STARE DECISIS, DICTA, OR . . . SOMETHING ELSE?

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1

A story about the long arm statute

- *Telford v. Smith Cnty., Texas*, 155 Idaho 497, 314 P.3d 179 (2013)
  - Telford is a well know serial litigator. Before this case was over, she was designated as a vexatious litigant. Unfortunately, we had to finish our case, because this suit was filed before that happened.
  - She tried to buy property in Smith County, Texas, pursuant to a tax sale. However, the tax lien was redeemed, and the sale was undone.
  - As a result, she sued everyone.

A story about the long arm statute (cont.)

- We moved to dismiss for lack of personal jurisdiction.
- Idaho's long arm statute:
  - Any person, firm, company, association or corporation, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, firm, company, association or corporation, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:
    - (a) The transaction of any business within this state which is hereby defined as the doing of any act for the purpose of realizing pecuniary benefit or accomplishing or attempting to accomplish, transact or enhance the business purpose or objective or any part thereof of such person, firm, company, association or corporation;
    - (b) The commission of a tortious act within this state;
- Idaho Code § 5-514

A story about the long arm statute (cont.)

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- Idaho Code § 5-514

A story about the long arm statute (cont.)

- *Saint Alphonsus Reg'l Med. Ctr. v. State of Wash.*, 123 Idaho 739, 852 P.2d 491 (1993)

  "This Court has consistently held that an allegation that an injury has occurred in Idaho in a tortious manner is sufficient to invoke the tortious act language of I.C. § 5–514(b). Further, this section is designed to provide a forum for Idaho residents, is remedial legislation of the most fundamental nature and should be liberally construed. Washington argues that its application of the POAC rate is not tortious conduct within the long-arm statute since the POAC rate is part of Washington's rules and regulations promulgated pursuant to legislative authority and in furtherance of its police powers. Whether Washington's conduct is actually tortious, however, is a factual question and irrelevant to our examination of jurisdiction under the long-arm statute. Given the remedial nature of our long-arm statute, and construing the facts in the affidavits in a light most favorable to St. Alphonsus, we find that jurisdiction exists under § 5–514(b).

  Having found jurisdiction under § 5–514(b), St. Alphonsus must satisfy one additional test: whether the assertion of jurisdiction by an Idaho court is permissible under the Due Process Clause of the United States Constitution."

  - *Saint Alphonsus Reg'l Med. Ctr. v. State of Wash.*, 123 Idaho 739, 743, 852 P.2d 491, 495 (1993)

A story about the long arm statute (cont.)

- So what to do? Make the argument anyway.

As for Smith County, Respondents also contend that no business transaction nor tortious act occurred in Idaho. First, it is not clear that that *I.C.* § 5-514 applies to Smith County. It specifically states that "Any person, firm, company, association or corporation, whether or not a citizen or resident of this state" which commit the enumerated facts can be subject to jurisdiction. *I.C.* § 5-514. The plain language of the statute does not include foreign governments or their subdivisions within its scope.[22]

[22] In *Saint Alphonsus Reg'l Med. Ctr. v. State of Wash.*, 123 Idaho 739, 743, 852 P.2d 491, 495 (1993), this Court seems to infer that the State of Washington could be subject to the Courts of Idaho under the long arm statute. However, the issue of whether a state meets the definition of "person, firm, company, association or corporation" is not addressed, and so it is possible that the parties in *Saint Alphonsus* waived the argument. Respondents do not waive the argument, and contend that Smith County does not fall within the enumerated entities.

RESPONDENTS' BRIEF - 16

A story about the long arm statute (cont.)

- What did it get me?
  - "By its terms, the statute applies to any "person, firm, company, association or corporation." I.C. § 5–514. In *Saint Alphonsus Regional Medical Center v. State of Wash.,* 123 Idaho 739, 852 P.2d 491 (1993), we held that the State of Washington was subject to jurisdiction under Idaho Code section 5–514, *id.* at 743, 852 P.2d at 495, but there was no analysis of whether the state was included in the words person, firm, company, association, or corporation."
  - *Telford v. Smith Cnty., Texas*, 155 Idaho 497, 503, 314 P.3d 179, 185 (2013) (fn. 4)
- Essentially, I got a footnote on this argument.

What is stare decisis?

- "When there is controlling precedent on questions of Idaho law the rule of stare decisis dictates that we follow it, unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice."
  - *Greenough v. Farm Bureau Mut. Ins. Co. of Idaho*, 142 Idaho 589, 592, 130 P.3d 1127, 1130 (2006) (cleaned up)

Does stare decisis mean that a ruling is enshrined forever as law?

"While we are cognizant of the importance stare decisis plays in the judicial process, we are not hesitant to reverse ourselves when a doctrine, a defense, or a holding in a case, has proven over time to be unjust or unwise.

The court in the proper performance of its judicial function is required to examine its prior precedents. When precedent is examined in light of modern reality and it is evident that the reason for the precedent no longer exists, the abandonment of the precedent is not a destruction of stare decisis but rather a fulfillment of its proper function.

Stare decisis is not a confining phenomenon but rather a principle of law. And when the application of this principle will not result in justice, it is evident that the doctrine is not properly applicable."

- *Salinas v. Vierstra*, 107 Idaho 984, 990, 695 P.2d 369, 375 (1985) (cleaned up)

What is dicta?

"If the statement is not necessary to decide the issue presented to the appellate court, it is considered to be dictum and not controlling."

- *State v. Hawkins*, 155 Idaho 69, 74, 305 P.3d 513, 518 (2013)

"Obiter dicta and dictum are well-defined in Black's Law Dictionary:

Dictum. A statement, remark, or observation. . . .

The word is generally used as an abbreviated form of obiter dictum, 'a remark by the way;' that is, an observation or remark made by a judge in pronouncing an opinion upon a cause, concerning some rule, principle, or application of law, or the solution of a question suggested by the case at bar, but not necessarily involved in the case or essential to its determination; any statement of the law enunciated by the court merely by way of illustration, argument, analogy, or suggestion. Statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand or obiter dicta, and lack the force of an adjudication. Dicta are opinions of a judge which do not embody the resolution or determination of the court, and made without argument, or full consideration of the point, are not the professed deliberate determinations of the judge himself."

- *Smith v. Angell*, 122 Idaho 25, 35, 830 P.2d 1163, 1173 (1992) (cleaned up).

"This Court is not bound by such dicta[.]"

- *City of Weippe for Use & Benefit of Les Schwab Tire Centers of Idaho, Inc. v. Yarno*, 96 Idaho 319, 323, 528 P.2d 201, 205 (1974) (cleaned up).

What is the ruling in St. Al's v. Washington?

- "Given the remedial nature of our long-arm statute, and construing the facts in the affidavits in a light most favorable to St. Alphonsus, we find that jurisdiction exists under § 5–514(b)."
  - *Saint Alphonsus Reg'l Med. Ctr. v. State of Wash.*, 123 Idaho 739, 743, 852 P.2d 491, 495 (1993).
- This is essential to the case, and does not appear to be an aside. So it appears to be the holding, with precedential value, and not dicta.
- Why did this ruling not apply to Smith County?

What to do when the Court has not addressed an issue?

- What do you do when there is a case that is similar to yours, and has a ruling that is either specifically stated or is implicit, that directly applies to your case?
  - But what happens if you come up with an argument that is not even mentioned or analyzed in this case?
  - Are you bound by stare decisis?
  - Can you call the ruling dicta?
  - Or is it something else?

Idaho common law on dog bites

- *Boswell v. Steele*, 158 Idaho 554, 348 P.3d 497 (Ct. App. 2015)
  - Facts:
    - Steele and her granddaughter lived together with two small dogs. Steele visited the Boswells at their home. Mr. Boswell drove Steele home. At Steele's home, the two dogs were in the kitchen behind a gate. Boswell walked over the gate, and extended his hand to the dogs. One dog bit his hand, injuring him.
    - The same dog had previously bit or nipped at people.
    - Boswells filed claims for domestic animal liability, negligence, premises liability, negligence per se, and strict liability under a city code.
    - The District Court granted summary judgment to defendants on all claims.

Idaho common law on dog bites (cont.)

- *Boswell v. Steele*, 158 Idaho 554, 348 P.3d 497 (Ct. App. 2015) (cont.)
  - Ruling:
    - Domestic animal liability: question of fact as to vicious propensity and provocation.
    - Negligence: question of fact whether putting up gate and "beware of dog" signs was sufficient to meet the duty owed.
    - Premises liability: question of fact as to whether Steele sufficiently warned Boswell about dangerous nature of the dog.
    - Negligence per se: based on Idaho Code 25-2805 and Pocatello City Code. Questions of fact existed which precluded summary judgment.
    - Strict liability based on city code: question of fact as to whether the dog was a dangerous animal as defined by the code.

Idaho common law on dog bites (cont.)

- *Boswell v. Steele*, 164 Idaho 208, 428 P.3d 218 (2018)
  - Facts:
    - After remand from the Court of Appeals, the case was tried to a jury. The Boswells had tried to dismiss their negligence claims to proceed on strict liability and premises liability claims, but the district court gave negligence based jury instructions. The jury found Steele not negligent.

Idaho common law on dog bites (cont.)

- *Boswell v. Steele*, 164 Idaho 208, 428 P.3d 218 (2018) (cont.)
  - Rulings:
    - The Boswells were entitled to instructions on common law dog bite claims and claims based on the Pocatello City Code.
    - Comparative negligence applies to common law dog bite claims.
    - Comparative negligence does not apply to strict liability claims under the Pocatello City Code.

Idaho common law on dog bites (cont.)

- *Boswell v. Steele*, 164 Idaho 208, 428 P.3d 218 (2018)
  - FOOTNOTE 1: "We observe that the Legislature has acted to supplant the common law theories of liability that we discuss in this opinion when it adopted Idaho Code section 25-2810 in 2016. 2016 Idaho Sess. L. ch. 285, § 4, p. 786."
    - *Boswell v. Steele*, 164 Idaho 208, 211, 428 P.3d 218, 221 (2018).

Defenses to dog bite claims

- The claim does not exist.
  - There is a very strong argument that the *Boswell* court determined that all common law dog bite claims have been abrogated by the Idaho legislature.
    - "We observe that the Legislature has acted to supplant the common law theories of liability that we discuss in this opinion when it adopted Idaho Code section 25-2810 in 2016." *Boswell v. Steele*, 164 Idaho 208, 211, 428 P.3d 218, 221 (2018) (fn. 1).
  - Downside: this is not the holding of *Boswell*. It is dicta, in a footnote.
    - I tried arguing this to a judge a few months ago, and she said that she did not take this statement as binding.
    - I had to make an analysis for when legislative acts supersede or replace the common law. This argument crashed and burned, but I think the district court judge was wrong.

Defenses to dog bite claims (cont.)

- The claim does not exist. (cont.)
  - Argue that cities and counties do not have authority to create civil causes of action.
    - This is a hard argument to make, as *Boswell* seems to say that the Pocatello City Code, which created a cause of action, was appropriate to include in jury instructions.
    - However, it does not appear that anyone argued the constitutional point in *Boswell*.
  - Note: This is different from saying that city or county codes create a negligence per se duty. They clearly have the right to do that, and the code may apply for negligence per se.

Defenses to dog bite claims (cont.)

- The claim does not exist. (cont.)
  - States that allow cities and counties to create causes of action typically have a “home rule” provision in their constitutions or statutes.
  - Idaho has no home rule statute, and the constitution does not clearly give cities or counties authority to create civil causes of action.
  - Idaho follows *Dillon’s rule*, which does not allow for cities and counties to create civil causes of action.

The "Home Rule Doctrine"

- I have made this argument in at least three cases. I have never gotten a ruling on it.
- How do I justify this argument, when *Boswell* so clearly indicates that the Pocatello City Code was a basis for jury instructions on strict liability claims?
- Simple: *Boswell* in no way mentions the home rule doctrine or *Dillon's rule*, which means that no one raised the issue.
  - If no one raised the issue, then the Supreme Court did not rule on it. The argument is still valid.

Does the Supreme Court know that this sort of incongruity happens?

- Yes. They acknowledge it all the time.

Allen v. Campbell, 169 Idaho 613

Here, the district court dismissed Beneficiaries' complaint because it found it lacked subject matter jurisdiction under section 15-7-203. Beneficiaries argue that the district court made several errors in its application of this section, and that applied correctly, their complaint should not have been dismissed. Before addressing Beneficiaries' arguments, however, we must reframe the central issue in this case. Despite the way the issues were characterized below and have been argued on appeal, this is not a case about subject matter jurisdiction.

Allen v. Campbell, 169 Idaho 613

That said, it is understandable that the parties and the district court treated section 15-7- 203 as bearing on subject matter jurisdiction because this Court essentially said so forty years ago. In *Rasmuson v. Walker Bank & Trust Company*, 102 Idaho 95, 625 P.2d 1098 (1981), we held that "[i]n order to determine the district court's subject matter jurisdiction, [Idaho Code sections] 15-7-201, 15-7-202, and 15-7-203 must all be reviewed." *Id.* at 98–99, 625 P.2d 1101– 02. But a close reading of Rasmuson reveals that we misspoke because, shortly after the remark about subject matter jurisdiction, we recognized that section 15-7-203 is a statutory embodiment of the equitable doctrine of forum non conveniens. *Id.* at 99, 625 P.2d at 1102. This conclusion is borne out by the uniform law comment to section 15-7-203, which states in pertinent part, "the issue is essentially only one of forum non conveniens in having litigation proceed in the most appropriate forum. This is the function of this section." However, forum non conveniens is a doctrine involving venue, not jurisdiction. 20 Am. Jur. 2d Courts § 109 ("Forum non conveniens is a discretionary doctrine which vests in the courts the power to abstain from the exercise of jurisdiction even where authorized by statute if the litigation can more appropriately be conducted in a foreign tribunal."). In other words, section 15-7-203 pertains to the proper exercise of judicial power, not to its existence

What to do at the Lower Court when you suspect the Supreme Court "misspoke"?

- A few options for asserting the Supreme Court "misspoke" or that a line in its decision is dicta.
  - Show that the language was unnecessary to the Supreme Court's decision.
  - Show the issue was not well briefed to the Supreme Court. The University of Idaho provides public access to most Supreme Court briefs and records on appeal: https://digitalcommons.law.uidaho.edu/iscrb/
  - Identify a competing line of cases that conflicts with the unfavorable language at issue.
  - Identify the inconsistency of the unfavorable language with the statute, rule, or common law principle at issue.
  - Argue the principle that the Court would not have hid an elephant in a mousehole, limited discussion of the issue suggests Court did not intend a sea change in the law.
  - Point out negative policy implications of the unfavorable language.

What to do at the Supreme Court when you suspect the Supreme Court "misspoke"?

- Many of the same principles for addressing the issue before the district court apply. But you will also want to specifically invite the Court to revisit and disavow the prior language.
- Address stare decisis factors and establish they do not justify retention of the prior language.

State v. Blancas, No. 48357, 2022 WL 3268346, at *6 (Idaho Aug. 11, 2022)

- This case gives a good example where the Supreme Court goes to great lengths to explain why two previous cases relied on by the district court were dicta.

Unresolved Example: *Matter of Estate of Smith*, 164 Idaho 457, 482

Turning to Joseph's requests, in reverse order, section 15-8-208 allows for discretionary costs and reasonable attorney's fees for proceedings governed by the Trust and Estate Dispute Resolution Act ("TEDRA"), Idaho Code sections 15-8-101 to 15-8-305. The statute permits the court to award costs and fees from any party, assets of the estate or trust, or nonprobate asset that is subject of the proceedings. I.C. § 15-8-208(1); *Quemada v. Arizmendez*, 153 Idaho 609, 617, 288 P.3d 826, 834 (2012). Unlike in *Quemada*, Joseph did not file his initial petition for probate pursuant to TEDRA, Idaho Code section 15-3-302. As such, this was not a TEDRA proceeding and its costs and fees provision does not have applicability here.

Must the petition identify TEDRA to substantiate an award of fees under the statute?

- Is the line from *Matter of Estate of Smith* dicta or holding?

Reasons it may be a holding

- Issue was squarely presented to the Court.
- The Court's assertion that a party must file a petition "pursuant to TEDRA" was necessary to its holding.

Reasons it may be dicta

- Inconsistency with other law.
  - I.R.C.P. 54(e)(4)(A): "In General. It is not necessary for any party in a civil action to assert a claim for attorney fees in any pleading." (providing the only exception in I.R.C.P. 54(e)(4)(B) on default judgment).
  - *Straub v. Smith*, 145 Idaho 65, 70 (holding that because the case did "not involve a default judgment . . . to require that attorney fees be pleaded in this case would be contrary to I.R.C.P. 54(e)(4)").

Reasons it may be dicta

- Inconsistency with the text of § 15-8-208(2).
  - "This section applies to all proceedings governed by this chapter including, but not limited to, proceedings involving trusts, decedent's estates and properties, and guardianship matters. Except as provided in section 12-117, Idaho Code, this section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, unless such statute specifically provides otherwise."

Reasons it may be dicta

- Lack of thorough presentation or analysis.
  - The Supreme Court's analysis in *Matter of Estate of Smith* is cursory. It does not quote the statute, acknowledge competing arguments, or analyze the issue in any detail.
  - The likely reason for this arises from the lack of briefing on the issue to the Supreme Court in the First instance.
    - Respondent's Brief included a one line request for fees citing the TEDRA statute.
    - Appellant's Reply does not specifically address the issue at all.

Reasons it may be dicta

- Bad public policy.
  - For example, if the opening pleading is all important, parties would have to race to the courthouse to be the first to file a declaratory suit in order to preserve their right to invoke either TEDRA jurisdiction with the potential for fees, or another statute providing similar relief without invoking TEDRA.
  - The Court would also have to determine then whether the opposing party could file a mirror image declaratory counterclaim making the opposite election of the opposing party.
  - What happens then? Do fees apply or do they not?

Justice Stegner's Dissent

"Further, it is doubtful that the cases the majority relies upon even constitute stare decisis on this issue. The doubt arises from the fact that none of the cases directly addressed whether the first two subsections should be read in the conjunctive or the disjunctive. Gilpin v. Sierra Nevada Consol. Min. Co., 2 Idaho 662, 703, 23 P. 547, 549 (1890) (inserting the word "and" between quotations of subsections (1) and (2) of section 4288, Rev. St. Idaho without explanation); Staples v. Rossi, 7 Idaho 618, 626–27, 65 P. 67, 69 (1901) (holding Plaintiff entitled to a preliminary injunction without addressing if the first two subsections of section 4288, Rev. St. Idaho were conjunctive or disjunctive); Evans v. Dist. Ct. of Fifth Jud. Dist., 47 Idaho 267, 270, 275 P. 99, 100 (1929) (citing California case law and failing to address Idaho statute concerning injunctive relief); Farm Serv., Inc. v. U. S. Steel Corp., 90 Idaho 570, 590–91, 414 P.2d 898, 909–10 (1966) (citing Evans for the rule without addressing interpretation of Idaho statute); Harris v. Cassia Cnty., 106 Idaho 513, 518, 681 P.2d 988, 993 (1984) (citing Evans and Farm Service, Inc. without interpreting Rule 65(e)); Idaho Cnty. Prop. Owners Ass'n, Inc. v. Syringa Gen. Hosp. Dist., 119 Idaho 309, 315, 805 P.2d 1233, 1239 (1991) (citing Evans and Farm Service, Inc. without interpreting Rule 65(e)); Brady v. City of Homedale, 130 Idaho 569, 572, 944 P.2d 704, 707 (1997) (citing Harris and Evans without interpreting Rule 65(e)); Munden v. Bannock Cnty., 169 Idaho 818, 829, 504 P.3d 354, 365 (2022) (citing Brady without interpreting Rule 65(e)).

A review of these cases reveals that this Court has not previously examined or decided whether the first two subsections should be read with an "and" instead of an "or." Instead, the Court either inserted the word "and" without explanation (Gilpin), cited Gilpin, without articulating whether it required both subsections (Staples), or relied on California law (Evans). The remaining cases perpetuate the California rule from Evans. None of these grappled with the issue at hand—how to interpret Idaho's law and rule. As a result, there is no controlling precedent to establish that the Rule's plain language should be ignored in favor of inserting the word "and" between the first two subsections."

Planned Parenthood Great Nw. v. State, No. 49615, 2022 WL 3335696, at *10–11 (Idaho Aug. 12, 2022) (Stegner, J., dissenting)

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36