

BOISE, MONDAY, APRIL 3, 2023, AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**BENNETT G. DAY, also known as BEN)
DAY, individually, and as TRUSTEE OF)
TRUST B OF THE DONALD M. DAY AND)
MARJORIE D. DAY FAMILY TRUST;)
JOHN F. DAY; DAN E. DAY; THE ERNEST)
AND LOIS DAY LIVING TRUST;)
HOLCOMB ROAD HOLDINGS, LLC, an)
Idaho limited liability company; DONNA)
DAY JACOBS; and DAVID R. DAY,)**

Docket No. 48898

Plaintiffs-Appellants-Cross Respondents,)

v.)

**IDAHO TRANSPORTATION)
DEPARTMENT,)**

Defendant-Respondent-Cross Appellant.)

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Samuel A. Hoagland, District Judge.

Parsons, Behle & Latimer, Boise, for Appellants-Cross Repondents.

Raúl R. Labrador, Idaho Attorney General, Boise, and Holland & Hart, LLP, Boise, for Respondent-Cross Appellant Idaho Transportation Department.

This appeal concerns an inverse condemnation and breach of contract action filed by the Day Family against Idaho Department of Transportation (“ITD”). It concerns real property owned near the Isaacs Canyon Interchange in Ada County. The district court originally dismissed the Days’ claims because the claims were time barred by the statute of limitations and some of the parties lacked standing. On the Days’ first appeal, this Court held that there was a genuine issue of material fact regarding whether the claim was timely filed. *Day v. Transportation Dep’t*, 166 Idaho 293, 458 P.3d 162, 171 (2020) (*Day I*). Following a 14-day trial on remand, the district court found that there was no breach of contract, and although a taking had occurred, the Days’ claim was untimely filed.

The Days appeal this order, arguing that the inverse condemnation claim should not be time barred. The Days contend that the district court erred: (1) in failing to consider their argument that quasi-estoppel precludes ITD from asserting a statute of limitations defense, (2) in determining that the Days did not rely on the statute of limitations waiver provided to them by ITD in 2000, and (3) in failing to adhere to the Idaho Supreme Court’s instructions in *Day I* to

consider the parties course of dealing to determine whether the claim was timely filed. ITD cross-appeals, arguing the district court erred in finding that the gravamen of the claim was not a commercial transaction and that ITD was not entitled to attorney fees.