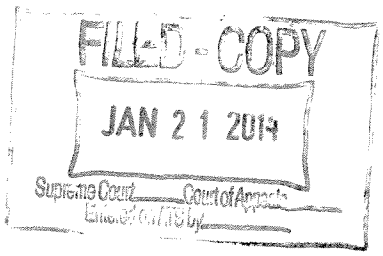
1-21-2014

Lightner v. Craven Appellant's Brief Dckt. 41561

IN THE COURT OF APPEALS

IN THE STATE OF IDAHO

WILLIAM LIGHTNER, **Appellant,** **vs.** **OLIVIA CRAVEN Executive Director of Idaho Commission of Pardons and Parole MIKE H. MATHEWS, JANIE DRESSEN, ROBIN SANDY, BUD BRINEGER, DEL RAY HOLM, Commissioners of Idaho Commissions of Pardons and Parole and their successors in office, et, al.** **Respondents,**	**CASE NO. 41561** **DCT NO. CV OC-2013 17033 (ADA)** **APPELLANT'S BRIEF WITH SUPPORTING AFFIDAVITS**



BRIEF OF APPELLANT

Appealed from the District Court of the Fourth Judicial Distract of the State of Idaho, in and for the County of Ada

HONORABLE JUDGE DANIEL HURLBUTT
District Judge

WILLIAM LIGHTNER #41438
APPELLANT
ICC, UNIT P-21-B
P.O. BOX 70010
BOISE, IDAHO 83707

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INTRODUCTION

Appellant filed this civil Rights Complaint ("Complaint") on 26 September 2013 (dkt 11) requesting reimbursement of funds. These funds were collected from him by the respondents for services rendered to be able to be on parole. This was not a one-time fee, but collected on a month to month basis. When Appellant was violated and returned to the prison. Respondents elected not to count any of Appellants time which he had successfully completed on parole. Instead, Respondents added his parole time to the end of his sentence, changing his final discharge date. Appellant is seeking reimbursement for the successful months completed on parole that he was charged for, yet now not accounted for in his time calculations. If Respondents are not counting the time, appellant claims that the services for credited parole were not rendered as per the agreement of parole, and reimbursement should be made.

STATEMENT OF FACTS

1. Appellant was originally paroled in January 2004.
2. Allegations were made against Appellant and he was returned to IDOC custody in August 2004.
3. At Appellants revocation hearing in March 2005 he was reinstated and remained in good standing until July 2005 when he violated his parole conditions. Appellant's violation was not related to any new crimes.
4. Appellant was arrested and returned on a commission warrant to custody in October 2005
5. Appellant received a revocation hearing in 2006 where his parole was terminated, and he is still currently confined under IDOC care, custody and control.
6. Appellant was never informed by the Commissions of Pardons and Parole or IDOC staff that the money he paid for "services" could be refundable.
7. Appellant filed this civil action on 26 September 2013 (dkt 11) after hearing for the first time that it could be possible to get a refund of the parole money he had previously paid.
8. On 8 October 2013, Appellant filed a Motion to Disqualify Judge Hurlbutt without cause (dkt 27).
9. On 11 October 2013 Counsel for Respondents filed a Motion to Dismiss with a supporting Memorandum (dkt 30).
10. Prior to Appellant being afforded an opportunity to answer the Respondents Motion, the District Court granted Respondents Motion and dismissed the case on 15 October 2013 (dkt 40).
11. Appellant now appeals the District Court rulings (dkt 47).

ISSUES ON APPEAL

ISSUE 1- Did the statute of limitations begin at Appellants' 2006 revocation hearing, or at a later 2013 date?

ISSUE 2- Knowing Appellant had filed a Motion to disqualify without cause under IRCP 40 (d)(1) should district court Judge Hurlbutt have issued an order of dismissal of the case seven (7) days after receiving the Motion to disqualify without cause?

ISSUE 3- Did the District Court abuse its discretion by granting Defendants/Respondents Motion to Dismiss prematurely without allowing Plaintiff/Appellant a chance to respond?

ISSUE 4- Is the $600.00 collected from Appellant by the Respondents an issue of material fact for which relief can be granted?

ARGUMENT

ISSUE 1- ***Did the statute of limitations begin at Appellants' 2006 revocation hearing, or at a later 2013 date?***

Appellant was arrested by a commission warrant and returned to custody on 2 October 2005. At his 2006 revocation hearing Appellant was informed that in addition to being violated and returned to prison, that his completed parole time would be forfeited.

> *"The time which during such prisoner was on parole shall not be deemed a part [of the sentence] thereof; unless the commission, in its discretion, shall determine otherwise, but nothing herein constrained shall prevent the commission from again paroling such prisoners at its discretion", IC 20-228.*

The issue presented by Appellant in his complaint was that of reimbursement of funds collected from him, NOT that his time was being forfeited (dkt 14). This is not addressed IC 20-228. These are two separate issues and need to be treated as such. It was clear to Appellant that his time was being forfeited. The issue of time forfeiture was discussed at the 2006 revocation hearing. However, the issue of financial refund for services not rendered was not addressed or discussed at that hearing.

Under the rules of the Court and pre established law, the Appellants Statute of limitations begins to run once he knew of the injury and its cause.

> *"[a] claim occurs when the plaintiff knows or has reason to know of the injury which is the basis for the action" Gibson v. United States* 781 F2d 1334 (9th Cir. 1986)

Appellant claims that he did not know that there was a possibility of a refund. Also, he had no reason to even suspect to know, and was not informed at his 2006 hearing that the possibility of a refund was a genuine issue of material fact. Neither did he sign a form such is given in Miranda informing him of any rights. The issue of monetary refund or reimbursement was not mentioned.

Respondents claim that Appellant knew his time was being forfeited and automatically by assumption without proof or evidence lead the court to believe that these are one in the same (dkt 35), but forfeiture of time, and reimbursement of collected fees are separate issues, and as such, can have different dates acquiring knowledge about them. Appellant admits he was informed at his 2006 hearing that his time was being forfeited. But as an inmate, locked away in prison without access to an attorney he was not informed and did not have any knowledge of the possibility of a reimbursement until 2013. No evidence has been given by defendants to prove otherwise.

Furthermore, the non moving party is entitled to have all information and inferences from the record viewed in his favor. *Miles v. Idaho Power Co. 116 Idaho 635 728 P2d 757 (1989).* Since respondents have provided nothing more than mere speculation and assumption that Appellant knew and was aware of his refund issue without proof, it must be viewed in his favor that he did not know. Therefore, 2006 cannot be used as a starting accrual date for purpose of statute of limitations.

Meanwhile, Appellant's claims are supported with an affidavit of his own, and that of another who attended the 2006 hearing. These affidavits prove the genuine issue of material fact in question concerning reimbursement of fees was not mentioned. Defendants/Respondents motion to dismiss is based on un-supported and unsubstantiated speculation.

Viewing this in light most favorable to the non-moving party the accrual did not begin until 2013 when Appellant first learned he could possibly receive a refund.

ISSUE 2- ***Knowing Appellant had filed a Motion to disqualify without cause under IRCP 40 (d)(1) should district court Judge Hurlbutt have issued an order of dismissal of the case seven (7) days after receiving the Motion to disqualify without cause?***

The purpose of this rule is to assure a fair tribunal by allowing a party to disqualify a Judge thought to be unfair or biased. *Jahnke v. Moore* 112 Idaho 944, 737 P2d 465 (Ct. App. 1982).

Knowing that Appellant feels Judge Hurlbutt is unfair and biased, and had filed a Motion for Disqualification without Cause, he should not have filed any Order to the case, except to excuse himself.

By ignoring plaintiff's motion to disqualify, then hastily granting the defense's motion to dismiss, prior to receiving plaintiff's response to said motion, the court proved to be unfair and biased (dkt 2).

Furthermore, continuing to show bias and unfairness, the district court denied plaintiffs motion to disqualify "WITHOUT CAUSE" quoting Rule 40(d)(1)(h), which states:

> *"a party moving to disqualify a judge or magistrate under this rule 40 (d)(1) shall mail a copy of the motion for disqualification to the presiding judge or magistrate at the judges resident chambers."*

Appellant's motion was filed with the clerk of the court as all other motions are filed, it's clear it was received, it was responded to. In researching Rule 40(d)(1)(h) the clerk of the court claims that Judge Hurlbutt does not have a separate address for a resident chambers were motions can be mailed to. In the interest of Justice, Appellant did not need a cause for disqualification, yet, the district court provided one. Proving to be unfair and biased the district courts orders should be reversed and remanded.

ISSUE 3- ***Did the District Court abuse its discretion by granting Defendants/Respondents Motion to Dismiss prematurely without allowing Plaintiff/Appellant a chance to respond?***

Defendants/Respondents filed a Motion (dkt 30), with Memorandum in support (dkt 32), to Dismiss according to IRCP Rule 12 (b)(6) or alternatively Rule 56 (c), using the 2006 revocation hearing as the accrual date for statute of limitations.

The District Court failed to consider that Rule 12 (b)(6) goes on to state that

> *"To dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the court. The motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion be Rule 56."*

In violation of this Rule, Appellant was not given a reasonable opportunity to respond, or to present any evidence. The Motion was filed on the 11th of October 2013 and the District Court, without waiting for Plaintiffs response, granted Defendants Motion to dismiss just four (4) days later on 15 October 2013 (dkt 40).

With a Motion to Dismiss or for Summary Judgment on the grounds of statute of limitations or lachas it would be better made only after the non-moving party has answered, and the issues are framed. *Osterloh v. State 100 Idaho 702, 604 P2d 716 (1979).*

Appellant had planned to respond to the Motion to dismiss with affidavits supporting his responses. Yet the District Courts premature Order did not allow that. It must be deemed a biased Order when only considering one side of the argument, or refusing to allow a response from the non moving party.

ISSUE 4- ***Is the $600.00 collected from Appellant by the Respondents an issue of material fact for which relief can be granted?***

While it has been determined that a parolee can be charged a cost of supervision fee, this is not a one-time fee. It occurs on a month to month basis. As a parolee, Appellant successfully completed a number of months without incident. At the beginning of each of these months a fee was charged by the defendants to provide services which allowed Appellant the ability to be on parole for that month.

Yet, when Appellant was violated; the parole commission exercised its ability to pull more than the parole time of just the month the violation occurred in. They used IC 20-228 to pull every month of Appellants parole time.

Therefore, by their own discretion and choice, once the defendants later chose to pull a completed month of good time served on parole it must be deemed that they did not provide the services for the month. They must therefore return the collected money for successfully completed months they chose not to count but were completed without violation. If no violation occurred within the month not being counted and a new month began, Respondents should not be financially rewarded for voiding the contractual agreement at a later date. They should not be allowed to keep those funds from a completed month they voluntarily choose not to count?

Although Appellant finds no case law either supporting or denying this claim (which is why counsel should be appointed in setting precedence) because the fee is charged each month, Appellant claims that once a month is successfully completed, he has fulfilled his contractual obligation that month. As a new month begins, a new contract is invoked and a new fee charged. This continued month to month throughout the length of parole.

A completed monthly contract is fulfilled when the final day passes and no violations have occurred, thereby, beginning a new monthly contract and new fee for services. If the commission

decides at a later date to pull a successfully completed month (where they cannot claim a violation occurred during that month) then, they can only say they are choosing not to count the month thereby retracting any service that was paid for, and entitling Appellant to a refund. Appellant is demanding $600.00 for successful months completed and paid for which the commission chose to pull by also revoking any services allegedly rendered (dkt 15).

Defendants demanded that while on parole Appellant attends outpatient treatment therapy and was charged a $50.00 per week fee for that therapy. By being charged this extra fee and being required to attend this mandated program, defendants overstepped the intent of Idaho Code 20-228 when choosing not to count this time. Since Appellant did what was required, paid all the fees and attended all classes, it must be deemed he completed his end of those monthly contracts. It was the defendants who have not fulfilled their end of those monthly contracts, and therefore, a return of Appellants service fees must be granted.

According to contract law, when either party fails to uphold their end of the contract, the contract itself can be deemed null and void. When Appellant was paroled he was required to sign a contract with the Parole Commission, it was a requirement, which was binding for all parties to adhere to. Appellant claims that parole supervision fees should be viewed as month to month contracts. It is clear that any violation during the month forfeits that month's fee as a revocation occurs and parole can be terminated. Likewise, when Respondents fail to count a successfully completed month they should forfeit their service fee.

CONCLUSION

It is well established that the statute of limitations begins when the plaintiff knows or should have known about the issues. In this case the Plaintiff/Appellant did not know he could file for a refund of his parole fees. Nor should he have known. To this day, Appellant has no knowledge of established case law on the issue. Respondents have failed to offer any proof that he had known, or should have known. Respondents instead rely on speculation that he should have known because his time was being forfeited. Speculation is not evidence, nor should it be accepted as such. Encouraged by Respondents to view all case law, information and inferences in his favor the Motion for Dismissal on statute of limitations should be denied.

By Responding to Plaintiff's Motion to Dismiss without cause, the district court admitted that it was aware of the bias challenge and should have excused itself from the case. The District Court erred by speedily ruling and Ordering the case be dismissed. This shows a willful and wanton act of bias, which is the purpose Rule 40 (d)(1) intended to avoid. Also, when Plaintiff/Appellant filed for Motion to Dismiss without cause, the Court denied the Motion using an improper claim that Appellant did not properly serve the courts private chambers. There is no address or information available for Plaintiff to serve a certificate of service to private chambers, as Rule 40 (d)(1)(h) suggests. This caused Plaintiff/Appellant his right to access the court for a fair and impartial ruling for his motion, playing a part in his case being dismissed.

With the District Court having knowledge that all information and inferences should be deemed or looked at favorably toward the non moving party, the District Court error in rendering a judgment prior to receiving Appellants response to the Motion to Dismiss. By not allowing a response, the district court demonstrated prejudice and bias and is the exact reason for which Appellants Rule 40 (d)(1)

Motion to dismiss without cause was filed. Appellant has a constitutional right of due process to respond and offer evidence in his own behalf.

Whether the pleading would be successful or not is irrelevant in this matter. The fact is that Respondents collected $600.00 for services they did not provide. The refund is an issue of material fact on which relief if successful could be granted.

Respectfully submitted,

DATED this 16 day of January, 2014.

WILLIAM LIGHTNER, Appellant

STATE OF IDAHO)
(ss.
County of Ada)

William Lightner, Appellant, after first being duly sworn upon his oath deposes and says as follows:

1. I am the Affiant in the above entitled matter.
2. I am over the age of 18, of sound mind, and able to testify to these matters.
3. I am currently residing at ICC, Unit P-21B, P. O. box 70010, Boise, ID 83707.
4. I have been incarcerated since my 2006 parole revocation hearing ("hearing").
5. At my hearing, I was informed only that my parole was being terminated, and that all credited time was being forfeited and would be added to the end of my sentence.
6. With my parole time being forfeited at that hearing, the commission voluntarily chose to cancel and void their monthly contractual agreements and not count the months I paid them for services. Therefore, I claim the services I paid for were not rendered and I am entitled to a refund of the monthly fees for the months I successfully completed without violation.
7. I was not told or informed that I was entitled to or could ask for a refund of the money defendants collected from me.
8. During my entire time in prison, I have never spoken to anyone who has told me they received a refund of parole supervision fees.
9. It is the Commission policy not to mention paid supervision fees at revocation hearings.
10. By not crediting me the time for which I paid, the Commission did not provide the service for which the fee was collected.
11. I believe the $600.00 in question is a genuine issue of material fact that can be granted as relief.

12. While the Defendants have used my 2006 revocation hearing date, they have shown no proof or evidence to claim I knew or should have known of a possible refund at that time.

13. I believe that the time forfeiture and cost of supervision reimbursement are two separate, distinct, and individual issues.

14. The only mention that I made as the Plaintiff/Appellant in this case toward the number of days taken, was as an alternative to the reimbursement for settlement purposes.

15. Like with all motions, my Rule 40 (d)(1) motion to dismiss without cause was properly filed with the clerk of the district court.

16. While I was on parole I was required to take outpatient therapy through the SANE program which I attended each week. Being in therapy as a parole requirement and also being charged a treatment fee I feel that in not counting this time the defendants have violated my rights when not reimbursing me since they have chosen not to count the time.

17. The above statements are true and correct to the best of my knowledge.

FURTHER YOUR AFFIANT SAYETH NAUGHT

DATED this 17 day of January, 2014.

William Lightner

WILLIAM LIGHTNER, Affiant-Appellant

SUBSCRIBED AND SWORN to before me this 17 day of January, 2014.

Loretta M Goldston

Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 7-29-15

LORETTA M. GOLDSTON NOTARY PUBLIC STATE OF IDAHO

STATE OF IDAHO)
(ss.
County of Ada)

Marcia Lightner, after first being duly sworn upon her oath deposes and says as follows:

1. I am an Affiant to this above entitled matter.
2. I am over the age of 18, of sound mind, and able to testify to these matters.
3. I am currently residing at PO Box 574 Ontario, OR 97914.
4. I attended the 2006 parole revocation hearing of William Lightner #41438.
5. At no time during this hearing, did I hear the parole commission ever mention to William Lightner about reimbursement money which defendants collected they received for parole supervision fees.
6. At no time during this 2006 revocation hearing, did I hear the parole commissioners ever mention to William Lightner that his service fees were being taken, or that he was entitled to a refund.
7. At no time during this 2006 revocation hearing, did I hear the commission mention to Mr. Lightner informing him that he was entitled to or could ask for a refund of the money defendants collected from him.
8. In reviewing parole commission hearing minuets no statements reflect any information given to Mr. Lightner informing him about a refund for collected supervision fees when his parole time was forfeited.
9. The above statements are true and correct to the best of my knowledge.

FURTHER YOUR AFFIANT SAYETH NAUGHT

DATED this 17 day of January, 2014.

MARCIA LIGHTNER, Affiant

SUBSCRIBED AND SWORN to before me this 17 day of January, 2014.

Loretta M Goldston
Notary Public for Idaho
Residing at: Boise, Idaho
Commission Expires: 7-29-15

LORETTA M. GOLDSTON NOTARY PUBLIC STATE OF IDAHO

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of January 2014, I mailed a true and correct copy of the **APPELLANTS BREIF WITH SUPPORTING AFFIDAVITS OF WILLIAM AND MARCIA LIGHTNER** via the US mail system to:

OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION, APPELLATE UNIT
PO BOX 87320
BOISE, ID 83720-0010
KARIN MAGNELLI ISB 8929
Deputy Attorney General

MARCIA LIGHTNER