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Bettwieser v. Bettwieser Respondent's Brief Dckt. 47817

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

MARTIN BETTWIESER,

Plaintiff/Appellant,

vs.

CAROLE BETTWIESER,

Defendant/Respondent.

Ada County District Court No. CV01-19-05432

Supreme Court Docket No. 47817-2020

RESPONDENT'S BRIEF

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

Honorable Nancy Baskin, District Judge, Presiding

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RESPONDENT

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

CASES Page(s)

RULES

TRANSCRIPT

I. STATEMENT OF THE CASE

The Respondent, Carole Bettwieser, filed a Petition for Divorce with the Ada County Magistrate Court on November 7, 2018 in CV01-18-20821. At issue in the divorce was the division of community and separate property, and alleged marital agreements that the parties had entered into. The Appellant, Martin Bettwieser, filed an Answer and Counterclaim on December 18, 2018. Respondent sought a Civil Protection order against Appellant on March 19, 2019 in CV01-19-04776. A hearing was set for April 3, 2019.

On March 27, 2019, the Appellant filed a Complaint in Ada County District Court, alleging breach of contract (pertaining to the aforementioned marital agreements), among other causes of action. The Respondent filed a Motion to Dismiss Complaint on April 11, 2019, and sought an award of attorney fees and costs based on the frivolous nature of the complaint including but not limited to the fact that the marital agreements were already at issue within the divorce proceedings. A hearing was set for June 12, 2019, before the Honorable Judge Nancy Baskin. After a hearing on June 12, 2019, the Honorable Judge Nancy Baskin granted the Respondent's Motion to Dismiss Complaint, and further granted the Respondent's request for attorney fees and costs pursuant to Idaho Code §12-121. The Court issued an Order Dismissing Complaint on June 17, 2019. The Appellant filed an Objection to Proposed Order on June 17, 2019, a Motion to Set Aside Findings Alter or Amend Order for New Hearing on June 26, 2019, a Memorandum in Support of Motion to Set Aside Findings Alter or Amend Order for a New Proceeding on June 26, 2019, and an Objection to Proposed Order and Memorandum of Attorney Fees and Costs, also on June 26, 2019. The Court issued a Notice of Hearing on July 8, 2019, and set the Appellant's Motion for hearing on August 21, 2019. On July 10, 2019, the Respondent filed a Motion to Refer Consideration to the Administrative Judge of Whether Martin Bettwieser Should be Declared a Vexatios Litigant

Pursuant to I.C.A.R. Rule 59 ("Motion to Refer"), along with a supporting memorandum and affidavit. The Motion to Refer was also set for hearing on August 21, 2019. Multiple additional documents were filed prior to the August 21, 2019, but of particular importance for this appeal is the Motion to Disqualify with Cause, filed by the Appellant on August 16, 2019.

During the hearing on August 21, 2019, the Honorable Judge Nancy Baskin denied the Appellant's Motion to Disqualify with Cause, stating fully its reasoning on the record, including but not limited to the following:

> "So the Court finds that the party bringing the motion, the plaintiff, has not set forth sufficient grounds to justify that this Court needs to disqualify itself from the case. Rather, it appears that the plaintiff s dissatisfied with the Court's ruling and believes that there should be hearings when the Court is free to take certain action on its own if it thinks it's made an error. In a prior order it has the ability to sua sponte modify orders that it's issued and any modification is not – does not need to have a hearing before such modifications is made. So the Court finds no basis to disqualify itself in the case and that motion for the plaintiff is denied."

Transcript, P. 31, L. 15 – P. 32, L. 5. Also during the hearing, the Honorable Judge Nancy Baskin denied the Appellant's Motion to Set Aside Findings Alter or Amend Order for a New Proceeding. Judge Baskin stated her reasoning for denying the motion on the record. The Appellant filed a Motion to Reconsider, Set aside Amended Order Dismissing Complaint and Order for Attorney Fees on August 22, 2019, along with a supporting memorandum. Judge Baskin issued a Memorandum Decision and Order on Appellant's motion on October 29th, 2019, denying the motion. The Appellant filed a Motion to Clarify on November 6, 2019, and a Motion to Reconsider on November 7, 2019. The Judge issued an Order on Motion to Clarify and Motion for Reconsideration on November 14, 2019, denying both motions. The Appellant filed another Motion to Reconsider on November 14, 2019. The Court issued an Order Denying Third Motion for Reconsideration on January 17, 2020. Mr. Bettwieser filed a Notice of Appeal on February 19, 2020.

Meanwhile, the parties were divorced by a Judgment and Decree of Divorce on November 8, 2019 in CV01-18-20821. Mr. Bettwieser filed a Notice of Appeal in that case on January 28, 2020. In addition, after Ms. Bettwieser was granted her first Civil Protection Order against the Appellant on April 3, 2019, Appellant filed a Notice of Appeal on April 5, 2019. 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. The appeal is ongoing.

The Appellant was deemed a vexatious litigant in an Order Adopting Proposed Findings and Order of Issuance of Prefiling Order Declaring Martin Bettwieser a Vexatious Litigant filed by Melissa Moody, the Administrative District Judge, on March 3, 2020. The Appellant filed a Notice of Appeal on May 7, 2020. The appeal is ongoing.

II. STANDARD OF REVIEW

The trial court's findings of fact will not be set aside on appeal unless they are clearly erroneous such that they are not based upon substantial and competent evidence. *Stewart v. Stewart*, 143 Idaho 673, 676, 152 P.3d 544, 547 (2007). It is up to the trial courts to weigh conflicting evidence and judge the credibility of the witnesses, as such this Court will liberally construe the findings of fact in favor of the judgment entered. *Akers v. Mortensen*, 147 Idaho 39, 42, 205 P.3d, 1175, 1179 (2009). 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).

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).

An award of attorney fees is a factual determination, which this Court applies an abuse of discretion standard of review. *Smith v. Mitton*, 140 Idaho 893, 902, 104 P.3d 367, 375 (2004). "An award of attorney fees is a matter best left to the sound discretion of the trial court, and the burden is upon the appellant to demonstrate that the trial court abused its discretion." *Id.*

"When this Court reviews an alleged abuse of discretion by a trial court the sequence of injury requires consideration of four essentials. Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." *Lunneborg v. My Fun Life,* 163 Idaho 856, 863, 421, P.3d 187, 194 (2018).

III. ISSUES PRESENTED ON APPEAL

Respondent does not present any of her own substantive issues on appeal, but presents one issue by respectfully requesting her attorney fees and costs for defending this appeal. Appellant presented one issue on appeal: "Was the district court bias and erred and abuse it's discretion in dismissing the complaint and awarding attorney fees?"

IV. ARGUMENT

A. The District Court Did Not Show Bias and Did Not Err and/or Abuse Its Discretion by Dismissing the Complaint and Awarding the Defendant Attorney Fees.

The Appellant argues that the Court's dismissal of the action was improper, and was further an abuse of discretion. The Appellant has failed to set forward any applicable legal standards that would support his argument that the Court showed bias against him or otherwise erred and abused its discretion by dismissing the complaint and awarding the Respondent attorney fees, and for those reasons, we request that the Court affirm the District Court's findings.

The Appellant first argues that the Judge showed bias against him prior to the Court's dismissal of the action and during the hearing that followed the dismissal. Judge Nancy Baskin stated on the record during the June 12, 2019 hearing, "To begin with, a pro se litigant is held to the same standard as an attorney in arguing and responding to motions." Transcript, P. 14, L. 2-4. Judge Baskin mentioned the Appellant being held to the same standard as an attorney during the

August 12, 2019 hearing as well. The Appellant asserts that these statements show a preference for represented parties, however the Appellant has failed to logically set forward how Judge Baskin's statements show that preference, when a reasonable inference can be drawn that she was just making it clear that the Appellant needed to comply with all necessary guidelines, rules, and case law just as an attorney would. On the contrary, Judge Baskin's statements appeared to be aimed at giving the Appellant reasonable notice of what she expected of him throughout the proceedings.

Secondly, the Appellant asserts that he was prejudiced when the Court filed an Amended Order Dismissing Complaint on July 10, 2019, which simply changed the order so that the Complaint was dismissed without prejudice. After the hearing on June 12, 2019, Judge Baskin ordered the Respondent's attorney to file a proposed order dismissing the complaint. Counsel filed a proposed order on June 14, 2019, which did not contain the words "without prejudice". The Order Dismissing Complaint was signed by the Judge on June 17, 2019, and issued by the Court to both parties. The Appellant filed an Objection to Proposed Order on June 17, 2019, and objected based on the fact that the Order did not include the term "without prejudice". Then, once the Court issued the Amended Order containing the term "without prejudice", the Appellant became upset that the Court had included the language, although his request was that it be included. To date, the Respondent does not understand the basis of Appellant's assertion that making a change that he requested shows bias and/or prejudice against him. The Appellant does not seem to recognize that the Amended Order in fact gave him the opportunity to refile in the future, should he feel the need to.

The Appellant states, "The district court never held the defendant's accountable for serving upon Martin the proposed Amended Order dismissing complaint, but the court denied Martins

Objection to the Memorandum of Fees and Costs because he stated it as an "Objection" and not a "Motion to disallow. The Court required cited case for authority and argument from Martin and none from the defendant's and from other comparisons. Therefore, the facts sustain bias and prejudice against pro-se litigants and for attorneys." Appellant's Brief, P. 6. Besides the Appellant's statement being riddled with grammatical errors making it difficult to understand, the Appellant mentions a proposed order, his failure to file a Motion to Disallow Costs, and the Courts' alleged failure to ask Respondent's Counsel to cite case law, just as they asked him to. With regard to the proposed order, there is no requirement that a proposed order be submitted to opposing counsel prior to submission. Due to the nature of litigation with the Appellant, the Respondent did not serve proposed orders onto him because she knew they would be met with an objection regardless of their compliance with the Judge's orders. In this circumstance, the Respondent knew the order was following the Judge's order, and further was not instructed by the Judge to allow the Appellant to review the order prior to submission. With regard to the "Objection" as opposed to the "Motion to Disallow", Idaho Rule of Civil Procedure Rule 54(d)(5) states, "Within 14 days of service of a memorandum of costs, any party pay object by filing and serving a motion to disallow part or all of the costs." Idaho Rule of Civil Procedure Rule 54. Appellant's failure to file the correct document does not logically lead to the Court erring for ruling that he did not properly object. The Appellant is held to the same standard as an attorney, and his failure to property file the objection is not the Court's fault. In addition, the Appellant complains that the Court did not ask the Respondent to recite case law during the hearing. The Appellant, as made evident in his argument in his Appellant's Brief, often makes conclusory statements regarding the law without properly referencing the basis for his statement. Judge Baskin's repeated questioning of the basis of his argument is not inappropriate, nor is the fact that she did not ask Counsel for the Respondent

to do the same, as Counsel for the Respondent either stated her basis within her argument, or stated it within the pleadings that were filed.

With regard to attorney fees, the trial court has a wide range of discretion when deciding on whether or not to award attorney fees and costs. Appellant states that, "Borley v. Smith 149 Idaho 171, 187, 233 p.3d 102, 118 (2010) provides that in order to be entitled to attorney fees there must be authority and argument." Appellant's Brief P. 7. Further, he states, "A citation to statutes and rules authorizing fees, without more is insufficient. *Goldman,* 139 Idaho at 947-948, 88 P.3d at 733-67." Appellant's Brief P. 7. The Appellant's cites and analysis thereof are improper. First and foremost, *Borley v. Smith* states, in pertinent part,

> "In order to be entitled to attorney fees on appeal, authority and argument establishing a right to fees must be presented in the first brief filed by a party with this Court. Idaho App. R. 35(b)(5), 41; *Goldman v. Graham,* 139 Idaho 945, 947-48, 88 P.3d 764, 766-67 (2004). A citation to statutes and rules authorizing fees, without more, is insufficient. *Goldman,* 139 Idaho at 947-48, 88 P.3d at 766-67. Although both parties cute to the Idaho Appellate Rules, they submit no argument in their briefs as to why fees should be awarded under any statute or contract provision. Thus, we decline to award attorney fees to either party on appeal.

Borley v. Smith, 149 Idaho 171, 187 (Idaho 2010). *Borley v. Smith* discusses requesting fees on appeal, and is not relevant to the Respondent's request for attorneys in a District Court pleading and during a District Court hearing. Further, *Goldman v. Graham* states, in pertinent part:

> "Dr. Graham's request for attorney fees does not comply with I.A.R. 35(b)(6) because he failed to provide argument in support of his request. In his brief to this Court, Dr. Graham sets out his request for attorney fees and costs just below the statement of issues and then cites to I.A.R. 40, 41, and I.C § 12-121 for support of his request. However, Dr. Graham does not provide reasons why he should be awarded attorney fees on appeal. In fact, other than making the initial request just below his statement of issues, Dr. Graham never raises or addresses the issue again. Thus, Dr. Graham's mere reference to the request for attorney fees is not adequate. *Meisner v. Potlatch Corp.,* 131 Idaho 258, 263, 954 P.2d 676, 681 (1998); *Weaver v. Searle,* 131 Idaho 610, 616, 962 P.2d 381, 387 (1998). Therefore, this Court declines to address Dr. Graham's request for attorney fees because he failed to comply with the requirements of I.A.R. 35(b)(6)."

Goldman v. Graham, 139 Idaho 945, 88 P.3d 764 (Idaho 2004). *Goldman v. Graham* discusses requesting fees on appeal, and is not relevant to the Respondent's request for attorneys in a District Court pleading and during a District Court hearing. There is no requirement under the applicable rules cited, Rule 54(e) of the Idaho Rules of Civil Procedure and Idaho Code §§12-121, that a party include argument in their pleadings regarding the request for attorney fees. Further, Counsel for the Respondent did provide argument during the hearing on June 12, 2019, regarding her request for attorney fees as follows,

> "And it is our position that this – the plaintiff has brought this case frivolously, trying to push out the proceedings. Judge Cockerille did have to kind of put a delay on the family law case so we can be heard in front of you, understandably. But I do believe it is his position to try and push this out, push litigation between the parties out. Not necessarily in this case alone, but in a combination of all three of the cases. And based on all of that, we will be requesting attorney's fees for being here today and for him bringing this case based upon the code sections put forward in our motion to dismiss."

Transcript, P. 7, L. 13 – P. 8, L.1. Therefore, the Appellant's assertion that the Respondent failed to adequately support her claim for attorney fees is incorrect.

The Appellant has failed to set forward any reasonable argument regarding the District Court being biased against him, or otherwise abusing its discretion in dismissing the action and awarding attorney fees to the Respondent. Even if the Court did abuse its discretion in dismissing the action, the Appellant has failed to prove that the alleged error affected a substantial right, since the marital agreements at issue were fully litigated in the family law matter. Appellant instead repeatedly requests that the Court second-guess the District Court's decision regarding the same.

B. The Respondent Should Be Awarded Her Attorney Fees and Costs in this 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 failed to articulate the basis for his appeal, has appealed nearly every decision that has been decided adversely to him, has presented many arguments for the first time on appeal, and has further ignored relevant case law and relevant rulings from the District Court. The Appellant failed to show why the District Court incorrectly applied the law. The Appellant has misquoted case law in an attempt to argue the findings were in his favor, and has failed to set forward relevant facts and arguments from the prior proceedings that support the District Court's decision.

Respondent also requests fees pursuant to Idaho Code §§ 12-120 and 12-121. Attorney fees can be awarded under I.C. §§ 12-121 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. CONCLUSION

The Appellant essentially has asked this Court to reweigh and reevaluate the evidence, to second-guess the District Court's findings, and to arrive at a different conclusion than the District Court by reassessing the facts presented. The Appellant has failed to set forward a valid argument supporting his appeal of the District Court's dismissal of his complaint and subsequent award of attorney fees and costs to the Respondent. 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 be affirmed and that the Court order Appellant to pay attorney fees and costs to Respondent.

DATED this 1st day of February, 2021.

K. MITCHELL LAW, PLLC

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

Certificate of mailing or hand delivery

I certify that on this 1st day of February, 2021, I served a true and correct copy of the foregoing document upon the following by the method of delivery designated:

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☒ U.S. Mail ☐ Hand-delivered

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K. MITCHELL LAW, PLLC

By: /s/ Katelynn Mitchell
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