2019

HOLLY REBECCA ROSSER, Petitioner, v. Ronald Lee Rosser, Respondent. : Petitioner's Opening Brief

Utah Supreme Court

Steven W. Beckstrom; Attorney for Petitioner. Stephan D. Spencer; Attorney for Petitioner.

IN THE SUPREME COURT OF THE STATE OF UTAH

HOLLY REBECCA ROSSER, Petitioner, v. RONALD LEE ROSSER, Respondent.	Case no. 20190320-SC

PETITIONER'S OPENING BRIEF

ON WRIT OF CERTIORARI TO THE
UTAH COURT OF APPEALS

No. 20170736-CA

Appeal from a Final Judgment of the
Sixth Judicial District Court in and for
Garfield County, Panguitch Department
The Honorable Paul D. Lyman Presiding

No. 154600013

Steven W. Beckstrom
SNOW CHRISTENSEN & MARTINEAU
555 S. Bluff St., Ste. 301
St. George, UT 84770

Attorney for Respondent
Ronald Lee Rosser

Stephen D. Spencer (8913)
SPENCER LAW OFFICE, PLLC
5568 S. 300 W.
Murray, UT 84107

Attorney for Petitioner
Holly Rebecca Rosser

ORAL ARGUMENT REQUESTED

No. 20190320-SC

In the
Supreme Court of the State of Utah

PARTIES ON APPEAL*

HOLLY REBECCA ROSSER,

Petitioner on Certiorari,
Appellee and Petitioner Below,

v.

RONALD LEE ROSSER,

Respondent on Certiorari,
Appellant and Respondent Below.

ADDITIONAL PARTIES BELOW

none.

* — Counsel for parties are listed on the front cover of this brief.

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in its construction and application of Subsection 78B-6-301(4) of the Utah Code.

2. Whether the Court of Appeals erred in addressing the issue of the proper interpretation of Subsection 78B-6-301(4) of the Utah Code in light of the briefing on appeal.

TABLE OF CONTENTS

ADDENDUM

TABLE OF AUTHORITIES

Cases

Statutes

Court Rules

Other Authorities

[This page intentionally left blank]

INTRODUCTION

This appeal is from a contempt proceeding arising out of a divorce action. The district court adjudged Respondent Ron Rosser ["Ron"] in contempt of court for fraudulently inducing Petitioner Holly Rosser ["Holly"] to stipulate to a provision in their Decree of Divorce, which resulted in Holly being solely responsible for the parties' tax obligation of over $22,000. This was despite the parties agreeing at mediation that they would divide the tax obligation equally.

The Court of Appeals reversed the district court's judgment, holding that because Ron's misrepresentations were directed at Holly rather than the district court itself, they did not constitute contemptible "deceit" under Utah Code § 78B-6-301(4). However, this interpretation is not supported by either the plain text of the statute or by its context or purpose. Rather, these factors, as well as the case law of other jurisdictions and scholarly authority, support an interpretation that focuses not on who the deceit is communicated to, but rather whether the deceit interfered with the administration of justice, which Ron's deceit clearly did.

Moreover, The Court of Appeals reached this issue despite the fact that Ron did not raise the issue of whether his acts qualified as contemptible deceit before the district court or in his opening brief before the Court of Appeals. As such, the issue was improperly reached and is

reversible error. The Court should reverse the decision of the Court of Appeals and remand for further proceedings.

STATEMENT OF THE ISSUES

In its Order of June 24, 2019,[1] this Court granted certiorari as to the following issues:

Issue One: Whether the Court of Appeals erred in its construction and application of Subsection 78B-6-301(4) of the Utah Code.[2]

Background and Preservation. The district court found Ron in contempt "due to his deliberate deceit" by "knowingly and intentionally [misleading Holly] about his failure to pay the taxes he agreed to pay on June 16, 2016."[3] The Court of Appeals reversed the district court's decision, holding that the term "deceit" in Utah Code § 78B-6-301(4) ["Subsection (4)"] is limited to actions taken toward the court itself, and not toward another party.[4] Holly timely objected to the Court of Appeals' decision on this issue by raising it in her Petition for Writ of Certiorari,[5] thereby preserving the issue.

---

1. A copy of this order is included in the addendum—*see infra* at 55.

2. As this statute is of central importance to this appeal, it is reproduced in its entirety in the addendum. *See infra at* 35.

3. *Infra* at 52–53 (Dist. Ct. Ruling, Findings ¶ 16 & Conclusions ¶ 2) (R. at 1134–35).

4. *Infra* at 42–43 (Op. at ¶ 14).

5. Pet. Cert. at 1, 12–18 (filed Apr. 17, 2019).

Standard of Review. This Court reviews the legal conclusions of the Court of Appeals for correctness.[6]

Issue Two: Whether the Court of Appeals erred in addressing the issue of the proper interpretation of Subsection 78B-6-301(4) of the Utah Code in light of the briefing on appeal.

Background and Preservation. The Court of Appeals reversed the District Court's decision on the basis that Ron's acts did not fall within the scope of contemptible deceit under Subsection (4) as a matter of law. However, this issue was neither preserved in the district court, nor was it raised in Ron's opening brief on appeal. Moreover, the Court of Appeals did not give the parties notice that it would consider the issue *sua sponte*, did not order supplemental briefing on the issue, and did not analyze whether the issue was properly considered under an exception to the general rule of waiver in its opinion. As Holly had no notice of the Court of Appeals' action before its opinion was issued, she timely objected by raising it in her Petition for Writ of Certiorari,[7] thereby preserving the issue.

Standard of Review. This Court reviews the Court of Appeals' application of the rules regarding preservation and waiver for correctness.[8]

---

6. *Harris v. ShopKo Stores, Inc.*, 2013 UT 34, ¶ 16, 308 P.3d 449.
7. Pet. Cert. at 1, 18–20.
8. *State v. Johnson*, 2017 UT 76, ¶ 6, 416 P.3d 443.

STATEMENT OF THE CASE

This case is a contempt proceeding arising out of a divorce action. After the divorce decree was entered on August 8, 2016,[9] Holly filed a motion for order to show cause on November 11, 2016, alleging that Ron had fraudulently induced her to stipulate to a term in the decree that was inconsistent with the parties' settlement agreement, and seeking her damages caused by Ron's deceit as well as her costs and attorney fees.[10] On January 3, 2017, Ron filed a cross-motion for order to show cause, alleging that he was entitled under the decree to certain rebate checks received by Holly and that she had failed to deliver them to him.[11]

The district court conducted an evidentiary hearing on the matters raised in these motions on August 17, 2017.[12] On August 28, 2017, the district court issued a written ruling finding Ron in contempt "due to his deliberate deceit," finding that Holly was not in contempt, and awarding judgment for Holly.[13] On September 6, 2017, the district court entered a

9. R. at 481–499.

10. R. at 500–505.

11. R. at 528–530.

12. R. at 1129 (minutes of hearing); 1267–1404 (transcript of evidentiary hearing).

13. *Infra* at 49–54 (R. at 1131–1136).

supplemental judgment for Holly's costs and attorney fees.[14] Ron appealed these judgments on September 1 and 22, 2017.[15]

After receiving the parties' briefs and hearing oral argument, on January 10, 2019, the Court of Appeals issued an opinion reversing the district court's order on grounds that the acts that the district court found that Ron committed did not constitute "deceit, or abuse of the process or proceedings of the court"[16] or "disobedience of a lawful judgment, order or process of the court" under Utah Code § 78B-6-301(4)–(5).[17] On February 14, 2019, the Court of Appeals amended the opinion to clarify an ancillary issue.[18] Holly petitioned this Court for certiorari review on April 17, 2019, which this Court granted in an order dated June 24, 2019.[19]

FACTUAL BACKGROUND

The following are the facts material to the issue presented, recited "from the record in the light most favorable to the findings of the trial court" as required by the procedures of this Court.[20]

After twenty-five years of marriage, Holly and Ron separated in 2014, and Holly later petitioned for divorce.[21] After filing cross-petitions

14. *Infra* at 55 (R. at 1210).
15. R. at 1152, 1229.
16. *Infra* at 42–44 (Op. at ¶¶ 13–16).
17. *Infra* at 44–46 (Op. at ¶¶ 17–20).
18. *Infra* at 48 (Op. at ¶ 21 n.9).
19. *Infra* at 55.
20. *See State v. Moosman*, 794 P.2d 474, 476 (Utah 1990).

for divorce in the district court,[22] the parties attended mediation and executed a settlement agreement on June 16, 2016.[23] Paragraph 15 of that settlement agreement provided that the parties would split their 2015 debt to the IRS agreement equally.[24] At that time, the parties owed $29,901.71 to the IRS for their business and personal taxes for 2015.[25] Holly paid her half of the 2015 IRS debt shortly after mediation.[26]

Ron's counsel then prepared proposed findings of fact and conclusions of law and a proposed decree of divorce.[27] However, instead of providing that the parties were to split their 2015 IRS debt equally, the proposed decree provided that Holly "shall pay all fees charged by" the tax preparer, and she "shall be solely entitled to receive any refund resulting from the amended returns, and shall also be responsible to pay any tax liabilities resulting to any of the parties for the year 2015."[28] This was because after mediation, the parties decided to file an amended return for 2015, which would result in a $7,900.00 refund, provided that each party

---

21. *Infra* at 37 (Op. at ¶ 2).

22. R. at 1–7, 15–30.

23. *Infra* at 50 (Dist. Ct. Ruling, Findings ¶ 1) (R. at 1132); R. at 398–400 (settlement agreement).

24. *Infra* at 50 (Dist. Ct. Ruling, Findings ¶ 4) (R. at 1132); R. at 399 ("IRS debt from 2015, 50% Ron and 50% Holly.").

25. *Infra* at 50 (Dist. Ct. Ruling, Findings ¶ 5) (R. at 1132); R. at 569 (tax bill from IRS dated June 6, 2016).

26. *Infra* at 50 (Dist. Ct. Ruling, Findings ¶ 7) (R. at 1132).

27. R. at 427–461.

28. R. at 453–454 (Paragraph 9.r).

had paid his or her half of the IRS debt.[29] Holly agreed to pay the tax preparer's fee in exchange for receiving the entirety of the refund.[30] Thus, Holly's counsel approved the proposed findings and decree, including the changed provision for the 2015 tax debt,[31] and the district court signed and entered the findings and decree on August 8, 2016.[32] The parties then signed and filed the amended tax return on August 22, 2016.[33] However, Holly later found out that despite what he had led her to believe, Ron had not paid his half of the 2015 IRS debt.[34] Instead of receiving a $7,900.00 refund, Holly had to pay an additional $7,194.98.[35]

COURSE OF PROCEEDINGS IN DISTRICT COURT

After receiving this tax bill, Holly filed a motion for order to show cause on November 11, 2016,[36] alleging as follows:

> In the foregoing circumstances, [Ron] has defrauded [Holly]. [Ron] knowingly made a material misrepresentation as to a presently existing fact. To wit: that he had theretofore paid his $14,951.11

29. *Infra* at 50 (Dist. Ct. Ruling, Findings ¶ 8) (R. at 1132).

30. R. at 885 (July 29, 2016 email from Ron's counsel stating, "if Holly is willing to pay the $914.59 (or whatever the exact amount of the Precise bill will be for the amended return), then I think I can get Ron to agree to let Holly keep the tax refunds"); R. at 1301 (Transcript, Hearing of Aug. 17, 2017, 35:7–19 (Testimony of Holly Rosser)).

31. R. at 403–426.

32. R. at 462–499.

33. R. at 1017.

34. *Infra* at 51–52 (Dist. Ct. Ruling, Findings ¶¶ 10–16) (R. at 1133–34).

35. R. at 577 (tax bill from IRS dated Oct. 10, 2016).

36. R. at 500–503.

> share of the 2015 tax bill. Such representation was material and was made with malice for the purpose of inducing [Holly] to settle on those terms. [Holly] reasonably relied upon the misrepresentation to her detriment.[37]

Holly requested her damages caused by Ron's deceit as well as her costs and attorney fees.[38] Despite the allegation of deceit and fraud in Holly's Motion for Order to Show Cause, Ron did not argue at any time before the district court that Holly's allegation of fraud did not constitute contemptible deceit under Subsection (4), either at a hearing transcribed and included in the record[39] or in any written submission.[40]

Additionally, on December 1, 2016, Holly received rebate checks from IPC that belonged to Ron under the Decree.[41] Holly retained possession of these checks to secure payment for the amounts she believed she was owed for the 2015 taxes.[42] On January 3, 2017, Ron filed a cross-motion for order to show cause, alleging that he was entitled under the

---

37. R. at 502.

38. R. at 502–503.

39. The transcripts for hearings held between Holly's Motion for Order to Show Cause and Ron's Amended Notice of Appeal are located at R. at 809–846, 1257–1422.

40. Ron's written submissions to the Court filed between Holly's Motion for Order to Show Cause and Ron's Amended Notice of Appeal are located at R. at 517–22, 538–46, 548–50, 620–51, 682–702, 733–798, 911–1025, 1053–1109, 1115–28, 1152–86, 1195–1201, 1217–21, and 1224–30.

41. R. at 600–603.

42. R. at 583.

decree to certain rebate checks received by Holly and that she had failed to deliver them to him.[43]

After some procedural wrangling,[44] the district court conducted an evidentiary hearing on the matters raised in the parties' respective motions for order to show cause on August 17, 2017.[45] On August 28, 2017, the district court issued a written ruling, finding in relevant part:

> 5. The parties had received an IRS notice dated June 6, 2016, which notified them that they owed $29,902.21 for unpaid 2015 taxes.
> 6. The parties agreed [in Paragraph 15 of the June 16, 2016 mediation agreement] to each pay one half of that debt, or $14,951.11.
> 7. [Holly] paid her share of $14,951.11 within days of reaching the settlement agreement.
> 8. The parties intended on June 16, 2016 to file an Amended 2015 tax return, which would result in [Holly] receiving a $7,900.00 tax refund, which would only happen if they each paid their share of the [] $29,902.21 in taxes.

---

43. R. at 528–530.

44. The district court initially ruled in Holly's favor on the grounds that the undisputed material facts established his contempt (R. at 604, 705–719). In an attempt to vacate this ruling and present evidence at an evidentiary hearing, Ron filed a motion for reconsideration (R. at 623–640), a Rule 59 motion for new trial (R. at 733–746), and a Rule 60(b) motion to set aside (R. at 747–758). In addition to opposing these motions, Holly filed a Rule 56 motion for summary judgment dismissing Ron's motions (R. at 1029–1043). These motions were disposed of in the district court's order of July 25, 2017 setting aside its previous order of contempt and granting an evidentiary hearing (R. at 1118–1119).

45. R. at 1129 (minutes of hearing); 1267–1404 (transcript of evidentiary hearing).

9. [Holly] assumed she would receive the $7,900.00 refund from the Amended 2015 tax return, so she approved the amended tax return.
10. At no point did [Ron] tell [Holly] that he had failed to pay his $14,951.11 tax obligation.
11. Both [Holly] and [the parties'] accountant relied upon [Ron] having paid his $14,951.11.
12. [Ron] knew he would eventually be found out, but chose to let his deception go forward.
13. Consequently, [Holly] did not receive the agreed-upon $7,900.00 refund and she eventually had to pay an additional $7,174.98 in taxes to the IRS.
14. [Holly] had to pay the additional $7,174.98 because on August 4, 2016, the parties entered into a Stipulated Motion For Entry of Findings of Fact and Conclusions of Law and Final Decree of Divorce, which required [Holly] to pay any remaining tax liabilities for 2015, which she assumed was zero.
15. At the time this Stipulated Motion was filed, only [Ron] knew he had failed to pay the obligation agreed to on June 16, 2016.
16. After listening to the parties at trial it was evident that [Ron] knowingly and intentionally misled [Holly] about his failure to pay the taxes he agreed to pay on June 16, 2016.[46]

Based on these findings, the district court concluded that Ron was in contempt "due to his deliberate deceit and failure to act as agreed between the parties" in the mediation agreement.[47] The district court further concluded that despite not paying the rebates as required by the decree, Holly was not in contempt "due to her being victimized by [Ron's]

46. *Infra* at 50–52 (Dist. Ct. Ruling, Findings ¶¶ 1, 5–16) (R. at 1132–1134).

47. *Infra* at 53 (Dist. Ct. Ruling, Conclusions ¶ 2) (R. at 1135).

deceit."[48] The district court then awarded judgment for $15,074.98 in damages to Holly, plus her reasonable costs and attorney fees (which the Court found she was entitled to because they "would not have been incurred if [Ron] had not been deceitful"),[49] and less the amount of the rebates owing to Ron.[50] On September 6, 2017, the district court entered a supplemental judgment for Holly's costs and attorney fees in the amount of $17,870.00.[51]

PROCEEDINGS IN AND DISPOSITION BY COURT OF APPEALS

On appeal before the Court of Appeals, Ron did not raise the issue of whether the facts found by the district court constituted contemptible deceit under Subsection (4).[52] Instead, in the portion of his opening brief dealing with fraud and deceit, Ron appeared to assume that deceit toward Holly is contemptible, and only addressed whether the evidence supporting his deceit was sufficient for the district court to find fraud by clear and convincing evidence.[53] The first time Ron distinguished between

48. *Infra* at 52–53 (Dist. Ct. Ruling, Findings ¶¶ 20–23 & Conclusions ¶ 1) (R. at 1134–35).

49. *Infra* at 53 (Dist. Ct. Ruling, Findings ¶ 23 & Conclusions ¶ 4) (R. at 1135).

50. *Infra* at 54 (Dist. Ct. Ruling, Judgment ¶¶ 1–3) (R. at 1136).

51. *Infra* at 55 (R. at 1210).

52. Br. Appellant, 1–3 (Feb. 18, 2018) (outlining the issues raised on appeal).

53. Br. Appellant, 12–14 (Point II of Argument section).

regular fraud and contemptible deceit was in his reply brief.[54] Notwithstanding the fact that the issue was first raised in Ron's reply brief, and without giving notice or an opportunity for supplemental briefing, the Court of Appeals considered and decided the issue of whether Ron's deceit toward Holly was contemptible deceit under Subsection (4).[55]

In interpreting this statute, the Court of Appeals did not rely on any past Utah cases interpreting this statute or statutes with similar language, nor did it rely upon case law from other jurisdictions or authoritative scholarship on the issue. (As no supplemental briefing had been ordered, Holly was not in a position to provide case law and other authority at that time.) Rather, it concluded that since "the entire thrust of the subsection is aimed at allowing a court to penalize deceitful misuse of judicial proceedings by parties to those proceedings," the term "deceit" must be limited to actions taken toward the court itself, and not toward another party.[56] The Court of Appeals concluded that since "the deceit the [district] court described in its findings" committed upon Holly rather than upon the court, it was not contemptible deceit under the statute, and the district court erred in holding Ron in contempt on those grounds.[57]

---

54. Reply Br. Appellant, 9–11 (Point II.B. of Argument section).

55. *Infra* at 42–44 (Op. at ¶¶ 13–16).

56. *Infra* at 42–43 (Op. at ¶ 14).

57. *Infra* at 42, 47 (Op. at ¶¶ 13 & 21).

SUMMARY OF ARGUMENT

This matter can be decided on one of two grounds—the Court can either decide the question of the proper interpretation of Subsection (4) on its merits, or it can reverse the Court of Appeals' decision as improperly reached, as the issue decided was never before it.

Point I of the Argument details how the Court of Appeals' interpretation of Subsection (4) as only applying to deceit communicated directly to a court is not supported by either the plain text of the statute or by its context or purpose. Rather, these factors, as well as the case law of other jurisdictions and scholarly authority, support an interpretation that focuses not on who the deceit is communicated to, but rather whether the deceit interfered with the administration of justice. This is similar to a related principle in Utah law: the Fraud on the Court doctrine, which distinguishes between ordinary fraud and fraud that defiles the court, interferes with the administration of justice, or hinders a party from presenting its claim or defense. Courts in several jurisdictions have noted that fraud on the court is grounds for contempt, and this Court should adopt this reasoning.

Point II of the Argument points out that the issue of the proper interpretation of Subsection (4) was neither preserved in the lower court or raised in Ron's opening brief, and discusses the circumstances in which an appellate court may rule on such an issue. There were no exceptions that applied to allow the Court of Appeals to raise the issue *sua sponte*, but even if there were, the procedural requirements for raising the issue

were not followed, making the Court of Appeals' decision improper and reversible error. For either of these reasons, the Court should reverse the decision of the Court of Appeals and remand to determine any properly raised outstanding issues in the original appeal.

ARGUMENT

I. THIS COURT SHOULD REVERSE THE COURT OF APPEALS' DECISION AND HOLD THAT THE SCOPE OF CONTEMPTIBLE DECEIT UNDER SUBSECTION (4) IS EQUIVALENT TO THAT OF THE DOCTRINE OF FRAUD ON THE COURT.

The first issue certified for review by this Court is the proper construction and application of Subsection (4). Subsection (4) is part of Utah Code § 78B-6-301, which lists a number of acts or omissions constituting contempt, and provides, in relevant part:

> The following acts or omissions in respect to a court or its proceedings are contempts of the authority of the court: . . .
>
> (4) "deceit, or abuse of the process or proceedings of the court, by a party to an action or special proceeding[.]

As explained *supra* in the Statement of the Case, the Court of Appeals interpreted Subsection (4) to mean that a "deceit" is only contemptible if it is directed toward the court itself, and not toward another party or person. However, Holly believes that this interpretation is in error. As the proper interpretation or Subsection (4) and the proper scope of a district court's power to hold a party in contempt for fraud or deceit is a question of first impression for this Court,[58] Holly will review

58. *See* Pet. Cert. at 13–14.

the language of the statute, its context and purpose, case law from other jurisdictions, Utah cases interpreting statutes with similar language or similar principles of law, and authoritative scholarship on the issue[59] to demonstrate that contemptible deceit under Subsection (4) includes fraud directed toward the opposing party that prevents or hinders that party from presenting its claim or defense.

A. The plain text of Subsection (4) does not support the Court of Appeals' interpretation.

In interpreting a statute, this Court begins by looking at its text.[60] To be a contemptuous act or omission under Subsection (4), the act or omission must fulfill three requirements: first, it must constitute "deceit" or "abuse of the process or proceedings of the court," second, it must be "by a party to an action or special proceeding," and third, it must be "in respect to a court or its proceedings." While the meaning of "party" is obvious and uncontroversial (at least in the context of this case), the analysis of Subsection (4) could benefit by defining the other terms in the above requirements:

---

59. *See Park v. Stanford*, 2011 UT 41, ¶ 13, 258 P.3d 566 ("To assist in our determination of an issue of first impression, we often look to guidance from other jurisdictions as well as authoritative materials.").

60. *Otter Creek Reservoir v. New Escalante Irrigation Co.*, 2009 UT 16, ¶ 14, 203 P.3d 1015.

- "Deceit" is broadly understood to be synonymous with fraud or willful misrepresentation.[61]
- "Abuse of process" is the malicious use of legal process "primarily to accomplish a purpose not within the scope of the proceeding for which it was designed."[62]
- "In respect to" means concerning, regarding, related to or in connection with.[63]

Moreover, the language of Subsection (4) does not include an object that the deceit or abuse of process must be directed toward. Thus, *contra* the Court of Appeals' interpretation, the plain text of Subsection (4) seems to provide that a party to an action or special proceeding who makes a willful misrepresentation in connection with that proceeding is in contempt of court, regardless of who that misrepresentation is directed toward.

---

61. *See Bennett v. Jones Waldo Holbrook & McDonough*, 2003 UT 9, ¶ 74, 70 P.3d 17 (defining the tort of deceit as equivalent to common-law fraud); *Van de Grift v. State*, 2013 UT 11, ¶ 13, 299 P.3d 1043 (holding that "deceit" under Utah Code § 63G-7-301(5)(b) refers to the common-law tort of deceit); Black's Law Dictionary 435 (8th ed. 2004) (defining "deceit" as "a false statement of fact made by a person knowingly or recklessly . . . with the intent that someone else will act upon it").

62. *Bennett*, 2003 UT 9, at ¶ 47.

63. Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/in respect to (last visited Aug. 27, 2019); Merriam-Webster Online Thesaurus, https://www.merriam-webster.com/thesaurus/in respect to (last visited Aug. 27, 2019).

B. The context and purpose of Subsection (4) does not support the Court of Appeals' interpretation.

To be fair, the Court of Appeals seems to recognize that the plain text of Subsection (4) does not support its interpretation, as it states that it reached that interpretation after "reviewing the provision in context."[64] Holly agrees that context is a valuable tool in interpreting Subsection (4)—in interpreting statutes, courts should consider the language of statutes in light of "the purpose of the statute and what interpretation and application will best serve that purpose in practical operation."[65] However, because the Court of Appeals' interpretation does not serve the purpose of the statute in practical operation, it should be rejected in favor of an interpretation that is consistent with the purpose of punishing misuse of judicial proceedings and hindering the administration of justice.

In its opinion, the Court of Appeals cites portions of its language to conclude that "the entire thrust of the subsection is aimed at allowing a court to penalize deceitful misuse of judicial proceedings by parties to those proceedings."[66] However, even if one accepts that the purpose of Subsection (4) is to prevent deceitful misuse of judicial proceedings, it does not follow that Subsection (4) "must be interpreted to include only

64. *Infra* at 42–43 (Op. at ¶ 14).

65. *ASC Utah, Inc. v. Wolf Mountain Resorts, L.C.*, 2010 UT 65, ¶ 17, 245 P.3d 184.

66. *Infra* at 42–43 (Op. at ¶ 14).

deceit committed on the court"[67] unless one makes the assumption that a party can only misuse judicial proceedings by deceiving the court. This is simply untrue.

In Utah, judges often direct one of the parties to draft proposed orders, judgments and decrees for the court's signature.[68] Of course, this creates an opportunity for the party preparing the order to subtly (or at times, blatantly) draft the provisions of the order in a way that advantages that party. Despite that opportunity for mischief, judges do not usually painstakingly review proposed orders to ensure their provisions conform to prior stipulations of the parties or the court's decisions. Rather, they largely rely upon the other parties to do that work for them through the procedures of approval as to form and objections.[69] This system of giving the parties primary responsibility for detecting and raising errors in orders, judgments and decrees is a part of the adversarial system of justice, and is essential to judicial economy.[70] However, the system also allows a party to obtain an order by deceit without directly deceiving the judge. Because the Court of Appeals' assumption that a party can only misuse judicial proceedings by deceiving the court is not valid, it follows that the Court of Appeals' conclusion that

67. *Infra* at 41 (Op. at ¶ 13).

68. *See* Utah R. Civ. P. 7(j)(2); Utah R. Civ. P. 58A(c)(1).

69. *See* Utah R. Civ. P. 7(j)(3)–(4); Utah R. Civ. P. 58A(c)(2)–(3).

70. *See Johnson*, 2017 UT 76 at ¶ 8.

Subsection (4) includes only deceit committed on the court must be rejected.

However, this is not to say that, as suggested by the plain text of Subsection (4), any party who makes a willful misrepresentation in connection with a judicial proceeding is in contempt of court. As Subsection (4) is a statute defining contempt of court, the deceit that Subsection (4) includes should be those that fit within the general definition of contempt: "disobedience to, disregard of, interference with, or disrespect of the court, by acts in opposition to its authority and the administration of justice, hindering, impeding, embarrassing, or obstructing the court in the discharge of its duties,"[71] including conduct "calculated to intimidate, influence, impede, embarrass, or obstruct the courts in the due administration of justice in matters pending before them."[72] With that in mind, it is clear that not all deceits are contemptible. Rather, a deceit is contemptible if it impedes the court's authority and its function of the administration of justice. This is reflected in the rule in most jurisdictions that perjury does not constitute contempt of court unless the perjury operates to obstruct the judicial process.[73]

---

71. 17 Am. Jur. 2d *Contempt* § 2 (Rev. ed. 2019).

72. *Herald-Republican Publishing Co. v. Lewis*, 129 P. 624, 633 (Utah 1913) (Frick, J., concurring).

73. J.A. Bock, Annotation, *Perjury or False Swearing as Contempt*, 89 A.L.R.2d 1258, § 2 (1963, rev. ed 2019).

C. The text and context of Subsection (4), as well as the case law from other jurisdictions, related principles of Utah law and scholarly writings support an interpretation of Subsection (4) equivalent to that of the Fraud on the Court doctrine.

As demonstrated *supra*, rather than deciding whether a party's misrepresentation is contemptible based on who the misrepresentation is communicated to, it is more consistent with the context of Subsection (4) and the general definition of contempt to focus on whether the misrepresentation interfered with the administration of justice. However, rather than creating an entirely new set of doctrines from scratch to govern Subsection (4), the Court should consider importing the jurisprudence from the related doctrine of Fraud on the Court, which is well established in Utah law.

The Fraud on the Court doctrine is part of the jurisprudence for setting aside a judgment. Under Rule 60(b) of the Utah Rules of Civil Procedure, a party may set aside a judgment on the basis of "fraud . . . , misrepresentation or other misconduct of an opposing party,"[74] but the party must file a motion seeking that relief not later than 90 days after the entry of the judgment.[75] However, a party may file an independent action to set aside a judgment for "fraud upon the court" outside of the 90-day time limit.[76] Fraud on the court is narrower than ordinary fraud

74. Utah R. Civ. P. 60(b)(3).

75. Utah R. Civ. P. 60(c).

76. Utah R. Civ. P. 60(d).

between the parties—it requires an "unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense."[77] It also includes any "intentional act by a party in a divorce action which prevents the opposing party from making a full defense,"[78] including deceiving a party or concealing relevant facts from a party if the deception hinders the party's ability to present its case.[79]

This interpretation of contemptible deceit as equivalent to fraud on the court is consistent with the decisions of other jurisdictions. Federal courts have recognized that "the commission of a fraud on the court can form the basis for a finding of contempt."[80] This conclusion by the federal

77. *Cobell v. Norton*, 226 F. Supp. 2d 1, 24 (D.D.C. 2002), *vacated on other grounds*, 334 F.3d 1128 (D.C. Cir. 2003); *see Kartchner v. Kartchner*, 2014 UT App 195, ¶ 26, 334 P.3d 1.

78. *Kartchner*, 2014 UT App 195 at ¶ 27.

79. *Cobell*, 226 F. Supp. 2d at 28 (noting that a false representation to a party is contemptible "fraud on the court" when it hinders the party's ability to present its case); *see also Kartchner*, 2014 UT App 195 at ¶ 27 n.9 (dismissing as without merit a party's argument that misleading the other party is not conduct directed at the court and is therefore not fraud on the court).

80. *Cobell*, 226 F. Supp. 2d at 26 (citing cases); *see Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1119 (1st Cir. 1989) (holding that federal courts have inherent power to punish "fraud on the court" (as defined in *Cobell*) as part of their inherent power "to do whatever is reasonably necessary to deter abuse of the judicial process").

courts is also supported by case law from other jurisdictions and treatises on the subject.[81]

Moreover, it appears that nine states currently have statutory provisions similar to Subsection (4) in their laws,[82] and that two states previously had a similar provision sometime in the past.[83] While Holly has not found any case from these jurisdictions that is "on all fours" with the issue presented in this case, the case law generally seems to

---

81. *See*, *e.g.*, *Rockdale Mgmt. Co. v. Shawmut Bank*, 683 N.E.2d 29, 31 (Mass. 1994) (holding that when a fraud on the court (defined similarly to that in *Cobell*) is committed in an ongoing case, "the trial judge has the inherent power to take action [and] broad discretion to fashion a judicial response warranted by the fraudulent conduct"); *State v. Moquin*, 191 A.2d 541 (N.H. 1963) (holding that municipal courts had authority to punish fraud on the court as contempt, as all courts have the duty "to protect the judicial processes from being brought into disrepute and to act vigorously when confronted with acts or conduct which tend to obstruct or interfere with the due and orderly administration of justice"); 17 C.J.S. *Contempt* § 42 (Rev. ed. 2019) ("Willful abuse of legal process, such as instituting, or procuring the institution of, unauthorized or fictitious proceedings or suits, or obtaining court orders by fraud or deceit, provided the other party is prejudiced thereby, is contempt.").

82. Ala. Code § 12-1-8(4); Alaska Stat. § 9.50.010(4); Idaho Code Ann. § 7-601(4); La. Code Civ. Proc. Ann. art. 224(4); Mich. Comp. Laws § 600.1701(d); Minn. Stat. § 588.01(3)(2); Mont. Code Ann. § 3-1-501(1)(d); N.Y. Jud. Ct. Acts Law § 753(a)(2); Wyo. R. Crim Proc. 42(a)(2)(B).

83. Cal. Civ. Proc. Code § 1209(a)(4) (repealed 1907 ch. 255, § 1); Ore. Rev. Stat. § 33.010 (repealed 1991 c. 724, § 32).

emphasize that the misrepresentation interfered with the administration of justice rather than who the misrepresentation was communicated to.[84]

For example, In the New York case of *Fass & Wolper v. Burns*, the defendant, upon having a judgment entered against him, sought a stay of execution against his assets.[85] Defendant's request was granted without objection and without the imposition of any express conditions.[86] During the pendency of that stay, the defendant made an assignment of his assets for the benefit of creditors.[87] The court found that when a defendant seeks a stay, "he impliedly agrees, in consideration of the favor so extended to him, that he will not, during the pendency of the stay, transfer or dispose of his assets or otherwise disturb the status quo."[88] The court further stated that both it and the plaintiff were entitled to rely

---

84. *See*, *e.g.*, *United States v. Talbot*, 133 F. Supp. 120, 127–28 (D. Alaska Terr. 1955) (holding that to punish perjury as contempt under Alaska's analog to Subsection 4, "the matter which is falsely given must be material to the matter before the court, and . . . there must be the element of obstruction of the court in the administration of justice"); *Ex Parte Acock*, 23 P. 1029, 1030 (Cal. 1890) (holding that "the acts of petitioner" in deceiving a sheriff to obtain property held by the sheriff for the court "were contempts within the meaning of" statute defining deceit as contempt); 21 N.Y. Jur. 2d *Contempt* § 21 (Rev. ed. 2019) (noting that "filing a false affidavit may constitute contempt," but "false statements in an affidavit do not constitute contempt where the statements are immaterial to any questions in the case or where the rights or remedies of the other party have not been defeated, impeded, or prejudiced").

85. *Fass & Wolper, Inc. v. Burns*, 177 Misc. 430, 430 (N.Y. Sup. Ct 1941).

86. *Id.*

87. *Id.*

88. *Id.* at 431–32.

upon that implied promise, and the act of assigning assets for the benefit of creditors during a stay constitutes contempt, as it "is a fraud and deceit, as well as an abuse of a mandate or proceeding of a court within the meaning of [the analog of Subsection (4)."[89]

Likewise, in the Michigan case of *In re Contempt of Black*, attorney David Black called opposing counsel and represented that he would be late for a 10:00 hearing and would not be there before 11:00, and that he had already contacted the trial court.[90] However, despite this representation, Black had not contacted the court and timely arrived at the hearing.[91] In reliance upon Black's representation, opposing counsel did not arrive for the hearing until 10:45.[92] Opposing counsel explained Black's representations to the trial court, but Black denied making those representations.[93] The trial court found Black in contempt for making false representations to opposing counsel as well as deliberately lying to the court.[94] The Michigan Court of Appeals upheld the trial court's contempt ruling.[95]

---

89. *Id.* at 432.

90. *In re Contempt of Black*, No. 285330, 2009 WL 3014938, at *1 (Mich. App. Sept. 22, 2009).

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* at *1–2.

95. *Id.* at *2–3.

The facts of the present case clearly show a deception that interferes with the administration of justice and that fits nicely into Utah's Fraud on the Court doctrine. The district court found that Ron engaged in a deliberate course of deception to obtain a court order by inducing Holly to sign a stipulation rather than enforce the terms of the mediation agreement with the court. This is an intentional act by a party that prevents the opposing party from making a full defense and a deceitful misuse of judicial proceedings. It is therefore contemptible deceit under Subsection (4).

II. THIS COURT SHOULD REVERSE THE DECISION OF THE COURT OF APPEALS BECAUSE THE PROPER INTERPRETATION OF SUBSECTION (4) WAS NOT PROPERLY BEFORE IT.

As explained *supra* in the Statement of the Case, Ron did not raise the issue of whether Ron's fraud was contemptible deceit under Subsection (4) either before the district court or in his opening brief.[96] "When a party fails to raise and argue an issue in the trial court, it has failed to preserve the issue, and an appellate court will not typically reach that issue absent a valid exception to preservation."[97] Moreover, "when a party fails to raise and argue an issue on appeal, or raises it for the first time in a reply brief, that issue is waived and will typically not be

96. *See supra* notes 39–40 & 52–53 and surrounding text.

97. *Johnson*, 2017 UT 76 at ¶ 15.

addressed by the appellate court."[98] While there are exceptions that will allow an appellate court to reach an issue that was not preserved at trial and was not raised on appeal, as shown below, none of those exceptions apply in this case.

In *State v. Johnson*, this Court outlined three instances when an appellate court "may reach an issue when the issue was not preserved, there is no valid exception to preservation, and it was not raised by the parties on appeal": the subject matter jurisdiction exception,[99] the statutory exception,[100] and the "pure law" exception.[101] As the subject matter jurisdiction exception and the statutory exception obviously do not apply in this case, Holly will focus on the pure law exception.

Under the pure law exception,

> an appellate court may reach a waived and unpreserved issue when it is 1) a purely legal issue, 2) that is almost certain to arise and assist in the analysis in other cases, 3) is necessary to correctly determine an issue that was properly raised, and 4) neither party is unfairly prejudiced by raising the issue at that point or neither party argues that they are unfairly prejudiced. Examples of this include whether to overrule precedent on which the parties rely, interpreting the law that the parties rely on, determining that a law is inapplicable, determining if a statute relied upon is still effective, and considering controlling authority that was not raised by either party.[102]

---

98. *Id.* at ¶ 16.
99. *Id.* at ¶ 50.
100. *Id.* at ¶ 52.
101. *Id.* at ¶ 51.
102. *Id.* (citations omitted).

The issue of the proper interpretation of Subsection (4) fails to meet the third requirement of the pure law exception. The only issue that Ron raised that related to deceit was whether the trial court erred "in finding that Ron committed fraud by clear and convincing evidence" and whether the trial court made sufficient findings.[103] While the issue of whether Ron's deceit was contemptible as a matter of law under Subsection (4) would obviate the need to determine the issues of whether there was sufficient evidence or sufficient findings, it cannot be said to be necessary to determine those issues.

Moreover, regardless of whether the Court of Appeals could have invoked the pure law exception to reach the issue of the interpretation of Subsection (4), it did not follow proper procedure in doing so. Before an appellate court avails itself of an exception to preservation and waiver and raises the issue *sua sponte*, it should "examine closely the appropriateness of acting despite the existence of waiver," including allowing the parties to argue whether the issue should be considered.[104] Moreover, the appellate court "should typically allow some form of argument from the parties to test a notion of the court's own invention before using it to justify a reversal."[105] This is ordinarily done by ordering supplemental briefing, as it "gives the parties adequate time to research

103. Br. Appellant at 2.

104. *Id.* at ¶ 44.

105. *Id.* at ¶ 45.

and draft thoughtful responses."[106] In essence, what is required before an appellate court reaches an unpreserved and waived issue is notice and an opportunity to be heard.

In this case, despite the fact that Ron failed to preserve the issue of whether his fraud was contemptible deceit under Subsection (4) in the trial court and failed to raise the issue in his opening brief, the Court of Appeals considered the issue *sua sponte* without giving Holly meaningful notice of that decision or ordering supplemental briefing of the waived issue before issuing its opinion. As such, she did not have the opportunity to argue whether any of the exceptions to waiver applied, and the only opportunity she had to address the issue was at oral argument. Because Holly's counsel did not have any prior notice that the Court of Appeals would focus on the issue at oral argument (given the rules on waiver, the fact that the issue was raised for the first time in the reply brief was not adequate to provide notice), he had no ability to prepare and address the issue in advance of oral argument.[107] Also, there was nothing in the Court of Appeals' opinion that showed that it examined the appropriateness of reaching the waived issue.

---

106. *Id.* at ¶ 45.

107. These facts make the Court of Appeals' observation in Paragraph 15 of its opinion that Holly provided it with no case "in which a court held a person in contempt for deceit that occurred outside of the presence of the court, was directed towards another party, and did not involve false sworn testimony or the filing of a falsified document" all the more frustrating.

Finally, Ron has previously argued that the Court of Appeals was justified in addressing the issue because it was raised by Holly in her brief.[108] While Ron cites *Brown v. Glover*[109] for the proposition that an issue is not waived if it is addressed in the opposing brief,[110] this misunderstands the scope of the holding in *Brown*. In *Brown*, this Court held that a new issue first raised by the appellee as alternate grounds for affirmance and responded to by the appellant in her reply brief was properly before the Court of Appeals.[111] Other jurisdictions have discussed the scope of this rule, holding that while issues that "relate to the basis of the district court's ruling" must be raised in the opening brief, "when an appellee raises in its answer brief an alternative ground for affirmance, the appellant is entitled to respond in its reply brief."[112] In this case, Ron did not argue in his opening brief that fraud was not a basis for contempt—rather, he only addressed whether the evidence supporting his deceit was sufficient for the district court to find fraud by

108. Resp. Cert. at 16 & 18.

109. 2000 UT 89, 16 P.3d 540.

110. Resp. Cert. at 18.

111. *Brown*, 2000 UT 89 at ¶¶ 20–26.

112. *United States v. Brown*, 348 F.3d 1200, 1213 (10th Cir. 2003); *see Newsome v. Bd. of Elections*, 415 S.E.2d 201, 203–04 (N.C. App. 1992) (holding that an issue first raised in the opposing brief is a "new issue" that can be responded to in a reply brief when the issue does not arise naturally and logically from the record and question presented").

clear and convincing evidence.[113] In response, Holly cited to Subsection (4) in her brief by way of background and context, not as an alternate grounds for affirmance. Ron cannot take advantage of Holly's attempt to provide the Court of Appeals with relevant background to raise additional issues. Secondly, and just as importantly, this justification would not allow the Court of Appeals to reach the issue without relying upon an exception to waiver, as Ron did not preserve the issue below, and to the best of Holly's knowledge, there is no exception to preservation that applies.[114]

Under these circumstances, the Court of Appeals improperly reached the issue of the proper interpretation of Subsection (4). This Court should reverse the Court of Appeals' decision and remand to determine any properly raised outstanding issues in the original appeal.

---

113. *See* Pet. Cert. at 10, n.45 and surrounding text.

114. *Johnson*, 2017 UT 76 at ¶ 47 ("When an issue has not been preserved in the trial court, but the parties argue that issue on appeal, the parties must argue an exception to preservation for the issue to be reached on its merits."); *see id.* at ¶¶ 18–39 (discussing the exceptions to preservation).

CLAIM FOR ATTORNEY FEES [115]

Finally, as noted above, the district court awarded Holly her reasonable attorney fees on the basis that they would not have been incurred but for Ron's deceit.[116] Thus, Holly was entitled to her attorney fees under provisions of the Utah Code relating to contempt[117] and bad faith.[118] Moreover, Ron did not challenge the basis of this award in his Objection to Holly's Request for Attorney Fees before the district court,[119] nor did he raise the issue on appeal in his opening brief.[120] As such, there is no dispute that Holly was entitled to her attorney fees below, and she is

115. It appears that, should this Court reverse the Court of Appeals, the case will return to the Court of Appeals for determination of the issues raised by Ron that were not reached in the previous decision. Holly is unsure whether a claim for attorney fees would be addressed by this Court given this procedural posture, but makes the claim out of an abundance of caution.

116. *See supra* notes 48–51 and surrounding text.

117. Utah Code § 78B-6-311(1) (allowing a court to "order the person proceeded against to pay the party aggrieved a sum of money sufficient to indemnify and satisfy the aggrieved party's costs and expenses"); *see Iota LLC v. Davco Mgmt. Co.*, 2016 UT App 231, ¶ 60, 391 P.3d 239 (holding that "costs and expenses" include "the attorney fees the damaged party incurred").

118. Utah Code § 78B-5-825(1) (providing for an award of reasonable attorney fees "if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith").

119. *See* R. at 1195–1201.

120. Br. Appellant at 1–3 (outlining the issues raised on appeal).

thus also entitled to her attorney fees reasonably incurred on appeal.[121] This includes those attorney fees Holly incurred in the Court of Appeals, as while she was unsuccessful at that stage in the proceeding, she will have been "ultimately vindicated" by prevailing on appeal before this Court.[122]

CONCLUSION

For the foregoing reasons, Holly asks that this Court reverse the Court of Appeals' decision in this matter and remand to the Court of Appeals for further proceedings.

RESPECTFULLY SUBMITTED this 28th day of August, 2019.

/S/ Stephen D. Spencer
Stephen D. Spencer
SPENCER LAW OFFICE, PLLC
Attorney for Petitioner

121. *Jordan Constr., Inc. v. Fed. Nat'l Mortgage Ass'n*, 2017 UT 28, ¶ 71, 408 P.3d 296.

122. *Cf. Gilbert Dev. Corp. v. Wardley Corp.*, 2010 UT App 361, ¶¶ 50–52, 246 P.3d 131; *Cache County v. Beus*, 2005 UT App 204, ¶¶ 16–17, 128 P.3d 63.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Microsoft Word and uses Century Schoolbook typeface in 13-point font. According to Microsoft Word's word-count function, this brief contains 8,148 words, excluding the caption, table of contents, table of authorities, certificate of compliance, certificate of service and addendum. This brief is therefore in compliance with the type-volume limitation of Utah R. App. P. 24(g).

I further certify that this petition, including the appendix, does not contain any non-public information and is therefore in compliance with Utah R. App. P. 21(g).[123]

DATED this 28th day of August, 2019.

/S/ Stephen D. Spencer
Stephen D. Spencer
SPENCER LAW OFFICE, PLLC
Attorney for Petitioner

123. While the court records in this action are generally classified as private, the appendix contains only judgments, orders and decrees in the action, which are classified as public records. *See* UCJA 4-202.02(4)(B).

PROOF OF SERVICE

I hereby certify that I caused two copies of the foregoing PETITIONER'S OPENING BRIEF to be delivered via email to the following recipients:

Steven W. Beckstrom
SNOW CHRISTENSEN & MARTINEAU
swb@scmlaw.com

Attorney for Respondent Ronald Lee Rosser

DATED this 28th day of August, 2019.

/S/ Stephen D. Spencer
Stephen D. Spencer
SPENCER LAW OFFICE, PLLC
Attorney for Petitioner

UTAH CODE § 78B-6-301

As renumbered and amended by 2008 Utah Laws 48, 463 (c. 3 § 914)
Version effective Feb. 7, 2008–Present

◆

Acts and omissions constituting contempt.

The following acts or omissions in respect to a court or its proceedings are contempts of the authority of the court:

(1) disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the course of a trial or other judicial proceeding;

(2) breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;

(3) misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, or other person appointed or elected to perform a judicial or ministerial service;

(4) deceit, or abuse of the process or proceedings of the court, by a party to an action or special proceeding;

(5) disobedience of any lawful judgment, order or process of the court;

(6) acting as an officer, attorney or counselor, of a court without authority;

(7) rescuing any person or property that is in the custody of an officer by virtue of an order or process of the court;

(8) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial;

(9) any other unlawful interference with the process or proceedings of a court;

(10) disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness;

(11) when summoned as a juror in a court, neglecting to attend or serve, or improperly conversing with a party to an action to be tried at the court, or with any other person, concerning the merits of an action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the communication to the court; and

(12) disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after the action or special proceeding is removed from the jurisdiction of the inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of the officer.

2019 UT App 25

THE UTAH COURT OF APPEALS

HOLLY REBECCA ROSSER,
Appellee,
v.
RONALD LEE ROSSER,
Appellant.

Amended Opinion[1]
No. 20170736-CA
Filed February 14, 2019

Sixth District Court, Panguitch Department
The Honorable Paul D. Lyman
No. 154600013

Steven W. Beckstrom, Attorney for Appellant

Stephen D. Spencer, Attorney for Appellee

JUDGE RYAN M. HARRIS authored this Opinion, in which JUDGES DAVID N. MORTENSEN and DIANA HAGEN concurred.

HARRIS, Judge:

¶1 Ronald Lee Rosser and Holly Rebecca Rosser divorced in 2016 pursuant to a stipulated decree of divorce that was the result of mediation. One of the points of contention in their divorce case was how the parties would divide their 2015 tax obligations. At the conclusion of the mediation, the parties apparently agreed to split the 2015 tax liability equally. A few

1. This Amended Opinion replaces the Opinion in Case No. 20170736-CA that was issued on January 10, 2019. After our original opinion issued, Ronald filed a petition for rehearing, and we called for a response. We grant the petition for the limited purpose of clarifying Ronald's entitlement to an award of attorney fees, as reflected in footnote 9 herein.

weeks later, however, both parties executed a stipulated decree of divorce that obligated Holly[2] to "pay any tax liabilities . . . for the year 2015." Later, after Ronald refused to pay any of the outstanding 2015 tax obligation, Holly obtained an order to show cause and asked the district court to hold Ronald in contempt of court for refusing to pay his share of the 2015 taxes. The court granted Holly's request and found Ronald in contempt. Ronald now appeals, and we agree with Ronald that the actions he was found to have taken do not constitute statutory contempt of court. Accordingly, we vacate nearly the entirety of the district court's contempt order, and remand this case for further proceedings.

BACKGROUND

¶2 After twenty-five years of marriage, Holly and Ronald separated in 2014, and Holly later petitioned for divorce. Over the course of their marriage, the parties acquired various assets, including several vehicles, a residence in Panguitch, Utah, two other parcels of real property, and a number of franchise restaurants that were owned by a company in which Holly and Ronald each held a 50% stake. In addition to these assets, the parties also had certain debts, including a $29,902.71 tax obligation owed to the IRS for the 2015 tax year. The parties took opposing positions regarding the division of some of these assets and liabilities.

¶3 In an attempt to resolve their differences prior to trial, the parties agreed to participate in mediation on June 16, 2016. During that mediation session, the parties were able to come to an agreement regarding all of their issues, including the 2015 tax

---

2. Because both parties share the same surname, we identify the parties by their first names throughout this opinion. We intend no disrespect by the apparent informality.

obligation. This consensus was memorialized in a three-page written agreement (the Mediation Agreement) that was signed by all parties immediately upon completion of the mediation. With regard to the tax obligation, the Mediation Agreement states as follows: "IRS debt from 2015, 50% Ron and 50% Holly." The parties also agreed that Ronald would be entitled to certain "rebates" that the couple's business received.

¶4 In the weeks following the mediation, Holly paid her half of the 2015 tax obligation. For reasons unclear from the record, Ronald did not. However, Ronald did contact the parties' accountant and identify several additional tax deductions that he thought could potentially reduce the parties' 2015 tax liability. Acting on Ronald's instructions, in July 2016 the accountant prepared an amended 2015 tax return for Ronald and Holly. In preparing that return, however, the accountant mistakenly assumed that the entire previous 2015 tax obligation of $29,902.71 had already been paid, when in reality only half of it (Holly's half) had actually been paid. As a result, the amended tax return indicated that not only did Ronald and Holly not owe any taxes for 2015, they were actually due a tax refund of approximately $7,900. Holly would later testify that, operating on the assumption that Ronald had paid his half of the pre-existing 2015 tax obligation as she had done, she believed that the amended returns were accurate and that the parties were in fact owed a refund. For his part, Ronald would later testify that he also believed the amended tax returns were accurate, but premised this belief on a different assumption: that Holly had paid the entirety of the 2015 tax obligation in consideration for other income she had negotiated from him. Apparently both under the belief that the amended returns were accurate, the parties signed those returns on or about August 22, 2016.

¶5 On or about August 4, 2016—after the amended tax returns had been prepared and reviewed, but before either party actually signed them—the parties and their attorneys all signed a Stipulated Motion for Entry of Findings of Fact and

Conclusions of Law and Final Decree of Divorce. With respect to the 2015 tax obligation, that stipulation stated—in contrast to the Mediation Agreement—that Holly "shall be solely entitled to receive any refund resulting from the amended returns, and shall also be responsible to pay any tax liabilities resulting to any of the Parties for the year 2015." A few days later, on August 8, 2016, the district court signed a Final Decree of Divorce (the Decree) in accordance with the parties' stipulated motion. Under the terms of the Decree, Holly "shall be solely entitled to receive any refund resulting from the amended [2015 tax] returns, and shall also be responsible to pay any tax liabilities resulting to any of the Parties for the year 2015." The Decree also states that Ronald is entitled to the rebates as agreed upon at the mediation.

¶6 Holly later discovered that the amended tax returns were inaccurate, and that instead of being entitled to a $7,900 refund for tax year 2015, the parties still owed $7,174.98. Under the terms of the recently-entered Decree, Holly was obligated to make this payment, but she considered that result unfair since she had already paid her half of the 2015 tax obligation, as the parties had agreed at mediation, and Ronald had not. In part because she felt as though Ronald owed her money related to the 2015 tax obligation, she declined to pass along to Ronald certain rebate checks she received to which Ronald was entitled under the terms of the Decree.

¶7 On November 21, 2016, Holly filed a Motion for Order to Show Cause, alleging that Ronald had defrauded her and asking the court to order Ronald to pay his share of the parties' 2015 tax obligations as well as her attorney fees in bringing the motion. A few weeks later, Ron filed his own Motion for Order to Show Cause, alleging that Holly had willfully failed to comply with the provision of the Decree that concerned the rebates. Eventually, the district court scheduled both motions for an evidentiary hearing. During that hearing, Holly testified that Ronald had misled her into believing that he had paid his share of the parties' 2015 tax obligation assigned to him pursuant to

the Mediation Agreement. Ronald, by contrast, testified that Holly was not only aware that he had not done so, but that after mediation she had agreed to pay the entirety of the tax obligation. With regard to the rebates, Holly acknowledged that she had received rebate checks to which Ronald was entitled under the Decree, but stated that she had not passed those along to Ronald because she felt that he owed her money related to the 2015 tax obligations.

¶8 At the conclusion of the hearing, the court found that Ronald deceived Holly by allowing her to believe that he had paid his share of the tax obligation, and that Holly had not in fact agreed to pay it herself. The court then found Ronald in contempt of court for "his deliberate deceit and failure to act as agreed between the parties on June 16, 2016," and ordered Ronald to pay Holly approximately $15,000 plus reasonable attorney fees, which were later determined to be $4,000. The court also found that Holly had "failed to make" the rebate payments to Ronald as required by the Decree, but that Holly's conduct "did not intentionally violate the Decree" because Holly was "merely reacting to [Ronald's] deceit." Accordingly, the court allowed Holly to "offset" the rebate amounts she owed Ronald against the amount it determined Ronald owed her on the tax issue. After quantifying the amount of attorney fees to which it believed Holly was entitled, the court eventually entered judgment against Ronald in the amount of $18,951.11, but stated, in the judgment, that Holly "may apply" the "rebates toward the judgment and thus give [Ronald] credit" for them.

ISSUE AND STANDARD OF REVIEW

¶9 Ronald appeals from that judgment, and asks us to consider whether the district court erred in holding him in contempt. When reviewing a district court's decision to find a party in contempt, "we review the district court's findings of fact

for clear error and its legal determinations for correctness." *LD III LLC v. Davis*, 2016 UT App 206, ¶ 12, 385 P.3d 689 (quotation simplified). Ronald's chief complaint with the district court's contempt determination is a legal one: Ronald contends that the facts alleged by Holly, even if true, cannot constitute statutory contempt of court as a matter of law.[3] This is a legal question that we review for correctness. *Id.*

ANALYSIS

¶10 Under Utah statutory law, a court has authority to hold a person in contempt of court for any one of twelve enumerated reasons. *See* Utah Code Ann. § 78B-6-301 (LexisNexis 2012).[4]

---

3. Among other additional arguments, Ronald also takes issue with certain of the district court's factual findings supporting its contempt determination, but because we determine that the facts as set forth by Holly cannot constitute statutory contempt as a legal matter, we need not consider any of Ronald's other arguments, including whether the district court clearly erred in any of its factual determinations.

4. Under Utah law, courts also have inherent (non-statutory) contempt powers. *See Chen v. Stewart*, 2005 UT 68, ¶ 36, 123 P.3d 416 ("A court's authority to sanction contemptuous conduct is both statutory and inherent."). In this case, however, Holly did not ask the district court to invoke its inherent powers and, in its order, the district court did not expressly invoke any such powers. On appeal, Holly defends the district court's order by asserting that the court had the statutory power to issue its contempt order. Because the district court does not appear to have invoked its inherent power, and because Holly does not argue that it did, we do not address whether the district court would have had the power to hold Ronald in contempt of court pursuant to its inherent (as opposed to its statutory) authority.

Ronald contends that none of the twelve grounds apply here, and that therefore the district court was without statutory authority to hold him in contempt. We agree with Ronald.

¶11 In this case, while it is clear that the district court found that Ronald was in contempt of court, it is unclear which of the twelve statutory grounds the court relied upon. In its order, the court stated that Ronald was "in contempt, due to his deliberate deceit and failure to act as agreed between the parties on June 16, 2016." The court gave no other indication of the legal (as opposed to the factual) grounds for its determination that Ronald was in contempt of court.

¶12 Holly asserts that the district court implicitly relied upon two of the twelve statutory grounds for contempt: (a) the fourth one, which allows a court to find a "party to an action" in contempt for "deceit, or abuse of the process or proceedings of the court"; and (b) the fifth one, which allows a court to find a person in contempt for "disobedience of any lawful judgment, order or process of the court." *Id.* § 78B-6-301(4), (5). We are not convinced that either of these grounds was appropriately invoked in this case.

¶13 The court did mention Ronald's "deliberate deceit" as part of its reason for holding Ronald in contempt of court. But the deceit the court described in its findings was not deceit Ronald committed upon the court; rather, it was deceit Ronald apparently committed upon Holly by not telling her that he had failed to pay his share of the parties' 2015 tax obligation. In this case, there is no allegation, let alone a finding, that Ronald committed deceit or fraud *on the court*, and in our view subsection (4) of the contempt statute must be interpreted to include only deceit committed on the court.

¶14 We reach that conclusion after reviewing the provision in context. First, subsection (4)—unlike other subsections—is by its

own terms limited to the actions of "part[ies] to the action or special proceeding." *See id.* § 78B-6-301(4). Second, "deceit" is part of a short list of things that might be found contemptuous under that subsection, and the other thing listed is "abuse of the process or proceedings of the court." *Id.* Our supreme court requires a "commonsense approach" to statutory interpretation in which "a word is given more precise content by the neighboring words with which it is associated." *See Thayer v. Washington County School Dist.*, 2012 UT 31, ¶ 15, 285 P.3d 1142 (quotation simplified). Here, the entire thrust of the subsection is aimed at allowing a court to penalize deceitful misuse of judicial proceedings by parties to those proceedings. Ronald's actions were all undertaken toward Holly, and not toward the court, and thus cannot fall within the ambit of subsection (4).

¶15 It is contemptible deceit, for example, to lie to a court under oath.[5] *See Bhongir v. Mantha*, 2016 UT App 99, ¶ 16, 374 P.3d 33. It is also contemptible deceit to file false documents, *see, e.g. PacifiCorp v. Cardon*, 2016 UT App 20, ¶ 3, 366 P.3d 1226,

---

5. During the course of the hearing on Holly's order to show cause, Ronald testified that he had a meeting with Holly in July 2016 where she agreed to pay all of the 2015 taxes. Holly denied that any such meeting ever occurred, and denied ever agreeing to pay the entirety of the 2015 tax obligation. The district court credited Holly's version of those events, and made a finding that Ronald was "not telling the truth" in setting forth his version. However, there is no indication in the remainder of the court's contempt order that it intended to hold Ronald in contempt for the particular statement that it found was not true. The court's specific contempt finding lists only "deceit" in "fail[ing] to act as agreed between the parties on June 16, 2016," and makes no attempt to ground a contempt finding on any "deceit" associated with Ronald's testimony about the July 2016 meeting.

or to falsely testify during a divorce proceeding that one has very little money and then skip town with money which one has previously deposited under an assumed name, *see Smith v. Smith*, 218 P.2d 270, 271–72 (Utah 1950). But these are all actions taken toward the court, and we are aware of no case—and Holly provides us with none—in which a court held a person in contempt for deceit that occurred outside of the presence of the court, was directed towards another party, and did not involve false sworn testimony or the filing of a falsified document.

¶16 We share Ronald's concern that, were Holly's position governing law, there would be little to prevent any untruthful statement made by any party to anyone while litigation is pending from being punishable by contempt of court. Indeed, Holly's contentions in this case are, in essence, that Ronald breached the Mediation Agreement and in the course of doing so made fraudulent statements—or at least committed fraudulent nondisclosure—toward Holly. In our view, it would stretch the meaning of subsection (4) of the contempt statute well beyond its intended meaning if facts like these, even if true, were determined to fall within its ambit.

¶17 Holly next contends that the district court could also have been relying on subsection (5), which allows a court to punish "disobedience of any lawful judgment, order or process of the court." Utah Code Ann. § 78B-6-301(5) (2012). But the district court did not reference any judgment or order that it believed Ronald disobeyed. Instead, the only document the court mentioned was the Mediation Agreement; the court faulted Ronald for failing "to act as agreed between the parties on June 16, 2016." It is undisputed that, as part of the Mediation Agreement, Ronald agreed to pay half of the parties' 2015 tax obligation, and that he did not ever actually do so. But the Mediation Agreement was not an order of the court; it was just a private agreement between two parties. Breach of a private

agreement that has not yet been made an order of the court cannot be a violation of subsection (5) of the contempt statute.[6]

¶18 Holly attempts to defend the court's contempt order by asserting that Ronald was not only in violation of the parties' private Mediation Agreement, but that he was also in violation of the Decree, and that—even though the district court made no mention of it—the district court intended to hold Ronald in contempt for failure to comply with the terms of the Decree. For support, Holly directs our attention to paragraph 9(r) of the Decree, which is the paragraph setting forth the parties' rights and obligations regarding the 2015 tax obligation. As noted above, that paragraph states that Holly is to receive any 2015 tax refund to which the parties may be entitled, but that Holly "shall also be responsible to pay any tax liabilities resulting to any of the Parties for the year 2015." The plain terms of the Decree (as opposed to the Mediation Agreement) obligate Holly to pay the entirety of the parties' 2015 tax obligation, whatever that obligation might be. While Ronald's failure to pay half of that obligation may well violate the terms of the Mediation Agreement, such failure clearly does not violate the terms of the Decree, because the Decree imposed upon Ronald no obligation to pay any of the parties' 2015 tax obligation.

---

6. The district court ordered the parties to participate in mediation. However, Holly makes no claim that Ronald failed to participate in mediation, or that the district court intended to hold Ronald in contempt for violating its order that the parties participate in mediation. *See, e.g., Rawlings v. Rawlings*, 2008 UT App 478 ¶¶ 24-28, 200 P.3d 662 (holding that while complete failure to participate in court-ordered mediation may constitute a violation of a court order to participate in mediation in good faith, participating with no intention of making or considering any settlement offers does not), *reversed on other grounds by Rawlings v. Rawlings*, 2010 UT 50, 240 P.3d 754.

¶19 Holly argues, however, that paragraph 9(r) of the Decree is at least ambiguous, and asks us to consider parol evidence, most notably the Mediation Agreement, in construing its terms. Holly maintains that the "ambiguity" contained in paragraph 9(r) was "the presence or absence of a tax refund," and asserts that she only agreed to the terms of the Decree because she believed that she would receive a tax refund. Holly's argument fails, however, because the plain language of the Decree is not itself ambiguous, and clearly obligates her—and not Ronald—to pay any outstanding tax liability. A provision is ambiguous only if "its terms are capable of more than one reasonable interpretation because of uncertain meanings of terms, missing terms, or other facial ambiguities." *See Mind & Motion Utah Investments, LLC v. Celtic Bank Corp.*, 2016 UT 6, ¶ 24, 367 P.3d 994 (quotation simplified). If the language is not ambiguous, "the parties' intentions are determined from the plain meaning of the contractual language, and the contract may be interpreted as a matter of law." *Id.* (quotation simplified). "Terms are not ambiguous simply because one party seeks to endow them with a different interpretation according to his or her own interests." *Id.* (quotation simplified). Instead, "the proffered alternative interpretations must be plausible and reasonable in light of the language used." *Id.* (quotation simplified).

¶20 Holly's interpretation of the language contained in paragraph 9(r) is simply not "plausible and reasonable in light of the language used." *Id.* Where the language clearly imposes upon Holly the obligation to pay whatever tax obligation the parties owed for the 2015 tax year, any interpretation that imposes that obligation, even in part, upon Ronald is simply not consonant with the plain meaning of the language used. Accordingly, Ronald's failure to pay any portion of the parties' 2015 tax obligation is not a violation of the plain terms of the Decree, and therefore the district court could not have properly held Ronald in contempt of court on that basis.

CONCLUSION

¶21 A statutory contempt remedy simply does not fit the facts of this case, even if we assume that Holly's version of the facts is correct. Ronald did not commit deceit on the court, nor did he violate an order or judgment of the court. He appears to have violated the terms of the Mediation Agreement, and—although we express no opinion on the matter—he may have committed fraud or fraudulent nondisclosure upon Holly in the time period between the mediation and the entry of the Decree. But Holly's remedy, if any, for Ronald's actions must be found somewhere other than the contempt statute.[7] We vacate nearly the entirety[8]

---

7. For instance, a party in Holly's situation could, among other options, (a) elect to file a petition to modify the Decree, asserting a substantial and material change in circumstances; (b) file a motion, pursuant to rule 60(b)(3) of the Utah Rules of Civil Procedure, seeking relief from the terms of the Decree on the basis of fraud; or (c) file a separate lawsuit alleging fraud, fraudulent nondisclosure, or some other appropriate cause of action, and seeking damages. We express no opinion about whether, on the facts presented here, Holly would be entitled to relief under any of these options.

8. We do not vacate Paragraphs 20–22 of the district court's contempt order. In those paragraphs, the district court determined that Holly had failed to comply with the provision of the Decree that required her to pass along to Ronald certain rebate checks that she might receive. Holly has not appealed those findings, and takes no issue with them in the context of Ronald's appeal. On remand, the district court may revisit the question of whether Holly is entitled to offset her obligation to Ronald regarding the rebate checks against any other obligation Ronald may owe her, or whether a judgment in Ronald's favor regarding the rebate checks is appropriate.

of the district court's contempt order, including its order that Ronald pay attorney fees,[9] and remand this case for further proceedings consistent with this opinion.

---

9. Ronald not only asks that we vacate the attorney fees award entered against him, which we hereby do, but he also asks that we also (a) order Holly to reimburse him for the attorney fees he incurred on appeal and (b) direct the district court to award him his fees he incurred during the contempt proceedings before the district court. Ron's request for an affirmative award of attorney fees is premature. As we have previously stated, in situations like this it will be up to the district court, on remand, to determine whether Ron should be awarded his attorney fees incurred during the contempt proceedings before the district court. *See Thayer v. Thayer*, 2016 UT App 146, ¶ 41, 378 P.3d 1232 (reversing a district court decision in favor of Husband and noting that therefore "Wife has ultimately substantially prevailed both on appeal and in the district court," but declining to direct the district court to award Wife the fees she incurred before the district court, stating that "[t]he district court on remand should evaluate Wife's request for attorney fees . . ."). Ron has certainly prevailed on appeal, but he will only be entitled to reimbursement of the attorney fees he incurred on appeal if the district court, on remand, decides to award Ron the attorney fees he incurred before the district court. *Id.* (stating that "[i]f the court awards attorney fees [on remand], the award should also include Wife's attorney fees reasonably incurred for enforcing the decree on appeal").

IN THE SIXTH JUDICIAL DISTRICT COURT

IN AND FOR GARFIELD COUNTY, STATE OF UTAH

HOLLY R ROSSER, Petitioner, V. RONALD L. ROSSER, Respondent.	**ORDER AND JUDGMENT** Civil No. 154600013 Judge: PAUL D. LYMAN

The parties have both filed Order to Show Cause actions against the other party. The Petitioner's action was filed on November 21, 2016 and the Respondents' action was filed on January 3, 2017. A hearing was held on these opposing actions on February 8, 2017. The Petitioner appeared with her attorney, while the Respondent appeared pro se. Given that the critical issues appeared to be undisputed, the Court granted the Petitioner's Order to Show Cause and denied the Respondent's Order to Show Cause. The Respondent then re-hired his attorney and sought various forms of relief. This Court granted the Respondent a new trial on July 25, 2017. The new trial was held on August 17, 2017. Both parties appeared and presented evidence. Being now fully advised in the premises and for good cause appearing, the Court hereby renders its decision as follows:

Findings of Fact

1. In an attempt to resolve the parties' financial disputes in their divorce, the parties participated in mediation and reached a settlement agreement, which they signed on June 16, 2016.

2. The June 16, 2016 settlement agreement required both parties to immediately take various actions related to the businesses, properties, expenses and income.

3. Both parties did take immediate actions, which they both relied upon.

4. Paragraph 15 of the June 16, 2016 settlement agreement split the 2015 IRS debt 50/50.

5. The parties had received an IRS notice dated June 6, 2016, which notified them that they owed $29,902.21 for unpaid 2015 taxes.

6. The parties agreed to each pay one half of that debt or, $14,951.11.

7. The Petitioner paid her share of $14,951.11 within days of reaching the settlement agreement.

8. The parties intended on June 16, 2016, to file an Amended 2015 tax return, which would result in the Petitioner receiving a $7,900.00 tax refund, which would only happen if they each paid their share of the IRS claimed $29,902.21, in taxes.

9. The Petitioner assumed she would receive the $7,900.00 refund from the Amended 2015 tax return, so she approved the amended tax return.

10. At no point did the Respondent tell the Petitioner that he had failed to pay his $14,951.11 tax obligation.

11. Both the Petitioner and their accountant relied upon the Respondent having paid his $14,951.11.

12. The Respondent knew he would eventually be found out, but chose to let his deception go forward.

13. Consequently, the petitioner did not receive the agreed upon $7,900.00 refund and she eventually had to pay an additional $7,174.98, in taxes to the IRS.

14. The Petitioner had to pay the additional $7,174.98 because on August 4, 2016, the parties entered into a Stipulated Motion For Entry of Findings of Fact and Conclusions of Law and Final Decree of Divorce, which required the Petitioner to pay any remaining tax liabilities for 2015, which she assumed was zero.

15. At the time this Stipulated Motion was filed, only the Respondent knew he had failed to pay the obligation agreed to on June 16, 2016.

16. After listening to the parties at trial it was evident that the Respondent knowingly and intentionally mislead the Petitioner about his failure to pay the taxes he agreed to pay on June 16, 2016.

17. The Respondent claims that at some time he met the Petitioner outside of the U-Swirl, and she agreed to pay the extra taxes that he had not paid.

18. The Petitioner denies this claimed meeting and agreement; the Court having heard the evidence finds that the Respondent is not telling the truth and that no such meeting or agreement occurred.

19. The Respondent owes the Petitioner $7,900.00, plus $7,174.98, for a total of $15,074.98.

20. In paragraph 12 of the Final Decree of Divorce, the Petitioner is required to pay certain soda rebates to the Respondent within 10 days of their receipt.

21. The Petitioner has failed to make these payments as required.

22. The Petitioner did not intentionally violate the Decree of Divorce, since she was merely reacting to the Respondent's deceit.

23. In this Court's prior order regarding this matter, the Court allowed the Petitioner to simply offset these rebates owed, against the amount owed by the Respondent.

24. The Petitioner has incurred attorney's fees related to these matters, which attorney's fees would not have been incurred if the Respondent had not been deceitful.

Conclusions of Law

1. Based upon the proceeding Findings of Fact, the Court concludes that the Petitioner is not in contempt, due to her being victimized by the Respondent's deceit.

2. Based upon the proceeding Findings of Fact, the Court concludes that the Respondent is in contempt, due to his deliberate deceit and failure to act as agreed between the parties on June 16, 2016.

3. The Respondent owes the Petitioner $15,074.98 for damages she received from the Respondent's actions.

4. The Petitioner is entitled to her reasonable attorney's fees related to these Orders to Show Cause.

5. The monies owed by the Petitioner to the Respondent for unpaid rebates may be offset against the judgments for damages and attorney's fees, to which the Petitioner is entitled.

ORDER and JUDGMENT

1. Petitioner is awarded a Judgment of $15,074.98.

2. Petitioner is awarded her reasonable attorney's fees in an amount to be determined after submission of an affidavit by the Petitioner.

3. Petitioner may apply any soda rebates she owes to the Respondent against these Judgments.

4. Any unpaid portion of this Judgment shall accrue interest at the judgment rate of 2.65 percent annually, until paid.

DATED this 28th day of August, 2017.

BY THE COURT:

Paul D. Lyman

PAUL D. LYMAN
District Court Judge

STATE OF UTAH
SIXTH DISTRICT COURTS
GARFIELD

001136

IN THE SIXTH JUDICIAL DISTRICT COURT, IN AND FOR THE STATE OF UTAH, GARFIELD COUNTY, PANGUITCH DEPARTMENT	
HOLLY R. ROSSSER, Petitioner, v. RONALD L. ROSSER, Respondent.	**ORDER ON PETITIONER'S MOTION FOR ATTORNEY'S FEES** Case no. 154600013 Judge: Paul D. Lyman

The Court, having heretofore ordered that Petitioner should have a judgment for her reasonable attorney's fees and having reviewed the affidavit of Petitioner's attorney regarding those fees and the exhibits attached thereto, along with the Respondent's objections, now hereby ORDERS as follows:

1. Petitioner is awarded her reasonable attorney's fees in the amount of seventeen thousand, eight hundred seventy ($17,870.00) dollars.
2. Petitioner is awarded her costs in the amount of three hundred forty-eight dollars and ten cents. ($348.10.)
3. The total judgment amount awarded to Petitioner shall be augmented by $18,218.10 for Petitioner's reasonable attorney's fees and costs.
4. The foregoing amount is fair and reasonable given the Respondent's bad faith and contempt in this matter.

The Order of the Court is stated below:
Dated: June 24, 2019 06:32:38 PM /s/ Thomas R. Lee Associate Chief Justice

IN THE SUPREME COURT OF THE STATE OF UTAH

---00000---

Holly Rebecca Rosser, Petitioner, v. Ronald Lee Rosser, Respondent.	ORDER Supreme Court Case No. 20190320-SC Court of Appeals Case No. 20170736-CA Trial Court Case No. 154600013

This matter is before the court upon a Petition for Writ of Certiorari, filed on April 17, 2019.

The Petition for Writ of Certiorari is granted as to the following issues:

1. Whether the Court of Appeals erred in its construction and application of Subsection 78B-6-301(4) of the Utah Code.

2. Whether the Court of Appeals erred in addressing the issue of the proper interpretation of Subsection 78B-6-301(4) of the Utah Code in light of the briefing on appeal.

A briefing schedule will be established hereafter. The parties shall comply with the briefing schedule upon its issuance. Requests for extension are disfavored, but may be granted with good cause.

End of Order - Signature at the Top of the First Page