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### Gangi v. Debolt Appellant's Brief Dckt. 48003

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Attorney for Plaintiff

IN THE SUPREME COURT OF THE STATE OF IDAHO

ALICIA GANGI, an individual,

Plaintiff-Appellant,

vs.

MARK W. DEBOLT and JANE DOE  
DEBOLT, husband and wife,

Defendants-Respondents.

SUPREME COURT NO. 48003-2020

Kootenai County Case No. CV28-18-5145

Appeal from the District Court of the First Judicial District  
Of the State of Idaho, in and for the County of Kootenai

Honorable John T. Mitchell, Presiding

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**APPELLANT'S OPENING BRIEF**

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## **I. STATEMENT OF THE CASE**

### **A. Nature of the Case**

Alicia Gangi (hereinafter “Gangi”) purchased a parcel of property in Kootenai County, Idaho. (R.9, ¶1) Mark Debolt (hereinafter “Debolt”) owned the lot next to Gangi. (R.11, ¶2) The water system that provided water to Debolt had a water tank that was on Gangi’s lot and that tank has a deck on it. (R.11, ¶¶4, 8). Debolt has an easement that allows him to use the deck on Gangi’s lot and Debolt claimed that the easement provided him with the exclusive right to use the deck. (R.11, ¶9)

Gangi filed suit seeking a determination that the easement in question was not an exclusive easement and Gangi filed a motion for summary judgment on that issue.<sup>1</sup> The District Court determined that the easement was ambiguous and the intent of the parties to it was a question of fact. (R.93) Thereafter, Gangi moved to dismiss the case with prejudice and that motion was granted. After that motion was granted, the District Court awarded Debolt his attorney’s fees based on a contract. (R.142)

The District Court awarded fees based on a contract that was a totally different agreement than the agreement that the District Court found to be ambiguous. (Tr. 17, Ln. 20 – Tr. 18, Ln 7) The first time this new agreement or contract was ever mentioned in the case was when Debolt requested attorney’s fees. (R.98) The agreement the District Court relied on was between a neighbor who is not a party to this action, and the predecessor of both Gangi and Debolt. (This new agreement will hereinafter be referred to as the “water contract”.)

The Gangi and Debolt parcels were one parcel before their predecessor, Arthur Elliott, (hereinafter “Elliott”) split the parcel into the Gangi and Debolt lots. (R.11, ¶4) Before Elliott

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<sup>1</sup> As discussed below, Gangi also sought a declaration related to her use of the water system.

split the parcel, he and another neighbor, David C. DaBoll, (hereinafter “DaBoll”) entered into the water contract. (R.100) That agreement allowed them both to use the water system. It also contained a restriction on additional hook-ups that required the parties to it to agree to allow an additional hook-up. (R.101, ¶ b.) The agreement does not provide any direction if one of the parties to it split their lot. At the time Elliott split his lot, it was his understanding that DaBoll knew he was creating an additional lot and that he and DaBoll should have modified the agreement in light of the splitting of his lot.<sup>2</sup> (R. 154, p.7-8)

Debolt was aware that Elliott and DaBoll’s intention was that the Gangi lot would also be allowed to use the water system. In 2015, Debolt signed a water rights claim which set forth that three homes would be served by the water system. (R.156) Debolt then took the position that Gangi could not use the water system. In this action, Gangi sought a declaration that her lot could use the water system. (R.11, ¶¶4-7) The issue of Gangi’s right to use the water system was never addressed in the District Court.

## **II. ISSUES ON APPEAL**

Did the District Court commit error when it awarded attorney’s fees based on a contract that was not between Gangi and Debolt?

Did the District Court commit error when it awarded attorney’s fees based on a contract that had nothing to do with the dispute that was resolved or the dispute pertaining to use of the water system which was not resolved?

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<sup>2</sup> In this portion of the record I refer to Debolt, when I meant DaBoll.

### III. ARGUMENT

#### A. STANDARD OF REVIEW

An award of attorney's fees is reviewed for an abuse of discretion. Ellis v. Ellis, 467 P.3d 365 (2020). If it is determined that when reviewing the court's discretionary decision, we determine whether 1) the district correctly perceived the issue as one of discretion; 2) acted within the boundaries of such discretion and consistently with applicable legal standards; and (3) reached its decision by an exercise of reason. Blackmore v. Re/Max Tri-Cities, LLC, 149 Idaho 558, 563, 237 P.3d 655, 660 (2010).

#### B. THE DISTRICT COURT ABUSED ITS DISCRETION IN AWARDING FEES BECAUSE GANGI AND DEBOLT HAD NO AGREEMENT WHICH AUTHORIZED THE AWARD.

Attorney's fees may only be awarded when there is a contract between the parties that authorizes the award. "Where a valid contract between the parties contains a provision for an award of attorney fees, the terms of the contract establish a right to attorney fees." Primera Beef, LLC v. Ward, 166 Idaho 180, 457 P.3d 161, 170 (2020) citing Lamprecht v. Jordan, LLC, 139 Idaho 182, 187, 75 P.3d 743, 748 (2003).

The agreement, the meaning of which was litigated, was an agreement between Elliott and Debolt. It was that agreement that Debolt was claiming granted him the right to the exclusive use of the deck, notwithstanding the fact that that agreement never even used the word "exclusive" The agreement the District Court relied upon to grant Debolt his fees was between Elliott and DaBoll. Gangi and Debolt are simply the successors to Elliott and they have a contract with DaBoll that allows for fees.

No contract exists between Gangi and Debolt that allows for an award of fees, therefore the District Court abused its discretion when it awarded fees.

C. THE DISTRICT COURT ABUSED ITS DISCRETION BECAUSE THE CONTRACT BETWEEN DABOLL AND ELLIOTT HAD NOTHING TO DO WITH THE RESOLUTION OF THE ISSUES IN THE CASE.

The water contract upon which the District Court relied to grant fees had nothing to do with this case. The only issue litigated was whether Debolt had exclusive right to use the deck on Gangi's property which was resolved by reference to a separate recorded document. The water contract provided no guidance on the issue of the use of the deck. It has nothing in it that speaks to that issue. Lastly, even if the issue of Debolt's ability to prevent Gangi from using the water system had been litigated, the water contract would have provided no guidance on that issue.

For attorney's fees to be awarded in a case involving a tort claim based on a contract, the resolution of the dispute requires reference to or construction of the contract itself. Davis v. Tuma, No. 46721, 2020 WL 4556820, at \*11 (Idaho Aug. 7, 2020) For attorney's fees to be awarded pursuant Idaho Code §12-1230(3) as a commercial transaction, the lawsuit must seek resolution of a dispute which arises from that transaction. "Rather, the test is whether the commercial transaction comprises the gravamen of the lawsuit. Attorney's fees are not appropriate under I.C. § 12-120(3) unless the commercial transaction is integral to the claim, and constitutes the basis upon which the party is attempting to recover. Edwards v. Edwards, 122 Idaho 971, 972-73, 842 P.2d 307, 308-09 (Ct. App. 1992) citing Brower v. E.I. DuPont De Nemours and Co., 117 Idaho 780, 784, 792 P.2d 345, 349 (1990).

The water contract set forth the rights of Elliott and DaBoll in relation to the water system. Elliott then split his right in two and transferred it to two different owners. The water contract sets forth the rights of Elliott's successors, Gangi and Debolt, as they relate to DaBoll. Gangi and Debolt were in essence co-owners of a water right who were in a dispute about their

duties and obligation as amongst themselves.<sup>3</sup> Nothing in the water contract with DaBoll provides any guidance on the resolution of that issue and even if Gangi's ability to use the water system had been litigated, the water contract still would not be relevant to the resolution of the dispute between Gangi and Debolt.

The water contract had nothing to do with this case and it was error for the District Court to rely upon it as a basis to award fees.

#### IV. CONCLUSION

In order to award attorney's fees based on a contract, a contract between the parties must exist which allows the same. No such contract exists here. The contract which allows for an award of fees is between DaBoll and Gangi/Debolt – not between Gangi and Debolt. Furthermore, the contract relied upon to award fees had nothing to do with the resolution of the claim which was resolved.

This court should reverse the order awarding Debolt his attorney's fees and remand the matter to take actions consistent therewith.

DATED August 31, 2020.

/s/ Arthur M. Bistline

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ARTHUR M. BISTLINE  
Attorney for Plaintiff-Appellant

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<sup>3</sup> It is clear that Gangi would have prevailed on her case to use the water system. The water agreement is silent as to what happened when Elliott split his lot and the intent of both Elliott and DaBoll was that the Gangi lot could use the system. It is equally clear that Debolt was aware of this intent when he stated that three homes would be using the system on his water rights application.

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2020, I served a true and correct copy of foregoing APPELLANT’S OPENING BRIEF by the method indicated below, and addressed to the following:

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/s/ Sharon L. Oyler

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