

4-17-2017

## Action Collection Service, Inc. v. Black Appellant's Brief Dckt. 44466

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### Recommended Citation

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

ACTION COLLECTION SERVICE, INC.  
An Idaho Corporation

Plaintiff / Respondent,

vs.

HARMONY L. BLACK (aka  
McCULLOUGH),

Defendant / Appellant

SUPREME COURT NO. 44466-2016

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**APPELLANT'S BRIEF**

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Appeal from the District Court of the Third Judicial District  
of the State Of Idaho, In and For the County of Canyon

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The Honorable George D. Carey, District Judge presiding  
The Honorable Jerold W. Lee, Magistrate Judge presiding

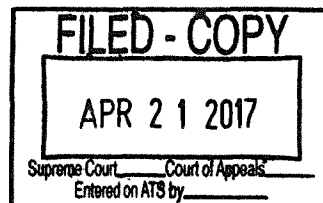
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**I**  
**STATEMENT OF THE CASE**

**A. NATURE OF THE CASE.**

This appeal arises from a collection suit brought by Plaintiff-Respondent Action Collection Service, Inc. (“ACS”) against the Defendant-Appellant Harmony L. Black (f/k/a Harmony L. McCullough) (“Black”) for an alleged debt owed by Appellant to the Idaho Department of Juvenile Corrections (“IDJC”) for costs incurred during the incarceration of Appellant’s then minor child in IDJC facilities beginning in 2007. ACS asserted it had an assignment of a claim from IDJC and proceeded as the lone plaintiff. Appellant denied the existence of a debt owed by her to IDJC and challenged the validity of the claim and any assignment by IDJC to ACS based upon the lack of any order from the juvenile court directing her to pay IDJC, the lack of contract or other agreement between her and IDJC for same, and the lack of a valid contract and assignment between IDJC and ACS. Summary judgment was entered by the Magistrate Court for ACS and Black appealed to the District Court where the judgment was vacated and remanded to the Magistrate. ACS filed an intermediate appeal where the Idaho Court of Appeals, on January 22, 2015, affirmed the District Court’s order vacating and remanding the case to the Magistrate.

**B. COURSE OF PROCEEDINGS.**

Upon remand, resumption of the case proceeded before the Magistrate on April 27, 2015. R. p. 5. On or about May 4, 2015, ACS filed another *Motion for Summary Judgment* upon which, after several responsive pleadings, a hearing on the *Motion* and a status conference was

held on June 15, 2015. R. pp. 57-58. During the hearing on ACS's motion, several issues arose regarding the sufficiency of ACS's complaint and the Magistrate granted leave of the court for amended pleadings. TR. *Motion Hearing (June 15, 2015)* pp.1-89; R. pp. 210-213. On or about July 7, 2015, ACS filed its *Amended Complaint*. On or about July 8, 2015, Black filed her *Motion for Summary Judgment* and a *Memorandum in Support* asserting that ACS conceded that no written agreement existed between Black and IDJC. R. pp. 230-239. On or about July 17, 2015, the Magistrate denied Black's motion but granted her request to have the monies garnished by ACS remitted to her. R. pp. 240-241. On or about July 30, 2015, Black filed her *Answer to Amended Complaint* asserting affirmative defenses including the failure to join IDJC as an indispensable party. R. pp. 248-252. On or about July 31, 2015 through about September 21, 2015, ACS filed several pleadings. R. pp. 246-270. During the pre-trial hearing held on or about September 28, 2015, the Magistrate set the trial date for one day, that being February 19, 2016. TR. *Pretrial Hearing (09-28-2015)* pp. 4-55; R. p. 270. On or about October 5, 2015, Black filed her disclosure of trial witnesses (erroneously captioned) which included the Director of IDJC, Sharon Harrigfeld. R. pp. 271-273.

Several pre-trial motions and other pleadings were filed by the parties and heard by the Magistrate. R. pp. 274-364. The trial began on February 19, 2016 and after a full day of proceedings presided over by the Magistrate, the trial was continued until March 23, 2016, the Court went into recess, and the trial was adjourned for the evening. TR. *Magistrate Court Trial* pp. 292-298.

Upon resumption of the trial on March 23, 2016, the Magistrate identified a conflict of interest with a subpoenaed witness, namely Sharon Harrigfeld, and asked the parties for a motion to disqualify him and for his recusal. *TR. Magistrate Court Trial* pp. 319-327. Said Motions were then made and the Magistrate then recused himself from the case. *R.* pp. 456-458.

Subsequently, four other magistrate judges were sequentially assigned to this case and were either voluntarily disqualified or disqualified upon motion by the parties, until District Court Judge George D. Carey was assigned. *R.* pp. 474-510.

Several pleadings and motions were filed during the interim period before the resumption of trial which had been rescheduled for July 7-8, 2016. *R.* pp. 511-665. Trial was held as scheduled and judgment was entered in favor of ACS but limited to an amount less than what had been pleaded from the inception of the case. Several post-trial motions were also filed and attorney's fees awarded to ACS were limited to the portion of the trial where the District Court deemed the proceedings to be the substitute for the, up until then never held, juvenile reimbursement hearing assessing costs against Black.

### **C. STATEMENT OF FACTS**

ACS is a collection agency organized under the laws of Idaho. The Idaho Department of Juvenile Corrections is a political subdivision of the State of Idaho.<sup>1</sup> Black, at all times relevant to this matter, is an individual person who is a resident of the State of Idaho.

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<sup>1</sup> The Idaho Department of Juvenile Corrections (IDJC) was ostensibly created by the enactment of the Juvenile Corrections Act of 1995. However, the IDJC's creation does not comport with the Idaho Constitution under Article IV, Section 20 wherein it provides that all executive departments of the state of Idaho must be created prior to the year 1975. Appellant asserts the constitutional validity of the IDJC is in dispute.

ACS has asserted that it had a valid assignment from, under a valid contract with, the IDJC to collect a sum certain from Black under the auspices of Idaho Code Title 67 Section 2358. (I.C. T.67-§2358). Further, ACS asserted that the sum certain was a debt created by the IDJC in its operations which included the incarceration of Black's then minor child from 2007-2009. The IDJC's asserted authority is derived from the Idaho Juvenile Corrections Act of 1995, codified at I.C. T.20-§501 et seq.

## **II ISSUES ON APPEAL**

### **A. IS A HEARING AND AN ORDER FROM THE JUVENILE COURT REQUIRED FOR PARENTAL REIMBURSEMENT OF COSTS INCURRED BY THE IDJC?**

The statutory authority for IDJC to collect any reimbursement under the Idaho Juvenile Corrections Act of 1995 is found in I.C. T.20-§524. That section, entitled "SUPPORT OF JUVENILE OR JUVENILE OFFENDER -- REIMBURSEMENT FOR COSTS INCURRED", provides in Subsection (1) that "[. . .] after due notice to the parent [. . .], and after a hearing, the court may order and decree that the parent [. . .] shall pay in such a manner as the court may direct a reasonable sum that will cover in whole or in part the support and treatment of the juvenile or juvenile offender." I.C. T.20-§524(1).

### **B. IS A VALID CONTRACT NECESSARY FOR THE IDJC TO BE ABLE TO ASSIGN A CLAIM FOR REIMBURSEMENT?**

The statutory authority for any public agency of the State of Idaho to assign debts for collection by a private collection agency is found in I.C. T.67-§2358. That statute, entitled "COLLECTION OF PUBLIC DEBTS – FEES", provides, under subsection (1)(a) that "[p]ublic



agencies, as defined in section 67-2327, Idaho Code, may retain by written contract a collection agency that has a permit pursuant to chapter 22, title 26, Idaho Code, for the purpose of collecting public debts owed by any person [. . .].”

**C. CAN A CLAIM FOR REIMBURSEMENT BY THE IDJC BE ASSIGNED PRIOR TO THE ISSUANCE OF AN ORDER?**

The statutory authority for any public agency of the State of Idaho to assign debts for collection by a private collection agency is found in I.C. T.67-§2358. That statute, under subsection (2)(a), provides that “[n]o debt may be assigned to a collection agency unless there has been a reasonable attempt to advise the debtor of the debt and at least thirty (30) days have elapsed from the time such notice was attempted. The public agency shall maintain a record of all attempts to notify the debtor of the existence of the debt.”

**III  
ARGUMENT**

**A. STANDARDS OF REVIEW**

“The interpretation of a statute is a question of law over which this Court exercises free review.” *Carrier v. Lake Pend Oreille Sch. Dist.*, 142 Idaho 804, 807, 134 P.3d 655, 658 (2006).

“The interpretation of a statute ‘must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.’” *Verska v. Saint Alphonsus Reg’l Med. Ctr.*, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011) (quoting *State v. Schwartz*, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003)).

Whether a document is ambiguous is a question of law. *McKay v. Boise Project Bd. of Control*, 141 Idaho 463, 469, 111 P.3d 148, 154 (2005) (citing *City of Chubbuck v. City of Pocatello*, 127 Idaho 198, 899 P.2d 411 (1995)).

The existence of ambiguity determines the standard of review of a lower court's interpretation of a contract or instrument." *Mountainview Landowners Coop. Ass'n, Inc. v. Cool*, 139 Idaho 770, 772, 86 P.3d 484, 486 (2004) (citing *Union Pac. R.R. Co. v. Ethington Fam. Trust*, 137 Idaho 435, 437–38, 50 P.3d 450, 452–53 (2002)).

"This Court reviews factual findings made after a trial without a jury for clear error." *Coward v. Hadley*, 150 Idaho 282, 286, 246 P.3d 391, 395 (2010) (citing I.R.C.P. 52(a)).

"A district court's exercise of discretion will be upheld absent a showing of abuse of discretion." *Schneider v. Howe*, 142 Idaho 767, 771, 133 P. 3d 1232 (2006). When an exercise of discretion is involved, an appellate court conducts a three-step inquiry: (1) whether the trial court properly perceived the issue as one of discretion; (2) whether that court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by the exercise of reason. *Peasley Transfer & Storage Co. v. Smith*, 132 Idaho 732, 745, 979 P.2d 605 (1999).

**B. THE DISTRICT COURT ERRED IN ITS DETERMINATION THAT VALID CONTRACT EXISTED BETWEEN THE IDJC AND ACS**

A valid written contract was a statutory requirement for IDJC to be able to assign anything to ACS for collection. I.C. T.67-§2358(1)(a) provides that "[p]ublic agencies, [. . . ], may retain by written contract a collection agency [. . . ] for the purpose of collecting public debts [. . . ]."

The written agreement between ACS and IDJC for collection services was apparently executed on May 11, 2006. R. pp. 584-588. The first full paragraph of the Agreement states that it “is made this day of 6/1/06 and will extend through 5/31/07” R. p. 585. This contract lapsed under its own terms prior to the initiation of the “assignment” by IDJC to ACS in 2012. No other written contract was introduced into evidence by ACS. Review of the internal ambiguity of the agreement between ACS and IDJC is a matter of law and is freely reviewable by the Supreme Court. The District Court erred in its determination that a valid contract between IDJC and ACS was in existence at the time of the collection action by ACS.

**C. THE DISTRICT COURT ERRED IN ITS DETERMINATION THAT THE IDJC PROPERLY ASSIGNED A DEBT TO ACS**

Not only was the contract between IDJC and ACS lapsed, but the assignment also failed in that it was not a “debt” as statutorily required under I.C. T.67-§2358(2)(a), but merely an unripe claim that lacked the statutorily required “due notice to the parent [. . .], hearing, [and] order and decree” of the juvenile court under I.C. T.20-§524(1).

The plain language of I.C. T.67-§2358 states only debts can be assigned, and not claims, choses in action, or other potential causes of action. Furthermore, the plain language of I.C. T.20-§524(1) states that only “*after* due notice to the parent” and “*after* a hearing” can the juvenile court issue an order for reimbursement by a parent. [Italics added.]

The IDJC does not have the authority to make the determination that a debt is owed by a parent. The IDJC must request reimbursement from the juvenile court and the court’s authority

for an order is discretionary where the plain language again states that “the court *may* order and decree that the parent [. . .] shall pay”. [Italics added.] I.C. T.20-§524(1).

During trial, the Director of the IDJC was asked specifically about the issue of parental reimbursement and stated that the IDJC takes the parent to court in cases of requested reimbursement. TR. *Court Trial July 7, 2016- July 8, 2016*, p. 382, ll. 24-25; p. 384, ll.1-2; p. 384, ll. 14-15.

No order of reimbursement was entered against Black by any court prior to the trial on July 7-8, 2016.

**D. THE DISTRICT COURT ABUSED ITS DISCRETION IN ALLOWING THE TRIAL TO SUPPLANT THE REIMBURSEMENT HEARING**

The District Court allowed ACS to assert that the trial held on July 7-8, 2016 to serve as the reimbursement hearing under I.C. T.20-§524. TR. *Court Trial July 7, 2016- July 8, 2016*, pp. 344-345. This was an abuse of discretion in that ACS never pleaded that it was acting in place of IDJC for purposes of a reimbursement hearing nor did ACS ever plead that the trial was in essence the reimbursement hearing. Id.

For the District Court to allow this was fundamentally prejudicial to Black in that “due notice” had not been given as required by I.C. T.20-§524. Moreover, the proceedings for collection occurred prior to a court order of reimbursement which deprives ACS, by virtue of a premature assignment, the statutory authority to bring a collection action without first establishing a debt as required under I.C. T.67-§2358.

The procedural errors in this regard were not only harmful and prejudicial, but the collection action by ACS, or even IDJC, had been time-barred long before trial. R. pp. 718-729.

#### **IV CONCLUSION**

The judgment in favor of ACS by the District Court should be reversed in favor of Appellant Black due to several errors of law. Because of the lapse of time during the protracted litigation, the interests of conservation of judicial resources, and in the interests of justice, this matter should not be remanded. Oral argument is requested.

DATED this 17<sup>th</sup> day of April 2017.

  
THOMAS J. KATSILOMETES  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 18<sup>th</sup> day of April 2017, a true and correct copy of the foregoing **APPELLANT'S BRIEF** was served upon opposing counsel as follows:

Shaun R. Bonney  
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Boise, ID 83715-5412

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