

SUMMARY STATEMENT
Diane Carol Frauenholz v. Lisa Young
Docket No. 51461

In this case arising out of Custer County, the Court of Appeals reversed and remanded with further instructions the district court's decision, on intermediate appeal from the magistrate court, affirming the judgment denying Lisa Young's petition to determine heirs, construe will, and for distribution. On appeal, Young argued that, as the child of the decedent, she was entitled to a share of the residuary estate because she was not expressly disinherited from the Will. In response, Diane Carol Frauenholz, on behalf of the Estate, argued that the decedent did not intend for Young to inherit any part of the estate including the residuary. The Estate asserted that the pretermitted child statute, Idaho Code § 15-2-302, supports the argument that a child born before an execution of a will but omitted from it should not participate in the residuary estate. The Estate also argued that, even if Young was entitled to a share of the distribution of the net estate, pursuant to I.C. § 15-2-611 she would still be required to prove that the decedent openly and notoriously treated her as his own child. Young argued that this statute does not apply in the instant case. The Estate also requested attorney fees on appeal.

First, the Idaho Court of Appeals concluded that I.C. § 15-2-302 neither applies to children born before the execution of a will nor implies a presumption that such children are excluded from a will. Next, the Court held that, unless the testator expressly disinherits the heir from participating in intestate succession, the heir is not prevented from sharing in a residual estate under the laws of intestacy. The Idaho Court of Appeals also concluded that I.C. § 15-2-611 applies to distribution of class gifts to children born out of wedlock. The Will in the instant case did not include any class gifts; therefore, the requirements outlined in the statute are not applicable to the instant matter. Finally, the Court did not award attorney fees to the Estate pursuant to I.C. § 12-121 since the Estate is not a prevailing party on appeal. However, Young was awarded costs pursuant to I.A.R. 40(a).

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