

TWIN FALLS, FRIDAY, NOVEMBER 8, 2024 at 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

ELLEN SALAZAR,)	
)	
Petitioner-Respondent-)	
Cross Appellant,)	
)	
v.)	Docket No. 50725
)	
ERASMO SALAZAR,)	
)	
Respondent-Appellant-)	
Cross Respondent.)	
_____)	

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Cassia County, Michael P. Tribe, District Judge.

Erik R. Lehtinen, State Appellate Public Defender, Boise, for Appellant.

Roy, Nielson, Platts & McGee, LLP, Twin Falls, for Respondent.

This appeal concerns a non-summary contempt trial arising out of a divorce proceeding. Husband and Wife divorced in 2020, and the judgment and decree of divorce obligated Husband to pay Wife child support and attorney fees, among other terms. Roughly two years later, Wife brought the underlying contempt proceeding, charging Husband with nine counts of contempt for failing to comply with the terms of the divorce decree. On the morning of the contempt trial, Husband contacted a deputy clerk of the court, indicating he was stuck in Utah with a broken vehicle and would be unable to attend the trial. The magistrate court determined that Husband's failure to appear and failure to hire counsel to represent him was willful and held the trial and sentencing despite his absence. Ultimately, the magistrate court found Husband in criminal contempt of the divorce decree, imposing a 70-day jail sentence with 50-days suspended and awarding Wife additional attorney fees.

On intermediate appeal, the district court affirmed the magistrate court's decision to hold the non-summary contempt trial and sentencing hearing in his absence and without counsel. However, the district court determined there was insufficient evidence that Husband waived his right to counsel and, therefore, the magistrate court violated Idaho Rule of Civil Procedure 75(1)(1) by imposing a sanction of incarceration without an attorney present to represent Husband. Consequently, the district court reversed the magistrate court's order of contempt in part and remanded for further proceedings.

On appeal to the Idaho Supreme Court, Husband argues the district court erred in affirming the magistrate court's decision to hold the non-summary contempt trial and sentencing hearing in his absence and without counsel because the procedure violated his due process rights and Rule 75. Wife cross-appeals, arguing the district court erred by vacating Husband's jail sentence on various grounds, including: (1) Husband did not challenge the magistrate court's finding that he waived his right to counsel in its briefing to the district court; (2) Husband failed to produce an adequate record on appeal to the district court; and (3) there was sufficient evidence in the record, based on Husband's prior conduct, to establish a waiver of his right to be present during the contempt trial and right to counsel. Wife further argues the district court erred by failing to address and award attorney fees and costs to her on intermediate appeal.