

## SUMMARY STATEMENT

*Petrus v. Kirk*  
Docket No. 44784

Petrus Family Trust and Edmond A. Petrus, Jr., individually and as trustee of the Petrus Family Trust (collectively, Petrus) brought this appeal from the Ada County district court. In March 2014, Petrus sued Chris Kirk d/b/a Kirk Enterprises (Kirk) and several other parties for claims arising from Petrus's purchase of a home Kirk built in McCall. As relevant here, Petrus's claims against Kirk included a claim alleging a breach of the implied warranty of habitability. The district court granted summary judgment to Kirk on that claim, concluding it was untimely as a contract-based action. The district court also awarded attorney fees to Kirk under Idaho Code section 12-121, apportioning the award so as to award Kirk fees only insofar as Kirk was required to defend against a frivolous claim. Petrus timely appealed the grant of summary judgment in favor of Kirk, and Kirk timely cross-appealed the apportionment of fees.

The Idaho Supreme Court affirmed. Regarding Petrus's appeal, the Court concluded the district court was correct that Petrus's claim for breach of the implied warranty of habitability was untimely as a contract-based action. While Petrus argued the claim arose in tort, the Court disagreed. After surveying Idaho's jurisprudence on the implied warranty of habitability and the distinctions between contract and tort, the Court concluded the claim arose in contract and was thus untimely. In addition, on cross-appeal, because the district court properly exercised its discretion in apportioning an award of attorney fees under Idaho Code section 12-121 so as to award Kirk fees only insofar as Kirk was required to defend against a frivolous claim, the Court affirmed the district court's apportionment of attorney fees.