

SUPREME COURT OF IDAHO

Kepler-Fleenor v. Fremont County, 152 Idaho 207

268 P.3d 1159 (2012) · No. No. 38012 · Decided January 24, 2012

SUMMARY

The Idaho Supreme Court affirmed summary judgment holding that an unnamed road in the Sawtelle Mountain Subdivision was dedicated to public use by common law dedication. The court held that the subdivision plat unambiguously dedicated all roads to the public and that an engineer's affidavit offered with a motion for reconsideration was inadmissible parol evidence. The court awarded Fremont County costs but denied attorney's fees.

CASE DETAILS

COURT	Supreme Court of Idaho
WRITING FOR THE COURT	W. Jones; Chief Justice Burdick; Justice Eismann; Justice Horton; Justice Jones
JURISDICTION	Idaho
DECIDED	January 24, 2012
DOCKET	No. 38012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Property owners appealed from summary judgment declaring that an unnamed road shown on a subdivision plat had been dedicated to public use and from the denial of reconsideration and exclusion of an engineer's affidavit.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the district court. The record is liberally construed in favor of the party opposing summary judgment, with all reasonable inferences drawn in that party's favor. Whether a plat or deed is ambiguous is a question of law subject to free review.
PRECEDENTIAL VALUE	published
PARTIES	Joni Kepler-Fleenor, Kistin Fleenor, Blue Sky Management, LLC, Grant Neibaur, Barbara Neibaur, Art Herning, Claire Herning, Jerry Wageman, Cenia Wageman, David Neibaur, Douglas Neibaur, Linda Neibaur, Fritz Murdock, Pattie Murdock, Doran West, Connie West, Kim West, Kerry West, Rick Green, Kelly Green, Gary Killpack,

Diane Killpack, Terry Ekbert, Lorraine Ekbert, Randy Steed, Donna Steed, Jerry Nave, Kelly Nave, Brad Neibaur, Diane Neibaur, Wes Fife, Kevin Fleenor, Rick Krumenacker, Shauna Krumenacker, Brian Mordaunt, Pam Mordaunt, Steve Augustin, Laurie Augustin v. Fremont County

TOPICS

real estate

summary judgment

motion for reconsideration

evidence

appellate procedure

PRACTICE AREAS

real estate

civil procedure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court properly struck the engineer's affidavit submitted with the motion for reconsideration.
2. Whether the Sawtelle Mountain Subdivision plat unambiguously dedicated the disputed road to the public by common law dedication.
3. Whether Fremont County was entitled to attorney's fees on appeal.

HOLDINGS

1. The motion for reconsideration and accompanying affidavit were timely under Idaho Rule of Civil Procedure 11(a)(2)(B); Rule 56(c)'s deadline for affidavits opposing summary judgment did not govern evidence submitted with a motion to reconsider the summary judgment order.
2. The district court correctly excluded the affidavit because it was inadmissible parol evidence offered to vary the terms of an unambiguous subdivision plat.
3. The Sawtelle Mountain Subdivision plat unambiguously dedicated the disputed road to public use by common law dedication.
4. Fremont County was not entitled to attorney's fees under Idaho Code section 12-117 or section 12-121 because the appeal presented a legitimate legal question and section 12-117 was the exclusive fee provision applicable to the County.

KEY QUOTATIONS

"The only reasonable interpretation of the phrase "all roads are hereby dedicated to the public" is that the owners intended for all the roads that appear on the plat to be public unless specifically designated otherwise." (1164)

"The only reasonable way to read this plat is that it identifies a road and a utility easement." (1165)

FACTUAL BACKGROUND

The appellants owned lots in Division III of the Sawtelle Mountain Subdivision, whose plat was recorded in 1994. The plat showed a sixty-foot-wide, unnamed road crossing two lots and connecting the subdivision to a neighboring subdivision. After the lot owners installed a berm and gate to block construction traffic, Fremont County removed the obstructions because it believed the road was public. The owners sought a declaration that the road was private, while the County relied on the recorded plat and its dedication language.

PROCEDURAL HISTORY

The district court granted Fremont County summary judgment, holding that the Sawtelle Mountain Subdivision plat unambiguously dedicated the disputed road to public use. The court denied the property owners' timely motion for reconsideration and struck the accompanying affidavit as untimely, inadmissible parol evidence, and speculation. The Idaho Supreme Court affirmed, awarded costs to Fremont County, and denied attorney's fees.

DISPOSITION

affirmed

CASES CITED

- *Schneider v. Howe*, 142 Idaho 767, 770-71, 133 P.3d 1232, 1235-36 (2006)
- *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 890, 243 P.3d 1069, 1078 (2010)
- *King v. Lang*, 136 Idaho 905, 909, 42 P.3d 698, 702 (2002)
- *PHH Mortg. Servs. Corp. v. Perreira*, 146 Idaho 631, 635, 200 P.3d 1180, 1184 (2009)
- *Coeur d'Alene Mining Co. v. First Nat'l Bank of N. Idaho*, 118 Idaho 812, 822, 800 P.2d 1026, 1036 (1990)
- *Doe v. Idaho Dep't of Health & Welfare*, 150 Idaho 491, 495, 248 P.3d 742, 746 (2011)
- *Barmore v. Perrone*, 145 Idaho 340, 344, 179 P.3d 303, 307 (2008)
- *Ponderosa Homesite Lot Owners v. Garfield Bay Resort, Inc.*, 143 Idaho 407, 409, 146 P.3d 673, 675 (2006)
- *Howard v. Perry*, 141 Idaho 139, 141, 106 P.3d 465, 467 (2005)
- *Lattin v. Adams Cnty.*, 149 Idaho 497, 501, 236 P.3d 1257, 1261 (2010)
- *Union Pac. R.R. v. Ethington Family Trust*, 137 Idaho 435, 438, 50 P.3d 450, 453 (2002)
- *Porter v. Bassett*, 146 Idaho 399, 404-05, 195 P.3d 1212, 1217-18 (2008)
- *Benninger v. Derifield*, 142 Idaho 486, 489, 129 P.3d 1235, 1238 (2006)
- *Worley Highway Dist. v. Yacht Club of Coeur D'Alene, Ltd.*, 116 Idaho 219, 224, 775 P.2d 111, 116 (1989)
- *Smylie v. Pearsall*, 93 Idaho 188, 191, 457 P.2d 427, 430 (1969)
- *Saddlehorn Ranch Landowner's, Inc. v. Dyer*, 146 Idaho 747, 751-52, 203 P.3d 677, 681-82 (2009)
- *C & G, Inc. v. Rule*, 135 Idaho 763, 765, 25 P.3d 76, 78 (2001)
- *Ponderosa Home Site Lot Owners*, 139 Idaho at 701, 85 P.3d at 677
- *Deffenbaugh v. Wash. Water Power Co.*, 24 Idaho 514, 514-21, 135 P. 247, 247-48 (1913)
- *Cantwell v. City of Boise*, 146 Idaho 127, 138, 191 P.3d 205, 216 (2008)
- *Lane Ranch P'ship v. City of Sun Valley*, 145 Idaho 87, 91, 175 P.3d 776, 780 (2007)
- *Potlatch Educ. Ass'n v. Potlatch Sch. Dist. No. 285*, 148 Idaho 630, 635, 226 P.3d 1277, 1282 (2010)

