

SUPREME COURT DECISIONS

PHH MORTGAGE v. CHARLES NICKERSON

No. 42163

Release date: April 27, 2016

Idaho Supreme Court

HORTON, Justice.

In an appeal from Clearwater County, the Supreme Court affirmed the judgment of the district court and the district court's denial of the Nickersons' Rule 60(b) motions to set aside the judgment. The underlying suit involved an action for judicial foreclosure of a loan by PHH Mortgage against the Nickersons, and third-party claims against J.P. Morgan Chase by the Nickersons.

On appeal, the Nickersons argued the district court erred in a number of respects, including: granting summary judgment in favor of PHH; denying the Nickersons' motion for summary judgment; denying the Nickersons' motion for a continuance; not instructing the Nickersons to amend their pleadings to include fraud at the summary judgment hearing and later denying the Nickersons' motion to amend their pleadings; denying the Nickersons' motions for reconsideration; and denying the Nickersons' Rule 60(b) motions for relief.

The Supreme Court held that the district court did not err when it granted PHH's second motion for summary judgment and denied the Nickerson's motion for summary judgment. Further, the district court did not abuse its discretion when it denied the Nickersons' motion to continue and was not required to instruct the Nickersons during the summary judgment hearing to amend their pleadings to include the affirmative defense of fraud. The district court did not err when it denied the Nickersons' motions for reconsideration and did not abuse its discretion when it denied the Nickersons' Rule 60(b) motions to set aside judgment. Finally, the Supreme Court determined that the Nickersons raised several issues on appeal that were not properly before the Court, concluded that the Nickersons' appeal was frivolous under Idaho Code section 12-121, and awarded Chase attorney fees on appeal.

<http://www.isc.idaho.gov/opinions/42163.pdf>

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DENNIS LYLE AKERS v. MARTI MORTENSEN

No. 42726

Release date: April 27, 2016

Idaho Supreme Court

HORTON, Justice.

In an appeal from Kootenai County, the Supreme Court affirmed the district court's apportionment of attorney fees. The case involved a dispute regarding land ownership and claims of trespass, which had been before the Idaho Supreme Court several times prior to this appeal. The Idaho Supreme Court had recently affirmed the judgment of the district court, but vacated the grant of attorney fees because they had not been properly apportioned in *Akers v. Mortensen*, 156 Idaho 27, 320 P.3d 418 (2014). On remand, the district court apportioned attorney fees, awarding fees for prosecuting the trespass action under Idaho Code section 6-202. Marti Mortensen appealed, and the Supreme Court affirmed the district court's award of attorney fees, holding that Mortensen had waived her challenge to the district court's decision based upon deficiencies in her appellate brief.

The Supreme Court also awarded attorney fees and costs incurred on appeal to the Akers, finding that the appeal was frivolous. The Supreme Court held that Mortensen and the attorney who signed her brief on appeal were jointly and severally liable for the payment of the award of fees and costs.

<http://www.isc.idaho.gov/opinions/42726.pdf>

LOREN WAGNER v. RUSSELL WAGNER

No. 42707

Release date: April 27, 2016

Idaho Supreme Court

HORTON, Justice.

In an appeal from Latah County, the Supreme Court affirmed the district court's valuation of shares in Wanooka Farms, Inc. In the underlying case, Loren, Dena, and Greg Wagner (the Minority) sued for dissolution of Wanooka Farms. Russell, Stuart, Tom, and Jeff Wagner along with Wanooka Farms, Inc. (the Majority) exercised their right to purchase the Minority's shares to avoid dissolution. The district court held a bench trial and determined the fair value of corporate shares was \$3,344 using July 11, 2012, as the date to value the shares. The Majority challenged the district court's valuation on appeal, arguing the value was not supported by substantial and competent evidence and that the district court valued the shares using the wrong date. They also argued the district court erred by not reducing the value of the Minority's shares because they were minority, non-controlling shares. The Supreme Court affirmed the district court's decision, determining that substantial and

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competent evidence supported the valuation and rejecting the Majority's argument that the district court erred by not reducing the value of the Minority's shares because they were minority, non-controlling shares.

<http://www.isc.idaho.gov/opinions/42707.pdf>

STATE OF IDAHO v. KYLE NICHOLAS RIOS

No. 43017

Release date: April 26, 2016

Idaho Supreme Court

J. JONES, Chief Justice

The Supreme Court affirmed an order from the District Court of the Second Judicial District of the State of Idaho, Nez Perce County, suppressing the results of a warrantless blood alcohol test. The Court held that Rios withdrew his implied consent to blood alcohol testing by refusing to sign a consent form, and, therefore, the officer was required to obtain a warrant for the blood draw.

<http://www.isc.idaho.gov/opinions/43017.pdf>

STATE OF IDAHO v. BRIAN NEIL PRATT

No. 43383

Release date: April 26, 2016

Idaho Supreme Court

EISMANN, Justice.

The Idaho Supreme Court affirmed the judgment of the district court. This is an appeal out of Nez Perce County alleging that the district court erred in failing to grant a mistrial on the ground that an answer given by a prospective juror during voir dire examination prejudiced the entire jury panel against the defendant. Because the defendant passed the jury for cause at the end of the voir dire examination, he waived any objection to the jury panel. Therefore, the Court affirmed the judgment of the district court.

<http://www.isc.idaho.gov/opinions/43383.pdf>

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ROY GREEN v. INDUSTRIAL SPECIAL INDEMNITY FUND

No. 42782

Release date: April 26, 2016

Idaho Supreme Court

HORTON, Justice.

The Idaho Supreme Court affirmed the Idaho Industrial Commission's decision holding that the Industrial Special Indemnity Fund (ISIF) was liable for a portion of Roy Green's disability benefits. In the underlying case, Green filed a complaint against St. Joes Salvage Logging (Employer) and Travelers Indemnity Company (Surety). Employer/Surety, in turn, filed a complaint against ISIF, seeking to apportion some of Green's disability to pre-existing conditions. On January 29, 2014, the Commission concluded that Green was totally and permanently disabled. However, the Commission retained jurisdiction so that ISIF and Employer/Surety could gather impairment rating evidence because the Commission determined there was insufficient evidence to establish an impairment rating for a pre-existing thoracic spine condition. After additional evidence was presented, on November 26, 2014, the Commission apportioned liability to ISIF by concluding that 20% of Green's disability was due to the pre-existing condition. ISIF appealed the Commission's determination that it was liable.

The Supreme Court affirmed, determining the Commission did not abuse its discretion by retaining jurisdiction to determine the pre-existing thoracic spine impairment rating. The Supreme Court also held the Commission's finding that Green's thoracic spine condition "combined with" other industrial injuries to render Green totally and permanently disabled was supported by substantial and competent evidence.

<http://www.isc.idaho.gov/opinions/42782.pdf>

LUCIA NAVO v. BINGHAM MEMORIAL HOSPITAL

No. 42540

Release date: April 26, 2016

Idaho Supreme Court

W. JONES, Justice

In an appeal arising out of Bingham County, the Idaho Supreme Court vacated the district court's grant of summary judgment and award of costs and fees and remanded for further proceedings. Specifically, this Court held: (1) the district court did not abuse its discretion by refusing to admit Dr. Steinberg's expert testimony because Dr. Steinberg's conversation with

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Judith Nagel was not sufficient to show that he acquired actual knowledge of the local standard of care, and the statewide and national standards cited by Dr. Steinberg had not replaced the local standards of care; (2) the district court erred in holding that Appellants were barred from arguing apparent authority in response to BMH's motion for summary judgment because the Complaint was sufficient to put defendants on notice that Appellants sought to hold BMH liable for Sayre and Monroe's actions; (3) the district court erred in finding that no genuine issues of material facts existed as to whether Sayre was BMH's agent under a theory of apparent authority because a factfinder could reasonably find that Navo believed Sayre was an agent or employee of BMH, and by signing the Admission Form, Navo accepted Sayre's services with the belief that Sayre was acting as BMH's agent; and (4) no party is entitled to attorney fees on appeal.

<http://www.isc.idaho.gov/opinions/42540X.pdf>

COUNTRYWIDE HOME LOANS, INC. v. RALPH E. SHEETS, JR.

No. 42063

Release date: April 26, 2016

Idaho Supreme Court

HORTON, Justice.

In an appeal from Adams County, the Supreme Court affirmed the district court's grant of summary judgment. The appeal involved a dispute over a mistakenly released deed of trust, which secured a 2004 residential mortgage loan between Ralph Sheets and the lender, Bank of America, N.A., f/k/a Countrywide Home Loans, Inc.; the servicer of the loan; and the trustee who executed the mistaken release. In late spring of 2009, Sheets applied to refinance his loan but the refinancing did not close. On November 9, 2009, the trustee erroneously recorded a reconveyance of the 2004 deed of trust. Thus, Sheets has not made payments on his loan since October of 2009. Bank of America brought an action asking the district court to declare the reconveyance void and Sheets advanced various counterclaims. The district court granted summary judgment in favor of Bank of America, rescinding the reconveyance and dismissing Sheets' counterclaims. Sheets appealed and the Supreme Court affirmed, finding that the district court properly found that the reconveyance resulted in Sheets being unjustly enriched. The Supreme Court affirmed the district court's dismissal of Sheets' counterclaims, finding that the alleged agreement to loan Sheets money violated the Statute of Frauds and that there was no evidence that the parties had a meeting of the minds as to the material terms of the alleged agreement, including the amount of money to be lent and the interest rate to be paid on the loan.

<http://www.isc.idaho.gov/opinions/42063.pdf>

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RANGEN v. IDAHO DEPARTMENT OF WATER RESOURCES

No. 43370

Release date: April 26, 2016

Idaho Supreme Court

J. JONES, Chief Justice

The Director of the Idaho Department of Water Resources entered an order conditionally approving a mitigation plan proposed by Idaho Ground Water Appropriator's, Inc. ("IGWA"). Under the mitigation plan, IGWA sought to provide Rangen, Inc. with replacement water in order for certain junior-priority ground water users in the Eastern Snake Plain Aquifer to avoid curtailment. Rangen petitioned for review. On review, the district court affirmed the Director's order in significant part. On appeal, the Supreme Court upheld the district court's decision. The Supreme Court held that the Director did not abuse his discretion by deferring consideration of potential injury to other water users to another proceeding and that the mitigation plan provided sufficient contingency provisions. Additionally, the Court rejected Rangen's argument that the Director's order constituted an unlawful taking of Rangen's property in violation of the Idaho and U.S. Constitutions.

<http://www.isc.idaho.gov/opinions/43370.pdf>

JUDITH L. WEIBLE v. SAFEWAY, INC.

No. 43135

Release date: April 26, 2016

Idaho Supreme Court

EISMANN, Justice.

The Idaho Supreme Court affirmed the order of the Industrial Commission. This is an appeal from an order of the Industrial Commission upholding the denial of unemployment benefits during the period of time that Appellant was on a leave of absence from her employment in order to undergo needed surgery and to recover from that surgery. The Court upheld the order of the Commission.

<http://www.isc.idaho.gov/opinions/43135.pdf>

COURT OF APPEALS DECISIONS

STATE OF IDAHO v. ROBERT BENJAMIN BRACKETT

No. 41578

Release date: April 27, 2016

Idaho Court of Appeals

MELANSON, Chief Judge

Robert Benjamin Brackett appeals from his judgment of conviction for eight counts of possession of sexually exploitative material and five counts of sexual battery on a minor child of sixteen or seventeen. Brackett argues that the district court erred in denying his motions to dismiss for violating his right to a speedy trial under the Idaho and United States Constitutions. When analyzing claims of speedy trial violations under the state and federal constitutions, the Idaho appellate courts utilize the four-part balancing test set forth by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972). The factors to be considered are: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his or her right to a speedy trial; and (4) the prejudice occasioned by the delay. *Barker*, 407 U.S. at 530. The Court held that Brackett did not show that his speedy trial right was violated because he was largely the cause of the delays. Brackett has not shown that the district court erred in granting the state's motion for a mistrial because Brackett's comments substantially prejudiced the state's case. Brackett did show that the district court erred in denying him access to evidence. However, the error was harmless. Brackett did not show that the money judge erred in denying his request for funds to hire a third expert. Finally, the cumulative error doctrine does not apply because Brackett did not show two or more errors by the district court. Affirmed.

<http://www.isc.idaho.gov/opinions/41578.pdf>

STATE OF IDAHO v. LAURA LEE SMITH

No. 42090

Release date: April 19, 2016

Idaho Court of Appeals

GUTIERREZ, Judge

Laura Lee Smith appeals from her judgment of conviction for aiding and abetting in the delivery of a controlled substance. She first contends that the trial court erred by admitting the audio recording of a nonwitness's out-of-court statements in violation of the Confrontation Clause. Smith also claims that the trial court erred in the admission at trial of

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certain testimonial evidence that Smith characterizes as hearsay. Smith finally contends that there was insufficient evidence to support her conviction. The Court held that the trial court did not err when it admitted the nontestimonial audio portion of Kendle's statement. The admission of the hearsay testimony of Officer Mattingley was error, and the State did not meet its burden of proving that such error was harmless. Finally, the evidence was sufficient for the jury to find Smith guilty of aiding and abetting in the delivery of a controlled substance, thus double jeopardy does not bar reprosecution. Accordingly, the Court vacated Smith's judgment of conviction.

<http://www.isc.idaho.gov/opinions/42090SUB2.pdf>

STATE OF IDAHO v. TOBY GLENN WEATHERLY

No. 42777

Release date: April 14, 2016

Idaho Court of Appeals

HUSKEY, Judge

Toby Glenn Weatherly appeals from his judgment of conviction, arguing that his rights under the Double Jeopardy Clause of the Idaho Constitution and the Fifth Amendment to the United States Constitution were violated when a jury found him guilty of grand theft and criminal possession of a financial transaction card. Weatherly argues that his rights under the Double Jeopardy Clause of the Idaho and United States Constitutions were violated because possession of a financial transaction card is a lesser included offense of grand theft. The Court held that Weatherly was not persuasive in his arguments that criminal possession of a financial transaction card is a lesser included offense of grand theft in this particular case. The Court found that one can be in legal possession of a financial transaction card belonging to another, but still commit theft by making an unauthorized transfer. Thus, as charged in this case, it is not clear from the face of the information that the criminal possession of a financial transaction card was the means or element of the commission of the grand theft charge. Therefore, Weatherly did not show the alleged error violated one or more of his unwaived constitutional rights. Affirmed.

<http://www.isc.idaho.gov/opinions/42777.pdf>