

SUMMARY STATEMENT

Lydia Nunez v. Carl Johnson
Docket No. 45136

Lydia Nunez and Carl Johnson were involved in a car accident. Nunez filed a complaint against Johnson alleging negligence and seeking recovery for property damage and personal injuries sustained during the accident. Initial trial counsel filed a motion to withdraw approximately six months after the complaint was filed due to an inability to remain in contact with Nunez. Following a hearing, the district court granted the motion to withdraw. Approximately four months after the clerk served the order allowing withdrawal on Nunez via certified mail, Johnson filed a motion to dismiss. The district court granted the motion and issued an order of dismissal with prejudice. Nunez filed a motion to set aside the order of dismissal pursuant to Idaho Rule of Civil Procedure 60(b)(1), (b)(4), or (b)(6). The court denied the motion following a hearing.

Nunez appealed from the district court's order denying her motion to set aside the order of dismissal. Nunez argued that the order of dismissal is void pursuant to I.R.C.P. 60(b)(4) because counsel and the district court did not strictly comply with I.R.C.P. 11.3.

The Court of Appeals held I.R.C.P. 11.3(b)(1) demands strict compliance, and subsequent judgments entered against the party whose attorney withdrew without strict compliance with the rule are void. Counsel did not strictly comply with the requirements of I.R.C.P. 11.3(b)(1) because he did not serve the motion to withdraw on Nunez nor did he provide notice to Nunez of the hearing on the motion. The Court also held that the district court failed to strictly comply with I.R.C.P. 11.3(c)(1) because the district court relied on a prior version of the rule when it issued the order allowing withdrawal. Specifically, the order allowing withdrawal obligated counsel, not the clerk, to serve copies of the order on Nunez, and contained an incorrect deadline. Thus, the order and judgment of dismissal is void because counsel did not strictly comply with the requirements of I.R.C.P. 11.3(b)(1) and the district court did not strictly comply with the requirements of I.R.C.P. 11.3(c)(1). Accordingly, the Court of Appeals reversed the district court's order denying Nunez's motion to set aside the order of dismissal and remanded for further proceedings.