

Uldaho Law

Digital Commons @ Uldaho Law

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

2-18-2020

Neustadt v. Colafranceschi Respondent's Brief Dckt. 47201

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Neustadt v. Colafranceschi Respondent's Brief Dckt. 47201" (2020). *Idaho Supreme Court Records & Briefs, All*. 7960.

https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/7960

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

JULIE ANN NEUSTADT,)
) SUPREME COURT NO.: 47201-2019
Petitioner-Appellant,)
)
)
vs.)
)
)
MARK D. COLAFRANCESCHI,)
)
Respondent-Cross-Appellant)
_____)

CROSS-RESPONDENT'S 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

Scot M. Ludwig & Daniel A. Miller
Ludwig Shoufler Miller Johnson, LLP
401 West Front Street, Suit 401
Boise, Idaho 83702
scot@lsmj-law.com
dan@lsmj-law.com

Mark D. Colafranceschi
Respondent, Pro Se
3330 HWY 55
New Meadows, Idaho 83654
markcola40@gmail.com

*Attorneys for Petitioner/Appellant
Cross-Respondent*

Attorney for Respondent/Cross-Appellant

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES.....3

STATEMENT OF CASE.....4

ADDITIONAL ISSUES ON APPEAL.....11

ARGUMENT.....11

ATTORNEY FEES ON APPEAL.....11, 17, 18

TABLE OF CASES AND AUTHORITIES

Cases:

Aspiazu v. Mortimer, 139 Idaho 548, 550 (2003).....12

DeChambeau v. Estate of Smith, 132 Idaho 568, 572 (1999).....17

Dungan v. Dungan, 147 Idaho 599, 601 (2009).....15

Hill v. Am. Family Mut. Ins. Co., 150 Idaho 619, 629 (2011).....12

Mays v. Davis, 132 Idaho 73, 75 (1998).....17

Shepherd v Shepherd, 161 Idaho 14, 20 (2016).....12

Wash. Fed. Sav. v. Van Engelen, 153 Idaho 648, 657 (2012).....13

Rules and Statutes:

Idaho Code Section 12-121.....11, 17

Idaho Code Section 32-917.....15

Idaho Code Section 32-922.....15

Idaho Code Section 32-924.....15

Idaho Rule of Civil Procedure 36.....11, 12

STATEMENT OF THE CASE

Cross Respondent (hereinafter Julie) and Cross Appellant (hereinafter Mark) entered into a Premarital Agreement on March 20, 2012. Pet. Ex. A., pp. 1-151.

The following Sections of the Premarital Agreement have relevance to Mark's appeal.

Section 3.3 defines what Julie's separate property is pursuant to the Premarital Agreement. That separate property includes all items listed on Exhibit C of the Premarital Agreement including any income derived from the separate property, and any acquisition of property, and Mark has no right, title, interest, lien, or claim to any of Julie's separate property. Pet. Ex. A, p. 3, § 3.3.

Exhibit C to the Premarital Agreement includes Julie's interest in the Allen Neustadt Testamentary Trust. Pet. Ex. A, Exhibit C of Pet. Ex. A.

Section 4.3 of the Premarital Agreement states that the conduct of Mark or Julie in the past, present, or future does not mean or imply any agreement, promise, or understanding except as set forth in this Agreement. Pet. Ex. A, p. 4, § 4.3.

Section 4.4 of the Premarital Agreement states that Mark and Julie disclaim and waive any express or implied agreement or understanding, written or oral, that either of them had or will acquire any right to property or income of the other, and any right acquired by reason of the parties' relationship and previous conduct or statements. Pet. Ex. A, p. 4, § 4.4.

Section 11 of the Premarital Agreement defines income to include any property and rights of any nature including distributions from trusts and estates. Pet. Ex. A, p. 8, § 11.

Section 16.1 of the Premarital Agreement states that the entire agreement between Mark and Julie is found within the Premarital Agreement itself and there has been no promise, representation, agreement that is being relied upon by Mark or Julie whether oral or written except what is in the Premarital Agreement. Pet. Ex. A., p. 9, § 16.1.

Section 16.2 of the Premarital Agreement states the only way to modify the agreement is by a writing that is executed and acknowledged by Mark and Julie and their attorneys. Pet. Ex. A., p. 9, § 16.2.

Mark and Julie expressly agreed that they were waiving any claim that the Premarital Agreement had been altered, modified, amended, changed, etc. by way of an oral agreement. Pet. Ex. A, p. 9, § 16.3.

Mark and Julie were both represented by attorneys, and they each agreed that they had read the Premarital Agreement, been advised by their attorneys regarding the legal meaning of the document, understood the terms in the agreement and they were entering into the agreement free from fraud. Pet. Ex. A, p. 10, §§ 20.1, 20.2.

Both attorneys for Mark and Julie certified that they fully advised their clients of the property and support rights and obligations and the legal significance of the Premarital Agreement and that Mark and Julie acknowledged complete understanding of the agreement. Pet. Ex. A, p. 12, Certification of Attorney.

On March 25, 2013, the Allen Neustadt Testamentary Trust acquired 408 Osprey View Drive

in McCall, Idaho. Pet. Ex. S; Trial testimony of Janene Foster, Vol. 1, Tr., pp. 129 - 130, Court Trial Tr., pp. 515 - 518. Julie had no authority to transfer or liquidate the 408 Osprey View Drive property. Vol. 1, Tr., p. 130, Court Trial Tr., pp. 519 - 520. The Osprey View Drive property was purchased by the Trust and all expenses related to the Osprey View Drive property were paid by the Trust. Vol. 1, Tr., pp. 135 - 137, Court Trial Tr., pp. 537 - 545.

In his testimony Mark admitted that Osprey View Drive was owned by the Allen Neustadt Testamentary Trust. Vol, 1, Tr., pp. 142, Court Trial Tr., p. 566, ll. 7 - 12.

The Osprey View Drive property will not be distributed to Julie until one year after her father dies, and her father (Allen Neustadt) was alive as of the time of the trial. Vol. 1, p. 130, Court Trial Tr., pp. 518 - 520; p. 133, Court Trial Tr. P. 530, ll. 4-5. One of the reasons the Trust purchased 408 Osprey View Drive was to protect the property from any claimed marital interest. Vol. 1, Tr, p. 131, Court Trial Tr., p. 523, ll. 19 -25, p. 524, ll 1 - 24.

During the marriage Mark attempted to have Julie execute a written agreement giving him a share of equity in the Osprey View Drive property, and Julie refused to sign the documents Mark had prepared. Vol. 1, Tr., p. 189, Court Trial Tr., pp. 753 - 755, p. 797, l 8 - p. 798, l. 2; Pet. Ex. C. Mark acknowledged to Julie that the reason he wanted her to sign the documents he prepared was due to the fact that he knew any change to the Premarital Agreement required a signed writing. Vol. 1, p. 189, Court Trial Tr., pp. 756, ll. 1-16. Julie testified that after the Trust purchased the property Mark wanted a share of the equity in the home and Julie would not sign the documents he provided

to her. Vol. 1, Tr., p. 198, Court Trial Tr., pp. 789 l. 10 - p. 790, l. 1.

Mark's testimony at trial was that Julie had made a promise that he was going to have equity in their homes. Vol. 1, p. 278, Trial Court Tr., p. 1109, ll. 16 - 18. When asked by the Court how the couple were going to purchase any home, Mark's reply was that he "assumed" the Trust would make the purchase. Vol. 1, p. 285, Trial Court Tr., p. 1139, ll. 2 -8.

Julie and Mark were married on March 26, 2012. R., p. 294. They separated on April 29, 2016. Id. They have no children in common. Id. Julie filed for divorce on May 6, 2016. R., p. 22. A court trial was held on November 14, 15, and 16, 2016. R., p. 290. The Trial Court issued its Findings and Conclusions Following Trial on December 8, 2016.

In its Findings and Conclusions the Trial Court found:

1. That language in the Premarital Agreement indicated there were no prior agreements or understandings regarding property. R., p. 294.
2. The Premarital Agreement recited the entire agreement of the parties was within the Premarital Agreement, and there were no other promises, oral or written, except those that were contained in the agreement itself. R., p. 294.
3. The Premarital Agreement set forth a strict requirement that any alterations or amendments could only be done in writing. R., p. 294.
4. The Premarital Agreement provided that property owned by Julie or Mark prior to marriage, including income derived from separate property, or acquired from separate property

would remain their separate property. R., p. 295.

5. The Allen Neustadt Testamentary Trust purchased the 408 Osprey residence in March of 2013. R., p. 295. The Trust was not a party to the litigation. Id.

6. The Trust is irrevocable and has four Co-Trustees. Julie is the sole beneficiary and will receive the Trust assets one year after the death of her father Allen Neustadt, who is still living. R., p. 295.

7. Mark testified that prior to signing the Premarital Agreement Julie promised that he would “have equity in all homes we purchased.” R., p. 296. Julie denied making any such promise. Id.

8. Julie wanted any property she purchased with her separate property to remain her separate property. R., p. 296.

9. Mark asked that if the couple (“we”) purchased a home that it would be community. R., p. 297. Language was added to the Premarital Agreement that addressed community property. Id.

10. Julie and Mark did not purchase the Osprey View property. R., p. 297. The property was purchased by the Allan Neustadt Testamentary Trust. Id. At the time of the purchase of Osprey View by the Trust there was no evidence that Mark requested Julie to purchase the property together as a community asset. Id.

11. The trial court found that Mark had failed to meet his burden of proving that he was

fraudulently induced into signing the Premarital Agreement. R., p. 297.

The trial court noted that the parties had stipulated that the value of the Osprey property was reserved should the court find that Mark was entitled to an interest in the property. R., p. 292.

The Trial Court entered a Judgment and Decree of Divorce on December 8, 2016, denying Mark's fraud in the inducement claim and request for an interest in the Osprey property. R, p. 305 - 306.

On January 18, 2017, Mark filed an appeal.

On January 26, 2017, an Amended Judgment of Divorce was entered. That Judgment reiterated that Mark's fraud claim and claim of interest in the Osprey property were denied. R., p. 311 - 312.

On February 21, 2017, Mark filed an Amended Notice of Appeal. R., p. 351.

On May 28, 2019, the District Court filed its Opinion. The District Court found that because it was remanding the case back to the magistrate with instructions to allow both parties to proceed on extreme cruelty, that issue was moot. R., p. 405. The District Court did determine that the magistrate judge did not coerce Mark into stipulating to a divorce on the grounds of irreconcilable differences. R., pp. 405 -406.

The District Court also found that Mark failed to prove the first two elements of fraud were missing. Those elements were that a representation was made that was false. R., p. 406. The Premarital Agreement contained no language that any home the couple resided in would be a

community asset, and the Osprey home was not purchased together, and best case for Mark was that the promise only applied to a home the couple purchased together. R., pp. 406 -407. In addition, the District Court found that the language of the Premarital Agreement mitigated against a finding of fraud because its language was very clear that every agreement between Mark and Julie was contained within the agreement, and no other agreements existed. R., p. 407. As to Mark being induced to return to the parties home by a promise of equity in the Osprey home the District Court found that substantial evidence supported the finding that Mark did not have a right to rely on the representation because Julie had refused to sign his written amendment, and Julie testified that she never agreed to give Mark any equity in the Osprey home. R., p. 409. Mark pointed to conflicting evidence, but the District Court pointed out that conflicting evidence did not warrant overturning the magistrate judge's decision. Id.

On July 8, 2019, the District Court filed an Amended Opinion but that opinion did not change the decision regarding Mark's fraud in the inducement claims. R., pp. 417 - 440.

Mark filed notice of his cross appeal on August 7, 2019. R., p. 445.

Mark's brief was filed on January 21, 2020. He listed four issues for this Court:

1. "Did Judge Williamson by denying Mark discovery request upon Julie surrounding extreme cruelty abuse her discretion. Did Judge Scott error at the district level in failing to address the issue on Appeal by calling it moot."

2. "Did the District Court commit an error by failing to rule on Judge Williamson's

failure to address an objection to Motion in Limine regarding life insurance.”

3. “Did the District Court Judge Scott error or abuse his discretion in determining Fraud by Inducement, in its analysis of facts and findings of the Magistrate Judge.”

4. “Should Respondent Cross-Appellant be awarded costs on appeal.”

ADDITIONAL ISSUES ON APPEAL

1. Should Julie be awarded her costs and fees on the Cross Appeal pursuant to Idaho Code section 12-121 because Mark’s appeal is not founded on facts or law and is frivolous?

2. Should Julie be awarded her costs and fees on the Cross Appeal pursuant to section 22 of the parties’ Premarital Agreement?

ARGUMENT

Mark seeks an order from this Court reversing the Trial Court for denying discovery regarding Julie’s extreme cruelty. Julie requests that Mark’s request be denied.

Mark does not cite this Court to the specific discovery requests that he claims were wrongfully denied by the Trial Court, nor does he cite the Court to any law that would support his appeal on this issue. He simply cites the Court to Rule 36 of the Idaho Rules of Civil procedure and then makes the conclusory claim that his discovery should have been allowed because it relates to extreme cruelty. The only records before the Court is the Trial Court’s order denying Mark’s motion to compel, and a transcript of the hearing on the motion to compel. R., pp. 23 - 24; Vol. 1 Tr., pp. 74 - 103. A party waives an appellate issue that is not supported by relevant argument or authority.

Shepherd v Shepherd, 161 Idaho 14, 20 (2016). Because Mark failed to adequately cite the Court to any legal authority beyond Rule 36, or make any argument beyond a conclusory statement that the discovery was relevant Julie requests the Court deny his claimed error.

Mark argues that Julie's Motion In Limine relating to the Insurance provision in the parties' Premarital Agreement was untimely. This Court has stated that court's have a responsibility not to enforce a contract provision that is contrary to public policy, and the responsibility/duty is "so strong" that Idaho's courts must raise the public policy issue sua sponte if necessary, and the court must not enforce any contract at "any stage in the litigation" in which it becomes apparent that the provision contravenes public policy. *Hill v. Am. Family Mut. Ins. Co.*, 150 Idaho 619, 629 (2011).

Although the Trial Court initially heard the Motion in Limine on October 31, 2016, the Trial Court reconsidered the Motion in Limine after evidence was taken at trial and did not issue its final decision until December 8, 2016. R., p. 291, issues reserved for trial. Therefore, the Trial Court did not commit error in terms of the timing of Julie's Motion as Mark was given plenty of opportunity to defend that motion and the Trial Court had a duty to address the issue during trial.

On appeal, the appellate court will uphold the magistrate's findings of fact if supported by substantial and competent evidence. *Aspiazu v. Mortimer*, 139 Idaho 548, 550 (2003). Evidence is substantial if a reasonable trier of fact would accept it and rely on it. *Id.* Findings based on substantial, competent evidence, although conflicting, will not be disturbed on appeal. *Id.*

Fraud consists of:

1. a statement or representation of fact;
2. its falsity;
3. its materiality;
4. the speaker's knowledge of its falsity;
5. the speaker's intent that there be reliance;
6. the hearer's ignorance of the falsity of the statement;
7. reliance by the hearer;
8. the reliance is justifiable; and
9. resultant injury.

Wash. Fed. Sav. v. Van Engelen, 153 Idaho 648, 657 (2012).

The District Court cited the substantial and competent evidence that supported a finding that Mark had failed to prove the first two elements of fraud with respect to his signing of the Premarital Agreement. Julie testified several times at trial that she never promised Mark equity in any future marital home. That finding is supported by the trial testimony. Vol. 1, Tr., p. 192, Trial Tr., p. 765, ll. 16-24; Tr., p. 196, Trial Tr., p. 783, l. 17 - p. 785, l. 4; Tr., p. 224, Trial Tr., p. 896, ll. 18-25.

In addition to Julie's testimony the language of Mark and Julie's Premarital Agreement supports Julie's testimony that she did not make Mark any promises of equity in a marital home. Julie's separate property included all items listed on Exhibit C of the Premarital Agreement including any income derived from the separate property, and any acquisition of property, and Mark

has no right, title, interest, lien, or claim to any of Julie's separate property. Pet. Ex. A, p. 3, § 3.3. Exhibit C to the Premarital Agreement includes Julie's interest in the Allen Neustadt Testamentary Trust. Pet. Ex. A, Exhibit C of Pet. Ex. A.

Mark and Julie agreed that conduct of Mark or Julie in the past, present, or future did not imply there was any agreement, promise, or understanding except as set forth in the Premarital Agreement. Pet. Ex. A, p. 4, § 4.3.

Mark and Julie disclaimed and waived any express or implied agreement or understanding, written or oral, that either of them had or will acquire any right to property or income of the other, and any right acquired by reason of the parties' relationship and previous conduct or statements. Pet. Ex. A, p. 4, § 4.4. The Premarital Agreement defined income to include any property and rights of any nature distributions from trusts and estates. Pet. Ex. A, p. 8, § 11.

Mark and Julie acknowledged that the entire agreement between them was found is within the Premarital Agreement and that there had been no promise, representation, agreement that is being relied upon by Mark or Julie whether the oral or written except what is in the Premarital Agreement. Pet. Ex. A., p. 9, § 16.1.

The only way to modify the Premarital Agreement was by a writing that was executed and acknowledged by Mark and Julie and their attorneys. Pet. Ex. A., p. 9, § 16.2. Mark and Julie expressly agreed that they were waiving any claim that the Premarital Agreement had been altered, modified, amended, changed, etc. by way of an oral agreement. Pet. Ex. A, p. 9, § 16.3. Over the

years Julie rejected Mark's attempts to have her sign a written agreement modifying the Premarital Agreement. Vol. 1, Tr., p. 189, Court Trial Tr., pp. 753 - 755, p. 797, l. 8, p. 798, l. 2; Pet. Ex. C.

Mark and Julie were both represented by attorneys, and they each agreed that they had read the Premarital Agreement, been advised by their attorneys regarding the legal meaning of the document, understood the terms in the agreement and they were entering into the agreement free from fraud. Pet. Ex. A, p. 10, §§ 20.1, 20.2.

Both attorneys for Mark and Julie certified that they fully advised their clients of the property and support rights and obligations and the legal significance of the Premarital Agreement and that Mark and Julie acknowledged complete understanding of the agreement. Pet. Ex. A, p. 12, Certification of Attorney. Mark expressly waived any right he had in Julie's separate property. Pet. Ex. A, § 6.1. The Premarital Agreement listed as her interest in the Allan Neustadt Testamentary Trust as a separate property asset. Exhibit C to Pet. Ex. A.

It was proper for the lower court's to consider the language of the Premarital Agreement in assessing Mark's claim of an oral promise made by Julie. Idaho law shows a strong public policy that premarital agreements and modifications to those premarital agreements must be in writing signed by both parties. Idaho Code §§ 32-917; 32-922; 32-924; See also *Dungan v. Dungan*, 147 Idaho 599, 601 (2009) rejecting a theory of partial performance of an oral marital agreement.

The Trial Court was correct in finding that even if Julie had made a promise to Mark that any property Mark and Julie purchased would be community property, that promise was not broken

because Mark and Julie never did buy a home together. The evidence is uncontroverted that the Osprey View home was purchased by the Trust. On March 25, 2013, the Allen Neustadt Testamentary Trust acquired 408 Osprey View Drive in McCall, Idaho. Pet. Ex. S; Trial testimony of Janene Foster, Vol. 1, Tr., pp. 129 - 130, Court Trial Tr., pp. 515 - 518. Julie had no authority to transfer or liquidate the 408 Osprey View Drive property. Vol. 1, Tr., p. 130, Court Trial Tr., pp. 519 - 520. The Osprey View Drive property was purchased by the Trust and all expenses related to the Osprey View Drive property were paid by the Trust. Vol. 1, Tr., pp. 135 - 137, Court Trial Tr., pp. 537 - 545.

Judge Scott was also correct in finding that there was no fraudulent inducement by Julie to get Mark to return to the Osprey home because Mark knew that to modify the Premarital Agreement there had to be a writing signed by Julie before the amendment would be enforceable, and Julie refused to sign the agreement. Mark acknowledged to Julie that the reason he wanted her to sign the documents he had prepared was due to the fact that he knew any change to the Premarital Agreement required a signed writing. Vol. 1 Tr., p. 189, Court Trial Tr., p. 756, ll. 1-16. Julie testified that after the Trust purchased the Osprey property Mark wanted a share of the equity in the home and Julie would not sign the documents he provided to her. Vol. 1, Tr., p. 198, Court Trial Tr., pp. 789 l. 10 - p. 790, l. 1. Mark was not entitled to rely on any oral promise made by Julie if in fact such promise was made post separation. This finding is supported by the evidence.

Mark is making credibility arguments to this Court, and pointing to evidence that he argues

conflicts with the findings of the Trial Court. This Court has stated that a trial court's findings of fact will not be set aside unless they are clearly erroneous. *Mays v. Davis*, 132 Idaho 73, 75 (1998). When a trial court sits without a jury this Court will liberally construe the trial court's findings of fact in favor of the judgment entered. *Id.* Even if conflicting evidence exists this Court will not disturb the trial court's findings and conclusions on appeal if they are based on substantial evidence. *Id.*

Julie requests that this Court reject Mark's appeal regarding fraud as the Trial Court's and District Court's decisions were based on substantial evidence.

Mark claims in his brief that his monetary interest in Osprey is \$700,000.00. He does not cite the Court to any evidence at trial that supports his claim, and the Trial Court made it clear that Mark has not established his interest in Osprey home.

Mark asks this Court in his concluding argument to award him an interest in the Osprey home. He offers no legal citation that would show how this Court would award Mark an interest in a property that is owned by a non-party to the case.

Mark is inviting this Court to second guess the Trial Court's findings of fact. Idaho Code § 12-121 provides for an award of attorney fees for a frivolous appeal. *DeChambeau v. Estate of Smith*, 132 Idaho 568, 572 (1999). Julie requests that this Court award her attorney fees because Mark's arguments are asking this Court to second guess the Trial Court's factual findings. Since Mark's appeal also involves the Premarital Agreement, Julie would also be entitled to an award of

fees pursuant to section 22 of the Agreement which provides for an award of fees to the prevailing party who seeks to enforce the Agreement. Petitioner's Ex. A, § 22.

DATED This 10th day of February, 2020.

LUDWIG ♦ SHOUELER ♦ MILLER ♦ JOHNSON, LLP

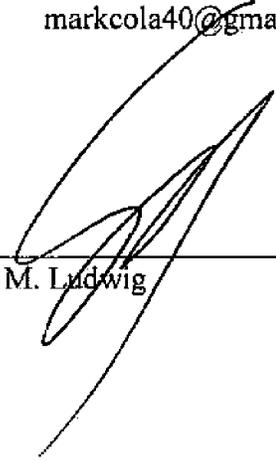
By _____
Scot M. Ludwig
Attorneys for Petitioner/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2020, I caused a true and correct copy of the foregoing document to be served upon the following as indicated:

Mark D. Colafranceschi
3330 HWY 55
New Meadows, Idaho 83654

x Via E-File/Serve:
markcola40@gmail.com



Scot M. Ludwig