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Ada County v. Browning Appellant's Reply Brief Dckt. 47984

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

ADA COUNTY, Plaintiff-Respondent, v. PHILLIP BROWNING, Defendant-Appellant, and CONSOLIDATED SUPPLY CO., IDAHO STATE TAX COMMISSION, WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee of Stanwich Mortgage Trust A, Defendants.	Supreme Court Docket No. 47984

APPELLANT'S REPLY BRIEF

Appeal from the Fourth Judicial District for Ada County
Honorable Steven Hippler, District Judge, Presiding

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I. Respondent's Actions Were Not Reasonable.

Respondent actions and arguments contravened the plain language of an applicable statute. The district court correctly noted that the "ultimate question is whether the parties presented reasonable arguments. *Arambarri v. Armstrong*, 152 Idaho 734, 741." A.R., p. 273. Respondent made no arguments and cited no relevant case law as to why no statutes of limitation governed its frivolous actions.

A. All civil actions are limited by a statute of limitations in Title 5.

It is not a matter of first impression that all civil actions are limited by a statute of limitations prescribed by a statute. "Civil actions can only be commenced within the periods prescribed in this chapter after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute." I.C. § 5-201. An action is commenced within the meaning of the chapter when the complaint is filed. I.C. § 5-228. The limitations prescribed in this chapter apply to actions brought in the name of the state, or for the benefit of the state, in the same manner as to actions by private parties. I.C. § 5-225. Limitations on actions brought in the name of state apply to counties as well. *See Blaine Cty. v. Butte Cty.*, 45 Idaho 193 (1927). In other words, any time a county files a civil complaint to initiate a civil action, it must comply with the timing provisions found in Chapter 2 of Title 5 unless it can point to a different limitation prescribed by statute. Specifically, a county must commence a civil action on statutory liabilities, i.e. liabilities created by statute within three (3) years. I.C. § 5-218. If there was ever any confusion which statute of limitation applied, section 224 provides a catch-all: "An action

for relief not hereinbefore provided for must be commenced within four (4) years after the cause of action shall have accrued." I.C. § 5-224.

Respondent had a maximum of four years to bring this foreclosure action after having learned of Gloria Browning's death. The district court ultimately determined that Respondent's action was subject to a three year statute of limitations under section 218 or in the alternative three years under section 224. Respondent had no reason to believe any statute of limitations prescribed in Title 5 provided Respondent more than four years to foreclose against the lien. While the district court reasoned that it was a matter of first impression whether section 218 applied to a county's statutory lien, it was not a matter of first impression whether a foreclosure lawsuit is subject to Title 5.

B. It was unreasonable for Respondent to believe a different statute of limitations applied to Idaho Code § 3501 et seq.

Absent a clear directive from Chapter 35 of Title 31, it was unreasonable for the county to believe a different statute of limitations applied to I.C. § 31-3501 et seq. Idaho Code § 5-201 highlights that it will be rare for a statute to prescribe a statute of limitations outside of Chapter 2 of Title 5. "Civil actions can only be commenced within the periods prescribed in this chapter after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute." *Id.* (Emphasis added.)

The Respondent does not indicate which section of Title 5 could permit a cause of action eleven years after the accrual. Nor does Respondent cite any relevant case law exempting section 3504 liens from the statutes of limitation found in Title 5. Respondent asserts that it previously "argued that the lien had no expiration and there was no statute of limitations governing the

foreclosure of Ada County's unsatisfied lien." *See Respondent's Brief*, p. 1. However, Respondent did not explain how it was exempted from the limitations in Title 5. This is not a reasonable argument, just a conclusory statement.

Respondent did not even argue that section 218 was ambiguous. The district court argued that for them. *See Appellant's Brief*, p.7. But even if section 218 does not unambiguously apply to indigent liens, one of the statutes of limitation within Title 5 does apply. Either the County had three or four years to commence a foreclosure action. It does not matter whether the County was uncertain which statute of limitations applied to this underlying case because either limitation barred the County from bringing this lawsuit.

The district court abused its discretion in denying Appellant's attorney's fees when the County's action was barred by either a three year or four year statute of limitation. Because there is no legal basis to believe that the County had more than four years from learning of Gloria's death to commence an action, the County acted unreasonably and without any basis in law or fact.

II. It Was Unreasonable To Allege A Liquidated Amount Without Proof.

Appellant recognizes that a calculation of attorney fees due as the prevailing party in the underlying action will likely be remanded to the district court for analysis. However, as a matter of background, and to clear the record, Appellant points out that it was unreasonable for Ada County to commence an action for foreclosure without proof of the underlying value and validity of the lien. It was this unreasonable action that led to the ensuing costly litigation.

A. Ada County refused to disclose the Board of Commissioners' Findings of Fact, Conclusions of Law, Final Determination, and Order of Reimbursement.

The County brought an untimely lawsuit and alleged the value of the lien without disclosing the Board of Commissioners' Findings of Fact, Conclusions of Law, Final Determination, and Order of Reimbursement. A.R., p. 61. In fact, the County did not allege in its complaint that the Board of Commissioners ever issued a Final Determination in this matter. A.R., pp. 29-34. Instead of providing the supporting evidence that was requested in discovery, the County filed for a protective order (A.R., p. 182) and argued that Browning was launching a collateral attack. A.R., p. 122. Apparently the County wished that Browning would just take its word that all of the appropriate procedures and notice were given back in 2000, when the medical services were allegedly provided.

B. The County's only proof of the value of the lien consisted of computer printouts, printed 18 years after the lien was filed.

Rather than provide the Final Determination, which would have shown the liquidated amount of the lien, the County provided a printout that was printed eighteen years after the alleged services took place. A.R., p. 37. The value of the County's lien is determined by the county commissioners "for such reasonable portion of the financial assistance paid on behalf of the applicant as the county commissioners may determine that the applicant is able to pay from resources over a reasonable period of time." I.C. 31-3510A(1). Thus, the final determination will set forth the amount of financial assistance that was paid on behalf of the applicant. I.C. § 31-3510A. Finally, after multiple rounds of discovery, the County produced a second printout, this time printed on March 7, 2019, showing a list of medical bills allegedly expended. A.R., pp. 203-

4. However, as noted by the district court, this created more reason to question the 18 year old process because there were discrepancies on the face of the two computer printouts alleging medical services provided as evidence by the County:

> Although the Notice of Lien represents that the medical services commenced on August l, 2000, the Provider Dales of Services reveals that Gloria received care beginning August 30, 2000 and that the County paid for such care.

A.R., p. 268, footnote 3.

Browning was surprised by the County's lien and subsequent lawsuit for his late aunt's medical bills. It was not unreasonable for him to demand evidence of what took place back in 2000 that would cause the County to foreclose on his home nearly 18 years later.

C. The legal work done by Browning was reasonable and necessary to properly defend his home.

Browning was forced by the County to expend resources to defend his home from foreclosure. The County now argues that Browning is not entitled to attorney fees for work related to a collateral attack to the decision of Ada County Board of Commissioners:

> Defendant's efforts up to [the County's motion for summary judgment] was to invalidate the lien attached to the Defendant's real property by collaterally attacking the decision of the Ada County Board of Commissioners which approved the medical indigency application of Gloria Browning and by repeatedly requesting disclosure of the contents of the indigency file that supported the propriety of the lien.

Respondent's Brief, p. 5. The County mischaracterizes Browning's pre-summary judgment efforts. The statute of limitations accrued upon the date the County learned of Gloria's death. This date that the County was aware of her death was disclosed by the County to Browning

during the discovery process. Prior to obtaining the date the statute of limitations had accrued, Browning was required to verify the validity and value of the County's alleged lien claim.

Finally, the County filed an amended complaint on February 7, 2019. A.R., pp. 29-37. Browning sent discovery requests to the County on February 21, 2020. A.R., p. 5. The County responded to the requests on March 20, 2019 (A.R., p.5), and on the same day filed a motion for Summary Judgment. A.R., pp. 38-48. The County's action was brought unreasonably. Browning was required to defend against an untimely foreclosure action alleging an unsubstantiated amount of money arising from an unsubstantiated indigent lien. The County prolonged the litigation by refusing to turn over the most basic of documents. "An aggressive litigation strategy carries with it certain risks, one of which is that a party pursuing an aggressive strategy may, if it loses, find itself required to bear a portion of the attorneys' fees incurred by the other party in responding to that aggressiveness." *Praseuth v. Rubbermaid*, Inc., 406 F.3d 1245, 1260 (l0th Cir. 2005).

Because the County's action was unreasonable, Browning was entitled to attorney's fees pursuant to I.C. § 12-117. For the foregoing reasons the district court abused its discretion in denying Browning's attorney's fees.

CONCLUSION

Browning respectfully requests this Court vacate the district court's denial of Browning's Motion for Reconsideration and remand to the district court.

DATED THIS 19th day of October, 2020.

/s/ Seth H. Diviney
Seth H. Diviney
Attorney for Defendant-Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of October, 2020, I caused to be served a true and accurate copy of the foregoing **APPELLANT'S BRIEF** upon the following by the method indicated:

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