocket costs and fees from third-part attorneys" allegedly incurred by Erickson do not justify an award of attorney fees to an otherwise entirely *pro se* appellant. His claims for an award of attorney fees on appeal should be denied.

The Association, on the other hand, is legally entitled to an award of attorney fees on appeal, on a number of bases. An award of attorney fees is appropriate pursuant to I.A.R. 41 "if the law is well-settled and the appellants have made no substantial showing that the district court misapplied the law." *Bowles*, 973 P.2d at 148. The Magistrate Court, in the original Default Judgment, found that the Association was entitled to an award of attorney's fees pursuant to the contractual terms of the "Uniform Amended Declaration of Covenants, Conditions, and Restrictions for Crossroads Subdivision Nos. 1-7." Furthermore, the Association is entitled to attorney's fees on appeal, both for this appeal and to the appeal from the Magistrate Court to the District Court, pursuant to Idaho Code §12-120 and Rule 11 of the Idaho Rules of Civil Procedure, due to the fact that Erickson's claims are frivolous and without basis in fact or law, as

will be demonstrated below. The Association has both a contractual and a statutory basis for an award of attorney fees, and requests such from this Court.

ARGUMENT

1. The Record, as Provided by Erickson, is Insufficient for this Court to Determine the Issues Presented on Appeal, and Erickson's Brief as a Whole Fails to Comply with this Court's Requirements.

Erickson, as the Appellant in this case, has the obligation to provide this Court with a record that would allow it to assess his claims and make a determination as to their underlying validity. On a similar note, he has the obligation to file a brief with this Court that complies with the Idaho Rules of Appellate Procedure and this Court's standards. He has failed on both accounts.

The Idaho Supreme Court "does not assume error on appeal; rather, the party assigning error must affirmatively show it." *Student Loan Fund of Idaho, Inc. v. Duerner*, 951 P.2d 1272, 1281 (Idaho 1997). Erickson, as the Appellant, "has the responsibility to include exhibits and transcripts of hearings in the record before the appellate court." *Id.* When an appellant fails to ensure that the record on appeal contains the evidence taken into account by the district court, the Court "must necessarily presume that the evidence justifies the decision and that the findings are supported by substantial evidence." *Id.* When the record provided by appellant "is inexcusably scant and clearly insufficient to conduct a review of the issues asserted on appeal," this Court may conclude that the "appeal was brought for an improper purpose or unreasonably." *Garcia v. Pinkham*, 174 P.3d 868, 870 (Idaho 2007). This Court has found that "[w]here an incomplete record is presented to this Court the missing portions of that record are presumed to support the action of the trial court." *Rutter v. McLaughlin*, 101 Idaho 292, 293 (Idaho 1980).

The Idaho Appellate Rules, at Rule 28(b)(1), lay out a default set of documents that will be included in each record for appeal, unless otherwise directed by the party responsible for compiling the record. Rather than supplementing this base record, Erickson chose to specifically limit the record to the documents laid out in paragraph seven of his Notice of Appeal. *R.* p. 104. As will be demonstrated, the documents provided in the record are not sufficient to prove Erickson's claims and establish that the District Court erred, either procedurally or substantively.

Furthermore, Rule 35(a)(6) of the Idaho Appellate Rules requires that the argument portion of an appellant's brief "contain the contentions of the appellant with respect to the issues present on appeal, the reasons therefor, with citations to the authorities, statutes and parts of the transcript and record relied upon." Idaho R. App. Proc. 35(a)(6). This Court "will not consider an issue not supported by argument and authority in the opening brief." *Dawson v. Cheyovich Family Trust*, 234 P.3d 699, 706-707 (Idaho 2010) (citing *Jorgensen v. Coppedge*, 145 Idaho 524, 528 (Idaho 2008)). If an argument is "not supported by any cogent argument or authority, it cannot be considered by this Court." *Id.* This Court is not expected to search the record on appeal for error, and to the "extent that an assignment of error is not argued and supported in compliance with the I.A.R., it is deemed to be waived." *Suits v. Idaho Bd. of Prof'l Discipline*, 138 Idaho 397, 400 (Idaho 2003); *Suits v. Nix*, 141 Idaho 706, 708 (Idaho 2005).

The record in this case is ultimately insufficient to make a determination on the matters that Erickson has raised on appeal. The documents that are included in the record support the District Court's decisions, as will be demonstrated below. Overall, Erickson's brief is devoid of any citations to the limited record that is provided, and provides no analysis or authority for his

claims that the District Court erred in its handling of his case. These procedural shortcomings are a sufficient basis for this Court to reject Erickson's claims on appeal.

2. Erickson's First Six Issues on Appeal are Entirely Procedural, and He Has Failed to Demonstrate Error on the Part of the District Court for any of these Issues.

Notwithstanding Erickson's procedural failures to provide a proper record and brief his issues on appeal properly, his allegations about the District Court's procedural failures have no basis in fact or law. The interpretation of the Idaho Rules of Civil Procedure is a matter of law over which this Court exercises free review. *Dawson*, 234 P.3d at 704; *Canyon County Bd. of Equalization v. Amalgamated Sugar Company, LLC*, 137 P.3d 445, 447 (Idaho 2006). The majority of Erickson's issues on appeal relate to the District Court's application of the Rules of Civil Procedure, specifically its entry and enforcement of briefing schedules on appeal, issues related to the transcript on appeal, and the overall manner in which the District Court handled Erickson's appeal and the convoluted process by which it was brought before the District Court. Each of Erickson's six initial issues on appeal relate directly to the District Court's interpretation and application of the Idaho Rules of Civil Procedure, specifically Rule 83.

Erickson's arguments related to the District Court's procedural handling of his appeal, specifically his appellate issues One through Six, are plagued by procedural short-comings, and have no substantive basis. Again, Erickson has failed to cite to the record in a single instance, the record is devoid of a number of pieces of evidence that are necessary for the determination of his claims, and the record before the Court establishes that the District Court made no errors in its handling of Erickson's convoluted appeal.

Erickson chose, in the first instance, to file his initial appeal shortly after filing his Motion to Set Aside Default Judgment, before that Motion had been resolved. *R.* p. 2-7. It was his failure to comply with standard procedures and his premature appeal that led to the initial confusion of the District Court and the stay of the appeal pending resolution of that Motion. *R.* p. 26. After that Motion was considered and denied by the Magistrate Court, the District Court exercised its discretion to dismiss the appeal *sua sponte*, based on the evident lack of support for Erickson's claims that the Default Judgment should be set aside. *R.* p. 71. Erickson requested a reconsideration of that Order, and the Court held a hearing on November 19, 2015 to consider his claims, as they related to the status of his dismissed appeal. *R.* p. 81.

The District Court, in the hearing on November 19, 2015 admitted to the confusing nature of what should have been a relatively simple case, and the effect that complexity had on that Court's judicial efficiency:

THE COURT: Frankly, the flurry of filings, it's been difficult for me to grasp where we are in this case. The case in its structure should be relatively simple; that is, a default judgment was entered, a deferred action until a motion was taken up before Judge Young to determine if she would set aside that default. She has declined to set aside. I don't know – I don't think there's been an amended judgment entered, so we're talking about the appeal to the original judgment, as near as I can tell. *Tr.* p. 9, L.12-21.

In light of the District's Court's confusion as to the status of the case, the District Court determined that the most fair and efficient solution was to allow the appeal to proceed on the merits of whether or not the default judgment had been properly entered, or should be set aside. *Tr.* p. 11, L.5-14. It is important to note that at the November 19 hearing, Erickson himself requested that the appeal be reinstated and allowed to proceed on the original issue on appeal.

Tr. p. 8, L.7-11. After ordering the reinstatement of the appeal at the hearing on November 19, 2015, the Court entered the Amended Order Governing Procedure on Appeal, clearly stating that Erickson, as the Appellant, had to file and serve his brief by December 24, 2015. *R.* p. 82. By that time, the transcript and record for the case, to the best knowledge of the Court and the Association, had been paid for by Erickson. *Id.*

Erickson, for the first time on appeal, objects to the Court's entry of the November 20, 2015 Amended Order Governing Procedure on Appeal, as he alleges that the appeal had not been reinstated until December 21, 2015. *Appellant's Brief*, p.10. A review of the transcript from the November 19, 2015 hearing, however, clearly shows that the District Court ordered that the appeal be reinstated and an updated briefing schedule be entered by the Court. Tr. p. 11, L.5-14; p.11, L. 24-26 – p.12, L. 1-9. The District Court did request that the Association submit an order to that effect, which was signed by the Court on the 17th of December and entered on the 21st of December, 2016, presumably as a formality. *R.*p. 86. However, this has no bearing on the Court's determination at the November 19 hearing, the November 20 Amended Order, nor the fact that Erickson was given ample notice that the appeal had been reinstated and that his brief was due on the 24th of December, 2015.

As of December 29, 2015, Erickson had failed to file or serve his brief, despite the clear requirement that his brief be filed and served by December 24, 2015, and the Association filed a Motion to Dismiss Appeal. *R.* p. 88. That Motion was granted in an Order Dismissing Appeal, entered by the Court on January 4, 2016 and an Order to Dismiss entered by the Court on January 8, 2016. *R.* p. 90-92. Overall, from the date of entry of the Amended Order Governing Appeal to the date of the Order Dismissing Appeal, Erickson had 45 days to file and serve his

brief, and failed to do so. The Idaho Rules of Civil Procedure, at Rule 83(o), state that “Briefs ... must be filed and served within the time provided by the Idaho Appellate Rules unless otherwise ordered by the district court.” The District Court, in the Amended Order Governing Appeal, provided Erickson with ample time to complete his brief, especially considering that the appeal had been initiated over a year earlier, on the exact same issues. *R.* p. 3; 82. The deadline for filing his brief was clearly and explicitly laid out in the Amended Order Governing Appeal, and he failed to comply with that deadline, ask for an extension, or otherwise object to the timeline. *R.* p. 82. Erickson’s inability to comply with a clear deadline does not prove error on the part of the District Court in applying the Rules of Civil Procedure.

Erickson argues that Court further erred by failing to “address the confusion over the transcript,” and “failing to include procedures in the briefing schedule for lodging and settling the transcript.” *Appellant’s Brief*, p.8. However, any confusion over how the transcript or record is to be ordered from the Court upon appeal, or paid for by the appealing party, was only on the part of Erickson. The Idaho Rules of Civil Procedure are quite clear as to how records and transcripts are to be handled, how they are ordered and lodged, and when they must be paid for. I.R.C.P. 83 (g-l). The District Court, in its Orders Governing Procedure on Appeal laid out this process further and accounted for it in establishing the briefing schedule. *R.* p. 11; 23-24. Erickson’s confusion as to how to order the transcripts and record and how to pay for them was not the responsibility of the District Court to address. Rule 83 of the Rules of Civil Procedure is quite clear, as were the Orders Governing Procedure on Appeal.

Erickson, in his Brief, takes further issue with the fact that the District Court duplicated its efforts in dismissing his appeal, by entering an order on both January 4 and January 8.

Appellant's Brief, p. 8-9. However, aside from assertions as to the Court's allegedly improper motives in doing so, Erickson provides no evidence that a specific rule or procedure was violated, nor that he suffered any harm from what was likely simple judicial oversight. The record is certainly devoid of any evidence otherwise.

Overall, the record before this Court is devoid of any evidence that either the Magistrate Court or the District Court failed to follow any laws or provisions of the Idaho Rules of Civil Procedure. Erickson was granted the requisite amounts of time to perform all acts that were required of him, and failed to comply with those timelines. Erickson's first six issues on appeal, as they relate to these specific alleged procedural errors, fail as a matter of law and fact – the District Court did not err.

3. The Default Judgment Entered Against Erickson is Valid, and He Has Failed to Provide Evidence or Authority that Either the Magistrate Court or the District Court Erred.

Ultimately, Erickson's appeal to the District Court was dismissed based upon his failure to comply with the briefing schedule established by the Court. The District Court, other than in its February 12, 2015 Order Dismissing Appeal, has not ruled on the actual merits of Erickson's claims that the Default Judgment should be set aside. That Order was ultimately extinguished by the Court when it reinstated the appeal at Erickson's request after the November 19, 2015 hearing. Following that reinstatement, the Court was never provided with an opportunity to review Erickson's claims on their merits because he failed to timely submit a brief. However, even if the Court had made a substantive determination, or if its February 12, 2015 Order remained in effect, the Default Judgment entered in this case is valid, and Erickson has provided no evidence that it should be set aside.

“The decision to grant or deny a motion under I.R.C.P. 60(b) is committed to the discretion of the district court.” *Dawson*, 234 P.3d at 704. It is unclear from Erickson’s brief and Notice of Appeal whether he is appealing the Magistrate’s underlying denial of his Motion to Set Aside Default Judgment, or the District Court’s refusal to overturn that denial. Regardless, when an appeal “arises from a decision of the district court affirming a decision of the magistrate division,” this Court must “review the magistrate’s decisions independently, with due regard for the decision of the district court acting in its appellate capacity.” *Hoskinson v. Hoskinson*, 80 P.3d 1049, 1055 (Idaho 2003).

Erickson provides no evidence of why the default is invalid, other than a bald citation to case law, his own opinions, and some assertions that his case should be “tried on the merits.” Again, this Court cannot “consider an issue not supported by argument and authority in the opening brief.” *Dawson*, 234 P.3d at 706-707 (citing *Jorgensen v. Coppedge*, 181 P.3d 450, 454 (2008)). If an argument is “not supported by any cogent argument or authority, it cannot be considered by this Court.” *Id.* This Court has held that “a party waives an issue on appeal where that party fails to provide authority supporting its argument.” *Puckett v. Oakfabco, Inc.*, 979 P.2d 1174, 1179 (Idaho 1999).

The record, as compiled by Erickson, is insufficient to determine this matter, as the only relevant document that is included in the record is the two-page Default Judgment itself, not the Complaint, the filings related to service of the Complaint, the Notice of Intent to File Default, nor the Motion or Affidavit in Support of Default Judgment. The record also does not include Erickson’s Motion for a More Definite Statement, nor his Motion to Set Aside Default Judgment.

These short-comings are exacerbated by his failure to cite in a single instance to any of the portions of the record which he did include on appeal.


This Court cannot make a determination as to the validity of the Default Judgment without the benefit of this evidence in the record. “When a party appealing an issue presents an incomplete record, this Court will presume that the absent portion supports the findings of the District Court.” *Gibson v. Ada County*, 69 P.3d 1048, 1051 (Idaho 2003). The appellant has the burden of showing that the district court committed error below. *Garcia*, 174 P.3d at 869. That error must be affirmatively shown on the record before this Court, and if the record is “inadequate to review the appellant’s claims, the Court will not presume error below.” *Id.* Erickson has failed in his obligation to establish a record that supports his claims, and to use that record to show how the lower courts erred in entering Default Judgment against him and denying his Motion to Set Aside that Default Judgment. As a matter of law, Erickson’s claims on appeal fail.

CONCLUSION

Appellant Erickson, in his Notice of Appeal and his brief, has laid out six particular issues on appeal wherein he alleges that the District Court made procedural errors in the handling of his appeal. He also includes a seventh issue on appeal, which appears to be a substantive argument that the Default Judgment in this case should have been reviewed and set aside by the District Court. As the Association has demonstrated, Erickson has failed in his responsibility as the appellant to establish a sufficient record for this Court to review the proceedings below and make a well-informed decision, and he has failed to properly brief his appeal in accordance with the standards Idaho law requires. Additionally, he has failed to provide any factual evidence or

legal authority that supports his arguments that the District Court erred, either procedurally in handling his barrage of non-typical motions and practice, or substantively, in denying his request to set aside the Magistrate Court's Default Judgment. This matter has been ongoing for nearly three years, and due to Appellant Erickson's failure, or outright refusal, to comply with the basic rules of civil procedure, the case remains unresolved. Ultimately, he has failed to meet his burden on appeal, and his claims should be denied and dismissed, reaffirming the entry of Default Judgment, and awarding attorney fees and costs to the Association.

Respectfully submitted this 17th day of November, 2016.



Brindee L. Collins – ISB #9216
Attorney for Plaintiff/Respondent
Crossroads Neighborhood Association, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of November, 2016, I caused to be served a true and correct copy of the foregoing Respondent's Brief by regular mail to Appellant Rick Erickson at the following address:

Rick A. Erickson
3626 East Presidential Drive
Meridian, ID 83642



Brindee L. Collins – ISB #9216
Attorney for Plaintiff/Respondent
Crossroads Neighborhood Association, Inc.