

SUPREME COURT OF THE STATE OF IDAHO

Andrew and Kimberly Kirk v. Ann B. Wescott

160 Idaho 893 (2016) · No. 42593 · Decided September 12, 2016

SUMMARY

The Idaho Supreme Court reviewed a quiet-title action concerning a temporary access easement across Lot 7 for the benefit of Lot 8. The court held that the easement deed was unambiguous and that the district court erred in interpreting its termination provisions on summary judgment without allowing the parties to present extrinsic evidence of intent. The judgment of the district court was reversed.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                              |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of Idaho                                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | J. Jones, Chief Justice; Eismann; Burdick; W. Jones; Horton                                                                                                                                                                                                                                  |
| JURISDICTION          | Idaho                                                                                                                                                                                                                                                                                        |
| DECIDED               | September 12, 2016                                                                                                                                                                                                                                                                           |
| DOCKET                | 42593                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | The Kirks appealed from a district court judgment dismissing their quiet-title action after the court granted Wescott partial summary judgment concerning the interpretation of an access easement. Wescott cross-appealed the denial of attorney fees under Idaho Code section 12-121.      |
| STANDARD OF REVIEW    | Summary judgment is reviewed under the same standard applied by the district court. Interpretation of whether a deed is ambiguous is reviewed freely, while leave to amend and the determination whether an action was frivolously brought or defended are reviewed for abuse of discretion. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                               |
| PARTIES               | Andrew and Kimberly Kirk v. Ann B. Wescott                                                                                                                                                                                                                                                   |

TOPICS

- quiet title
- easements
- summary judgment
- appellate procedure
- attorney fees

## PRACTICE AREAS

real estate law

appellate procedure

civil procedure

## QUESTIONS PRESENTED

1. Whether the access easement was void for lack of an adequate legal description.
2. Whether the district court improperly interpreted the access easement on summary judgment.
3. Whether Wescott was entitled to attorney fees under Idaho Code section 12-121.
4. Whether Wescott was entitled to attorney fees on appeal under Idaho Code section 12-121.

## HOLDINGS

1. The court declined to address the issue because the Kirks had not presented it to the district court and there was no adverse lower-court ruling on it.
2. The easement deed was unambiguous, and its plain language required the owner of Lot 8 to quitclaim the easement back to Lot 7 within one year after delivery of the deed. Because the deed was delivered in 2000, the one-year period had expired.
3. Wescott was not entitled to attorney fees because reversal of the district court judgment meant she was no longer the prevailing party.
4. Wescott was not entitled to attorney fees on appeal because she did not prevail on appeal.

## KEY QUOTATIONS

*“Issues not raised below but raised for the first time on appeal will not be considered or reviewed.”* (160 Idaho at 899)

*“We hold that the deed granting the Easement of Access was not ambiguous, and from the plain language, the easement was intended to terminate one year from delivery of the deed.”* (160 Idaho at 900)

*“We hold that the district court erred in its interpretation of the deed, and conclude that under the express terms of the Easement of Access, it was intended to terminate one year from the time the deed was delivered.”* (160 Idaho at 903)

## FACTUAL BACKGROUND

The Kirks purchased Lot 7 in Blaine County, Idaho, and later discovered that a 25-foot temporary access easement across Lot 7 had been granted for the benefit of Lot 8, owned by Wescott. The deed stated that the easement would become effective upon a written denial of access by the United States Forest Service and included provisions requiring its quitclaim or termination under specified circumstances, including within one year or upon completion of the driveway. Wescott obtained a Forest Service access easement, constructed a driveway using the forest road, and never used the deeded easement across Lot 7.

## PROCEDURAL HISTORY

The Kirks filed a quiet-title action seeking termination of a temporary access easement burdening Lot 7. The district court granted Wescott partial summary judgment on interpretation of the easement, denied the Kirks' motions to amend, conducted a limited bench trial, dismissed the action, and denied Wescott attorney fees. The Idaho Supreme Court reversed and remanded for entry of judgment in favor of the Kirks.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remanded to the district court to enter judgment in favor of the Kirks. Costs on appeal were awarded to the Kirks.

## CASES CITED

- Idaho Development, LLC v. Teton View Golf Estates, LLC, 152 Idaho 401, 404, 272 P.3d 373, 376 (2011)
- Mortensen v. Stewart Title Guaranty Co., 149 Idaho 437, 441, 235 P.3d 387, 391 (2010)
- Banner Life Insurance Co. v. Mark Wallace Dixson Irrevocable Trust, 147 Idaho 117, 123, 206 P.3d 481, 487 (2009)
- Black Canyon Racquetball Club, Inc. v. Idaho First National Bank, N.A., 119 Idaho 171, 175, 804 P.2d 900, 904 (1991)
- Idaho Military Historical Society, Inc. v. Maslen, 156 Idaho 624, 629, 329 P.3d 1072, 1077 (2014)
- Whitted v. Canyon County Board of Commissioners, 137 Idaho 118, 121-22, 44 P.3d 1173, 1176-77 (2002)
- Machado v. Ryan, 153 Idaho 212, 218, 280 P.3d 715, 721 (2012)
- Porter v. Bassett, 146 Idaho 399, 404, 195 P.3d 1212, 1217 (2008)
- Hoch v. Vance, 155 Idaho 636, 639, 315 P.3d 824, 827 (2013)
- Marek v. Lawrence, 153 Idaho 50, 53, 278 P.3d 920, 923 (2012)
- Cool v. Mountainview Landowners Cooperative Association, Inc., 139 Idaho 770, 772, 86 P.3d 484, 486 (2004)
- Armand v. Opportunity Management Co., 155 Idaho 592, 600, 315 P.3d 245, 253 (2013)
- Wilson v. Linder, 18 Idaho 438, 445-46, 110 P. 274, 276 (1910)
- Race Tires America, Inc. v. Hoosier Racing Tire Corp., 674 F.3d 158, 165 (3d Cir. 2012)
- Barmore v. Perrone, 145 Idaho 340, 344, 179 P.3d 303, 307 (2008)