

SUMMARY STATEMENT

Herr v. Herr

Docket No. 47941

After Anne Herr petitioned for divorce from John Herr, John asserted that two investment accounts opened during the marriage were his separate property. The magistrate court disagreed, finding that separate and community property had been commingled in the accounts, triggering the presumption that all assets in the accounts were community property. Because John did not present an argument to rebut this presumption, the magistrate court ordered the accounts divided equally between the parties. The district court affirmed the magistrate court's decision on intermediate appeal. John appealed to the Idaho Supreme Court, arguing that the district court's decision should be reversed because evidence sufficient to trace his separate property was admitted at trial.

The Supreme Court affirmed the decision of the district court. The Court held that John was obligated to present an argument at trial to rebut the presumption applied by the magistrate court, not merely to provide evidence from which an argument might have been made. Additionally, the Court awarded attorney fees on appeal to Anne.

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