

STATE OF IDAHO)
County of Kootenai)^{SS}

FILED _____

AT _____ O'clock _____ M
CLERK OF THE DISTRICT COURT

Deputy Clerk

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

JEANIE SHANNON PRINCE,)

)

Case No. **CV 00 4241**

Plaintiff, Respondent)

vs.)

ROBERT LOUIS WILHELM,)

**ORDER VACATING “DECISION ON
APPEAL” AND
APPELLATE JUDGMENT
(Judgment on Appeal, I.R.C.P. 83(z))**

)

Defendant, Appellant)

On February 26, 2001, Appellant filed a “Notice of Appeal”. On September 13, 2001, this Court (Honorable Craig Kosonen) issued a “Decision on Appeal” dismissing Robert L. Wilhelm’s Motion for Appeal because he did not appear and argue, but Judge Kosonen also stated in his “Decision on Appeal” that he made “oral pronouncements that constituted findings of fact.” On October 16, 2001, Robert L. Wilhelm filed a “Petition for Rehearing (Brief in Support)”.

A problem in this appeal is the fact that Appellant is proceeding pro se, that problem is compounded by the fact that Appellant is incarcerated at ICIO in Orofino, Idaho. The result is that the Idaho Rules of Civil Procedure are not being followed.

While Appellant has provided no authority for his “Petition for Rehearing”, the Court notes it is probably before the Court pursuant to I.A.R. 42 via I.R.C.P. 83(x). *Ustick v. Ustick*, 104 Idaho 215, 657 P.2d 1083 (Ct.App. 1983). This Court also has the authority and discretion

pursuant to I.R.C.P. 60(b) to relieve a party from an order for a variety of reasons, including mistake, if there are legitimate grounds to do so.

This Court is persuaded that after a review of the file and the record: 1) the Magistrate failed to order a report from Health and Welfare pursuant to Idaho Code 32-717(c), after Jeanie S. Prince alleged child abuse, and 2) it is not clear that the Magistrate considered the Child Support Guidelines under I.R.C.P. 6(c)6 in determining the amount set for monthly child support payments. Robert L. Wilhelm argues that the Magistrate committed other errors, and this Court finds the remaining grounds alleged by appellant Wilhelm are without support.

IT IS THEREFORE ORDERED, that the District Court's (Judge Kosonen's) "Decision on Appeal" dismissing Robert L. Wilhelm's Motion for Appeal is VACATED, only as to the issues of: 1) failure to order a report from Health and Welfare pursuant to Idaho Code 32-717(c), after Jeanie S. Prince alleged child abuse, and 2) consideration of I.R.C.P. 6(c)6 in determining the amount set for monthly child support payments, all other issues in the "Decision on Appeal" are AFFIRMED. The "Decree of Divorce" filed January 30, 2001 is AFFIRMED, except for the findings contained in paragraphs 2 and 9, which are REMANDED back to the Magistrate, pursuant to I.R.C.P. 83(z), for a *de novo*¹ hearing to reconsider its prior custody decision after a report from Health and Welfare has been issued, and to reconsider its support decision utilizing I.R.C.P. 6(c)6. For the orderly administration of this matter, given the fact that appellant is incarcerated and the child should not be left without a custodial parent, until the matter is heard by the Magistrate, findings in paragraph 2 and 9 will remain in effect.

DATED this 10th day of November, 2002.

John T. Mitchell, District Judge

¹ *Wells v. Wells*, 105 Idaho 575, 576-77, 671 P.2d 488 (Ct.App. 1983) indicates the district court can grant a *de novo* hearing either in that court or by a remand to the Magistrate.

CERTIFICATE OF MAILING

I hereby certify that, pursuant to I.R.C.P. 83(z), on the ____ day of November, 2002 a true and correct copy of the foregoing was mailed, postage prepaid, or sent by interoffice mail to:

Robert L. Wilhelm	ICIO, Hospital Dr.,	Orofino, ID 838544
Ramona R. Liesche	P. O. Box 2127	Coeur d'Alene, ID 83816-2127
Hon. Eugene A. Marano	324 W. Garden Ave.,	Coeur d'Alene, ID 83816-9000

DANIEL J. ENGLISH
Clerk of the District Court

By: _____
Merri Thorne, Deputy Clerk