

SUMMARY STATEMENT

Regan v. Owen, Docket No. 43848

This case addresses whether the issuance of a tax deed extinguishes a prescriptive easement across a parcel of land by operation of former Idaho Code section 63-1009. The Owens purchased a small parcel of land (“the Orphan Parcel”) from Kootenai County after a tax sale. A dispute arose as to whether the Regans had the right to drive across the Orphan Parcel. The Regans sued the Owens to reform the tax deed to include an express easement and to establish a prescriptive easement.

The district court granted summary judgment in favor of the Regans, ruling that the Owens’ deed contained a mutual mistake and should be reformed to reflect an express easement that the original grantors intended. The Owens appealed and this Court held that the deed should not be reformed. The Supreme Court vacated a portion of the district court’s judgment and remanded the case for further proceedings. *Regan v. Owen*, 157 Idaho 758, 339 P.3d 1162 (2014) (“*Regan I*”). On remand, the district court granted summary judgment in favor of the Owens, finding that any prescriptive easement was extinguished by Idaho Code section 63-1009, which provides that tax deeds convey property free of all “encumbrances.” The Regans timely appealed. After they filed their appeal, the Idaho Legislature amended Idaho Code section 63-1009. 2016 Idaho Sess. L. ch. 273, § 7, p. 758. On September 8, 2017, this Court released its original decision in this appeal, and thereafter granted the Regans’ petition for rehearing. The Supreme Court vacated the judgment entered in favor of the Owens and remanded this case for further proceedings.