

## SUMMARY STATEMENT

*Boren v. Gadwa*

Docket No. 50604-2023

This case concerns Michael Boren's claims for defamation, defamation per se, conspiracy to commit defamation, and declaratory relief against Gary Gadwa and Sarah Michael. Boren applied for a conditional use permit ("CUP") with the Custer County Planning and Zoning Commission ("CCP&Z") to have a preexisting airstrip on his property declared a designated county airstrip. Boren's property is located within the Sawtooth National Recreation Area and his application spawned an intense public debate. Gadwa and Michael actively opposed Boren's CUP application, including allegedly making false statements about the airstrip and Boren himself. Despite opposition, the CCP&Z granted Boren's CUP application, and the Custer County Board of Commissioners affirmed that decision.

In the wake of the CUP proceedings, Boren sued Gadwa, Michael, and other individuals not parties to this appeal. Gadwa and Michael moved to dismiss Boren's claims pursuant to Idaho Rule of Civil Procedure 12(b)(6), arguing that all their allegedly defamatory statements were protected by the First Amendment and the Idaho Constitution. Alternatively, Gadwa and Michael argued that their statements were protected by the litigation privilege. The district court concluded that all of Gadwa's and Michael's allegedly defamatory statements were protected by both the First Amendment and the litigation privilege and dismissed Boren's claims. Boren then moved to amend his complaint, which the district court denied. Michael moved for an award of her attorney fees, which the district court also denied. The thrust of Boren's argument on appeal was that the district court erred in dismissing his claims because some of Gadwa's and Michael's allegedly defamatory statements were not protected. Boren also argued that the district court erred in denying his motion to amend and that the district judge should be disqualified on remand. Michael cross-appeals the district court's denial of her request for attorney fees.

The Idaho Supreme Court affirmed in part and reversed in part the district court's decision. The Court determined that the district court erred in dismissing most of Boren's defamation allegations because the applicability of the litigation privilege is not evident from the face of the first amended complaint and the First Amendment's petitioning clause does not provide absolute immunity from defamation claims. The Court affirmed the district court's dismissal of the conspiracy claim. The Court also affirmed the district court's dismissal of Boren's claim for declaratory judgment because a declaratory judgment would not terminate the uncertainty or controversy giving rise to his claims against Gadwa and Michael. The Court reversed the district court's denial of Boren's motion to amend his complaint because the district court erred when it concluded that the second amended complaint would be futile.

The Court remanded the case for further proceedings consistent with its opinion. Because the Court remanded the case for further proceedings, it also remanded the issue of Michael's attorney fees to the district court. The Court declined to disqualify the district judge on remand because legal error alone is not evidence of bias or prejudice, and Boren did not point to other evidence of bias or prejudice on the district judge's part.

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