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Schoeffel v. Thorne Reaserch, INC Appellant's Reply Brief Dckt. 47101

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

CONNIE SCHOEFFEL,

Claimant/Appellant,

vs.

THORNE RESEARCH, INC.

Employer/Appellant,

and

IDAHO DEPARTMENT OF LABOR

Respondent/Appellee

SUPREME COURT DOCKET NO. 47101-2019

Industrial Commission No. 4201013407-2019

APPELLANTS' REPLY BRIEF

Appeal from the Idaho Industrial Commission

Chairman Thomas P. Baskin presiding

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I. INTRODUCTION

The Idaho Industrial Commission ruled incorrectly on the legal question of whether a corporation paid severance to its former employee. Because the written contract between employee Ms. Connie Schoeffel (Schoeffel) and employer Thorne Research, Inc. (Thorne) plainly provides that the payments were for other purposes, and Idaho Code § 72-1367(4) does not apply, the payments were not severance. Rather, Thorne's primary purpose was paying Schoeffel to *stay* employed with Thorne, among other things – not "as a result" of severance of her employment.

In its response, the Idaho Department of Labor (Department) continues to argue (1) that the contract between Thorne and Schoeffel does not mean what the plain language of the contract says, (2) that Idaho Code Section 72-1367(4) is the only relevant authority the Industrial Commission needed to consider, and (3) that the questions in this appeal may be decided upon the basis of the substantial evidence standard. As described below, the Department's arguments fail on all three points.

First, Schoeffel received bargained-for compensation for staying with Thorne throughout a key time of business transition for the company, for maintaining the confidentiality of Thorne's proprietary information and trade secrets, for not disparaging Thorne, and for a release of any employment claims she may have had against the company. Because the contract is clear and unambiguous, the Industrial Commission was required to have considered it and to have made its decision based upon the plain language of the contract provisions, which do not provide for severance. The Industrial Commission was required to do so notwithstanding the Department's arguments that the contract provisions must not actually intend what the language says.

Second, as the language of Idaho Code Section 72-1367(4) makes clear, the statutory definition of severance does not apply to the bargained-for payments made from Thorne to Schoeffel. The Industrial Commission should have recognized this and ruled in favor of Thorne and Schoeffel.

Third, despite the Department's argument that the appeal before this Court is a factual review on a substantial competent evidence standard, this appeal seeks an interpretation from this Court regarding both the contract between Thorne and Schoeffel, and the definition of severance within 72-1367(4). Both are questions of law, over which this Court has free review.

Accordingly, Schoeffel and Thorne ask that this Court reverse the decision of the Industrial Commission as a matter of law.

II. ARGUMENT

A. TO DECIDE THIS APPEAL ON THE MERITS, THIS COURT SHOULD LOOK TO THE TERMS OF THE AGREEMENT.

The two parties to the contract at issue here are the (now former) employee Schoeffel and the employer Thorne. These two parties agreed to a deal whereby Schoeffel would receive payments upon the completion of certain conditions of performance under the contract.

Because the terms of the parties' contract do not provide for severance, the Department's arguments to the contrary, based upon the timing of the payments, should not prevail. Rather, Thorne permissibly structured the contract to pay Schoeffel once her performance was substantially complete. It was prudent to do so, just as it was prudent to devise payments to be in compliance with existing Idaho law. Finally, if the Department seeks to argue or suggest – for the first time on appeal to this Court – that the contract is a sham, the issue must have been raised and supported by some competent evidence below.

1. Agreement Provided That Payment Was to Occur Following Part Performance by Schoeffel.

The Department suggests that because Schoeffel received payment from Thorne only after her employment ended, and did not receive any payments during the time she was working, that these facts are of particular importance and have a significance over all else, even contract terms. *See* Respondent Brief at 8-11.

But the record shows that Thorne had a business objective in offering certain employees, including Schoeffel, a contract. General Counsel Mr. Kim Pearson testified before the Department hearing officer that, in November of 2016, Thorne announced to all employees in North Idaho that

the company would be relocating to South Carolina. Tr. 23, L. 4-6. The company's transition included two employee programs: a relocation program and a retention program. *Id.* at L. 6-9. The purpose of the retention program was to enable Thorne to continue to produce its products at a time when the new production was coming online in South Carolina. Tr. 23, L.11 to Tr. 24, L.1. Thus, Thorne devised a program to keep up production of its products from November of 2016 until at least June of 2018 at its only operational facility (in Idaho). Tr. 23, L. 11-18. Mr. Pearson testified that it was "critically important that [Thorne] was able to maintain manufacturing in our Dover, Idaho, facility while a new facility was coming online in South Carolina. Therefore, the employee retention program was based on offering incentives to employees to stay, although they would know that they would be unemployed at some date certain." *Id.* L. 15-21.

So, it was designed that an employee's performance of the retention obligation preceded Thorne's payment to the employee under the terms of the contract. Had Thorne paid an employee as soon as the employee *agreed* to the 18-month bargain, it is foreseeable that an employee might not have remained with Thorne throughout the transition period. Had Thorne not designed the contract payments in this way, it might have experienced a labor shortage, and the primary purpose of the contract (retaining employees to ensure that Thorne could produce products) might not have been realized. If hired, temporary or more short-term employees might not have maintained the same level of proprietary information, or might not have been as agreeable to sign a non-disparagement clause. The confidentiality of Thorne's information might not have continued to be protected if the company shared confidential information with temporary employees. Thorne would have needed to spend a considerable amount of administrative and human resource capital

to hire temporary employees. Thus, it was prudent, and served Thorne's legitimate business need, for the company to delay payment of contract funds until partial performance was reached.

Thorne was within its rights to do so, and this business decision should have no bearing on whether Schoeffel should receive unemployment benefits.

2. Thorne Research Should Not Be Criticized for Prudently Complying with the Letter of the Law

Second, the Department suggests that Thorne's payments, which did not begin until after the end of Schoeffel's transition period, should raise some suspicion that the company was trying to skirt the law with this purported "scheme." *See, e.g.* Respondent Brief at 11 (noting that Kim Pearson's intent as Thorne's General Counsel was to "follow as closely as [he] could…the underlying law of *Parker*...[to provide payment] not in consideration of any prior services rendered to Thorne…but [for] the obligations [Schoeffel] was undertaking, [and for which] Thorne agreed to pay her bargained-for compensation,)" *and see id.* at 15 (suggesting that companies may not use the unemployment trust fund to pad separation benefit packages offered to employees).

But Thorne was not avoiding the law. The company was prudent in doing its due diligence to determine that a bargained-for agreement with an employee could be in compliance with the law as discussed within *Parker vs. Underwriters*, even after the 2005 amendment to Idaho Code § 72-1367(4). *Parker vs. Underwriter Laboratories, Inc.*, 140 Idaho 517, 96 P.3d 618 (2004). Thorne was no more trying to skirt the law than a company trying to comply with any of our various tax laws is trying to evade the law by seeking tax advice and following it to the letter. In the company's estimation, it was in full legal compliance in advising Schoeffel that she did not

need to report her bargained-for compensation as severance under the law in Idaho, and in offering the Agreement to her. Parties to a contract should not be penalized for trying to act within the limits provided by law.

3. The Agreement Itself Is the Best Evidence of the Intention of the Parties

Third, the Department essentially argues, without foundation or evidence, that certain terms of the Agreement between Schoeffel and Thorne are a sham, or that the parties did not intend two of the four conditions described within the Agreement. *See*, *e.g.* Respondent's Brief at 10-11.

Yet the language of the contract specifically provides that payment to Schoeffel is conditioned upon each of four contract provisions: the retention obligation, the release of claims obligation, the non-disparagement obligation, and the confidentiality obligation. Exhibit p. 38, ¶ 6. There is no evidence in the record to support the assertions by the Department that two of the conditions do not apply to Schoeffel. *See*, *e.g.* Respondent's Brief at 10-11. The Department argues that the release of claims and the confidentiality provisions should not be given weight. *Id.* at 11("viewing these clauses in the context of Schoeffel's employment, there was no evidence presented that Schoeffel had any actual or threatened claims against Thorne Research to be released, or that her kitchen manager position exposed her to any confidential or proprietary information.").

This argument was not raised at the hearing officer level, nor on appeal to the Industrial Commission, and cannot be considered now. *See*, R. pp. 13-14 (Request for Reconsideration), pp. 32-37 (Brief of IDOL). But even if this issue had been raised, it would be the Department's burden to introduce evidence of a sham contract, had the Department believed it to be so. The Agreement

itself is the best evidence of the intent of the parties. *See Farnsworth v. Dairymen's Creamery Ass'n*, 125 Idaho 866, 870, 876 P.2d 148, 152 (Ct. App. 1994). It cannot now be argued that Thorne and Schoeffel have to prove what Schoeffel knew of Thorne's trade secrets, or what employment claims she might have had against Thorne. It is high-handed of the Department to presume, based upon nothing but Schoeffel's job title, that she could not have understood or could not have accessed any confidential information as a kitchen employee, and such a supposition is unsupported in the Record. To say that she would have no knowledge of information like customer lists or how precisely Thorne produced its products, assumes facts not in the record.

This Agreement between Thorne and Schoeffel cannot so easily be cast aside simply based upon the Department's conjecture, without evidence, to suit the result given by the Industrial Commission. Instead, because the Agreement does contain the relevant terms, and consideration was exchanged for the bargain, the contract should be upheld. The contract does not provide for payments that are reportable severance under the Idaho Employment Security Law and, therefore, the Industrial Commission's decision should be reversed.

B. THE INDUSTRIAL COMMISSION ERRONEOUSLY UPHELD THE DEPARTMENT'S DECISION WHICH IMPLIES THAT IDAHO CODE § 72-1367(4) OF THE EMPLOYMENT SECURITY ACT IS THE ONLY RELEVANT AUTHORITY HERE – NOT THE CONTRACT BETWEEN THE PARTIES.

The Department argues, and the Industrial Commission's decision presumes, that Schoeffel must report every cent she was paid during the time period when she was receiving unemployment benefits, no matter what the source. But this argument ignores that Idaho's Employment Security Law and the Rules promulgated under those statutes, are limited by the statutory language.

The November 16, 2018 Income Determination informed Schoeffel that she had reported income "which can include holiday, vacation, bonus, or severance income." Exhibit p. 11. Idaho Code § 72-1312(1) and § 72-1367(4) were cited in the Income Determination. *Id.*

Idaho Code § 72-1312(1) provides that, for purposes of calculating benefits, a compensable week for a claimant is a week wherein that claimant has no work or less than full-time work in which *wages* payable are less than one and a half (1½) times a claimant's weekly benefit amount. And § 72-1367(4) provides that any *wages* in excess of that amount shall be deducted from the claimant's weekly benefit.

Wages are further defined within § 72-1328, as including "all renumeration for *personal services* from whatever source, including commissions and bonuses."[1] I.C. § 72-

[1] "Wages" are generally defined by a statute as all money paid for *work* or a *service* from any source and an enumerated list follows, which includes commissions and bonuses, as well as tips received while performing employment services, and employer contributions under a qualified 401k plan. *See generally*, I.C. § 72-1328(1)-(3). Here Schoeffel's payment under the terms of her Agreement was not wages earned from working, nor was the payment for any service, nor was it a part of her employment compensation. Of course, it was also not a commission, bonus, tip, nor a qualified 401k plan contribution.

1328(1)(a)(emphasis added). Schoeffel did not receive payment from Thorne for personal services. In fact, the Agreement instructs "Thorne and Schoeffel agree that the bargained-for compensation described in Paragraphs 6 and 7 is not made in consideration of any prior services rendered to Thorne by Schoeffel as an employee of Thorne…" Exhibit p. 38. Schoeffel's payments were not for performing any work (*i.e.*, services), rather, they were in exchange for giving up certain rights Schoeffel had, in exchange for payment. *See* Exhibit p. 38, ¶¶ 6-7.

Although the Idaho Legislature was free to ignore the prior definition of wages as a payment for work or personal service – and it did so when amending Idaho Code § 72-1367(4) to define *severance* as *wages* – the Legislature still did not choose to define severance in a manner that encompasses the payments Schoeffel received.

Similarly, the Rules promulgated by the Department do not speak to the payments Schoeffel received. Despite the language of the Income Determination that she received compensation which "can include holiday, vacation, bonus, or severance income," her payment does not fall under the description of vacation pay, severance pay, wages for services performed prior to separation, or any other category of reportable income for purposes of unemployment benefits. *See* IDAPA 09.01.30.525(11) (Severance Pay), IDAPA 09.01.30.525(12) (Vacation Pay), IDAPA 09.01.30.525(14) (Wages for Contract Services), IDAPA 09.01.30.525(15) (Wages for Services Performed Prior to Separation).

As such, Schoeffel's payment was not wages, nor severance, and was not reportable income for purposes of an unemployment benefit determination.

Accordingly, the Industrial Commission should not be permitted to construe this disclosure against an applicant such as Schoeffel, when it is clear that the statutes and Rules are silent on such payments. The Industrial Commission's decision should be reversed.

C. THE DEPARTMENT ARGUES FROM THE INCORRECT LEGAL STANDARD.

The Department suggests that the issue to be decided on appeal is a factual question, and that the relevant standard of review on appeal is whether substantial competent evidence exists to uphold the Industrial Commission's decision. *See*, Respondent's Brief at 5 (noting that the only issue on appeal is whether substantial competent evidence exists to support the Commission's decision). This is the correct standard for an appeal of a factual question, but here, Thorne and Schoeffel ask this Court to review questions of law.

The Idaho Supreme Court exercises free review over questions of law on appeal from the Industrial Commission. *See Uhl v. Ballard Med. Prod., Inc.* 138 Idaho 653, 657, 67 P.3d 1265, 1269 (2003).

Here, analysis of the contract between Thorne and Ms. Schoeffel is necessary for the outcome of this appeal. Analysis of Idaho Code § 72-1367(4), and interpretation of the scope of the definition of "severance" under the Idaho Employment Security Law could also arise within this appeal. Interpretation of contracts and statutes involve questions of law. The Department concedes as much when it argues that the Commission's legal conclusion is supported by the

statute. Respondent's Brief at 8 ("the Commission's *legal conclusion* is supported by the plain language of Section 72-1367(4))." (emphasis added).

The Department contends that it is presumed to enjoy deference in its reading and application of the statute. *See*, Respondent's Brief at 6 (citing *Garner v. Horkley Oil*, 123 Idaho 831, 833, 853 P.2d 576, 578 (1993) and *Two Jinn, Inc. v. Idaho Dep't of Ins.*, 154 Idaho 1, 3, 293 P.3d 150, 152 (2013)). But deference is limited to a reasonable interpretation not contrary to the express language of the statute. *See id.* Here, the Industrial Commission has not analyzed the Agreement between Schoeffel and Thorne, which is the very agreement defining the nature of the payments. Declaring that a payment is severance by ignoring the best evidence is not a reasonable statutory interpretation. A finding that the nature of the payments here is severance is contrary to the express language of the statute – because the statute is silent on these particular payments.

Accordingly, this Court is not bound by either the contractual or the statutory interpretation of the Industrial Commission, and free review should be exercised here over these questions of law. *See Uhl v. Ballard Med. Prod., Inc.* 138 Idaho 653, 657, 67 P.3d 1265, 1269 (2003).

III. CONCLUSION

Appellants Connie Schoeffel and Thorne Research, Inc. have shown that the plain language of the contract is controlling, and the payment from Thorne to Schoeffel does not fall under any reportable income provision of the Employment Security Law. It is respectfully requested that the decision to the contrary by the Industrial Commission be reversed.

DATED this 4th day of February, 2020

PARSONS BEHLE & LATIMER

By *__/s/ Amy A. Lombardo__*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February, 2020, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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