

FILED 9/16/2020

AT 5:00 O'Clock P. M

CLERK OF DISTRICT COURT

Anna Clauson
Deputy

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

DAVID JESSE GOVE,

Plaintiff,

vs.

SANDRA DOLORES TEAL,

Defendant.

Case No. **CV28-20-2533**

**MEMORANDUM DECISION AND
ORDER GRANTING IN PART
DEFENDANT'S MOTION FOR
ENTRY OF ISSUANCE OF
PRELIMINARY DETERMINATION OF
DEFENDANT'S RIGHT TO
POSSESSION AND WRIT OF
POSSESSION**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

On April 10, 2020, plaintiff David Gove (Gove) filed this lawsuit against defendant Sandra Teal (Teal) seeking declaratory judgment against Teal, with the Court declaring that he is the "exclusive and lawful owner of the 2011 GMC and the 1995 Ford". Compl. 7, ¶¶ 28. As to those two vehicles, Gove also brings a cause of action of "constructive trust" and "unjust enrichment" against Teal. *Id.* at 7-9, ¶¶ 29-36.

On June 16, 2020, Teal filed her Answer and Counterclaim. Teal claims she should be declared the "sole owner of the vehicles". Answer and Countercl. 9, ¶ 28. Teal claims she is the equitable owner of the vehicles. *Id.* at ¶ 2. Teal claims she and Gove "had a dating non-matrimonial relationship (herein called relationship) but maintained themselves as single persons." *Id.* at 10, ¶ 2. Teal claims "As part of this relationship, the parties would cooperatively purchase vehicles wherein Gove would often assist Teal in the negotiation of the purchase of the vehicles and Teal would be the person primarily providing the finances for the purchases, payment of sales tax, registration, maintenance,

repair, improvements and insurance.” *Id.* at ¶ 3. Teal seeks “quiet title” against Gove for a Lane recliner valued at \$100, (*Id.* at 12, ¶ 1.3), a floor vase valued a \$100, (*Id.* at ¶ 1.4), two electric scooters valued at \$3,000, (*Id.* at ¶ 1.5), an Amana refrigerator valued at \$1,200, (*Id.* at ¶ 1.6), a tall white and glass cabinet valued at \$400, (*Id.* at ¶ 1.7), a six-foot faux tree valued at \$350, (*Id.* at 13, ¶ 1.8), a mirror valued at \$500, (*Id.* at ¶ 1.9), a wooden salad bowl valued at \$60, (*Id.* at ¶ 1.10), and sixteen other items of lesser stated value, some of which (an extra key fob to a 2005 Mercedes) with no stated value. *Id.* at 13-15, ¶¶ 1.11-1.29.

The day after filing her Answer and Counterclaim, counsel for Teal filed an “Order to Show Cause Pursuant to Idaho Code Section 8-302.” As required by that statute, this Court set a hearing for June 24, 2020, for 30 minutes. Due to the Covid 19 pandemic, the hearing was held via Zoom. Teal was requiring Gove to show cause “why the personal properties listed in Defendant’s counterclaim in paragraphs 1.2 through 1.29 should not be taken from the Plaintiff (Gove) and delivered to the Defendant (Teal).” Order to Show Cause Pursuant to Idaho Code Section 8-302, 1.

On June 23, 2020, the day before the hearing, Gove, through counsel, filed an “Objection to Order to Show Cause” and “Plaintiff’s Declaration in Response to Order to Show Cause.” This declaration purported to be the declaration of Gove, but was inexplicably signed by counsel for Gove and not by Gove himself.

The next day, counsel for Gove filed “Plaintiff’s Declaration in Response to Order to Show Cause Amended”, which was electronically signed by Gove “/s/ David Jesse Gove”, which appears to meet the requirements of Idaho Rules for Electronic Filing and Service 9. It also appears to be in the correct form for a declaration. At the end of Gove’s declaration, and before Gove’s electronic signature, is the language, “I am the Plaintiff

named above, I have read the foregoing Declaration, I know the contents thereof, and I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.” Pl.’s Decl. in Resp. to Order to Show Cause Amended 6. This does not meet the requirements of an affidavit or declaration are set forth in Idaho Code § 51-102, as interpreted by *State v. McClure*, 159 Idaho 758, 367 P.3d 153 (2016), because it was not sworn to or affirmed by the declarant before a person authorized to administer oaths. 159 Idaho at 760-61, 367 P.3d at 155-56, citing I.C. § 51-102. However, Gove’s declaration meets the requirements found in Idaho Code § 9-1406, which was added after the defective affidavits in *McClure* were signed. The Idaho Supreme Court in *McClure* commented on Idaho Code § 9-1406 with approval. 159 Idaho at 760, 367 P.3d at 155, n. 1.

Also on June 24, 2020, counsel for Gove filed “Plaintiff’s Second Declaration in Response to Order to Show Cause”, which was again an electronic signature and met the requirements of Idaho Code § 9-1406. Later that day, counsel for Gove followed that by filing “Plaintiff’s Third Declaration in Response to Order to Show Cause”, again with an electronic signature of Gove, in the form allowed by Idaho Code § 9-1406.

At the June 24, 2020, hearing, counsel for Teal called Teal as a witness and she testified. Counsel for Gove then called Gove as a witness, but counsel for Teal objected that counsel for Gove had not listed Gove as a witness for the hearing. That objection was overruled, but due to other proceedings before the Court, Gove only testified for a few minutes before the hearing was continued by this Court.

On July 13, 2020, counsel for Gove filed Gove’s Reply to Counterclaim, essentially denying all Teal claimed in her counterclaim.

Counsel for Teal called this Court’s Deputy Clerk of Court to reserve a hearing time on July 20, 2020, and such time was reserved for Teal. However, counsel for Teal

failed to file and serve a Notice of Hearing for such hearing. Counsel for Teal argued that this Court's "Zoom" invitation would constitute "notice" to counsel for Gove. Counsel for Teal obtained another continued hearing date, and this time filed a Notice of Hearing on Continued Order to Show Cause, setting the continued hearing for July 28, 2020.

At the July 28, 2020, hearing, counsel for Teal called as witnesses Jerad Storlie, and Joe Balbas, and counsel for Gove called as witnesses Gove. At the hearing, the Court admitted Defendant's Exhibits A-I, K1, and L-UU and plaintiff's Exhibits 1-5, 5A and 8, all of which were stipulated by the parties. At the conclusion of the testimony, the Court ordered Teal, the moving party file a brief by August 11, 2020, Gove's response brief was due on August 18, 2020, and any reply brief due by Teal on August 25, 2020. Those briefs were timely filed. On August 11, 2020, counsel for Teal filed "Defendant's Breif [sic] for Entry of Issuance of Preliminary Determination of Defendant's Right to Possession and Writ of Possession." On August 17, 2020, counsel for Gove filed "Brief Re: Order to Show Cause." On August 21, 2020, counsel for Teal filed "Defendant's Reply Brief [sic] for Entry of Issuance of Preliminary Determination of Defendant's Right to Possession and Writ of Possession." Teal's motion is now under advisement.

Neither party obtained a transcript of either the June 24, 2020, hearing or the July 28, 2020, hearing. Thus, all the Court has to decide this case is its own notes and the court minutes taken during those hearings.

II. ANALYSIS

Teal seeks a writ of possession for a number of items. First, Teal lists items that appear to be uncontested by Gove that should be determined by this Court to be in Teal's possession. Def's. Argument for Entry of Writ of Possession 1-2. Teal next lists items that Gove claims he does not have, and Teal argues that "if Plaintiff claims that he does not have the items ... he is not prejudiced by the court awarding the personal property

items to Defendant.” *Id.* at 2-3. Finally, Teal lists the items that are contested by Gove. *Id.* at 3-6.

Idaho Code § 8-302(3) states:

Upon the hearing on the order to show cause, the court shall consider the showing made by the parties appearing, and shall make a preliminary determination which party, with reasonable probability, is entitled to possession, use, and disposition of the property, pending final adjudication of the claims of the parties. If the court determines that the action is one in which a prejudgment writ of possession should issue, it shall direct the issuance of such a writ.

This is the pertinent statute regarding Teal’s motion for writ of possession. The issue is whether Teal has proven with “reasonable probability” that she is entitled to possession of the disputed items.

A. Two scooters.

At the June 24, 2020, hearing, Teal testified under oath that she purchased the two scooters, that Exhibit U7 is a Visa payment for two scooters (electric bikes per the invoice, Exh. U2) purchased on April 30, 2017. Teal testified that she had read Gove’s declaration where he claimed that Gove paid for the scooters and Teal said that is not accurate. Teal testified that Gove attempted to pay for the scooters with a credit card (presumably his), but that Gove was not successful in doing so.

Teal’s bank statement, shipping invoice and cashed personal check (Answer and Counterclaim Ex. U1, U3 and U4 (Teal’s trial Exhibits are the same as those attached to her Answer and Counterclaim, and it was those that were marked “admitted”; Exhibit U7 was filed separately on June 24, 2020, and admitted at the June 24, 2020, hearing, Exhibits PP, QQ(1) and QQ(2) were filed on July 17, 2020, and were admitted at the July 28, 2020, hearing.) show that Teal paid for the two scooters (electric bikes) and the shipping for the scooters. The scooters were purchased from W.J. Bynes & Company and the invoice shows “Services Billed to: Gove, David” and that the invoice date was

June 20, 2018, and payment was due by July 5, 2018 *Id.* at U2. The \$999.55 check from Teal's account dated July 2, 2018, was deposited by W.J. Bynes & Company, as is shown on the back of the cancelled check. Ex. U3. The date of deposit by W.J. Bynes & Company is not shown on the back of the check, but Teal's Chase bank statement shows the bank paid that check on July 9, 2018. Ex. U4. All the dates track. The Court finds all documentation presented by Teal appears accurate.

But, here is where things get weird. Teal has submitted Exhibit U7, which is a copy of the Southwest Airlines Rapid Rewards credit card statement from Chase Bank. That statement shows an April 30, 2020 payment to www.alibaba.com Delaware, DE, in the amount of \$1,208.32. Did Teal pay for the bikes twice? Did Teal pay for one bike with a check and one with a credit card? Counsel for Teal has not sorted this out at all. This case has been presented as if the parties gathered up all the evidence they could find, shoved it in a banker's box and said, "Sort this out judge, you can do it!" It does not appear that Teal paid for one scooter with a check and the other with a credit card. The Court comes to that conclusion because the Invoice (Ex. U2) lists two scooters, under "description" the Invoice reads, "2 PKG ELECTRIC BIKE." The only conclusion the Court can reach is that Teal paid for the two bikes twice, once by credit card on April 30, 2020, and later by check. At the June 24, 2020, hearing, Teal did not testify about this double payment.

Gove also claims he has proof he paid for scooters. Gove claims Exhibit 3 to his affidavit "is a true and correct copy of the proof of my purchase of the 2 scooters with my credit card." Pl's. Second Decl. In Resp. to Order to Show Cause Ex. 3. Exhibit 3 is not any proof that Gove paid for the two scooters with his credit card. In fact, Exhibit 3 directly contradicts Gove's claim that he paid for the two scooters with his credit card. Exhibit 3 first of all does not appear overly authentic. Exhibit 3 appears to be almost a

screen shot of some transaction taking place on a smart phone. The Court makes this finding because page one of Exhibit 3 seems to have an icon that would be navigable by a smartphone or I-pad, and said icon reads "CHAT". But even if Exhibit 3 is an accurate copy of a document that actually exists on this planet, it shows that the order was "submitted" on April 28, 2018, and that payment was completed on April 30, 2018, at 12:07 p.m., but then it shows "Payment Failure" on three separate occasions. Gove gives no explanation why there would be two days between when the order was "submitted" and payment was completed. Reading Exhibit 3 in sequence, the "Payment Failure" came after the "Payment Completed". If, somehow the "Payment Failures" were before the "Payment Completed" occurred, Gove has utterly failed to explain why sequentially on the "document", they occur after. Exhibit 3 is not an invoice Exhibit 3 does not show what payment method was used or who made the payment. Finally, Gove gives no explanation as to why he would make full payment for the scooters on April 30, 2018, only to have Teal make another timely (per the invoice) full payment on July 2, 2018, on an invoice that was created on June 20, 2018. Gove does not show any invoice. The only invoice is as set forth in Exhibit U2. So Exhibit 3 is not an invoice, it provides no proof that Gove made the payment which Gove purports to be shown on the incredibly suspect Exhibit 3, and even if it did give some evidence of proof of payment by Gove, such payment would have been made nearly two months **before** the invoice (Ex. U2) was created. That makes no sense at all. Finally, at the June 24, 2020, hearing, Teal testified that she had read Gove's declaration where he claimed to have paid for the scooters with his credit card, and while that was true that he tried to pay with his credit card, that payment did not go through so Teal paid for the scooters. At the July 28, 2020, hearing, Gove testified that he "Paid for the scooters with my credit card." However, Gove has never produced a credit card statement proving such. Thus, the Court finds Gove not to

be credible on this claim. The Court finds Gove's Exhibit 3, attached to his Plaintiff's Second Declaration in Response to Order to Show Cause is entitled to no weight.

Based on the above information, a writ of possession for the two scooters should be issued in favor of Teal. Teal has proven with "reasonable probability, [she] is entitled to possession" of the scooters. Idaho Code § 8-302(3). The Court finds by a reasonable probability that Teal's funds exclusively were used to purchase the scooters, and that Gove's proof is not accorded any weight and in fact causes this Court to give Gove little credibility on all matters to which he testified, as a result of what certainly appears to be an attempt to fabricate evidence regarding Exhibit 3. If anything, Teal has proven that she paid for the scooters twice. Best case, Gove has been extremely negligent in not providing any proof to back up his purported payment contained in his Exhibit 3, there is no bank card statement, no receipt, no invoice no cashed check for payment of that credit card account, which would track with Exhibit 3.

B. Refrigerator and cooler.

In regards to the refrigerator and the cooler, Teal states that, "her credibility should be believed over the Plaintiff because he failed to be truthful regarding numerous items of personal property." Def.'s Br. For Entry of Issuance of Prelim. Determination of Def.'s Right to Possession and Writ of Possession 15. That claim might find some limited traction with this Court's finding as to Gove's lack of credibility as set forth immediately above, but there does not appear to be any evidence on the record as to who is the rightful owner of the refrigerator and cooler. Based on this Court's notes from the June 24, 2020, hearing, and the court minutes from that hearing, there appears to have been no testimony regarding the cooler and the refrigerator. Teal has the burden at this point, and that requires some affirmative proof by Teal, not just some claim by Teal that Gove is not credible on all items. Again, the banker's box analogy applies.

C. 2011 GMC truck.

Regarding the 2011 GMC truck and 1995 Ford van, both of these vehicles are titled to Teal. Answer and Counterclaim Ex. I and Ex. M, respectively. For this reason alone, a writ of possession in favor of Teal is likely warranted. Gove argues that, "Title alone may or may not give rise to the right of immediate possession", citing *Morrison v. Quality Produce, Inc.*, 92 Idaho 448, 451, 444 P.2d 409, 412 (1968). Br. Re: Order to Show Cause 10. In this case, there is much more than just title as to these two vehicles. As to the 2011 GMC truck, most importantly, at the July 28, 2020, hearing, Gove testified under oath that as to the 2011 GMC truck, "technically it was defendant's (Teal's) at the time." Thus, Gove **admits** Teal is entitled to possession of the 2011 GMC truck. When asked where the truck was, Gove testified "I don't know, ask Jared Storlie." Then, he exercised his Fifth Amendment right not to incriminate himself (or his attorney did on his behalf, the Court's notes are not clear). Gove claims that he paid \$142.47 bill for repairs to the 2011 GMC truck, Ex. 4. However, nowhere on Exhibit 4 is it stated who paid the \$147.47 invoice to Knudsen Chevrolet. And, Gove has provided no credit card statement that would prove that he paid such bill. Finally, even if he had, it would not be sufficient to rebut Teal's claim to ownership and entitlement of possession given the fact that, 1) Teal is the titled owner, and 2) Gove admitted in his testimony under oath that Teal the 2011 GMC truck was "Teal's at the time."

D. 1995 Ford van.

As to the 1995 Ford van, Teal has produced a cancelled check from her account that on April 2, 2018, Teal paid Idaho Department of Motor Vehicles \$203.25 for sales tax and registration for the 1995 Ford van. Ex. K2. Teal produced evidence that she paid for expenses and improvements for the 1995 Ford van. Ex. K1. At the June 24, 2020, hearing, Teal testified the money for the 1995 Ford van, all of \$400, was first paid by

Gove, but then when Teal's 1994 Chevrolet van sold a week later for \$1,900, Gove kept \$400 out of that cash sale to reimburse him for basically advancing the \$400 funds for the 1995 Ford van a week earlier. At the July 28, 2020, hearing, Gove testified. Gove testified that he paid the \$400 acquisition price from his personal funds, which is essentially corroborated by Teal, up to this point. But Gove, even though he had a over a month to think about Teal's testimony, never rebutted Teal's claim that she paid him back the \$400 out of the sale of her 1994 Chevrolet van. Thus, Teal's testimony as to her paying all the funds to acquire the 1995 Ford van is uncontradicted.

This Court is not going to make a determination under I.C. §8-302(3) as to wooden salad bowl, faux trees, mirror, vase or key fob. This Court finds those determinations do not require the urgency which I.C. §8-302(3) anticipates. Those determinations simply must wait until the trial.

As to the items discussed, the two scooters, the 2011 GMC truck and 1995 Ford van, this decision only ends the current inquiry on the issue at hand before the Court, Teal's motion for possession under I.C. §8-302(3). There is still another hearing (essentially a trial) at a later date for both parties and the Court to look forward to regarding final adjudication of the parties' claims under I.C. §8-302(5). Oddly enough, I.C. §8-302 seems to contemplate that possession of the two scooters, the 2011 GMC truck and 1995 Ford van could be re-litigated in the "final" possession context of I.C. §8-302(5), as this instant order only addresses the "preliminary" possession ;under . I.C. §8-302(3). Evidence as to the wooden salad bowl, faux trees, mirror, vase and key fob can all be thoughtfully presented at that trial.

Another hearing (trial) on property which collectively, might not total up to the jurisdictional limit for District Court. At that hearing, there will likely be a prevailing party. The parties are encouraged to try and resolve this dispute short of that I.C. §8-302(5)

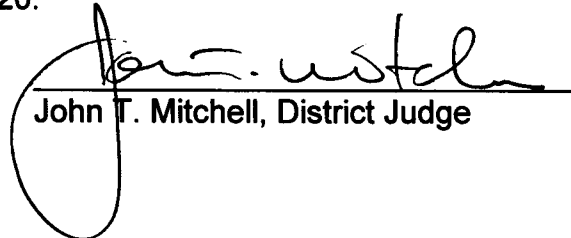
hearing. Or, each party should convince themselves they will certainly be the prevailing party. If attorney fees were awarded to the prevailing party it would be catastrophic for the non-prevailing party, given the monetary value of what is in dispute. Even if there were no prevailing party determination, it would seem that the potential attorney fees that may be incurred by each party may surpass the aggregate value of all the items sought.

III. CONCLUSION AND ORDER.

For the reasons stated above,

IT IS HEREBY ORDERED a writ of possession shall be issued in favor of defendant Teal as against plaintiff Gove, upon presentation of such writ by counsel for Teal, for the two scooters, the 2011GMC truck and the 1995 Ford van.

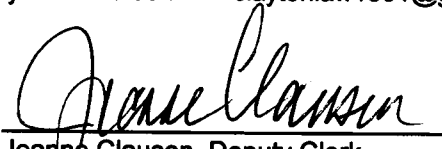
Entered this 16th day of September, 2020.


John T. Mitchell, District Judge

Certificate of Service

I certify that on the 17th day of September, 2020, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer **email**
Ian D. Smith IanSmithLaw@gmail.com ✓
5:00pm

Lawyer **email**
Clayton Andersen claytonlaw1801@gmail.com ✓

Jeanne Clausen, Deputy Clerk