

## **SUMMARY STATEMENT**

*Smith v. Smith*  
Docket No. 46832

This appeal involves a challenge to subject matter jurisdiction in connection with a petition to modify an order in a divorce proceeding. In 2005, Ballard Smith (Husband) and Charlie Smith (Wife) stipulated to a final divorce order that required the parties to sell real property located in Salt Lake City, Utah (Salt Lake Property) and allocate the net proceeds to both parties on an equal basis. In subsequent orders, Husband was tasked with marketing and selling the Salt Lake Property. Without Wife's knowledge, Husband moved the Salt Lake Property in and out of various business entities and unilaterally sold a six-acre portion of the Salt Lake Property. After the majority of the Salt Lake Property remained unsold for nearly a decade, Wife petitioned the magistrate court to modify its prior order, requesting that the magistrate court: (1) direct that the Salt Lake Property be appraised and that Husband pay her one-half of the appraised value, or (2) in the alternative, appoint a receiver to sell the Salt Lake Property and divide the net proceeds equally. Husband opposed the petition, in large part, by arguing that the magistrate court never had subject matter jurisdiction over the Salt Lake Property when it entered its original final divorce order. The magistrate court granted Wife's petition to modify and appointed a receiver to handle all matters relating to the Salt Lake Property. Additionally, the magistrate court ordered Husband to pay Wife one-half of the net proceeds from the sale of the six-acre portion of the Salt Lake Property and awarded Wife attorney fees pursuant to Idaho Code section 12-121. Husband appealed to the district court. The district court affirmed the magistrate court and awarded Wife attorney fees on intermediate appeal.

The Supreme Court affirmed the district court's decision and awarded attorney fees to Wife. First, the Court held that the district court did not err in affirming the magistrate court's determination that it had subject matter jurisdiction over the Salt Lake Property. Second, the Court held that the district court did not err in affirming the magistrate court's ruling that the Salt Lake Property was community property. Third, the Court held that the district court did not err in affirming the magistrate court's appointment of a receiver. Fourth, the Court held that the district court did not err in affirming the magistrate court's ruling that Wife was entitled to one-half of the net proceeds from the sale of the six-acre portion of the Salt Lake Property. Lastly, the Court held that the district court did not err in affirming the magistrate court's award of attorney fees and discretionary costs to Wife, nor did the district court err when it awarded attorney fees to Wife on intermediate appeal.

\*\*\*This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.\*\*\*