

POCATELLO, THURSDAY, SEPTEMBER 24, 2009 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

JERRY CHRISTIAN and JOY CHRISTIAN,)	
husband and wife,)	
)	
Plaintiffs-Appellants,)	
)	Docket No. 35331
v.)	
)	
DAVID MASON,)	
)	
Defendant-Respondent.)	

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Bonneville County. Honorable Jon J. Shindurling, District Judge.

Marcus, Christian & Hardee, LLP, Boise, for appellants.

Wright, Wright & Johnson, PLLC, Idaho Falls, for respondent.

This is an action to recover funds transferred from Robert McClung to David Mason in the amount of \$32,873.12. McClung transferred the funds to Mason as part of a Ponzi scheme operated by McClung. McClung held himself out to his victims as a day-trader or investment advisor. He solicited funds from his victims and then employed the funds for his own use or for payment of returns to previous investors to keep the scheme operating. McClung provided fictitious account statements to demonstrate his alleged trading activity.

The Idaho Department of Finance began investigating McClung in July 2002. Around that same time, McClung sent a letter to his victims, informing them that he had stopped trading. The Department of Finance initiated a civil lawsuit against McClung and various entities under his control in November 2002, seeking to regain funds invested with him and to prevent further violations of the Idaho Securities Act. McClung was also prosecuted federally and plead guilty to mail fraud in United States District Court in January 2005, resulting in a 36-month prison sentence.

As a result of the Department of Finance lawsuit and the collapse of his Ponzi scheme, McClung filed Chapter 11 bankruptcy in United States District Court. The case was eventually converted to a Chapter 7 bankruptcy. Jerry and Joy Christian received a judgment against McClung in the bankruptcy case on October 14, 2004, in the amount of \$154,690.80, rendering them McClung's judgment creditors. This debt was not discharged by the bankruptcy court.

This action was brought by the Christians in the Seventh Judicial District Court to recover funds transferred from McClung to Mason in what the Christians allege was a fraudulent transfer. Mason invested \$166,042.06 with McClung and was paid \$198,915.18, resulting in an

excess return of \$32,873.12. The Christians allege that they are entitled to the excess \$32,873.12 because it constitutes a fraudulent transfer under the Uniform Fraudulent Transfers Act. The Act allows recovery of funds transferred by a debtor with the actual intent to hinder, delay, or defraud a creditor or where the funds were transferred without receipt of reasonably equivalent value in exchange. On cross-motions for summary judgment, the district court dismissed the case, finding that the Christians' state law claim was preempted by federal bankruptcy law, meaning that they lacked standing to pursue the claim because the sole authority to pursue it was vested in the bankruptcy trustee.

On appeal, the Christians argue that the district court erred in dismissing their suit because the fraudulent transfer claim was not preempted by federal bankruptcy law. The Christians argue that they have standing to sue because the statute of limitations for the bankruptcy trustee to bring a fraudulent transfer claim had passed and their action was filed within the time limit specified by Idaho law. The Christians also argue that the trial court should have granted them summary judgment because the transfers to Mason were fraudulent as a matter of law.

POCATELLO, THURSDAY, SEPTEMBER 24, 2009 at 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

RALPH J. HENDERSON, an individual,)
)
 Appellant,)
 v.)
)
 HENDERSON INVESTMENT)
 PROPERTIES, L.L.C., an Idaho Limited)
 Liability Company, ROBER E.)
 HENDERSON, an individual and LISA A.)
 HENDERSON, an individual,)
)
 Respondents)

Docket No. 35138

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, Bannock County. Hon. Ronald E. Bush, District Judge.

Norman G. Reece, P.C., Chubbuck, for appellants.

Cooper & Larsen, Chtd, Pocatello, for respondent.

Appellant, Ralph Henderson, along with Respondents, their son Roger Henderson and their daughter-in-law, Lisa Henderson, created a business known as Henderson Investment Properties, L.L.C. (“HIP”). The sole purpose of HIP was to operate a Jimmie John’s Gourmet Sandwich Shop in Pocatello, Idaho.

On July 27, 2005, Appellant filed a complaint for judicial dissolution. On April 10, 2007, Appellant filed a second complaint wherein he sought a declaratory judgment. Subsequently, on May 21, 2007, the district court consolidated the above actions. The trial began on July 6, 2007, and finished on July 8, 2007.

Shortly thereafter, on August 2, 2007, the district court denied Appellant’s request for judicial dissolution and as result of its ruling, on November 7, 2007, the district court dismissed Appellant’s claim for declaratory relief.

On February 12, 2008, the district court ruled that Respondents were entitled to attorney fees and expenses under paragraph XIV(G) of the Operating Agreement, which reads, “In any action or proceeding brought to *enforce* any provision of this Agreement, the successful party is entitled to recover reasonable attorneys’ fees...” The court awarded a total of \$21,552. Appellant now appeals the award of attorney fees.

POCATELLO, THURSDAY, SEPTEMBER 24, 2009 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

WENDY KNOX & RICHARD DOTSON,)

Plaintiffs-Appellants,)

v.)

STATE OF IDAHO ex rel. C. L. OTTER,)

Governor; BEN YSURSA, Secretary of)

State; and LAWRENCE G. WASDEN,)

Attorney General,)

Defendants-Respondents.)

Docket No. 35787-2008

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Bingham County. The Hon. Darren B. Simpson, District Judge.

Thomsen Stephens Law Offices, PLLC, Idaho Falls, for Plaintiffs-Appellants.

Attorney General, Civil Litigation Division, Boise; David F. Hensley, Counsel to the Governor, Boise, for Defendants-Respondents.

Wendy Knox and Richard Dotson appeal from an order dismissing their complaint, which asked for a declaratory judgment that Idaho Code sections 67-429B and 67-429C violate article III, section 20 of the Idaho Constitution. Idaho Code sections 67-429B and 67-429C were passed via ballot initiative in the November 2002 general election. Knox and Dotson claim that these code sections, which purportedly permit Indian tribes to conduct gambling using tribal video gaming machines and set forth the mechanism for tribes to amend their state-tribal gaming compacts, violate the Idaho Constitution's prohibition on gambling in the State of Idaho.

The district court dismissed the complaint for lack of standing. Knox and Dotson alleged their injury in fact was that they became compulsive gamblers who habitually gambled at Fort Hall Casino near Blackfoot, Idaho. As a result of their gambling addictions, they lost tens of thousands of dollars, a home and job, and endured family strife and emotional distress. The district court ruled that Knox and Dotson failed to demonstrate a substantial likelihood that the declaratory judgment requested would prevent or redress their claimed injury.