

## SUMMARY STATEMENT

*Kelso v. Applington*

Docket No. 50039

This case concerns a dispute over the ownership of checking account funds following the death of one of the joint owners. Karon “Kelly” Kelso (hereinafter “Kelly”) was originally a joint owner with a right of survivorship of a checking account with his wife, Sandra Kelso. After Sandra died in 2017, Linda Applington, a friend of Kelly’s, began helping Kelly process his monthly bills. In March 2018, Kelly executed a will, leaving his entire estate to his son, Greg Kelso. Around fourteen months later, Kelly added Linda on his checking account as a joint owner with the right of survivorship. Kelly died in July 2020. Thereafter, his son, Greg Kelso, became the personal representative and sole heir of Kelly’s estate.

Greg Kelso sought to have the funds in the checking account transferred to Kelly’s estate. However, upon learning how the account was arranged, Linda Applington claimed ownership of the account under the right of survivorship and declined to transfer the funds to Kelly’s estate. Greg Kelso, acting as personal representative, filed a multi-count complaint against Linda, including a claim to invalidate the gift under Idaho Code section 15-6-104 for lack of donative intent and other equitable claims. Linda moved for summary judgment. While conceding that there were no facts in the record to support the equitable claims, Greg Kelso maintained there remained a genuine issue of material fact as to donative intent, as required by Idaho Code section 15-6-104. The district court disagreed and granted summary judgment in favor of Linda. Greg timely appealed and challenged the award of summary judgment on his Idaho Code section 15-6-104 claim. He also challenged the district court’s award of attorney fees.

The Idaho Supreme Court began its analysis by reiterating that traditional summary judgment principles apply, even though the statutory claim at issue here requires proof by clear and convincing evidence. The Court then reiterated its longstanding rule concerning questions of credibility on summary judgment. Applying that rule, the Idaho Supreme Court concluded that material discrepancies in the testimonies of two key witnesses left a genuine issue of material fact as to Kelly’s donative intent when he added Linda to the account. Therefore, the Idaho Supreme Court reversed the district court’s grant of summary judgment and remanded for a jury trial.

The Court also vacated the award of attorney fees below because the district court awarded attorney fees on frivolous claims without any consideration of the arguably meritorious claim. The Court remanded this matter so the district court could determine at the conclusion of the case whether the prevailing party is entitled to full or partial attorney fees under Idaho Code section 12-121.

***\*\*\*This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.\*\*\****