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Lingnaw v. Lumpkin Appellant's Brief Dckt. 47098

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

DERRICK RICHARD LINGNAW, Plaintiff-Appellant, vs. STUART LUMPKIN, in his official capacity as SHERIFF OF CUSTER COUNTY, Defendant-Respondent and CITY OF CHALLIS, an Idaho municipal corporation; CHALLIS JOINT SCHOOL DISTRICT NO. 181, Defendants.	Docket No. 47098-2019 Custer County District Court CV-2018-3

APPELLANT'S BRIEF ON APPEAL

On Appeal from the Seventh Judicial District, County of Custer
Honorable Stevan H. Thompson, presiding

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STATEMENT OF THE CASE

NATURE OF THE CASE:

This is an appeal from the District Court's decision relative to the Amended Complaint for Declaratory & Injunctive Relief in which the Appellant sought a declaration as to the parties' respective rights, status, and other legal relations relating to Appellant's ability to legally reside at his real property, free of interference from the parties.

COURSE OF PROCEEDINGS:

The Appellant filed a Complaint for Declaratory & Injunctive Relief on January 16, 2018. (R. p. 15-19) The Defendant, Challis Joint School District No. 181 filed an Answer on March 30, 2018. (R. p. 20-25) Following negotiations, Challis Joint School District No. 181, filed an Order Dismissing with Prejudice Defendant Challis Joint School District No. 181, in which they agreed to comply with any Orders or rulings of the District Court. (R. p. 26-28) Respondent filed an Answer to Plaintiff's Complaint for Declaratory & Injunctive Relief on July 18, 2018. (R. p. 29-30) The Appellant filed an Amended Complaint for Declaratory & Injunctive Relief on December 14, 2018, which included the Idaho Attorney General as a party. (R. p. 31-35) Respondent filed an Answer to Plaintiff's Amended Complaint and Defendant Lumpkin's Cross-Claim, which asserted a claim against the Idaho Attorney General, on January 15, 2019. (R. p. 36-41) An Order Granting Motion to Dismiss, which dismissed the Idaho Attorney General from the proceeding, was filed on March 25, 2019. (R. p. 46-47) A Court Trial was conducted on April 17, 2019, with the Appellant and the Respondent as the only parties to said trial.

(Tr. See generally) Judgment was entered on April 24, 2019. (R. p. 48-49) The Appellant filed his Notice of Appeal timely on June 4, 2019. (R. p. 50-52) An Order Conditionally Dismissing Appeal was filed on June 13, 2019, (R. p. 56-60), with an Amended Judgment and Amended Notice of Appeal being filed July 3, 2019 (R. p. 65-66, 61-63), and an Order Withdrawing Conditional Dismissal filed July 9, 2019. (R. p. 64) In addition, Respondent filed a Motion to Reconsider relative to reconsideration of the Court's denial of an award of attorney's fees and costs, which was denied by a Decision and Order Re: Defendant's Motion for Reconsideration dated July 22, 2019. (R. p. 67-73)

STATEMENT OF FACTS:

Appellant (hereinafter "Lingnaw") is a registered sex offender. Lingnaw moved from Twin Falls, Idaho, to Challis, Idaho, some time around April, 2017. While residing in Twin Falls, Lingnaw's sex offender registration was supervised by Doug Sugden (hereinafter "Sugden").

Prior to moving to Challis, Lingnaw was required to disclose where he was moving to. (Tr. p. 7) Lingnaw had purchased real property located at 201 South 6th Street, Challis, Idaho, around March or April, 2017. Both Lingaw and his wife's name are on the Deed. Before purchasing the property, Lingnaw went to Sugden's office to make certain that he would legally be able to reside there. Lingnaw was informed by Sugden that he had done some research and the property was okay. (Tr. p. 8-9) Lingnaw testified that at the time he purchased the home, he believed that the building was being used by the County Commissioners. Based upon Lingnaw's discussions with Sugden and his own investigation, neither Lingnaw or Sugden were concerned about the location. (Tr. p. 10)

At the time of trial, Lingnaw testified that it was his understanding that the school owned the property, however, the building was being leased by the BLM. Lingnaw further testified that the last time the building had been used as a school was his stepdaughter's class of 2004. (Tr. p. 12) Lingnaw testified that the building did not have any posted notices as required by Idaho Code Section 18-8329. (Tr. p. 13) Lingnaw testified that his house was about one block down the road from the school owned property line.

Lingnaw conceded that from the outside of his home to the school owned property line is less than 500 feet. He testified that the distance from his home and the gym exceeds 500 feet. (Tr. p. 18) Lingnaw testified that he agreed that the building was owned by the school, but disputed whether it meets the definition of "school". (Tr. p. 33) Lingnaw testified that on the front of the building at issue the sign says Bureau of Land Management. (Tr. p. 40) He also testified that one of the baseball fields behind the building was replaced by a parking lot. He stated that he did not believe the building to be a school because it is not a place where children are picked up, to and from, at certain times. (Tr. p. 47) Lingnaw further testified that he had an opportunity to drive by the building at issue during the morning and afternoon hours, and had never seen school buses pull up to this building nor children embark into the school and then disembark out of the school. (Tr. p. 78) Lingnaw testified that while one of the exhibits reflected a basketball court, it had been fenced in as a BLM parking lot prior to trial. (Tr. p. 81) Lingnaw further acknowledged that although his residence is within 500 feet of the school's property line, he was not residing within 500 feet of the property on which a

school is located. (Tr. p. 83)

Lani Rembelski (hereinafter "Rembelski"), who is the Superintendent of the Challis School District and the elementary principal testified at the trial. (Tr. p. 88) She testified that the building at issue with the BLM sign on the front of it is owned by the school. She testified that between the courthouse and the BLM building there is a gym. (Tr. p. 91) Rembelski testified that the BLM is leasing some of the building from the school district. (Tr. p. 92) She also testified that there was another tenant in that building, InterMountain Family Services. She went on to testify that there is a junior/senior high school in which the junior component consists of 7th and 8th grade and the senior component consists of 9th to 12th grade. She testified that the elementary school consists of grades Pre-K through 6th. (Tr. p. 93)

Rembelski testified that the junior/senior high school was approximately 100-200 yards away from the elementary. In addition to the elementary school and the junior/senior high school, Rembelski referred to the BLM building as a middle school, however, conceded that no grades currently attended that building. (Tr. p. 94) She admitted that while the BLM building may have functioned as a middle school in the past, that at the time of trial, it was not functioning as a middle school. She further testified that there was no academic instruction occurring at that building and that there were no children dropped off in the morning at said building. (Tr. p. 95) Rembelski testified that in the BLM building there is an auditorium that is used intermittently. (Tr. p. 96) She testified that the auditorium was used by the school district on average once per month. (Tr. p. 97) Rembelski further admitted that the term "middle school" is no

longer utilized by the school system in Challis. (Tr. p. 99) She clarified that while there had been two baseball fields behind the BLM building, one of the baseball fields was removed and converted into the BLM yard. She further stated that there were no school sponsored events occurring on that remaining field. Rembelski made it clear that the only portion of the property that housed school sanctioned events was the gym or the auditorium. (Tr. p. 100) She set forth that the last time the BLM building had been utilized as a traditional school with academic instruction was the 2002-2003 school year. It was then utilized as an alternative school between 2008-2010, and had not been utilized as a traditional school for some nine (9) years as of the date of trial. (Tr. p. 103) Rembelski stated that the auditorium is not used during school hours and that the gym is usually used after school hours. (Tr. p. 119)

ISSUES ON APPEAL

(A) Whether or not there is substantial and competent evidence to support the findings of fact;

(B) Whether or not the findings of fact support the conclusions of law;

(C) Whether or not the Court abused its discretion/erred in denying Appellant the opportunity to present closing argument; and

(D) Whether or not the Appellant is entitled to an award of costs, pursuant to Idaho Code § 10–1210, and attorney fees pursuant to Idaho Code § 12–121.

ARGUMENT

It is important to note that in cases involving declaratory relief, Idaho Code Section 10-1209 sets forth as follows:

> When a proceeding under this act involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other actions at law or suits in equity in the court in which the proceeding is pending.

Lingnaw asserts that the District Court's findings are not supported by substantial and competent evidence. As set forth in the Statement of Facts above, the testimony at trial makes it clear that the building at issue in the instant case, while owned by the school district, is not utilized as a traditional school, i.e., there is no academic instruction occurring at that building and that there were no children dropped off in the morning at said building. (Tr. p. 95) In fact, the last time the BLM building had been utilized as a traditional school with academic instruction was the 2002-2003 school year. It was then utilized as an alternative school between 2008-2010, and had not been utilized as a traditional school for some nine (9) years as of the date of trial. (Tr. p. 103) The auditorium is not used during school hours and the gym is usually used after school hours. (Tr. p. 119)

As set forth in *Bettwieser v. New York Irrigation Dist.*, 154 Idaho 317 (2013):

> When this Court reviews a trial court's findings of fact and conclusions of law after a bench trial, the review is "limited to ascertaining whether the evidence supports the findings of fact, and whether the findings of fact support the conclusions of law." *Borah v. McCandless*, 147 Idaho 73, 77, 205 P.3d 1209, 1213 (2009) (citing *Benninger v. Derifield*, 142 Idaho 486, 488–89, 129 P.3d 1235, 1237–38 (2006)). Because "it is the province of the trial court to weigh conflicting evidence and testimony and to judge the credibility of the witnesses," this Court liberally construes the trial court's findings of fact in favor of the

> judgment. *Id*. (citing *Rowley v. Fuhrman*, 133 Idaho 105, 107, 982 P.2d 940, 942 (1999)). "This Court will not set aside a trial court's findings of fact unless the findings are clearly erroneous." *Id*. (citing *Ransom v. Topaz* Mktg., L.P., 143 Idaho 641, 643, 152 P.3d 2, 4 (2006); I.R.C.P. 52(a)). Therefore, if the trial court's findings are based upon "substantial evidence, even if the evidence is conflicting," those findings will not be overturned on appeal. *Id*. (citing *Benninger*, 142 Idaho at 489, 129 P.3d at 1238). Nor will this Court substitute its view of the facts for that of the trial court. *Id.* (citing *Ransom*, 143 Idaho at 643, 152 P.3d at 4). "This Court exercises free review over matters of law." *Id*. (citing *Bolger v. Lance*, 137 Idaho 792, 794, 53 P.3d 1211, 1213 (2002)).

Id. at 322.

The term "substantial evidence" is further discussed in the case of *City of Middleton v. Coleman Homes, LLC*, 163 Idaho 716 (2018) as follows:

> This Court will not set aside a trial court's findings of fact unless the findings are clearly erroneous." *Mortensen v. Berian*, 163 Idaho 47, 50, 408 P.3d 45, 48 (2017) (quoting *Borah v. McCandless*, 147 Idaho 73, 77, 205 P.3d 1209, 1213 (2009)). "Clear error will not be deemed to exist if the findings are supported by substantial and competent, though conflicting, evidence." Id. (quoting *Pandrea v. Barrett*, 160 Idaho 165, 171, 369 P.3d 943, 949 (2016)). Evidence is substantial and competent if a reasonable trier of fact could accept and rely upon the evidence in making a factual finding. *Id*. (citing *Greenfield v. Wurmlinger*, 158 Idaho 591, 598, 349 P.3d 1182, 1189 (2015)).

Id. at 727.

Lingnaw asserts that the Court's findings are clearly erroneous based upon the testimony elicited at trial. In addition, Lingnaw asserts that the Court erred in concluding that the BLM building qualifies as a "school" as that term is utilized in Idaho Code Section 18-8329.

This err centers around the interpretation of Idaho Code Section 18-8329, and more specifically, the definition of the word "school" as that term is utilized in said statute. Idaho Code Section 18-8303 entitled "Definitions", does not define the word

"school". As such, it is unclear as to the standard by which the District Court declared the BLM building to be a school.

At the conclusion of the trial, the District Court did not allow Lingnaw to make closing argument but, rather, simply pronounced his decision. (Tr. pp. 156-161) When brought to his attention by counsel, the Court stated "I guess I apologize for that". (Tr. p. 161, Ll. 12-13.)

Although counsel for Lingnaw could not find any case law directly on point, Lingnaw asserts that the constitutional guarantee of the right to assistance of counsel includes the right to have counsel present proper argument. *State v. Gilbert*, 65 Idaho 210, 142 P.2d 584 (1943). This includes the right to liberal freedom of speech and discussion, and the right to argue the law insofar as the law is not misstated or inconsistent with the court's instructions. *Id.*

The Court reasoned that the gymnasium is a school building utilized by the school for school functions on a regular basis. (Tr. p. 157, Ll. 17-21) The Court further reasoned that "under any definition of a school, that gymnasium would be considered a school building." (Tr. p. 157, Ll. 21-23) While the Court was issuing its decision, counsel for Lingnaw interrupted and made it clear that Idaho Code Section 18-8329(d) does not say "school building" it actually says "on which a school is located". (Tr. p. 159, Ll. 2-5) Idaho Code Section 18-8329(d) makes it a misdemeanor for a person who is currently registered or is required to register under the Sex Offender Registration Act to:

> Reside within five hundred (500) feet of the property on which a school is located, measured from the nearest point of the exterior wall of the offender's dwelling unit to the school's property line, provided however, that this paragraph (d) shall

not apply if such person's residence was established prior to July 1, 2006. Following the interruption, the Court attempted to rephrase his ruling by stating "[s]o I do find under the statute that the - - the gymnasium, under that interpretation of that subsection, would be considered a school - - as part of a school, simply detached from the other buildings where classroom activity may occur. But under the intent of the statute, the gymnasium would be considered a school." (Tr. p. 159, Ll. 11-17) Lingnaw asserts that this reasoning is not supported by substantial and competent evidence.

Given that the majority of Lingnaw's argument centers around what we assert to be erroneous findings of fact, the Statement of Facts set forth above is both Lingnaw's assertion of a concise Statement of Facts, and also his factual argument to support his position. And, therefore, Lingnaw incorporates and references same as if fully set forth herein.

ATTORNEY FEES ON APPEAL

In addition, pursuant to Idaho Code § 10–1210, Lingnaw would request that this Honorable Court award costs to him as he asserts that it is equitable and just given the circumstances, and award attorney fees pursuant to Idaho Code § 12–121. An award under Idaho Code § 12–121 is appropriate if the Court is left with the abiding belief that the appeal was brought or defended frivolously, unreasonably or without foundation. *Natl. Union Fire Ins. Co. of Pittsburgh, P.A. v. Dixon*, 141 Idaho 537, 542, 112 P.3d 825, 830 (2005).

CONCLUSION

Lingnaw respectfully requests this Honorable Court to set aside the District Court's findings of fact and conclusions of law and resulting Judgment, and declare that the District Court's findings are clearly erroneous and not supported by substantial and competent evidence. Lingnaw requests that this matter be remanded to the District Court consistent with this Honorable Court's directives.

RESPECTFULLY SUBMITTED This 12th day of December, 2019.

FULLER LAW OFFICES

/s/ Daniel S. Brown
DANIEL S. BROWN
Attorneys for Plaintiff/Appellant

CERTIFICATE OF E-FILING AND E-SERVICE

I, the undersigned, do hereby certify that on the 12th day of December, 2019, a true and correct copy of the foregoing Appellant's Brief was e-filed and e-served to the following:

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/s/ Ranee M. Marsing