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

BRIAN MEDRAIN dba EXCELLENCE  
HEATING AND COOLING,

Plaintiff-Respondent,

v.

JADE LEE, an individual, BING LEE, an  
individual, and GOLDEN CHINA LIMITED  
LIABILITY COMPANY, an Idaho limited liability  
company,

Defendants-Appellants

and

BING LEE, an individual,

Defendant

Supreme Court Docket No. 46819-2019

Bingham County District Court  
CV-2017-0109

Appeal from the District Court of the Seventh Judicial District for Bingham.  
Honorable Darren B. Simpson, District Judge, presiding

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**APPELLANTS' BRIEF ON APPEAL**

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## STATEMENT OF THE CASE

### A. Statement of Case

At issue is whether the failure to sign a notice of appeal, from the magistrate to the district court, may be cured or whether it is a jurisdictional defect. In this case, Jade Lee and her husband Bing Lee ran a restaurant under the name Golden China and organized as an LLC. Bing contracted for improvements to the restaurant with Brian Medrain. A dispute arose between Bing Lee and Medrain as to the completeness of the work and payment. Medrain sued Bing, Jade and Golden China in magistrate court and the three defendants filed counterclaims. The magistrate ruled in Medrain's favor. A notice of appeal was timely filed naming Bing Lee, Jade Lee, and Golden China as appellants. Although all three appellants continued to be represented by the same counsel, neither the counsel nor Jade Lee signed the notice. The notice was signed by Bing Lee as pro se appellant. Medrain did not object to the notice of appeal and Bing Lee, Jade Lee and Golden China appeared in the district court appellate case. After trial counsel withdrew, Bing Lee, Jade Lee, and Golden China obtained new counsel and filed an Amended Notice of Appeal correcting the lack of signature on the notice of appeal.

### B. Course of Proceedings and Statement of Facts.

Appellant Jade Lee and her husband Bing Lee operated Golden China Restaurant through Appellant Golden China Limited Liability Company ("Golden China"). Bing Lee was the principal and primary owner. (R. Vol. I, p. 29). In 2016, Bing Lee contracted with Brian Medrain, dba Excellence Heating and Cooling ("Medrain"), to remodel a portion of the premises,

specifically including installation of a venting system for the Mongolian grill to draw air from above the grill and supply makeup air into the restaurant.

In October 2016, Medrain filed suit against Jade Lee, Bing Lee, and Golden China for breach of contract and quantum meruit/quasi contract, alleging that he had not been paid for his services. (R. Vol. I, p. 12-17). Medrain's counsel verified at trial that the contractual claims related to an alleged contract between Bing Lee and Medrain, for work to a premises operated by Bing and Jade Lee and on the basis that "[t]hey are married – Bing and Jade – as we understand it." (R. Exhibits, P. 81, Tr. 13:3 – 23). Medrain sought a trial before the magistrate division as the amount in controversy was less than \$35,000. (R. Vol. I, p. 22).

Bing Lee, Jade Lee and Golden China, filed their Answer and Counterclaim, alleging that Medrain had failed to perform on the contract and that the Defendants had suffered economic damages as a result. (R. Vol. I, p. 29-36.) Defendants' Complaint was verified by Bing Lee. (Id.)

Trial was held on October 3 and 4, 2017. (R. Vol. I, p. 41). The Magistrate Court's Findings of Fact Conclusions of Law and Order, filed October 6, 2017, denied Defendants' claims and granted Medrain's claims in the amount of \$6,400.00. (R. Vol. I, p. 45).

The Court entered its first Judgment on November 1, 2017, allowing Plaintiff to "recover from Defendants, Jade Lee and Bing Lee, husband and wife, and Golden China Limited Liability Company, Jointly and severally." (R. Vol. I, p. 46 – 48).

A Judgment Re Attorneys Fees and Costs was entered on December 1, 2012 in the amount of \$8,518.42. (R. Vol. I, p. 49 -51).

On December 12, 2017, Defendants' filed their notice of appeal that (1) named Jade Lee, Bing Lee, and Golden China Limited Liability Company as Appellants; (2) named Brian Medrain dba Excellence Heating and Cooling as Respondent; (3) was timely filed from an appealable judgment; and (4) was properly served on counsel for Respondent. (R. Vol. I, p. 52 – 59). The notice of appeal was not, however, signed by the Defendants' counsel, nor was it signed by Jade Lee. (Id.)

The Judgment and Judgment for attorneys fees were subsequently amended on on January 29, 2018. (R. Vol. I, p. 60 – 65).

Jade Lee and Golden China continued to appear in the district court's appellate proceeding through their prior counsel of record David Parmenter. On August 2, 2018, nearly eight months after the filing of the notice of appeal, Parmenter moved the District Court for permission to withdraw as attorney for Jade Lee and Golden China in the ongoing appeal. (R. Vol. I, p. 8 – 9, 73). The District Court heard the motion at status conference on August 6, 2018, and issued its order allowing Parmenter's withdrawal on August 8, 2018. (R. Vol. I, p. 9).

Appellants' current counsel entered his appearance on August 28, 2018, for Appellants and Bing Lee. At the same time, Appellants and Bing Lee filed their Amended Notice of Appeal and their request for trial de novo due to the insufficiency of the trial transcript.

On October 11, 2017, Medrain objected to both the request for a trial de novo and moved to strike the appeal as to all three Defendants, or in the alternative, as it pertains to Jade Lee and Golden China, raising for the first time a violation of Idaho R. Civ. P. 11(a)(1) and/or that Bing Lee could not sign the notice of appeal on behalf of other parties. (R. Vol. I, p. 72 – 76).

On January 11, 2019, the District Court granted in part Medrain's motion to dismiss, dismissing Jade Lee and Golden China from the Appeal. (R. Vol. I, p. 11, 96 – 103, 104). At the same time, the District Court granted a trial de novo as to the remaining parties, pending a decision in this appeal. (R. Vol. I, p. 107).

#### ISSUES PRESENTED ON APPEAL

1. Whether the lack of a signature, by counsel or pro se appellant, is a jurisdictional defect despite a signature not being specifically required under Idaho Rule of Civil Procedure 83(d), which establishes what a notice of appeal from the magistrate division to the district court must contain?

2. To the extent that Idaho Appellate Rule 17 applies to a notice of appeal from the magistrate division to the district court, whether an amended notice of appeal pursuant to Rule 17(m) providing the signature of counsel, relates back to the date of filing of the original notice of appeal?

3. Whether completing a notice of appeal in conformity with the form provided by the Idaho Appellate Rules amounts to practicing law without a license?

#### ATTORNEY FEES ON APPEAL

Jade Lee and Golden China request attorney fees pursuant to Idaho Code Sections 12-121 and 12-123, Idaho Rule of Civil Procedure 54 and Idaho Appellate Rules 35(a)(5), 35(b)(5) and 41.

## ARGUMENT

Appeals from the Magistrate Court are governed by Idaho Rule of Civil Procedure 83, which establishes the District Court's authority and the procedural rules on appeal. Rule 83(d) specifically sets forth the information that a notice of appeal to the district court "must contain." Rule 83(d) does not require that the notice of appeal contain a signature.<sup>1</sup>

Under similar circumstances, the United States Supreme Court has determined that the failure of an appellant to sign a notice of appeal is not a jurisdictional defect. In *Becker v. Montgomery*, 532 U.S. 757, 121 S.Ct. 1801 (2001) the Sixth Circuit Court of Appeals dismissed an inmate's civil appeal because the inmate did not sign the notice of appeal. 532 U.S. at 761, 121 S.Ct. at 1805-1805. Similar to I.R.C.P. 83, the appellate rule at issue in *Becker*, Federal Rule Appellate Procedure 3(c)(1), set forth the requirements of a notice of appeal without specifically requiring that the notice be signed. *Montgomery* argued that Rule 11 of the Federal Rules of Civil Procedure required that all filings be signed and that the signature requirement was

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<sup>1</sup> Idaho R. Civ. Proc. 83(d) "A notice of appeal to the district court must contain the following information:

- (1) the title of the court from which the appeal is taken;
- (2) the title of the court to which the appeal is taken;
- (3) the date and heading of the judgment or order being appealed;
- (4) a statement as to whether the appeal is taken upon matters of law, or on matters of fact, or both;
- (5) whether the testimony and proceedings of the original trial or hearing were recorded or reported, the method of recording or reporting, and the name of the party or persons who has the recording or reporting; and
- (6) a preliminary statement of the issues the appellant intends to assert in the appeal, which may be filed separately within 14 days after filing the notice of appeal and which does not prevent the appellant from asserting other issues on appeal. "

jurisdictional. The Supreme Court determined, however, that while the requirements of Federal Appellate Rule 3 rule were jurisdictional, the requirement to sign was found in a separate rule, Rule 11, and therefore not a jurisdictional requirement. “Notably, a signature requirement is not among Rule 3(c)(1) specifications, for Civil Rule 11(a) alone calls for and controls that requirement and renders it nonjurisdictional.” *Becker*, 532 U.S. at 766, 121 S.Ct. at 1807. The Court stated that the “[petitioner] proffered a correction of the defect in his notice in the manner Rule 11(a) ... permits ... and therefore should not have suffered dismissal ... for nonobservance of the Rule.” *Becker*, 532 U.S. at 765, 121 S.Ct. at 1801.

Post *Becker*, Circuit Courts have required notice and an opportunity to cure non-signed pro se appeals, even where the filed appeal names multiple non-signing appellants. In *Wash v. Johnson*, 343 F.3d 685 (5th Cir. 2003) the Fifth Circuit Court of Appeals was confronted with a pro se notice of appeal “filed, purportedly on behalf of all [twenty-four] plaintiffs but signed by only one.” *Wash*, 343 F.3d at 687. The *Wash* Court determined that *Becker* overruled the Fifth Circuit’s prior decisions holding that the signature requirement can be cured only within the time for filing a notice of appeal under Fed. R. App. P. 4(a) and instead found that the signature requirement could be cured if properly supplied once the omission is called to the non-signing party’s attention. *Wash*, 343 F.3d at 689.

Admittedly, when the provisions of I.R.C.P. 83 fail to address a specific procedure, the District Court is directed to look at both the Idaho Rules of Civil Procedure and the Idaho Appellate Rules. “Any appellate procedure not specified in this rule must be in accordance with the Idaho Rules of Civil Procedure or the Idaho Appellate Rules.” Idaho R. Civ. P. 83(q)

As to the requirements for notices of appeal from the magistrate to the district court, they are set forth with specificity by Idaho R. Civ. P. 83(d). To the extent, however, that this court finds a signature requirement in either Idaho R. Civ. P. 11 or Idaho App. R. 11.2, it should adopt the reasoning of *Becker* that the lack of signature is a curable defect.

Similarly, Idaho Appellate Rule 17 sets forth the required contents of a notice of appeal to the Idaho Supreme Court, with Rule 17(n) requiring “the name and signature of the attorney for the appellant, or name of appellant if the appellant does not have an attorney.” Idaho Appellate Rule 17(m), however provides a mechanism for curing any such defect.

Idaho Appellate Rule 17(m) sets forth the process for correcting a deficiency in the notice of appeal, “In the event the original notice of appeal erroneously states any of the information and requirements of this rule or additional facts arise after the filing of the initial notice of appeal, the appellant may thereafter file an amended notice of appeal correctly setting forth the facts and information.” Furthermore, Rule 17(m) specifically provides that “[i]f the original notice of appeal was timely filed from an appealable judgment, order or decree, the amended notice of appeal will relate back to the date of filing of the original notice of appeal.”

Thus, I.A.R. 17(m) sets forth the requirements that are necessary to confer jurisdiction, a “timely filed from an appealable judgment,” while allowing for the liberal correction of the remaining requirements. Here, It is undisputed that the notice of appeal was timely filed was not taken from an appealable judgment. Medrain ws on notice that both Jade Lee and Golden China were appellants and failed to timely raise any objection to their appearance based upon the non-

signing of the notice of appearance.. Jade Lee and Golden China properly corrected any deficiency by filing their Amended Notice of Appeal prior Medrain's motion to dismiss.

The original notice of appeal filed on behalf of Jade Lee and Golden China was not the result of the practice of law without a license.

The District Court granted the motion to dismiss the appeals of Jade Lee and Golden China, under the theory that a notice of appeal, filed by Bing Lee and naming Jade Lee and Golden China as appellants, amounted to Bing practicing law without a license. (R. Vol. I, p. 99 – 101). In its decision, the District court relied upon two cases *State v. Bettwieser*, 143 Idaho 582, 149 P.3d 857 (2006) and *Citibank (South Dakota), Na v. Carroll*, 148 Idaho 254, 220 P.3d 1073 (2009), both of which addressed the practice of law by a non-party to the suit over the objections of other parties.

Bettwieser, a [REDACTED] charged with an infraction, wished to have her father represent her at trial over the objections of the prosecutor. *Bettwieser*, 143 Idaho at 584-585, 149 P.3d at 859, 860. In *Carroll*, this Court, in dicta, commented negatively upon a district court allowing the husband of a party to, among other things, argue motions in hearings before the district court. *Carroll*, 148 Idaho at 260, 220 P.3d at 1079.

In this matter, Jade Lee and Golden China LLC have been represented at all hearings by counsel. Following the magistrate trial, the parties filed a notice of appeal naming all three

parties but with Bing Lee as the sole signer.<sup>2</sup> Neither party has presented evidence regarding who drafted the notice of appeal, however, the form of a notice of appeal under either Idaho R. Civ. P. 83 or Idaho App. R. 17, is dictated by rule. See, Idaho R. Civ. Proc. 83(d) and Idaho App. R. 17(o).<sup>3</sup> The notice of appeal form required by Appellate Rule 17 is designed so that appellants either fill in blanks or chose from alternate language. See. Idaho App. R. 17(o), Notice of Appeal form. By design, the preparation of a notice of appeal does not subject preparers to the unauthorized practice of law as this Court has repeatedly held that “[t]he practice of law must be something beyond merely filling in blanks on prepared forms.” *Carroll*, 148 Idaho at 260, 220 P.3d at 1079, *citing In Re Matthews*, 58 Idaho 772, 776, 79 P.2d 535, 537 (1938).

Furthermore, the magistrate court’s judgment allowed recovery from Bing Lee and Jade Lee as husband and wife. The court should consider the community interests each has in the other when determining whether a spouse may draft a notice of appeal protecting the shared interest.

#### CONCLUSION

The lack of a signature by Jade Lee or the counsel for Jade Lee and Golden China on the notice of appeal was a curable defect, which was cured by the filing of an amended notice of

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<sup>2</sup> At the time of filing, Bing Lee, Jade Lee and Golden China were all represented by David Parmenter.

<sup>3</sup> The fill in the blank form provided in Rule App. R. 17(o) provides specific language to allow one notice to be filed to cover multiple appellants (“the above named appellant(s) (name) appeal(s) against the above named respondent(s) to the Idaho Supreme Court from (The final judgment) (The order, describing it).) Notice of Appeal Form, Line 1.

appeal. Jade Lee and Golden China respectfully request that the matter be remanded to the district court so that the parties may participate in the trial de novo.

Dated this day of August 26, 2019.

/s/ Jeremy D. Brown  
Attorney for Defendants/Appellants

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this day of August 26, 2019 I served a true and correct copy of the foregoing via the File and Serve system:

Marty R. Anderson  
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/s/ Jeremy D. Brown  
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