

SUMMARY STATEMENT

Limary v. McLean

Docket No. 50588

This appeal arises from a divorce proceeding between Crystal Limary and Shaun McLean. Following a court trial, McLean appealed the magistrate court's amended judgment and decree of divorce regarding property division and custody of the parties' minor child. The district court on intermediate appeal concluded that the magistrate court inappropriately interjected itself into the trial by extensively questioning the parties and the witnesses beyond the scope permitted. The district court vacated the judgment, finding that the magistrate court's active participation obscured the reliability of its decision, and remanded the matter to a different judge for a new trial. Limary appealed, arguing (1) McLean's failure to object to the magistrate court's questioning during trial constituted a waiver of that issue on appeal, and (2) the magistrate court's questioning of the parties and the witnesses was within the scope of its authority under Idaho Rule of Family Procedure 706(g).

The Idaho Supreme Court affirmed the district court's decision to vacate the magistrate court's judgment and decree and divorce. The Court first held that an objection to the magistrate court's questioning of witnesses may be raised in an opening brief on appeal pursuant to Idaho Rule of Family Procedure 706(h) because it is "the next available opportunity" for a party to raise the issue in the context of a family law proceeding where the magistrate court is the trier of fact. The Court then held that the magistrate court's questioning of the witnesses went beyond the scope permitted was thus improper. The Court further ordered reassignment to a different magistrate judge on remand.

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