

SUMMARY STATEMENT

Kelly v. Kelly, Docket No. 46748

The Idaho Supreme Court vacated a magistrate court's award of primary physical custody and sole legal custody of a minor child to Brandon Kelly after determining that the magistrate court impermissibly allowed Brandon to hire his own expert to conduct a parenting time evaluation. The Court held that under Idaho Rule of Family Law Procedure 719, parenting time evaluators can only be selected by stipulation of the parties or by appointment of the court. In either case, the chosen expert must be neutral, and not beholden to either side. The Court held the magistrate court violated the scope and purpose of Rule 719 by allowing Brandon to hire his own expert to act as a parenting time evaluator. The Court concluded that this error clouded the entirety of the judicial process and required that the judgment regarding child custody and visitation be vacated and remanded for a new trial. Even so, the Court still affirmed several of the magistrate court's evidentiary rulings for guidance upon remand.