

SUPREME COURT OF IDAHO

Kosmann v. Dinius, 165 Idaho 375

446 P.3d 433 (2019) · Decided May 14, 2019

SUMMARY

The Idaho Supreme Court reviewed a dispute over enforcement of an oral settlement agreement reached during mediation. The court affirmed enforcement of the \$32,047.19 settlement and declined to decide whether an alleged violation of Idaho Rule of Professional Conduct 4.2 occurred. It also upheld the denial of sanctions against Dinius, reversed sanctions imposed against Kosmann and his attorney, and addressed the striking of untimely reconsideration filings.

CASE DETAILS

COURT	Supreme Court of Idaho
WRITING FOR THE COURT	Moeller, Justice; Burdick, Chief Justice; Brody, Justice; Bevan, Justice; Stegner, Justice
JURISDICTION	Idaho
DECIDED	May 14, 2019
DISPOSITION	other
PROCEDURAL POSTURE	Kosmann appealed a district court judgment enforcing an oral settlement agreement reached during mediation and ruling on cross-motions for sanctions and a motion to strike untimely filings.
STANDARD OF REVIEW	The enforcement of a settlement agreement is reviewed under the summary-judgment standard when no evidentiary hearing was conducted, with the appellate court freely reviewing the record to determine whether either party was entitled to judgment as a matter of law and whether factual inferences were reasonably supported. Sanctions under I.R.C.P. 11 and decisions regarding untimely filings are reviewed for abuse of discretion under the Lunneborg four-part inquiry.
PRECEDENTIAL VALUE	Published Idaho Supreme Court opinion; precedential.
PARTIES	David Kosmann v. Kevin Dinius, Dinius & Associates, PLLC

TOPICS

contracts

mediation

sanctions

summary judgment

appellate procedure

PRACTICE AREAS

Contract law

Civil procedure

Legal ethics

Appellate procedure

Remedies

QUESTIONS PRESENTED

1. Whether the oral settlement agreement placed on the record during mediation was an enforceable contract.
2. Whether the alleged violation of Idaho Rule of Professional Conduct 4.2 rendered the settlement agreement void or unenforceable.
3. Whether the district court abused its discretion by declining to impose sanctions against Dinius for the alleged ethical violation.
4. Whether the issue of sanctions against Dinius and his attorney under I.R.C.P. 11 was preserved for appeal.
5. Whether the district court properly imposed I.R.C.P. 11 sanctions against Kosmann and Messerly for filing an untimely supplemental brief.
6. Whether the district court abused its discretion by striking untimely materials filed in support of Kosmann's motion for reconsideration.
7. Whether Kosmann was entitled to attorney fees or costs on appeal.

HOLDINGS

1. An oral settlement agreement is governed by ordinary contract principles; ethical concerns do not displace contract law in determining whether the settlement is enforceable.
2. The \$32,047.19 oral settlement agreement was valid and enforceable because its material terms were definite, the parties manifested mutual assent on the record, and Kosmann knowingly and voluntarily ratified the agreement after consulting with counsel.
3. The court declined to decide whether an ethical violation during settlement negotiations could render a settlement agreement void or contrary to public policy because the record contained no factual findings establishing whether any attorney violated Rule 4.2.
4. The district court did not abuse its discretion by declining to impose sanctions against Dinius for the alleged Rule 4.2 violation because the Idaho State Bar has authority to investigate and discipline ethical violations.
5. Kosmann did not preserve for appeal the issue whether Dinius and Dunbar abused I.R.C.P. 11 because he did not separately move for sanctions on that basis in the district court.
6. The district court abused its discretion by imposing Rule 11 sanctions based solely on the untimeliness of Kosmann's supplemental brief; Rule 11(b)(2) addresses claims and legal contentions that are not warranted by existing law, not papers filed after a procedural deadline.
7. The court declined to review the striking of Kosmann's untimely memorandum and declaration because he conceded their untimeliness below and failed to show that their exclusion affected a substantial right.

8. Kosmann was not entitled to attorney fees or costs on appeal because he did not prevail on the principal relief sought, the written settlement agreement was unsigned, and the court declined to impose an ethical-violation sanction.

KEY QUOTATIONS

“A settlement agreement stands on the same footing as any other contract and is governed by the same rules and principles as are applicable to contracts generally.” (165 Idaho at 439)

“The language of the rule indicates that it applies where the contents of a document-i.e., “the claims, defenses, and other legal contentions”-are not warranted by existing law, not where the document was merely filed outside of a deadline prescribed by another procedural rule.” (165 Idaho at 444)

“Simply put, the ethical rules that govern our profession are a shield designed to protect litigants from unscrupulous attorney behavior, not a cudgel with which the opposing attorneys can bash each other to gain a tactical advantage in litigation.” (165 Idaho at 443)

FACTUAL BACKGROUND

Kosmann had sued his former attorneys, Kevin Dinius and Dinius & Associates, over representation arising from a real-property dispute. During court-ordered mediation, the parties initially discussed a \$40,000 settlement, but Kosmann later met privately with Dinius and agreed to settle for approximately \$32,000 in exchange for Dinius's agreement not to pursue claims against Kosmann's attorney, Messerly. After consulting with Messerly, Kosmann agreed to the revised terms on the record, but later refused to sign written drafts and attempted to enforce the earlier \$40,000 agreement instead.

PROCEDURAL HISTORY

After Kosmann sued Dinius for professional negligence and breach of contract, the district court ordered mediation. The parties placed a renegotiated oral settlement on the record, but Kosmann later attempted to withdraw from it. The district court enforced the oral settlement, declined to sanction Dinius for an alleged ethical violation, imposed a \$200 sanction against Kosmann and his attorney for an untimely supplemental brief, struck untimely reconsideration materials, and denied reconsideration. Kosmann timely appealed.

DISPOSITION

other

REMAND INSTRUCTIONS

Dinius and Dunbar were ordered to return the \$200 sanction to Kosmann and Messerly in a timely manner. No remand was otherwise ordered; the oral settlement and denial of sanctions against Dinius were affirmed, and no attorney fees or costs were awarded on appeal.

CASES CITED

- Kosmann v. Gilbride, 161 Idaho 363, 386 P.3d 504 (2016)

- Seward v. Musick Auction, LLC, 164 Idaho 149, 426 P.3d 1249 (2018)
- Budget Truck Sales, LLC v. Tilley, 163 Idaho 841, 419 P.3d 1139 (2018)
- Borley v. Smith, 149 Idaho 171, 233 P.3d 102 (2010)
- Estate of Holland v. Metropolitan Property & Casualty Insurance Co., 153 Idaho 94, 279 P.3d 80 (2012)
- Campbell v. Kildew, 141 Idaho 640, 115 P.3d 731 (2005)
- Marek v. Hecla, Ltd., 161 Idaho 211, 384 P.3d 975 (2016)
- Lunneborg v. My Fun Life, 163 Idaho 856, 421 P.3d 187 (2018)
- Runsvold v. Idaho State Bar, 129 Idaho 419, 925 P.2d 1118 (1996)
- Idaho State Bar v. Souza, 142 Idaho 502, 129 P.3d 1251 (2006)
- Heckman Ranches, Inc. v. State, By & Through Department of Public Lands, 99 Idaho 793, 589 P.2d 540 (1979)
- State v. Cohagan, 162 Idaho 717, 404 P.3d 659 (2017)
- Matter of Doe, 163 Idaho 565, 416 P.3d 937 (2018)
- Hurtado v. Land O'Lakes, Inc., 153 Idaho 13, 278 P.3d 415 (2012)