

SUMMARY STATEMENT

McKay v. Walker, Docket No. 42434

In an appeal from Ada County, the Supreme Court affirmed the district court's grant of summary judgment against Patricia McKay and in favor Thomas Walker and Cosho Humphrey, LLP in a legal malpractice suit.

McKay argued the district court erred when it concluded that McKay could not show that Walker negligently drafted a Property Settlement Agreement by failing to include a legal description of property subject to a mortgage in her ex-husband's favor and the mortgage's instrument number. McKay claimed that these failures deprived McKay of a judgment lien against payments to her ex-husband due under a mortgage. The security provided by a judgment lien would have made it more likely that McKay's ex-husband would make a sizeable payment due to her under the terms of their divorce decree.

McKay's husband did not make the payment and litigation between them ensued. Although that litigation resulted in a settlement, McKay contended that it was settled on terms less favorable to her than would have been the case if the Property Settlement Agreement had been drafted in an appropriate fashion.

The pivotal question presented by the appeal is whether a mortgagee's interest is properly characterized as personal property or real property. The Supreme Court affirmed the district court's holding that a mortgage is not real property under Idaho law.