

SUPREME COURT OF IDAHO

Chisholm v. Idaho Department of Water Resources, 142 Idaho 159

125 P.3d 515 (2005) · No. Nos. 30843, 30844 · Decided November 25, 2005

SUMMARY

The Idaho Supreme Court reviewed the Idaho Department of Water Resources' approval of a water-right transfer for a proposed dairy. The court held that the hearing officer properly considered the local public interest, did not abuse discretion by excluding certain exhibits, and supported the decision with substantial and competent evidence. The court affirmed the agency's final order and awarded costs to the respondents, but denied attorney's fees.

CASE DETAILS

COURT	Supreme Court of Idaho
WRITING FOR THE COURT	Burdick, Justice; Burdick; Carey; Jones; Schroeder; Trout
JURISDICTION	Idaho
DECIDED	November 25, 2005
DOCKET	Nos. 30843, 30844
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals from a district court judgment affirming the Idaho Department of Water Resources' final order approving K & W Dairy's application to transfer water rights, subject to conditions.
STANDARD OF REVIEW	The Idaho Supreme Court independently reviews the agency record when the district court acted in its appellate capacity under IDAPA. It does not substitute its judgment for the agency's assessment of the evidence and defers to agency factual findings unless clearly erroneous. Findings must be supported by substantial and competent evidence, and agency action may be set aside for statutory or constitutional violation, excess of authority, unlawful procedure, lack of substantial evidence, arbitrariness, capriciousness, or abuse of discretion, but only when a substantial right has been prejudiced. Evidentiary admissibility rulings are reviewed for abuse of discretion, while relevancy is reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Bill Chisholm, Lee Halper v. Idaho Department of Water Resources, K & W Dairy

TOPICS

judicial review of agency action

administrative law

evidence

relevance

statutory interpretation

PRACTICE AREAS

administrative law

water rights

environmental law

appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether Halper's trespass claim was properly before the Supreme Court.
2. Whether the Supreme Court could consider attachments to Halper's opening brief that were not part of the agency or district-court record.
3. Whether the hearing officer abused his discretion by excluding the appellants' proffered exhibits.
4. Whether the hearing officer's findings and conclusions were supported by substantial and competent evidence and properly applied the local public interest standard.
5. Whether IDWR and K & W Dairy were entitled to attorney's fees on appeal.

HOLDINGS

1. The trespass claim was not properly before the Supreme Court because it was not identified as an appellate issue and had not been decided by either the hearing officer or the district court.
2. The Court could not consider attachments to an appellate brief that were not part of the record.
3. The hearing officer did not abuse his discretion by excluding the exhibits, and the appellants failed to demonstrate reversible error or prejudice to a substantial right.
4. The local public interest standard requires consideration and balancing of locally important factors, including both benefits and detriments; it is not limited to odor impacts. IDWR properly applied that standard to approve the transfer.
5. The respondents were not entitled to attorney's fees because the appellants did not act without a reasonable basis in fact or law.

KEY QUOTATIONS

"Local public interest" should be read broadly so as to secure the greatest possible benefit." (at 520)

"there must only be evidence that the odors emitted will be reasonable and at such a level as to satisfy the local public interest when balanced with other factors." (at 521)

FACTUAL BACKGROUND

K & W Dairy sought to expand its operations onto land outside Jerome, Idaho, and applied to IDWR to transfer water rights, including water for flushing solid waste from the dairy's parlor and alleys. Chisholm and Halper protested, principally arguing that odors from the proposed dairy would violate the local public interest standard in Idaho Code section 42-222. After hearings focused on odor-control measures, the hearing officer approved the transfer subject to conditions, including a mechanical scrape system; expert evidence supported the conclusion that the plan would reduce or minimize additional odors.

PROCEDURAL HISTORY

K & W Dairy applied to IDWR to transfer water rights for a proposed dairy outside Jerome, Idaho. After protests, hearings, reconsideration, an earlier judicial remand concerning the local public interest and odors, and a further hearing, IDWR issued a final order approving the transfer with conditions. The district court affirmed the final order, and Chisholm and Halper timely appealed; the Idaho Supreme Court consolidated the appeals and affirmed.

DISPOSITION

affirmed

CASES CITED

- Chisholm v. Twin Falls County, 139 Idaho 131, 132, 75 P.3d 185, 187 (2003)
- Dovel v. Dobson, 122 Idaho 59, 61, 831 P.2d 527, 529 (1992)
- Barron v. Idaho Department of Water Resources, 135 Idaho 414, 417, 18 P.3d 219, 222 (2001)
- Young Electric Sign Co. v. State ex rel. Winder, 135 Idaho 804, 807, 25 P.3d 117, 120 (2001)
- Cooper v. Board of Professional Discipline of Idaho State Board of Medicine, 134 Idaho 449, 454, 4 P.3d 561, 566 (2000)
- State ex rel. Ohman v. Ivan H. Talbot Family Trust, 120 Idaho 825, 827, 820 P.2d 695, 697 (1991)
- Soong v. Idaho Department of Health & Welfare, 132 Idaho 166, 168, 968 P.2d 261, 263 (Ct. App. 1998)
- Myers v. Workmen's Auto Insurance Co., 140 Idaho 495, 505, 95 P.3d 977, 987 (2004)
- Shokal v. Dunn, 109 Idaho 330, 338-39, 707 P.2d 441, 449-50 (1985)
- Jarvis v. Rexburg Nursing Center, 136 Idaho 579, 583, 38 P.3d 617, 621 (2001)
- Evans v. Hara's, Inc., 123 Idaho 473, 478, 849 P.2d 934, 939 (1993)
- Mann v. Safeway Stores, Inc., 95 Idaho 732, 736, 518 P.2d 1194, 1198 (1974)
- Shawver v. Huckleberry Estates, 140 Idaho 354, 365, 93 P.3d 685, 696 (2004)
- Kootenai Medical Center v. Bonner County Commissioners, 141 Idaho 7, 10-11, 105 P.3d 667, 670-71 (2004)