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IN THE SUPREME COURT OF THE STATE OF IDAHO

ROCKNE LEE HOLLINGSWORTH and
DEBORAH HOLLINGSWORTH,

Plaintiffs-Appellants,

vs.

HAROLD K. THOMPSON, M.D. and
WALTER KNOX COMMUNITY
HOSPITAL, INC. d/b/a VALOR HEALTH,

Defendants-Respondents.

Docket No. 47488-2019

Gem County Case No. CV23-18-0616

APPELLANTS' REPLY BRIEF

Appeal from the District Court of the Third Judicial District for Gem County
Honorable George Southworth, District Judge presiding.

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I. Introduction

In direct contradiction to the position they took in front of the district court, Respondents concede before this Court that “Walter Knox Community Hospital, Inc.” is the proper defendant entity that provided plaintiff’s care.

Idaho law provides that a corporate entity formed and maintained pursuant to the provisions of Idaho’s corporation statutes does not qualify as a governmental entity entitled to any protections afforded by Idaho’s Tort Claim Act (ITCA).

Respondents’ disavowal of their prior representation to the district court and acknowledgement that Walter Knox Community Hospital, Inc. is the entity that provided medical care to Mr. Hollingsworth is dispositive of this appeal. Respondents’ admission requires reversal of the summary judgment ruling and remand to the district court with direction that the ITCA is inapplicable to this case.

II. Respondents’ Reversal of Position Regarding Walter Knox Community Hospital, Inc.’s Role Establishes They Have No Claim to ITCA Protections

Respondents now concede the Plaintiffs/Appellants accurately identified Walter Knox Community Hospital, Inc. d/b/a Valor Health as Mr. Hollingsworth’s medical care provider. Although not acknowledging the magnitude or significance of the change, Respondents do admit their new position is directly contrary to their position at the district court. The concession is first made in footnote 5 at page 9 of Respondent’s Brief where they state:

Defendants hereby concede the Plaintiffs correctly named Walter Knox Community Hospital, Inc. d/b/a Valor Health as a defendant in their First Amended Complaint filed April 23, 2019, in the present lawsuit *see R.*, p. 105, contrary to Defendants’ past assertions that this designation was in error, *see R.*, pp. 121 and 191.

By way of this disavowal, Respondents acknowledge inaccuracies in multiple affidavits submitted in support of their Motion for Summary Judgment. They now admit Appellants have been right all along because of “facts clearly established by the record:”

Defendants understand that certain aspects of the record are conflicting and regret any inconvenience caused to the Court. In order to clarify any confusion, Defendants hereby confirm the facts clearly established by the record, that Walter Knox Community Hospital, Inc. provided patient care. . . .¹

They now unequivocally state: “Plaintiffs correctly identified Walter Knox Community Hospital, Inc. d/b/a Valor Health as a defendant in this case.”²

Idaho law precludes a corporate entity created pursuant to the provisions of the Idaho corporate code from claiming governmental status. Thus, Respondents’ change of position confirms that the ITCA does not apply to the Appellants’ claims in this case.

A. Idaho’s Business Corporations Statutes Preclude Walter Knox Community Hospital Inc. From Claiming Governmental Entity Status.

Idaho law provides that a corporate entity created pursuant to provisions of the Idaho corporate code which makes entity filings with the Secretary of State is by definition not a “governmental subdivision, agency or instrumentality.” Idaho Code § 30-21-102 provides in part:

- (11) "Entity":**
- (A) Means:**
- (i) A business corporation;**
- (ii) A nonprofit corporation;**
-**
- (x) Any other person that has:**
- (I) A legal existence separate from any interest holder of that person; . . .**

¹ Respondents’ Brief, p. 18.

² Respondents’ Brief, p. 19.

(B) Does not include:

••••

(v) A government or a governmental subdivision, agency or instrumentality.

Id. § 30-21-102 (emphasis added).

Under Idaho law a nonprofit corporation is an entity. *Id.* § 30-21-102(11)(A)(ii). As a statutory corporate entity, an Idaho nonprofit corporation cannot be a “government or a governmental subdivision, agency or instrumentality.” *Id.* § 30-21-102(11)(B)(v).

Walter Knox Community Hospital Inc. is a corporation created and “organized under and pursuant to the Idaho Nonprofit Corporations Act.”³ Valor Health is a d/b/a of Walter Knox Community Hospital, Inc.⁴ Respondents concede Walter Knox Community Hospital, Inc d/b/a Valor Health was the deliverer of the healthcare at issue via its employee Dr. Thompson.⁵

1. Respondents Acknowledge Walter Knox Community Hospital, Inc. is a Separate Entity.

In these proceedings, Respondents have made repeated representations that the Walter Knox Memorial Hospital entity and Valor Health were distinct and separate from Walter Knox Community Hospital, Inc. In multiple sworn filings and in oral argument at the district court, Respondents claimed Valor Health was the operating name for the Memorial Hospital entity.

The CEO of Valor Health, Mr. Brad Turpen, stated under oath “Walter Knox Memorial Hospital similarly explored the possibility of creating a *completely separate non-*

³ R. p. 210.

⁴ R. p. 215.

⁵ R. p. 128.

*profit organization.*⁶ He explained “[a] *separate non-profit corporation, Walter Knox Community Hospital, Inc. was established. . . .*”⁷ Recognizing the distinction between the two entities, he describes how “Walter Knox Memorial Hospital began the process to lease hospital assets to Walter Knox Community Hospital Inc.”⁸ He further stated under oath “*Walter Knox Community Hospital, Inc. exists on paper as a corporation, but it has no money, no assets, provides no patient care, and has never done so.*”⁹

He continues under oath stating: “Walter Knox Community Hospital, Inc. has never been a state licensed hospital established by Gem County.”¹⁰

Similarly, Bryan Elliot, Chairman of the Board of Commissioners of Gem County claimed Valor Health was Walter Knox Memorial Hospital. In his Affidavit filed April 16, he asserted:

2. Valor Health, also known as Walter Knox Memorial Hospital, is a state licensed hospital established and owned by Gem County.
3. At no time from its inception through the present has Valor Health, also known as Walter Knox Memorial Hospital, ceased being a county-owned/managed facility.¹¹

On May 20, 2019, again under oath he made the exact same representations to the district court.¹² Likewise, Respondents asserted in argument below that Walter Knox Community Hospital, Inc. “has never been involved in healthcare and was not involved in

⁶ R. p. 191, ¶ 3(emphasis added).

⁷ R. p. 191, ¶ 4(emphasis added).

⁸ *Id.* (emphasis added).

⁹ R. p. 191, ¶ 6.

¹⁰ R. p. 191, ¶ 7.

¹¹ R. p. 43, ¶ ¶ 2, 3.

¹² R. p.134, ¶ ¶ 2, 3,

the healthcare of this individual.”¹³ Additionally, they made these same representations to the district court in their Memorandum in Support of the Motion For Summary Judgment.¹⁴

Respondents now reverse themselves on the issue of the corporate entity providing the healthcare. They admit Walter Knox Community Hospital, Inc. was the health care service provider after all. Respondents state:

“Defendants hereby confirm the facts clearly established by the record that Walter Knox Community Hospital, Inc. provided patient care . . .¹⁵”

Respondents new admission on appeal confirms Appellants filed their claim against the proper entity.

All of this confirms the ITCA does not apply because the proper defendant is an Idaho nonprofit corporation.

2. Walter Knox Community Hospital, Inc. Is A Distinct Corporate Entity And Does Not Have Political Subdivision Status Under Idaho Code § 6-902.

a. As An Idaho Corporation Walter Knox Community Hospital, Inc. Cannot Be Governmental Entity.

As a matter of Idaho statutory law, Walter Knox Community Hospital Inc. cannot be a governmental entity. It is black letter law that “every corporation will be regarded as a separate legal entity.” *Lunneborg v. My Fun Life*, 163 Idaho 856, 867, 421 P.3d 187, 198 (2018) (quoting *Alpine Packing Co. v. H.H. Keim Co., Ltd.*, 121 Idaho 762, 763, 828 P.2d 325, 326 (Ct.App. 1991).)

¹³ Tr. p, 20 ll, 2-5.

¹⁴ R. p. 121.

¹⁵ Respondent’s Brief, p. 18.

The Idaho Uniform Business Organization Code provides that the articles of incorporation of a nonprofit corporation are the “public organic record” of that entity. *See* Idaho Code § 30-21-102(42). That section makes clear it is the act of filing the public organic record documents that causes the formation of the nonprofit corporation entity.

“Public organic record” means the record, the filing of which by the secretary of state is required to form an entity, and any amendment to or restatement of that record. The term includes:

- (A) The articles of incorporation of a business corporation;
- (B) The articles of incorporation of a nonprofit corporation;

....

Id. (emphasis added). *See also Henry Gold Mining Co. v. Henry*, 25 Idaho 333, 336, 137 P. 523 (1913) (acknowledging corporate existence begins at filing of articles).

Because it could not come into existence without filing its public organic record Walter Knox Community Hospital, Inc. is by law a “filing entity.” “‘Filing entity’ means an entity whose formation requires the filing of a public organic record.” Idaho Code § 30-21-102(14). An “entity filing” is “a record delivered to the secretary of state for filing . . .” *Id.* § 30-21-102(12). An Idaho nonprofit corporation is an entity that must make such entity filings because a nonprofit’s “corporate existence begins when the articles of incorporation are filed.” *Id.* § 30-30-203. Moreover, it is required to make an annual entity filing with the secretary of state and maintain that filing in its corporate records. *Id.* § 30-30-1101(g).

In short, Walter Knox Community Hospital, Inc. has a “legal existence separate from any interest holder.” *See Id.* § 30-21-102(11)(A). That is exactly why the corporate form of entity exists in law—to be separate.

Its entity filings¹⁶ conclusively establish Walter Knox Community Hospital, Inc. is not a political subdivision with the right to assert Idaho Code § 6-902 as a defense. Idaho Code § 30-21-102 provides that an entity created under the corporation code is, by definition, excluded from claiming the status of “a government or a governmental subdivision, agency or instrumentality.” *See Id.* § 30-21-102(11)(B)(v).

b. Walter Knox Community Hospital Inc. Was Expressly Established To Be A Non-Governmental Entity.

Escaping limitations imposed upon Idaho governmental entities was the very purpose for which Walter Knox Community Hospital, Inc. came into existence. As described in Respondent’s Brief at page 8:

In 2006, the Idaho Supreme Court determined it was unconstitutional for public entities to borrow money without a supermajority vote and the ability to pay off the loan within 12 months. *City of Boise v. Frazier*, 143 Idaho 1, 137 P.3d 388 (2006). In response Walter Knox Memorial Hospital explored the possibility of creating a separate non-profit entity, named “Walter Knox Community Hospital, Inc”. with the intention of selling or leasing assets to the non-profit entity in order to more easily obtain loans and thereby funding for the hospital.

This explains that escaping constitutional restraints enforced against governmental entities is the reason Walter Knox Community Hospital, Inc. was created. Mr. Turpen acknowledges this in his Affidavit.¹⁷ The constitutional provisions Walter Knox Memorial Hospital wanted to avoid were the limitations contained in section 3 of Article 8 of the Idaho Constitution which provides in part:

No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds

¹⁶ R. pp. 210-229.

¹⁷ *See* R. p. 191, ¶ 3.

of the qualified electors thereof voting at an election to be held for that purpose,. . . .

A subsequent constitutional amendment eliminated the applicability of this provision to hospitals.¹⁸ But nothing about that constitutional amendment changed Walter Knox Community Hospital, Inc.'s status as a non-governmental entity. And Respondents make no claim that the amendment made such a change. Walter Knox Community Hospital, Inc. merely continued making its mandated corporate entity filings with the Secretary of State.

c. Walter Knox Community Hospital, Inc. Is Just A Nonprofit Corporation Subject To Suit.

Respondents ignore the existence of the corporate form. They conflate the concept of ownership of the nonprofit corporate entity with actually being the nonprofit entity. There is no basis in law for this reverse alter-ego / corporate veil-piercing argument. And, Respondents cite nothing to support their arguments. That is understandable because there is nothing in Idaho law that supports such a position.

Just because the separate corporate entity may be owned by Gem County in whole or in part does not mean the entity *ipso facto* gets the same protections as a political subdivision. Respondents cite no law that establishes that its ownership of “a separate nonprofit corporation”¹⁹ formed under the Idaho corporate statutes expressly to avoid constitutional limitations imposed on governmental entities somehow conveys upon that corporate entity governmental status. At the risk of being trite, this is a basic case of Respondents wanting to have their cake (escape the constitutional fundraising limitations) and eat it too (claim protections of the ITCA).

¹⁸ Respondents' Brief, p. 9.

¹⁹ R. p. 191, ¶ 4.

Walter Knox Community Hospital, Inc. is an Idaho nonprofit corporation organized under the corporation laws of Idaho governed by its members and a Board of Directors elected by its members.²⁰ It is a separate entity. It was intended to be a separate entity. It is not Gem County.

Walter Knox Community Hospital, Inc. is merely a nonprofit corporation subject to suit. As such, it has no claim to the protections of the ITCA and summary judgment was improper.

B. Respondents' Judicial Admissions Establish They Have No Claim To ITCA Protections.

Another reason Respondents' disavowed position on the proper defendant requires reversal of the summary judgment is that it results in a record that precludes application of the ITCA. The combined effect of the new judicial admission along with facts asserted by Respondents in the district court that have not been disavowed shows the impropriety of the grant of summary judgment.

“A judicial admission is a statement made by a party or attorney, in the course of judicial proceedings, for the purpose, or with the effect, of dispensing with the need for proof by the opposing party of some fact.” *Sun Valley Potato Growers, Inc. v. Texas Refinery Corp.*, 139 Idaho 761, 765, 86 P.3d 475, 479 (2004). “To be a judicial admission a statement must be a deliberate, clear, and unequivocal statement of a party about a concrete fact within the party's knowledge.” *Vanderford Co. v. Knudson*, 150 Idaho 664, 673, 249 P.3d 857, 866 (2011).

²⁰ R. p. 211.

Two salient concrete facts have been admitted or asserted by Respondents in these proceedings. First, disavowing their arguments and submissions to the contrary below Respondents admit on appeal Walter Knox Community Hospital, Inc. “provided patient care” to Mr. Hollingsworth. Second, as argued and sworn to below and not disavowed on appeal Walter Knox Community Hospital, Inc. “has never been a state licensed hospital established by Gem County.”²¹ Combined these two facts provide another ground on which reversal of the summary judgment is necessary.

The only entities protected under the ITCA are political subdivisions as defined in the statute. Idaho Code § 6-902 provides in part:

2. "Political subdivision" means any county, city, municipal corporation, health district, school district, irrigation district, an operating agent of irrigation districts whose board consists of directors of its member districts, special improvement or taxing district, or any other political subdivision or public corporation. As used in this act, the terms "county" and "city" also mean state licensed hospitals and attached nursing homes established by counties pursuant to chapter 36, title 31, Idaho Code, or jointly by cities and counties pursuant to chapter 37, title 31, Idaho Code.

To claim protection under the statute Walter Knox Community Hospital, Inc. d/b/a Valor Health must fall within the provision of “state licensed hospitals and attached nursing homes established by counties.” Valor Health’s own CEO, Mr. Turpen, explained under oath to the district court: “Walter Knox Community Hospital, Inc. has never been a state licensed hospital established by Gem County.”²²

²¹ R. p. 121.

²² R. p. 191, ¶ 7.

Given that Respondents now admit Walter Knox Community Hospital, Inc. provided the relevant patient care and have always asserted that entity is not a state licensed hospital established by Gem County, none of the protections of the ITCA can apply.

The ITCA does not apply to Walter Knox Community Hospital, Inc. d/b/a Valor Health or its employee Dr. Thompson because they are not within the scope of the Act. The judicial admissions standing alone establish summary judgment in this case was improperly granted.

III. Respondents' Changed Position About Walter Knox Community Hospital, Inc. Reemphasizes the Appropriateness of Equitable Remedies

On appeal, Respondents have admitted positions taken by their Affiants and in its arguments below regarding the status of Walter Knox Community Hospital, Inc. were not true. Thereafter, they simply ignore the existence of the corporate form and the legal ramifications thereof. Neither the CEO of Valor Health nor the Chair of the Gem County Commission provided fully accurate information about the entity status. Even in light of their own confusion, Respondents continue to argue Appellants should have looked beyond the now shown to be accurate secretary of state's records. Respondents continue to argue Appellants were not reasonable in relying on those records. The changing landscape of Respondents' positions about the status of the entities involved reinforces, as Appellants explained in their Opening Brief, the propriety of equitable relief if the Court should choose to proceed on that route.

IV. Respondents Have No Valid Claim For Fees But Appellants May Under the Appropriate Conditions Provisions Of IAR 41

Respondents seek a fee award against the Hollingsworths pursuant to Idaho Code § 6-918A. Even in the face of the inaccurate filings Respondents submitted below, they argue the

Hollingsworths' appeal "can only be characterized as dishonest in purpose and therefore in bad faith."²³

Hollingsworths have presented the facts underlying the case, the actions of counsel and the timeline in the case accurately. Hollingsworths have made good faith arguments based on statutory and equitable standards. There is no Idaho appellate decision that discusses the ITCA where corporate filings led to confusion regarding the identity of the proper defendant. Furthermore, the representations regarding the corporate filings at issue in this appeal have now been disavowed.²⁴ From the get go, Hollingsworths sought, as argued below, to have the Court "look at the entirety of Idaho law and see how does the Idaho Tort Claims Act fits within it."²⁵ Hollingsworths, although accused of doing so by Respondents, have never impugned the motives of Respondents in making the required corporate entity filings. It has been the effect of those filings that has been the basis for seeking relief. The Hollingsworths' good-faith basis for seeking application of statutory or equitable remedies at the district court and on appeal arose from the confusion created by those filings for Walter Knox Community Hospital, Inc. Confusion confirmed by Respondents' own affiants' submissions in the record. That is hardly a dishonest, much less a bad-faith, position.

Conversely, however, the submission of and reliance on inaccurate sworn statements at the district court provides a basis on which this Court could find an award of fees to Appellants. On appeal, Respondents disavowed an essential position taken at the district

²³ Respondents' Brief, p. 46.

²⁴ See Respondents' Brief, p.14 fn. 9, Appellant's Opening Brief, p. 12 and Addendum A.

²⁵ Tr. P. 17.

court. Respondents' reversal establishes the entirety of the proceedings to this point have been a waste of the resources of the courts and all involved.

Appellants acknowledge that an award of fees must normally be sought in an Opening Brief. Idaho Appellate Rule 41, however, provides in part:

(a) Application for Attorney Fees - Waiver. Any party seeking attorney fees on appeal must assert such a claim as an issue presented on appeal in the first appellate brief filed by such party as provided by Rules 35(a)(5) and 35(b)(5); provided, however, the **Supreme Court may permit a later claim for attorney fees under such conditions as it deems appropriate.** (emphasis added)

Under the rule, fees may be awarded discretionarily under unique circumstances. The unique circumstance here is that the basis for seeking fees did not exist until Respondents filed their response brief.

The right to recover attorney fees in actions brought under the ITCA is governed exclusively by I.C. § 6-918A. *Athay v. Stacey*, 146 Idaho 407, 412, 196 P.3d 325, 330 (2008). That section provides:

6-918A. ATTORNEYS' FEES. At the time and in the manner provided for fixing costs in civil actions, and at the discretion of the trial court, appropriate and reasonable attorney fees may be awarded to the claimant, the governmental entity or the employee of such governmental entity, as costs, in actions under this act, upon petition therefor and a showing, by clear and convincing evidence, that **the party against whom or which such award is sought was guilty of bad faith in the commencement, conduct, maintenance or defense of the action.** . . .(emphasis added)


An award of fees is warranted under the unique circumstance presented in this case of Respondents' reversal on appeal of their position on a dispositive fact. Had the fact been admitted below, there would be no basis for the filing of, much less granting of, the summary judgment motion that brings the parties before this Court.

V. CONCLUSION

The district court's grant of summary judgment should be reversed. The case should be remanded for further proceedings on its merits with direction that the Idaho Tort Claims Act is inapplicable to the proceedings. Respondents' failure to acknowledge Hollingsworths brought suit against the correct corporate entity below makes a fee award in favor of Appellants appropriate.

Dated: April 1, 2020.

HEPWORTH HOLZER, LLP


By: 
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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed with the Clerk of the Court the foregoing using the ICourt E-File system which will send notification of such filing to:

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Dated: April 1, 2020.



Kurt D. Holzer