

BOISE, FRIDAY, AUGUST 21, 2009, AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

ARTHUR WILLIAM MICHALK,)	
)	
Plaintiff/Respondent)	Docket No. 35221
v.)	
)	
WENDI LEE MICHALK)	
)	
Defendant/Appellant.)	

Appeal from District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Terry R. McDaniel, Magistrate Judge.

Wendi Lee Michalk, *pro se* for appellant.

Audrey Numbers, Boise, for respondent.

Pro se Appellant Wendi Michalk (Wendi) appeals a divorce decree entered by Magistrate Judge Terry R. McDaniel, dissolving her marriage to Respondent Arthur William Michalk (Art), dividing the community assets and debts, and granting Wendi and Art joint legal and physical custody of their minor child. Wendi essentially argues that she was not afforded a fair trial and that Art's prior conviction for two counts of lewd and lascivious conduct with a minor should have precluded the magistrate court from granting the parties joint legal and physical custody of their child.

BOISE, FRIDAY AUGUST 21, 2009 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
)	
Plaintiff-Appellant-Cross Respondent,)	
)	
v.)	Docket No. 35665
)	
)	
MICHAEL EDWIN CLEMENTS,)	
)	
)	
<u>Defendant-Respondent-Cross Appellant.</u>)	

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Bonneville County. Hon. Gregory S. Anderson, District Judge.

Hon. Lawrence G. Wasden, Idaho Attorney General, Boise, for appellant.

Molly J. Huskey, Idaho Appellate Public Defender, Boise, for respondent.

In 1994, Clements shot two individuals and one of those individuals died as a result of the shooting. The State charged Clements with first-degree murder with a firearm enhancement, attempted first-degree murder with a firearm enhancement, and burglary. Clements entered into a plea bargain, where in exchange for his guilty pleas to the reduced charges of second-degree murder with a firearm enhancement and attempted second-degree murder with a firearm enhancement, the State dismissed the burglary charge and a felony intimidating a witness charge from a separate case, and also recommended concurrent sentences. The district court sentenced Clements to life with fifteen years fixed for second-degree murder plus fifteen years for the firearm enhancement, and fifteen years with ten years fixed for attempted second-degree murder plus five years for the firearm enhancement. Clements appealed his sentence. On October 3, 1996, the Idaho Court of Appeals affirmed his sentence in an unpublished opinion.

Approximately ten years later on May 26, 2006, Clements filed a *pro se* I.C.R. 35 motion to correct an illegal sentence. The basis of Clements' motion was that he was illegally sentenced for two weapon enhancements in violation of I.C. § 19-2520E since both shootings "arose out of the same indivisible course of conduct." Clements was appointed counsel for his Rule 35 motion, and the district court entertained argument. After reviewing the transcript of the preliminary hearing held on September 20, 1994, the district court determined that Clements shot

both victims in rapid succession and, therefore, the crimes “arose out of the same indivisible course of conduct” under I.C. § 19-2520E. Accordingly, the district court entered an order granting Clements’ Rule 35 motion in part, vacated his judgment of conviction and sentence for the count of attempted second-degree murder with a firearm enhancement, and resentenced Clements to fifteen years with ten years fixed for the count, with credit for time served.

The State appealed, asserting that the district court lacked jurisdiction to examine the underlying facts of Clements’ case in order to determine whether his original enhanced sentence for attempted second-degree murder was illegal. Clements filed a *pro se* cross-appeal, arguing the district court should have invalidated both of his sentences after finding that the imposition of two weapons enhancements was illegal. Clements was later appointed a public defender for his appeal. On May 29, 2008, the Idaho Court of Appeals reversed the district court’s order, holding that the district court lacked jurisdiction to examine the underlying facts of Clements’ case before concluding that his sentence was illegal. Clements now appeals to this Court.

BOISE, FRIDAY, AUGUST 21, 2009 AT 11:10.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STOREY CONSTRUCTION INC.,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 TOM HANKS and RITA WILSON,)
 husband and wife; and LILY REEVES,)
)
 Defendants-Appellants.)
 _____)

Docket No. 35459

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Blaine County. Hon. Robert Elgee, District Judge.

Danielson Harrigan Leyh & Tollefson, LLP, Seattle, Clements, Brown, & McNichols, P.A., Lewiston, Edward Simon, Ketchum, for Defendants-Appellants Hanks and Wilson; and Reeves.

Stanislaw Ashbaugh, LLP, Seattle, for Plaintiff-Respondent Storey Construction Inc.

Hepworth, Janis, & Brody, Chtd., Twin Falls, for Amicus Curiae Idaho Trial Lawyers Association.

Sun Valley Trust (Trust) is the owner of real property located in Blaine County. The beneficiaries of the Trust are Rita Wilson and Tom Hanks. Lily Reeves is the trustee of the Trust. In July of 2000, the Trust entered into a contract with Storey Construction, Inc. (Storey) to have Storey act as the general contractor for a high end residential villa building project on the property.

In December of 2002, Storey filed a demand for arbitration to resolve a payment dispute. The Trust and Wilson filed a counterclaim, including an allegation of substandard and defective work. Storey prevailed in that arbitration and the counterclaims were dismissed with prejudice.

On November 7, 2007, the Trust filed a demand for a second arbitration, alleging \$2.5 million in damages caused by latent construction defects. Storey responded by filing a complaint in the district court for abuse of process and seeking to stay the arbitration demand based on a defense of *res judicata*. Storey asserted that the previous arbitration award barred the Trust's current claim for substandard and defective work.

Wilson, Hanks, and Reeves now appeal from the rulings of the district court that (1) the arbitrability of *res judicata* is not itself an arbitrable issue and (2) because Appellants had made a claim of substandard and defective construction in a previous arbitration, the doctrine of *res judicata* bars their subsequent demand for arbitration against Storey.