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SUPREME COURT CASE NO. 46696-2019

IN THE SUPREME COURT OF THE STATE OF IDAHO

SHANE DODGE and CHRISTINE DODGE, husband and wife,

Plaintiffs/Appellants,

v.

BONNERS FERRY POLICE DEPARTMENT, OFFICER
WILLIAM COWELL and OFFICER BRANDON BLACKMORE

Defendants/Respondents.

**RESPONDENT BONNERS FERRY POLICE
DEPARTMENT, OFFICER WILLIAM COWELL and
OFFICER BLACKMORE'S BRIEF**

Appeal from the District Court of the First Judicial District for the
State of Idaho, in and for the County of Boundary.

HONORABLE BARBARA A. BUCHANAN,
DISTRICT JUDGE PRESIDING

**SHANE DODGE and CHRISTINE DODGE
PRO SE**

**JENNIFER FEGERT
ATTORNEY FOR RESPONDENT
BONNERS FERRY POLICE DEPARTMENT, OFFICER
WILLIAM COWELL and OFFICER BRANDON BLACKMORE**

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I. STATEMENT OF THE CASE

A. Nature of the Case and Course of Proceedings Below.

This is an appeal from an Order of Dismissal with Prejudice entered by the First Judicial District of the State of Idaho, In and For the County of Boundary, Case No. CV 11-18-408. The District Court granted the defendants Bonners Ferry Police Department, Officer William Cowell and Officer Brandon Blackmore's Idaho Rule of Civil Procedure 12(b)(6) Motion to Dismiss. The Court dismissed the plaintiffs' tort law claims pursuant to Idaho Code § 6-901 *et seq.*, for plaintiffs' failure to file a notice of tort claim and pursuant to Idaho Code § 6-610 *et seq.*, for plaintiffs' failure to post a bond prior to commencing their cause of action.

B. Statement of Facts.

On or about August 27, 2018, appellants (hereinafter collectively referred to as "Dodges") filed a complaint alleging that Shane Dodge sustained injuries when he was arrested for obstructing an officer on June 17, 2018. R. Vol. I, p. 6. The complaint further alleged that Christine Dodge suffered damages for emotional distress. R. Vol. I, p. 10. Specifically, the complaint alleged the following causes of action against Sgt. William Cowell and Officer Brandon Blackmore: False arrest pursuant to Idaho Code § 19-603; Unnecessary and excessive use of force pursuant to Idaho Code § 19-610; Misdemeanor assault pursuant to Idaho Code § 18-901(a)(b); Misdemeanor battery pursuant to Idaho Code § 18-903(a)(b); False imprisonment pursuant to Idaho Code § 18-2901; Falsifying a police report pursuant to Idaho Code § 18-3201; and Misdemeanor assault on Christine Dodge pursuant to Idaho Code § 18-901(a)(b). R. Vol. I, pgs. 12-13. At the same time the Dodges filed their complaint, they filed a Motion for Relief and Waiver of Bond Requirement,

I.C. 131-3220. R. Vol. I, p. 30. All claims brought by the Dodges were brought pursuant to Idaho state law and pursuant to Idaho criminal statutes. R. Vol. I, pgs. 12-15. The Dodges did not alleged compliance with the notice provisions of the Idaho Tort Claims Act or compliance with the bond requirement pursuant to Idaho Code § 6-610.

On or about September 24, 2018, Defendants (hereinafter collectively referred to as “Officers”) filed an answer to the complaint and a demand for jury trial. R. Vol. I, p. 40. In their answer, the Officers admitted that they were acting within the course and scope of their employment at all times complained of by the Dodges. R. Vol. I, p. 45. The Officers raised as an affirmative defense the Dodges’ failure to comply with the Idaho Tort Claims Act. R. Vol. I, p. 46. Specifically, the Officers raised the affirmative defense “Any and all state law claims alleged by the plaintiffs are barred for plaintiffs’ failure to comply with the requirements of the Idaho Tort Claims Act as provided in Title 6, Chapter 9 of the Idaho Code.” R. Vol. I, p. 46.

On or about November 5, 2018, the Dodges filed a motion to change venue. R. Vol. I pgs. 50-52. On or about December 5, 2018, the Dodges withdrew their motion to waive the bond requirement and moved the court to set the sureties pursuant to Idaho Code § 6-610. R. Vol. I pgs. 55-56. On or about December 13, 2018, the Officers filed a Motion to Dismiss, pursuant to Idaho Rules of Civil Procedure 12(b)(6). R. Vol. I, p. 4. Because the Court had already scheduled a hearing on December 20, 2018, for the purpose of hearing the Dodges’ motions to change venue and to set sureties, and for the purpose of holding a scheduling conference, the Officers filed a Motion to Shorten Time for the Court to hear the Officers’ Motion to Dismiss. R. Vol. I, p. 4. The Officers’ motion to shorten time was made pursuant to Idaho Rules of Civil Procedure 7(b)(3) and

for the purpose of judicial economy so that all matters could be brought before the court at the time previously scheduled for hearing and because all parties would be present and before the court. On December 13, 2018, the trial court granted the Officers' motion to shorten time. R. Vol. I, p. 4. The order granting the motion to shorten time was entered approximately seven (7) days prior to the hearing.

At the hearing scheduled on December 20, 2018, the Dodges sought a continuance of the hearing for the purpose of allowing them to file a written response to the Officers' motion to dismiss. The Honorable Barbara Buchanan denied the Dodges' request for a continuance, noting, "normally I would grant you a continuance. But I've reviewed the case law, and Ms. Fegert and the defendants are absolutely right. If you haven't filed a tort claim, you are—it has to be filed within 180 days of the injury that you're suing over... you can't fix that." Tr. Vol. I, p. 21, L. 25; p. 22, L. 1-8. The Court recognized that the issue of law was clear in that the Dodges' failure to file a notice of tort claim, pursuant to Idaho code § 6-901 *et seq.*, was dispositive of their claims against the Officers. Tr. Vol. I, p. 22, L. 15-19. The Court held that granting additional time to the Dodges so that they could prepare a response to the Officers' motion to dismiss would be futile because the time for which to file a notice of tort claim had expired, and therefore, pursuant to statute, the Dodges' claims must be dismissed. The trial court recognized that refusing to grant the Dodges additional time to defend their claims would not prejudice the Dodges because they could not correct their failure to file a tort claim. Tr. Vol. I, p. 22, L. 1-8. The trial court further recognized that the Dodges' failure to file a bond, pursuant to Idaho Code § 6-610 was also dispositive of their claims. Tr. Vol. I, p. 25, L. 1-15.

II. ADDITIONAL ISSUES PRESENTED ON APPEAL

A. Respondents Are Entitled To Costs And Attorney Fees on Appeal Pursuant to Idaho Code §12-117 and/or Idaho Code § 12-121.

The City and its Officers are entitled to recover their costs and attorney fees pursuant to Idaho Code § 12-117 and/or § 12-121, because the statutory mandates found in Idaho Code § 6-906 and Idaho Code § 6-610 are clear and are required as conditions precedent to filing suit against a law enforcement officer. Overwhelming case law makes it clear that those statutory requirements must be met prior to filing suit and therefore the plaintiffs' appeal was brought unreasonably and without reasonable basis in law or fact. Idaho Code § 12-117 provides in pertinent part:

Attorney's fees, witness fees and expenses awarded in certain instances:

(1) Unless otherwise provided by statute, in any proceeding involving as adverse parties a state agency or a political subdivision and a person, the state agency, political subdivision or the court hearing the proceeding, including on appeal, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

(2) If a party to a proceeding prevails on a portion of the case, and the state agency or political subdivision or the court hearing the proceeding, including on appeal, finds that the nonprevailing party acted without a reasonable basis in fact or law with respect to that portion of the case, it shall award the partially prevailing party reasonable attorney's fees, witness fees and other reasonable expenses with respect to that portion of the case on which it prevailed.

See Idaho Code § 12-117(1) and (2).

Idaho Code § 12-121 also provides for the award of attorney fees to the prevailing party on appeal. Idaho Code § 12-121 provides:

Attorney's fees- In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties, provided that this section shall not alter, repeal or amend any statute which otherwise provides for the award of attorney's fees. The term "party" or "parties" is defined to include any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

The standard for an award of attorney fees on appeal is the same under I.C. § 12-117 as it is under I.C. § 12-121. An award of attorney's fees is appropriate when the appeal is brought frivolously, unreasonably, or without foundation. *Gatchel v. Butler*, 104 Idaho 876, 664 P.2d 783 (Idaho App. 1983); *Sacred Heart Med. Ctr. v. Boundary County*, 138 Idaho 534, 66 P.3d 238 (2003). An award of fees is allowed under Idaho Code § 12-121 when an appeal turns on the application of settled law to undisputed facts and the appellant has made no substantial showing that the lower court misapplied the law. *Wolsk Bros. v. Hudspeth Sawmill Co*, 116 Idaho 714, 779 P.2d 28 (Idaho App. 1989). "Where the appellant fails to present any significant issue on appeal regarding a question of law, where no findings of fact made by the trial court are clearly or arguably unsupported by substantial evidence, where we are not asked to establish any new legal standards or modify existing ones, and where the focus of the case is on the application of settled law to the facts, the appeal is deemed to be without foundation." *Troche v. Gier*, 118 Idaho 740, 742, 800 P.2d 136, 138 (Idaho App. 1990). Under those circumstances, attorney fees should be awarded to the respondent. *Id.* at 742.

This Court has stated that the lack of legal or factual grounds for an appeal, alone, is generally not enough to support an award of attorney fees without showing that the appeal was brought for an improper purpose. *Shriner v. Rausch*, 141 Idaho 228, 232, 108 P.3d 275, 375

(2005). However, this Court has also stated that an “improper purpose may be inferred where an appeal is brought after the district court has advised counsel of the lawsuit’s substantial failings.” *Glaze v. Deffenbaugh*, 144 Idaho 829, 834, 172 P.3d 1104, 1109 (2007).

As shown below, this is a case where the pursuit of an appeal is not warranted under existing law. The Dodges have made no showing that the lower court misapplied the law to the facts of this case. The trial court advised the Dodges, on the record in the underlying matter, that the law in Idaho is well settled that a claimant must file a notice of tort claim and/or bond prior to filing suit against a law enforcement officer or agency, the failure of which cannot be remedied. Tr. Vol. I, p. 22, L. 1-8; p. 23 L. 24-25; p. 24, L. 1-2. There is no remedy for the Dodges’ failure to comply with the requisite statutes prior to filing suit and therefore their appeal of the District Court’s dismissal is frivolous, unreasonable and without foundation as a matter of law.

III. ARGUMENT

A. Standard of Review.

The Court’s standard of review for an order of the district court dismissing a case pursuant to I.R.C.P. (12)(b)(6) is the same as the summary judgment standard of review. *BHA Investments, Inc., v. State*, 138 Idaho 348, 63 P.3d 474 (2003); citing *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 398, 987 P.2d 300, 310 (1999). After reviewing all facts and inferences from the record in favor of the non-moving party, the Court will ask whether a claim for relief has been stated. *Coghlan*, 133 Idaho at 398. “The issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims.” *BHA Investments*, 138 Idaho at 350. In addition, the Court reviews an appeal from an order of summary judgment *de novo*.

“Ergo, a district court’s dismissal of a complaint under I.R.C.P. 12(b)(6) shall be *de novo*.” *Taylor v. McNichols*, 149 Idaho 826, 832, 234 P.3d 642, 648 (2010).

B. The Dodges Failed to Comply With The Idaho Tort Claims Act.

1. The District Court Did Not Err When it Dismissed the Dodges’ Complaint for Failure to File Notice of Tort Claim.

The Dodges brought state law claims against Sgt. Cowell and Officer Blackmore, who were employed with the Bonners Ferry Police Department and acting in their official capacity as law enforcement officers. All tort claims against a governmental entity, or employees thereof, are governed by the provisions of Idaho Code § 6-901, *et seq*, the Idaho Tort Claims Act. Under the Idaho Tort Claims Act, "No claim or action shall be allowed against a governmental entity or its employee unless the claim has been processed and filed within the time limits prescribed by this act." I.C. § 6-908. The applicable time limit is found in Idaho Code § 6-906, which states:

All claims against a political subdivision arising under the provisions of this act and all claims against an employee of a political subdivision for any act or omission of the employee within the course or scope of his employment shall be presented to and filed with the clerk or secretary of the political subdivision within one hundred eighty (180) days from the date the claim arose or reasonably should have been discovered, whichever is later.

The failure to file a notice of tort claim within the 180-day time limit acts as a bar to any future action. *Mallory v. City of Montpelier*, 126 Idaho 446, 885 P.2d 1162 (Idaho App. 1994). Compliance with the Idaho Tort Claim Act's notice requirement is a mandatory condition precedent to bringing suit, the failure of which is fatal to a claim, no matter how legitimate. I.C. §6-908; *McQuillen v. City of Ammon*, 113 Idaho 719, 747 P.2d 741 (1987); *Overman v. Klein*, 103

Idaho 795, 654 P.2d 888 (1982); *Smith v. City of Preston*, 99 Idaho 618, 586 P.2d 1062 (1978). The statutory period within which all claims against a political subdivision must be filed begins to run from the occurrence of the wrongful act, even though the full extent of the damages may be unknown or unpredictable at the time. *Ralphs v. City of Spirit Lake*, 98 Idaho 225, 560 P.2d 1315 (1977).

The Dodge's complaint alleges state law claims arising out of Shane Dodge's arrest on June 17, 2018. In order to comply with the Idaho Tort Claims Act, Idaho Code § 6-901 *et seq.*, the Dodges must have filed a notice of tort claim on or before December 13, 2018, and *prior* to bringing suit against the Officers. Filing a notice of tort claim is a mandatory condition precedent to bringing suit and the Dodges' failure to file a tort claim is fatal to their claims against the Officers. *See Overman*, 103 Idaho at 797.

The Dodges assert on appeal that because the Officers were "properly served the Complaint," and because the Officers answered the complaint, the Officers forfeited any argument with regard to the Dodges failure to file notice. The Dodges' cite to *Sysco International Food Serv. v. City of Twin Falls*, 109 Idaho 88, 705 P.2d 548 (Idaho App. 1985) to support their argument, yet the Dodges reliance on *Sysco* is misplaced. In *Sysco*, a vehicle driven by one of Sysco's employees, Larry Smith, collided with a vehicle owned by the City of Twin Falls. *Id.* at 89. Smith went to the City's insurance agent, ABF, and filed a claim against the City. *Id.* ABF accepted the claim and referred that claim to the City's insurance carrier CNA, who then investigated the claims. *Id.* CNA later called Smith and told him his claim was denied. *Id.* After

retaining counsel, Sysco filed a written notice of tort claim upon the City pursuant to I.C. § 6-906. *Id.* CNA again denied the claim and Sysco filed suit against the City. *Id.*

The City filed a motion for summary judgment, arguing that Sysco did not properly file a notice of tort claim within the time limits of § 6-906 because the written tort claim notice was filed approximately nine months after the collision. *Id.* The trial court granted the City's motion for summary judgment and dismissed Sysco's claims. *Id.* The appellate court disagreed with the trial court's ruling and remanded the matter back to the trial court. The appellate court noted that Smith had given adequate notice to the City of his claims when he first went to ABF and ABF referred the claim to CNA. The court found that "[w]hether the claim was made orally or in writing is irrelevant since ABF accepted and investigated the claim." *Id.* at 91. The court reasoned that the purpose of the notice requirement in § 6-906, which is to promote prompt investigation and to facilitate an early and amicable resolution of meritorious claims, was clearly met in that case since ABF had received, investigated and denied the claim. *Id.*

The court's holding in *Sysco* in no way stands for the proposition that filing a lawsuit under the Idaho Tort Claims Act is sufficient notice under Idaho Code § 6-906, or that a party forfeits its right to argue compliance with the tort claims act once a complaint has been answered. Under Idaho Code § 6-906, the governmental entity must be apprised of the facts giving rise to a plaintiff's claims *prior to* filing suit in order to comply with Idaho Code § 6-906 and it must be presented to that agency within 180 days in which the claim arose. The Dodges confuse service of process of a complaint filed under the Idaho Tort Claims Act with the notice requirement found in Idaho Code § 6-906. As this Court is aware, the notice requirement in Idaho Code § 6-906 is

different and apart from the filing of the actual complaint and is a condition precedent to bringing a lawsuit.

The Dodges failed to notify the Bonners Ferry Police Department, either orally or in writing, of their claims against the department and its officers prior to filing suit. The Dodges also failed to allege compliance with the Idaho Tort Claims Act in their complaint and the records of the City of Bonners Ferry shows that no tort claim was filed against the police department, the City of Bonners Ferry, or Officers Cowell and Blackmore, prior to the Dodges filing suit. Idaho Code § 6-908 requires dismissal of the Dodges' complaint with prejudice. As such, the trial court did not err when it dismissed the Dodges' complaint for their failure to file a notice of tort claim.

2. The District Court Did Not Err When it Dismissed the Dodges' Complaint for Failure to Post a Bond.

As shown by the files and records in this case, the Dodges failed to file the required undertaking prior to filing suit and therefore they are prohibited from proceeding with their claims against the Officers. At the time this action was commenced, the Dodges failed to file the requisite bond and instead filed a Motion for Relief and Waiver of Bond Requirement. R. Vol. I, p. 30. Because the Dodges filed their motion for relief and waiver at the same time they filed their complaint, their motion for waiver and to set sureties was untimely and barred by Idaho Code § 6-610.

Idaho Code § 6-610 provides in relevant part:

For purposes of this section, a "law enforcement officer" shall be defined as any court personnel, sheriff, constable, peace officer, state police officer... or their employees or agents, or any other person charged with the duty of enforcement of the criminal, traffic

or penal laws of this state or any other law enforcement personnel or peace officer as defined in Chapter 61, title 19, Idaho Code.

Before any civil action may be filed against any law enforcement officer or service of civil process on any law enforcement officer, when such action arises out of, or in the course of the performance of his duty, or in any action upon the bond of any such law enforcement officer, the proposed plaintiff or petitioner, **as a condition precedent** thereto, shall prepare and file with, and at the time of filing the complaint or petition in any such action, a written undertaking with at least two (2) sufficient sureties in an amount to be fixed by the court.

Idaho Code § 6-610 (emphasis added).

This Court has established the procedure under Idaho Code § 6-610(2) and I.R.C.P. 27

(a)(1) where a plaintiff seeks to have the bond requirement waived or reduced.

“We hold that I.C. § 6-610(2) plainly requires a plaintiff to post bond before it initiates suit against a law enforcement officer...a plaintiff may invoke the jurisdiction of a district court by filing with the court, located in the county where the law enforcement officer performs his or her official duties, a petition requesting an order fixing the amount of the bond. The petition should show that the petitioner expects to be a party to an action against a law enforcement officer, the subject matter of the expected action and the fact sufficient for the court to establish the amount of the bond Plaintiff must post **before** it files suit or serves process.”

See Allied Bail Bonds, Inc. v. Cty. Of Kootenai, 151 Idaho 405, 410, 258 P.3d 340, 345 (2011) (emphasis added).

The Dodges filed their cause of action naming Sgt. Cowell and Officer Blackmore as defendants acting within the course and scope of their employment as law enforcement officers. As such, Sgt. Cowell and Officer Blackmore are entitled to the benefits and protections of Idaho Code § 6-610. Posting bond is “mandatory” and failure to post bond requires the trial court judge

to dismiss the claims immediately. Idaho Code § 6-610(5); *Greenwade v. Idaho State Tax Commission*, 119 Idaho 501, 503, 808 P.2d 420, 422 (Idaho App. 1981). Filing the bond is not only necessary, it is a *condition precedent* to filing the suit. *Allied*, 151 Idaho at 411, 258 P.3d at 346 (holding that the district court properly dismissed claims against a sheriff because the plaintiff filed the required bond one day after filing the complaint); see also *Greenwade*, 119 Idaho at 503, 808 P.2d. at 422. “Where the complaint shows on its face... that the action is against peace officers and arises out of or in the course of the performance of the duty of such, if I.C. § 6-610 has not been complied with, the action must be dismissed.” *Beehler v. Fremont County*, 145 Idaho 656, 659, 182 P.3d 713, 716 (Idaho App. 2008). If the bond requirement has not been met, Idaho Code § 6-610(4) and § 6-610(5) permit an objection and dismissal of the claims. *Allied*, 151 Idaho at 410.

If the bond requirement has not been met, Idaho Code § 6-610(4) and § 6-610(5) permit an objection and dismissal the claims. *Allied*, 151 Idaho at 410. Specifically, Idaho Code § 6-610 states in relevant part:

(4) **At any time during the course of a civil action** against a law enforcement officer, the defendant or respondent may except to either the plaintiff’s or petitioner’s failure to file a bond or to the sufficiency of the sureties or the amount of the bond.

(5) When the defendant or respondent excepts to the plaintiff’s or petitioner’s failure to post bond under this section, the judge shall dismiss the case.

Idaho Code § 6-610(4) and § 6-610(5)(emphasis added).

The Dodges filed their motion for relief from the bond requirement and complaint for damages together on August 27, 2018. R. Vol. I, pgs. 6, 30. Approximately four (4) months later, the Dodges withdrew their motion to waive the bond requirement and instead moved the trial court to set two sureties in the matter. R. Vol. I, pgs. 53-57. On December 13, 2018, the Officers filed their motion to dismiss, taking exception to the Dodges' failure to post bond, as allowed by Idaho Code §§ 6-610 (4) and (5). Because the Dodges failed to file the statutorily required bond prior to filing their complaint, and because the Officers took exception to their failure to post bond in their motion to dismiss, the trial court did not err when it summarily dismissed the Dodges' complaint.

3. The District Court Did Not Err In Granting The Officers' Motion to Shorten Time to Hear Motion to Dismiss.

The Idaho Rules of Civil Procedure 7 provides in pertinent part:

(3) Filing and serving motions, affidavits, and briefs; Time limits.

(A) A written motion, affidavit(s) supporting the motion, memoranda or briefs supporting the motion, if any, and, if a hearing is requested, the notice of hearing for the motion, must be filed with the court and served so as to be received by the parties at least 14 days prior to the day designated for hearing.

(B) Affidavit(s) opposing the motion and opposing memoranda or briefs, if any, must be filed with the court and served so as to be received by the parties at least 7 days before the hearing.

...

(H) Any exception to the time limits in this rule may be granted by the court for good cause shown. If time does not permit a hearing or response on a motion to extend or shorten time, the court may rule without opportunity for response or hearing.

Idaho Rules of Civil Procedure 7(b)(3).

Courts have recognized the importance of the civil rules concerning the time requirements for filing and service of motions. *See Keeven v. Estate of Keeven*, 126 Idaho 290, 296, 882 P.2d 457, 463 (Idaho App. 1994) (decided under prior Idaho Rule 6(b)). The purpose of such rules is to provide sufficient notice of issues to be addressed and relief sought so that the opposing party may adequately prepare to present its position at hearing. *Id.* However, the notice rules are not jurisdictional and they do not provide grounds for reversal on appeal for a party who has no substantive defense to the motion and who was not prejudiced by the inadequate notice. *Id.*; *citing Jarman v. Hale*, 112 Idaho 270, 272, 731 P.2d 813, 815 (Idaho App.1986) (if no prejudice results from the failure to provide the required notice then proceeding with the motion may be proper). Untimely notice of a hearing requires no relief on appeal unless the aggrieved parties show that the untimeliness of the notice prejudiced them in some way. *Berg v. Kendall*, 147 Idaho 571, 577, 212 P.3d 1001, 1007 (2009). It is within the magistrate's discretion whether to hear a motion upon shortened time when the magistrate determines good cause exists. *Brinkmeyer v. Brinkmeyer*, 135 Idaho 596, 600, 21 P.3d 918, 923 (2001); *citing Sun Valley Potatoes, Inc., v. Rosholt, Robertson & Tucker*, 133 Idaho 1, 981 P.2d 236 (1999).

The Dodges cannot show that they were unfairly prejudiced at the trial court level. There is nothing in the record that would show that if the Dodges had received fourteen (14) days' notice of the Officers' intent to bring their motion to dismiss, they would have prevailed against the Officers' motion. The issues raised in the Officers' motion were dispositive and no amount of additional time would have allowed for the Dodges to correct their failure to file a notice of tort claim or their failure to post bond prior to filing their lawsuit. The trial judge in this matter properly

evaluated the relevant factors involved in determining whether good cause existed to grant the Officers' motion to shorten time and noted that because all parties were present, and because the Officers' motion was dispositive with regard to the issues raised in motion, there was no prejudice to the Dodges in hearing the Officer's motion. Tr. Vol. I, p. 25, L. 1-15.

4. The District Court Did Not Err in Denying the Dodges' Motion for a Continuance as Additional Time to Respond Would Have Been Futile.

The decision to grant or deny a motion for continuance is within the discretion of the trial court. *Gubler v. Boe*, 120 Idaho 294, 815 P.2d 1034 (1991); *State v. Payne*, 146 Idaho 548, 567, 199 P.3d 123, 142 (2008). The denial of a motion for continuance must not be overruled absent an abuse of discretion. *Gubler*, 120 Idaho at 296. As asserted above, giving the Dodges additional time to file a written response to the Officers' motion to dismiss would not have cured the deficiency in their failure to file a notice of tort claim and/or to post a bond. The Dodges failure to timely file a notice of tort claim, or to post a bond, could not be remedied by granting them any additional time and therefore the Dodges suffered no prejudice from the Court in its denial to grant request for a continuance.

III. CONCLUSION

The District Court did not err when it dismissed the Dodges' complaint for failure to comply with the Idaho Tort Claims Act notice requirement pursuant to Idaho Code § 6-901 *et seq.*, and for the Dodges' failure to post a bond pursuant to Idaho Code § 6-610. Granting the Dodges additional time to file a written response to the Officers' motion to dismiss would not have

corrected the Dodges' failure to comply with those statutes prior to filing suit and therefore summary dismissal was appropriate. The Officers respectfully request that this Court affirm the decision of the lower court and grant the Officers their costs and attorney's fees on appeal.

DATED this 10th day of May, 2019.

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