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

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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

APPELLANT'S REPLY BRIEF

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

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

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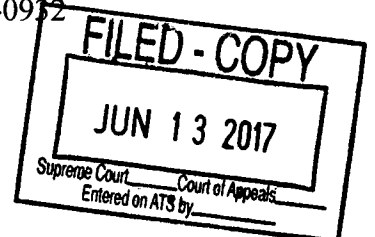


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Black’s Law Dictionary (10th ed., 2014)2, 3

I
STATEMENT OF THE CASE

A. DISPUTED FACTS.

1. CLEAR LACK OF A CONTRACT WITH, OR DEBT BY, MS. BLACK

While the Defendant's testimony and other evidence in this case are abundantly clear that at no time did she ever consider she was obligated to pay the Idaho Department Juvenile Corrections (IDJC) for her daughter's incarceration, Respondent misrepresents that she made payments "in response to a series of monthly statements". (Respondent's Brief, p.1) Quite the contrary is true. Not only did Ms. Black repeatedly dispute having to pay anything and refused to pay, she had asked IDJC for a "bill of particulars" regarding the services and care they claimed to have provided. Ms. Black only made two payments to IDJC for what she considered "ransom" to secure the release of her daughter from incarceration as promised by IDJC personnel. Also, there was no signed Stipulation For Statutory Reimbursement in the amount of \$4,465.00. (R. pp. 390-392) nor was there any reimbursement language in the court order. R. p. 453. Based upon this and other evidence, the District Court determined that no contract existed between Ms. Black and the IDJC. R. (Augmented) pp. 689-694 paragraphs 26, 32, 40, & 41.

2. THE ALLEGED CONTRACT BETWEEN IDJC AND ACS HAD LAPSED

Direct evidence in the form of testimony from ACS's President and Records Custodian, Mr. Grant Muir, at the beginning of the trial (in Magistrate Court (prior to his recusal)), was that ACS considered the subject contract dated May 11, 2006 between ACS and IDJC as having lapsed. TR. *Magistrate Court Trial February 19, 2016*, pp. 262-263. This salient point was

ignored by the District Court's decision despite the inconsistent later testimony and proper objection when the trial resumed in July. TR. *Court Trial July 7, 2016*, pp. 124-125.

3. THERE WAS A LACK OF AN ORDER TO PAY FROM THE JUVENILE COURT

The District Court interpreted the judgment of Magistrate Southworth to mean that neither IDJC nor the probation officer have discretion to determine what expenses will be paid by the juvenile or a parent, which is consistent with Idaho Code §20-524. R. (Augmented), p. 687. This statute empowers only the Juvenile Court, and no other entity, to determine a reasonable amount for a parent to pay. R. (Augmented), pp. 687-688.

Further, the District Court found that no lawfully determined debt had been created as required by Idaho Code §20-524. R. (Augmented), p. 688.

B. APPLICABLE LAW

1. THE IDAHO COLLECTION ASSIGNMENT LAW LACKS THE DEFINITION OF "DEBT"

Despite the tautological reference of the term "debt" in Idaho Code §67-2358(4) as referenced by the Respondent, no precise definition of the term is given elsewhere in Idaho Code. (Respondent's Brief, p.6) And, while Respondent's citation to Webster's Collegiate Dictionary is acceptable, Respondent's citation to Black's Law Dictionary (10th Ed.) is selectively incomplete and, as a result, misleading. (Id.)

The entire definition in Black's is:

Liability on a claim; a specific sum of money due by agreement or otherwise <the debt amounted to \$2,500>. 2. The aggregate of all existing claims against a person, entity, or

state <the bank denied the loan application after analyzing the applicant's outstanding debt>. 3. A nonmonetary thing that one person owes another, such as goods or services <her debt was to supply him with 20 international first-class tickets on the airline of his choice>. 4. A common-law writ by which a court adjudicates claims involving fixed sums of money <he brought suit in debt>. — Also termed (in sense 4) *writ of debt*.

“The action of debt lies where a party claims the recovery of a debt; that is, a liquidated or certain sum of money due him. The action is based upon contract, but the contract may be implied, either in fact or in law, as well as express; and it may be either a simple contract or a specialty. The most common instances of its use are for debts: (a) Upon unilateral contracts express or implied in fact. (b) Upon quasi-contractual obligations having the force and effect of simple contracts. (c) Upon bonds and covenants under seal. (d) Upon judgments or obligations of record. (e) Upon obligations imposed by statute.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 52, at 132 (Henry Winthrop Ballantine ed., 3d ed. 1923).¹

The specificity of the “sum of money due by agreement” would be, presumably, what the IDJC would be able to show had they presented their claim to the juvenile court and had either a signed stipulation as they had sought or as found by the juvenile court after a proper hearing.

2. THE JUVENILE CORRECTIONS ACT LIMITS PARENTAL REIMBURSEMENTS BY REQUIREMENT OF AN ORDER

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).

¹ Tellingly, the inclusion of the Shipman quote in this definition is presumably to distinguish a general definition from a legal one. Specifically, the common-law action for recovery of a debt is widely acknowledged to be based upon the theory of contract and is for a sum-certain.

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)).

B. EVEN IF A CONTRACT EXISTED BETWEEN THE IDJC AND ACS, THE ALLEGED ASSIGNMENT COULD NOT INCLUDE IDJC’S POTENTIAL CLAIM AGAINST MS. BLACK

The District Court properly found that there was no contract with Ms. Black. Without a contract between Ms. Black and IDJC and no valid debt as statutorily required to be determined

by the juvenile court, there was nothing legally authorized for IDJC to assign to Respondent ACS with regard to Ms. Black or her daughter. IDJC may or may not have had a claim against Ms. Black, but certainly did not properly pursue its claim under I.C. T.20-§524(1). IDJC did not present any claim for reimbursement to the juvenile court, let alone obtain an order recognizing a debt within the meaning of Idaho Code §20-524. Any attempted assignment also failed in that it was not a “debt” as statutorily required under I.C. T.67-§2358(2)(a). Without a judicially recognized debt, any attempted assignment was a legal nullity.

C. APPELLANT BLACK IS ENTITLED TO REVERSAL AND ATTORNEY’S FEES

Appellant Black is entitled to reversal based upon the errors of the Magistrate and District Courts as argued above and in Appellant’s Brief. Appellant Black has properly pursued her defense and this appeal and both were well grounded in fact and warranted by existing law.

Appellant Black seeks an award of attorney fees and costs for pursuing her defense and this appeal pursuant to I.A.R. 40 and 41.

**IV
CONCLUSION**

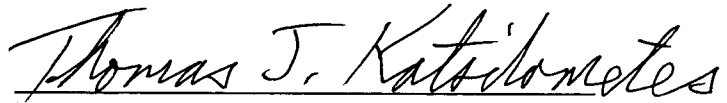
The judgment in favor of ACS by the District Court should be reversed in favor of Appellant Black due to several errors of law. Because of the lapse of time during the protracted litigation, the interests of conservation of judicial resources, and in the interests of justice, this matter should not be remanded. Appellant Black should be awarded all costs and attorney’s fees.

CERTIFICATE OF SERVICE

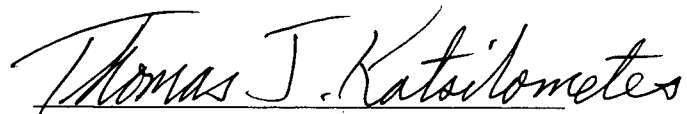
The undersigned hereby certifies that on this 9th day of June 2017, a true and correct copy of the foregoing **APPELLANT'S REPLY BRIEF** was served upon opposing counsel as follows:

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THOMAS J. KATSILOMETES
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DATED this 9th day of June 2017.


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