

**BOISE, THURSDAY, AUGUST 20, 2009, AT 9:00 AM**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 34978**

**JOHNNY BARKER,** )  
 )  
 **Petitioner-Appellant,** )  
 )  
 **v.** )  
 )  
 **STATE OF IDAHO,** )  
 )  
 **Respondent.** )  
 \_\_\_\_\_ )

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Darla S. Williamson, District Judge.

Nevin, Benjamin, McKay & Bartlett, LLP, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

In 2004, Johnny Barker was charged with domestic violence, second degree kidnapping, and aggravated battery. The charges arose from two separate instances in which Barker choked his girlfriend, tied her up, and assaulted her. Barker proceeded to trial and a jury found him guilty of all counts.

Barker filed a pro se application for post-conviction relief containing twenty-one separate claims and a request for an attorney. Barker was appointed an attorney, and the state filed an answer, which contained a section asking the district court to summarily dismiss Barker's application. A scheduling conference was held in June 2007, and summary dismissal hearings were held in July, August, October, and December of that year. Eventually, the district court summarily dismissed Barker's application. Barker appeals, asserting the district court erred in summarily dismissing his application for post-conviction relief.

**BOISE, THURSDAY, AUGUST 20, 2009, AT 10:30 AM**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 35135**

**ROCKY MOUNTAIN** )  
**PHARMACEUTICALS, INC.,** )  
 )  
**Plaintiff-Respondent,** )  
 )  
**v.** )  
 )  
**BERT and TINA DeWINKLE, husband and** )  
**wife, dba MOO RIAH BERTINA, INC.,** )  
 )  
**Defendants-Appellants.** )  
 )  
\_\_\_\_\_ )

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Juneal C. Kerrick, District Judge.

Harry C. DeHaan, Twin Falls, for appellants.

Douglas W. Crandall, Boise, for respondents.

Beginning in 1999, Bert and Tina DeWinkle, d/b/a Moo Riah Bertina, Inc., purchased pharmaceutical supplies for their dairy farm from a travelling salesman (Scott) for Rocky Mountain Pharmaceuticals, Inc. Throughout the course of their dealings, Scott delivered the DeWinkles supplies directly from his truck and presented them with an invoice. Scott regularly met with the DeWinkles regarding accumulated invoices during any given month, which the DeWinkles paid by check identifying the invoice number in the memo line. On occasions when Scott did not have the supplies on his truck, they were ordered and shipped to the DeWinkles directly from Rocky Mountain. Rocky Mountain then sent the DeWinkles invoices for these supplies.

After a period of time, Rocky Mountain claimed that there was an accruing balance of unpaid invoices owed by the DeWinkles. The DeWinkles claimed that they received monthly statements from Rocky Mountain identifying twenty outstanding invoices which they, in fact, had paid and could present cancelled checks identifying the invoices to be paid in the memo line. The alleged outstanding balance was the subject of a meeting between the DeWinkles, Scott, and Harold, the president of Rocky Mountain. The result of this meeting is contested by the parties. The DeWinkles claim that Scott and Harold signed two statements acknowledging that all invoices had been paid and granting the DeWinkles a credit for overpayment as well as waiving all past and future finance charges and late penalties. Rocky Mountain acknowledges the two

signed statements, but claims that there was an oral agreement that the debt would be satisfied upon its receipt of an agreed payoff amount which was never remitted.

Rocky Mountain filed suit on February 24, 2005, alleging damages of \$15,269.54 in unpaid invoices with interest. Prior to trial, the DeWinkles filed a motion in limine to exclude any evidence of charges to the open account that arose prior to the four-year statute of limitation period. The district court granted the DeWinkles' motion and ordered that any evidence of charges to the account made prior to February 24, 2001, was barred by the statute of limitation.

At trial, the DeWinkles made a continuing objection to the admission of evidence of debts incurred prior to the statute of limitation cutoff date. However, the district court admitted all of the invoices for products sold from Rocky Mountain to the DeWinkles from the commencement of their relationship in 1999 as well as summaries listing those invoices and the payments received through the corresponding period. The DeWinkles moved for a directed verdict after the conclusion of Rocky Mountain's evidence arguing accord and satisfaction, that Rocky Mountain was not the real party in interest, and failure to establish the existence of an outstanding debt. The district court deferred judgment on accord and satisfaction and denied the motion as to the other grounds. The DeWinkles renewed this motion at the conclusion of their evidence and it was again denied by the district court.

The jury returned a verdict finding that the DeWinkles had breached their agreement to pay for the pharmaceutical supplies and that they had failed to prove any of their affirmative defenses. The jury awarded damages to Rocky Mountain in the amount of \$9,518.15. After the verdict, the DeWinkles again renewed their motion for a directed verdict which was denied by the district court. Judgment was entered upon the jury's verdict. Rocky Mountain filed a motion for attorney fees as the prevailing party. The district court denied the motion reasoning that there was no prevailing party. The DeWinkles appeal challenging the district court's denials of their motions for directed verdict and judgment notwithstanding the verdict. Additionally, the DeWinkles challenge the admission of evidence of charges to the account prior to the cutoff date of the statute of limitation in violation of the district court's order in limine.

**BOISE, THURSDAY, AUGUST 20, 2009, AT 1:30 PM**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 35309**

**STATE OF IDAHO,** )  
 )  
 **Plaintiff-Respondent,** )  
 )  
 **v.** )  
 )  
 **TROY WAYNE WOLF,** )  
 )  
 **Defendant-Appellant.** )  
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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Gooding County. Hon. R. Barry Wood, District Judge.

E. W. "Skip" Carter, Attorney at Law, PA, Pocatello, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent. for respondent.

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Troy Wayne Wolf appeals from the judgment of conviction and sentence entered upon his plea of guilty to three counts of aggravated assault, count three of which was enhanced for the use of a firearm. Wolf contends that he lacked capacity to give an informed and voluntary guilty plea, that the district court should have *sua sponte* ordered a psychological evaluation as an aid for sentencing, that the district court abused its discretion in sentencing Wolf and in denying his Idaho Criminal Rule 35 motion, and that the district court should have ordered that Wolf be assigned to the Competency Restoration Unit program at the Idaho State Penitentiary.