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### Bettwieser v. Bettwieser Respondent's Brief Dckt. 47734

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IN THE SUPREME COURT OF THE STATE OF IDAHO

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Idaho Supreme Court  
By: Melanie Gagnepain, Deputy Clerk

CAROLE BETTWIESER,

Petitioner/Respondent,

vs.

MARTIN BETTWIESER

Respondent/Appellant.

Ada County District Court No. CV01-19-4776

Supreme Court Docket No.  
47734-2020

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**RESPONDENT'S BRIEF**

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Appeal from the Fourth Judicial District of  
the State of Idaho, in and for the County of Ada

Honorable Gerald F. Schroeder, District Judge, Presiding

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APPELLANT

RESPONDENT

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## I. STATEMENT OF THE CASE

Respondent sought a protection order against Appellant on March 19, 2019. A Temporary Protection Order was granted on March 20, 2019. A hearing was set for April 3, 2019. The Honorable Judge Laurie Fortier presided over the hearing, held in Ada County. Both parties testified and both parties introduced evidence to support their testimony. Following both parties' testimony, Judge Fortier issued a finding that Appellant had engaged in stalking pursuant to Idaho Code §18-7907 and issued a Civil Protection Order for one year. (Tr. p. 53, L. 8-24). Appellant filed a Notice of Appeal on April 5, 2019. Appellant filed his Appellant's Brief on August 1, 2019. Respondent filed her Respondent's Brief on August 30, 2019. Appellant filed his Reply Brief on September 19, 2019. The Honorable Senior District judge Gerald F. Schroeder issued an Opinion on Appeal on December 12, 2019. Appellant filed a Notice of Appeal to the Idaho Supreme Court on January 17, 2020. Appellant filed a Second Notice of Appeal on February 19, 2020.

As the Appellant was filing the Appeal, the Respondent sought to have the Civil Protection Order extended based on Appellant's conduct. A hearing was held on February 19, 2020, in front of the Honorable Steven J. Hippler. After the hearing wherein both parties testified, Judge Hippler extended the Civil Protection Order for another year. Mr. Bettwieser was charged with a violation of the protection order on April 10, 2020, in CR01-20-15123. A Pre-Trial Conference is scheduled for August 31, 2020.

Respondent objects to the Statement of the Case as set forward by the Appellant to the extent that the Appellant has attempted to argue his position on appeal within the Statement of the Case. Respondent objects, in particular, to his statement that, "... because Martin was communicating and trying to communicate with Carole the affections he still had for her and the need to reconcile and continue the marriage and..." (Appellant's Brief, P. 2). Respondent further

objects to the Statement of Facts set forward by the Appellant, as he has stated his opinion and his position on matters that are not facts. (Appellant’s Brief, P. 2-3).

Respondent further objects to the Appellant’s request that the records and exhibits included, particularly the exhibits from February 24, 2020 and thereafter, be stricken and disregarded. (Appellant’s Brief, P. 3). Respondent has failed to state good cause supporting his request that the exhibits be stricken and disregarded.

## **II. STANDARD OF REVIEW**

When reviewing the decision of a district court sitting in its capacity as an appellate court:

The Supreme Court reviews the trial court (magistrate) record to determine whether there is substantial and competent evidence to support the magistrate’s findings of fact and whether the magistrate’s conclusions of law follow from those findings. If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate’s decision, we affirm the district court’s decision as a matter of procedure.

*Matter of Estate of Brown*, 166 Idaho 472, 461 P.3d 754, 758 (2020) (quoting *Losser v. Bradstreet*, 145 Idaho 670, 672, 183 P.3d 758, 760 (2008)). Where issues involve mixed questions of law and fact, the appellate court reviews the trial court’s findings for clear error and freely reviews the conclusions of law. *Phillips Industries, Inc. v. Firkins*, 121 Idaho 693, 696, 827 P.2d 706, 709 (Ct. App. 1992).

The appellate court will set aside a trial court's findings of fact only if they are clearly erroneous. *Neider v. Shaw*, 138 Idaho 503, 506, 65 P.3d 525, 528 (2003). In deciding whether findings of fact are clearly erroneous, the appellate court determines whether the findings are supported by substantial, competent evidence. *Id.* Evidence is regarded as substantial if a reasonable trier of fact would accept it and rely upon it in determining whether a disputed point of fact has been proven. *Ransom v. Topaz Marketing, L.P.*, 143 Idaho 641, 643, 152 P.3d 2, 4 (2006). Substantial and competent evidence is “relevant evidence that a reasonable mind might accept to

support a conclusion.” *Henderson v. Eclipse Traffic Control & Flagging, Inc.*, 147 Idaho 628, 631, 213 P.3d 718, 721 (2009). Evidence is regarded as substantial if a reasonable trier of fact would accept it and rely upon it in determining whether a disputed point of fact has been proven. *Argosy Trust v. Wininger*, 141 Idaho 570, 572, 114 P.3d 128, 130 (2005). Substantial and competent evidence is less than a preponderance of evidence, but more than a mere scintilla. *Evans v. Hara's, Inc.*, 123 Idaho 473, 478, 849 P.2d 934, 939 (1993). Substantial and competent evidence need not be uncontradicted, nor does it need to necessarily lead to a certain conclusion; it need only be of such sufficient quantity and probative value that reasonable minds could reach the same conclusion as the fact finder. *See Mann v. Safeway Stores, Inc.*, 95 Idaho 732, 736, 518 P.2d 1194, 1198 (1974).

The appellate court exercises free review over the district court's conclusions of law to determine whether the court correctly stated the applicable law and whether the legal conclusions are sustained by the facts found. *Neider*, 138 Idaho at 506, 65 P.3d at 528; *Conley v. Whittlesey*, 133 Idaho 265, 269, 985 P.2d 1127, 1131 (1999); *Willis v. Willis*, 33 Idaho 353, 357-58, 194 P. 470, 472 (1920).

A party appealing an evidentiary ruling for abuse of discretion “must demonstrate both the trial court’s abuse of discretion and that the error affected a substantial right.” *Hurtado v. Land O’Lakes, Inc.*, 153 Idaho 13, 18, 278 P.3d 415, 418 (2012).

This Court is tasked to determine whether the factual findings of the District Court are supported by substantial and competent evidence or whether its findings are clearly erroneous. Once that determination is made, this Court must exercise free review over the District Court’s conclusions of law which will ultimately decide this case. Respondent submits that after this Court reviews the findings of fact and conclusions of law made by the District Court, this Court will affirm the District Court.

### **III. ISSUES PRESENTED ON APPEAL**

Respondent does not present any of her own issues on appeal. Appellant presented three issues to the District Court on appeal: (1) Whether or not the Magistrate committed constitutional error by not allowing him to cross-examine Respondent (2) Whether or not the Magistrate committed constitutional error in renewing the protection order according to the facts and law, and (3) Whether or not a protection order can be issued to obstruct investigations in a legal proceeding. Appellant has seemingly added three additional issues, although he failed to clearly brief those issues, which include: (4) Whether or not the District Court erred in its findings and ruling of Issues A, B, and C, (5) Whether or not the Protection Order under Idaho Code §18-7907 is a quasi criminal and civil proceeding, and (6) Whether or not Pro-Se Litigants have the same rights to Examination as Attorneys.

### **IV. ATTORNEY FEES ON APPEAL**

Respondent respectfully requests that attorney fees and costs for defending this appeal be awarded to her pursuant to Idaho Appellate Rules, Rules 35(b)(5), 40 and 41. These attorney fees and costs are proper in this case for the reasons stated in this brief, including the fact that Appellant has presented many arguments for the first time on appeal and has further ignored relevant case law and relevant rulings from the District Court. Respondent also requests fees pursuant to IRFLP Rules 901 and 908, and I.C. §§ 12-120, 12-121. Attorney fees can be awarded under that statute (I.C. §§ 12-121) to the Respondent on appeal if the appeal was brought or pursued frivolously, unreasonably, or without foundation. *Reed v. Reed*, 137 Idaho 53, 44 P.3d 1108 (2002). An award of attorney fees is appropriate if the appellant simply invites the appellate court to second-guess the trial court on conflicting evidence. *Id.* Appellant is doing exactly that in this appeal, and therefore, an award of fees and costs would be proper under Idaho Code §12-121. Respondent



reserves the right to file further statements and assert a claim for attorney's fees when this Court issues a decision on the merits of this appeal.

## V. ARGUMENT

### **A. The Magistrate Court Did Not Err When it Did Not Allow Appellant to Cross-Examine Respondent, and the District Court Did Not Err When it Affirmed the Magistrate Court's Decision.**

In the Opinion on Appeal, the District Court noted specifically that, "The [A]ppellant did not specifically request to cross-examine the Respondent after she testified and before he testified, and the magistrate never expressly ruled on the issue, after initially saying she would 'probably not' allow it". (Opinion on Appeal, P. 5). The District Court also correctly noted that, "[T]he [A]ppellant was afforded the opportunity to testify and present evidence during the hearing. He has not shown that he was denied "a meaningful opportunity to be heard[.]" (Opinion on Appeal, P. 6). As the District Court noted, the Appellant failed to show any prejudice to his substantial rights based on the Magistrate Court's decision to now allow him to testify.

Appellant gave a lengthy monologue regarding the events in question during the hearing, and the Honorable Judge Laurie Fortier asked twice if he had anything else he would like to share with the Court (Tr. P. 47, L. 8, Tr. P. 48, L. 8). Appellant has failed to set forward any valid and/or reasonable argument against the District Court's ruling regarding his ability to cross-examine the Respondent, except what was included in his original Appellant's Brief that was submitted to the District Court. The District Court addressed his assertion regarding *State v. Folk*, 151 Idaho 327, 256 P.3d 735 (2011), but the Appellant reiterates his argument nonetheless. The Appellant appears to have added new argument in bold type face within his brief, however his intent with his original argument is unclear. The Appellant seems to have ignored the District Court's findings by leaving his original argument in the Appellate Brief, which creates a large barrier for the Respondent when responding to his allegations.

As stated within the Respondent’s Brief that was submitted on August 30, 2019, and as this Court is well aware, Magistrate courts have wide discretion in making their decisions. A trial court does not abuse its discretion “so long as it recognizes the issue as one of discretion; acts within the outer limits of its discretion and consistently with the legal standards applicable to the available choices, and reaches its decision through an exercise of reason.” *Roberts v. Roberts*, 138 Idaho 401, 403, 64 P.3d 327, 329 (2003). In this situation, Judge Fortier, in her discretion, ruled that the parties are not able to cross-examine each other since neither were represented by counsel. Judge Fortier did, however, allow both parties to testify, and therefore Appellant’s due process rights were not violated.

The Appellant has failed to set forward any reasonable argument regarding the District Court’s alleged error surrounding Appellant’s inability to cross-examine the Respondent. Even if the Court did abuse its discretion in refusing to allow Appellant to testify, he fails to prove that the alleged error affected a substantial right. Appellant instead repeatedly requests that the Court second-guess both the Trial Court and the District Court’s decision regarding the same.

**B. The Magistrate Court Did Not Err in Renewing the Protection Order According to the Facts and Law, and the District Court Did Not Err When it Affirmed the Magistrate Court’s Decision.**

Once again, the Appellant kept his original argument from the District Court’s appeal regarding the issue of whether or not the Court erred by granting the Protection Order, and seemingly added new argument which he differentiated only by editing the type font to bold.

The District Court ruled that, “The [M]agistrate’s findings that the [A]ppellant engaged in stalking by his repeated course of nonconsensual contact with the [R]espondent is supported by substantial and competent evidence.” (Opinion on Appeal, P. 11). Appellant asserted no constitutional issues before the Magistrate Court, and the District Court therefore refused to consider any constitutional issues since they were raised for the first time on Appeal.

In addition, the District Court refused to address the issue of malice, since Appellant did not raise the issue before the magistrate. The District Court did not consider the issue as it had been raised for the first time on Appeal. Appellant, in his brief, stated, “This is contrary to the record. It was raised.” (Appellant’s Brief, P. 9). Appellant cites to Tr. P. 48, L. 9-16. This cite leads to Appellant’s testimony, wherein he states, “As you can see, the testimony from Exhibit 300, clearly shows that there was an inflation to try to mislead the circumstances. I think the whole protection order was presented that way in order to try to mislead that there were legitimate purposes in all communications. Nothing was malicious, harassing, threatening, annoying. It was all legitimate. Thank you.” (Tr. p. 48, L. 9-16). Appellant’s mere mention of the word “malice” does not constitute him properly raising the issue that the Court did not consider that there was no malicious intent pursuant to Idaho Code §18-7907. The Appellant did not object to the Magistrate Court’s findings during the hearing, nor did he ask the Court to clarify whether or not they had made a specific finding regarding maliciousness.

Appellant repeatedly attacks Respondent’s credibility. (Appellant’s Brief, p. 10-12). Appellant only uses his opinion to attack Respondent’s credibility, stating his perception of her intent, his belief about ‘irreparable harm’, and his own stance on legislative intent. Appellant misquotes Respondent, claiming that, “... Carole never really cared whether Martin knew where she lived, (Tr. p. 50, L. 3-7) she only did so she could make it an issue for filing for a protection order and use that order as basis for argument in the divorce proceeding, (Tr. p. 33, L. 11-19) and so the issue is moot as to irreparable harm”. (Appellant’s Brief, P. 10). First of all, Respondent’s quote was, “...at that time I thought I was trying my best to keep Mr. Bettwieser from finding where I lived, so he could not stalk me at my current residence. I’m happy now. My change of address is out for my new address because he obviously knows where I live. All of his family members can have it if they’d like. I have no objection. I mean it’s not a problem.” (Tr. P. 49, L.

25 – P. 50, L. 1-7). Respondent does not claim that she, “never really cared whether Martin knew where she lived”. Appellant has misquoted Respondent. Secondly, Appellant cites his own testimony, seemingly to support his contention that Respondent is improperly using the Civil Protection Order. Appellant’s citation to his own testimony to support his claim is improper.

Further, Appellant states, “Because of the short window to appear and address a charge against a person, cross examination is a must.” (Appellant’s Brief, P. 12). Appellant provides no supportive argument for this statement, fails to explain how he is “charged” with anything, and seemingly tries to wrap up his argument with a conclusory statement that has not been explained nor supported anywhere in his brief.

Appellant has failed to set forward any applicable legal standards that would support his argument that the facts and law did not support the renewed Protection Order and that the District Court erred in affirming the Magistrate Court’s decision.

**C. The Protection Order Was Not Granted to Obstruct Investigations in a Legal Proceeding.**

Appellant failed to set forward any relevant authority and/or reasonable arguments regarding the District Court’s alleged error in finding that the protection order was not granted to obstruct investigations in a legal proceeding. Instead, Appellant seemingly continues to ask the Court to re-weigh and evaluate the evidence, and regularly poses his own questions within his Appellant’s Brief, in an attempt to direct the burden to the Court and to Respondent when he has the burden to prove why he is appealing the District Court’s decision. The Appellant cites to a denied exhibit and an irrelevant newspaper article, neither of which contribute factually to his position that he was prejudiced by the entry of the Civil Protection Order. As stated within the Respondent’s Brief submitted to the Court on August 30, 2019, there was no constitutionally protected “investigating” that the Protection Order had prevented Appellant from partaking in.

While CV01-19-05432 was eventually dismissed, there was still an opportunity for Appellant to conduct discovery within CV01-18-20821, and therefore investigate and make his case without the need to contact Respondent outside of the legal proceedings. In fact, Appellant took Respondent's deposition on May 16, 2019.

Appellant has failed to set forward reasonable evidence and/or relevant authority to support his position. The Respondent respectfully requests that the District Court's decision to affirm the Magistrate Court's issuance of the Protection Order as it relates to this specific issue be affirmed.

**D. The District Court Did Not Err in its Findings Regarding Issues A, B, and C.**

The Appellant included a fourth issue in his Table of Contents which read, "Did the District Court err in its findings and ruling: Argued in Issue A, B, C" (Appellant's Brief, P. i). Appellant however did not include an analysis and/or argument section regarding the issue. Without a clear argument to reference, Respondent is unable to respond to these issues. Please see applicable responses in the other sections of the Respondent's Brief which reference this same issue.

**E. A Protection Order that is Granted Pursuant to Idaho Code §18-7907 is Civil in Nature.**

The Appellant included a fifth issue in his Table of Contents which read, "Is a Protection Order under I.C. 18-7907 a quasi or quasi criminal proceeding as civil and criminal and sui generis and afforded the constitutional protections under criminal as well as civil actions: "Argued in Issue A". (Appellant's Brief, P. i). Appellant however did not include an analysis and/or argument section regarding the issue. Without a clear argument to reference, Respondent is unable to respond to these issues. Please see applicable responses in the other sections of the Respondent's Brief which reference this same issue.

**F. The Right of a Pro-Se Litigant to Examine a Pro-Se Party is Within the Discretion of the Presiding Judge.**

The Appellant included a sixth issue in his Table of Contents which read, “Do pro-se litigants have the same rights to examination as attorney’s? Argued in “Issue A,B”. (Appellant’s Brief, P. i). Appellant however did not include an analysis and/or argument section regarding the issue. Without a clear argument to reference, Respondent is unable to respond to these issues. Please see applicable responses in the other sections of the Respondent’s Brief which reference this same issue.

**VI. CONCLUSION**

The Appellant essentially has asked this Court to reweigh and reevaluate the evidence, to second-guess the trial court’s findings, and to arrive at a different conclusion than the District Court by reassessing the credibility of the Respondent. The Appellant has failed to set forward a valid argument supporting his appeal of the Protection Order granted by the Magistrate Court and his Appeal of the District Court’s decision affirming the Magistrate Court’s decision. Not only are Appellant’s arguments factually incorrect, he has misquoted case law and attempted to mislead the Court regarding the proceedings. Appellant continues to engage in frivolous and vexatious litigation with Respondent in an effort to elongate litigation and cause Respondent to incur unnecessary attorney fees and costs. Based on the above, the Respondent respectfully requests that the District Court’s decision to affirm the Magistrate Court’s issuance of the Protection Order be affirmed and that the Court order Appellant to pay attorney fees and costs to Respondent.

DATED this 11th day of August, 2020.

K. MITCHELL LAW, PLLC

By:           /s/ Katelynn Mitchell            
**KATELYNN MITCHELL**  
K. Mitchell Law, PLLC

**Certificate of mailing or hand delivery**

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I certify that on this 11th day of August, 2020, I served a true and correct copy of the foregoing document upon the following by the method of delivery designated:

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K. MITCHELL LAW, PLLC

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**KATELYNN MITCHELL**  
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