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

JULIE ANN NEUSTADT,

Petitioner-Appellant,

vs.

MARK D. COLAFRANCESCHI,

Respondent-Cross-Appellant

SUPREME COURT NO.: 47201-2019

APPELLANT'S REPLY BRIEF

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

Honorable Judge Jason D. Scott, Presiding

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TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES....................3

ATTORNEY FEES ON APPEAL....................8

TABLE OF CASES AND AUTHORITIES

Cases:

Browning v. Browning, 621 S.E.2d 389 (S.C. Ct. App. 2005)....6, 7

Clements v. Terrell, 145 S.E. 78 (Ga. 1928)....6

Liss v. Liss, 937 So.2d 760 (Fl. Ct. App. 2006)....6, 7

Quiring v. Quiring, 130 Idaho 560, 566 (1977)....4, 5, 8

Secor v. Pioneer Foundry Co., 173 N.W.2d 780 (Mich. Ct. App. 1969)....6

Sedell v. Sedell, 100 So.2d 639 (Fl. Dist. Ct. App. 1958)....7

Wheeler v. Ins. Co., 101 U.S. 439 (1879)....6

Wilson v. Progressive Life Ins. Co., 7 S.E2d 44 (Ga. Ct. App. 1940)....6

Worlton v. Davis, 73 Idaho 217, 222 (1952)....4, 8

Rules and Statutes:

Idaho Code Section 32-921....5

Idaho Code Section 32-923....4

Idaho Code Section 32-923(1)....5

Idaho Rule of Family Law Procedure 908(A)....8

COMES NOW the Appellant, JULIE ANN NEUSTADT, by and through her attorneys of record, Scot M. Ludwig and Daniel A. Miller of Ludwig Shoufler Miller Johnson, LLP, and hereby submits her Reply Brief.

Appellant (hereinafter Julie) will respond to the arguments Respondent (hereinafter Mark) made in the order they appeared in his brief.

Contract Law

Mark argues the Julie is ignoring contract law. Julie is not ignoring contract law. She is claiming that a specific provision in the contract should not be enforced due to public policy considerations.

Habitual intemperance is not relevant to this Court's inquiry. The issue before the Court as has been outlined by Julie in her appeal and briefing, and that issue is whether paragraph 4.8(b) of the parties' prenuptial agreement is void because it violates public policy considerations. *Worlton v. Davis,* 73 Idaho 217, 222 (1952). The decision of whether a contract is against public policy is a question of law. *Quiring v. Quiring,* 130 Idaho 560, 566 (1977). Habitual intemperance will not assist the court in reaching its decision on the issue before. It is really difficult to ascertain what Mark is even claiming with respect to his habitual intemperance argument, but in any event it has nothing to do with this Court's analysis of the public policy issue.

Mark argues that Julie did not address Idaho Code §32-923 on appeal. That code section identifies what a premarital contract may address. That code section also states that parties

contemplating marriage may enter into a contract covering any "other matter, including their personal rights and obligations, **not in violation of public policy** or a statute imposing a criminal penalty." I.C. § 32-923(1), emphasis added. Julie has addressed this code section by arguing that 4.8(b) is void because it is against public policy.

Mark argues that Julie did not consider Idaho Code § 32-921 which is the definition section of Idaho's premarital act. Julie is not claiming that the parties do not have an enforceable contract that meets Idaho's requirements of a premarital agreement. Julie's claim is that one of the provisions within that premarital agreement is not enforceable due to public policy considerations.

Much of Mark's argument is that Julie entered into this contract voluntarily and with assistance of counsel and therefore, she should be bound by paragraph 4.8(b) of the contract. If 4.8(b) is not in violation of public policy considerations then Mark is correct. Julie will be bound by the language of 4.8(b). But if this Court finds that 4.8(b) violates public policy that provision of the contract cannot be enforced.

This Court stated many years ago that illegal contracts are void, and a void contract cannot be enforced. *Quiring v. Quiring,* 130 Idaho 560, 568 (1997). A party to an illegal contract cannot ask the Court to have the illegal contract carried out. *Id.*

Mark's argument regarding divorce not severing death benefits to a named beneficiary is not being argued by Julie. It is clear that Julie can name anyone she wants as a beneficiary to a life insurance policy she has on her life. What Julie is arguing is that she does not want to be bound to

name Mark as a beneficiary to a policy on her life when he has no insurable interest in her life post divorce.

The cases cited by Mark are not applicable to this case. For example, *Wheeler v. Ins. Co.*, 101 U.S. 439 (1879) dealt with an insurance policy purchased to cover property owned by the debtor to secure debt owed to creditors. *Clements v. Terrell,* 145 S.E. 78 (Ga. 1928) dealt with a deceased's estate attempting to prevent the deceased's fiancé from obtaining death benefits from an insurance policy. The estate claimed she was not the fiancé and the Georgia court held it did not matter if she was or was not because she was the named beneficiary. The Georgia Court of Appeals in a later case made it clear that its holding in *Clements* did not apply to wagering contracts, and that wagering contracts were "void from its inception." *Wilson v. Progressive Life Ins. Co.,* 7 S.E2d 44 (Ga. Ct. App. 1940). *Secor v. Pioneer Foundry Co.,* 173 N.W.2d 780 (Mich. Ct. App. 1969) held that termination of an insurable interest did not effect the right of the owner and beneficiary of a life insurance policy. Bottom line is that Julie can raise this issue because she is seeking clarification from this Court on an issue of first impression in this state.

In Idaho it is clear that Julie can insure her life and name anyone she wants to as beneficiary whether there is an insurable interest or not. Julie is not contesting this statement of the law.

Julie will not recite the facts and holdings in the cases she has previously cited in her initial brief namely *Liss v. Liss,* 937 So.2d 760 (Fl. Ct. App. 2006) and *Browning v. Browning*, 621 S.E.2d 389 (S.C. Ct. App. 2005) as Julie's initial brief fully covers the facts and holdings of both cases.

Julie will reiterate that both of those cases involved contracts and contract law. The documents in *Liss, supra,* and *Browning, supra,* both involved a property settlement agreements which are contracts. Once merged into the decree the mechanism of enforcement is granted to the Court as the contract is a court order. *Browning,* 621 S.E.2d 389, 394. The case cited by Mark, *Sedell v. Sedell,* 100 So.2d 639 (Fl. Dist. Ct. App. 1958), stands for the proposition that settlement or separation agreements merged into a decree of divorce are construed using contract principles. *Sedell,* 100 So.2d 639, 642. Therefore, the courts in *Liss, supra* and *Browning, supra* involved contract principles. The case of *Sedell, supra.,* did not involve public policy arguments involving lack of insurable interests.

Mark argues that he gave up alimony in exchange for being named as a beneficiary of Julie's life insurance policy. First, the language of the parties' prenuptial agreement does not support this argument. Section 10.2 of the prenuptial agreement states: "Additional Consideration. By mutually waiving and disclaiming any right to spousal support the parties will save substantial litigation cost which might otherwise be involved in determining spousal support or any other payment, and each party will be relieved from the real, but difficult to measure, costs of being away from their individual work activities to participate in the litigation." Ex. A, § 10.2. There is no mention of Mark being named beneficiary to a policy on Julie's life as part of the consideration for waiver of spousal support. Again, the issue is whether what the parties' bargained for is enforceable because of public policy considerations, not whether the parties' freely bargained for the provision. Julie has

pointed out that even if the parties bargained for a provision in a contract, that contractual provision cannot be enforced if it is against public policy. *Worlton, supra; Quiring, supra.*

Mark's argument regarding attorney fees is not supported legally. Section 22 of the Premarital Agreement provides for the award of fees and costs. Exhibit A, pg. 14, § 22. A basis for the award of fees is if a contract provides for the award of fees. I.R.F.L.P. 908(A). Both parties agree that the prenuptial agreement between Mark and Julie is a contract. Therefore, the Magistrate Judge had the jurisdiction to award fees pursuant to section 22 of the parties' prenuptial agreement. If Judge Scott's decision regarding the life insurance policy is affirmed, attorney fees should be looked at again by the Magistrate Judge. If this Court reverses Judge Scott then the Magistrate Judge's decision on fees should be reinstated.

In conclusion, Julie asks this Court to hold that the provision of parties' prenuptial agreement, 4.8(b) is unenforceable as void against public policy as it is a wagering provision, and that Judge Scott's decision on this issue and attorney fees be reversed. In addition, Julie requests that this Court award Julie her fees and costs as the prevailing party pursuant to section 22 of the parties' prenuptial agreement.

DATED This 28th day of February, 2020.

LUDWIG ◆ SHOUFLER ◆ MILLER ◆ JOHNSON, LLP

By______________________________

Scot M. Ludwig
Attorneys for Petitioner/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 2020, I caused a true and correct copy of the foregoing document to be served upon the following as indicated:

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Scot M. Ludwig