

BOISE, IDAHO, AUGUST 21, 2024, AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

MICHAEL BOREN, an individual,)	
)	
Plaintiff-Appellant-)	Docket No. 50604-2023
Cross Respondent,)	
)	
v.)	
)	
GARY GADWA, an individual,)	
)	
Defendant-Respondent,)	
)	
and)	
)	
SARAH C. MICHAEL, an individual,)	
)	
Defendant-Respondent-)	
Cross Appellant,)	
)	
and)	
)	
JON CONTI, an individual; RICHARD)	
DOUGLAS FOSBURY, an individual; DOES)	
1-20,)	
)	
Defendants.)	
)	

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Custer County. Stevan H. Thompson, District Judge.

Thomas Banducci P.C., Boise; Kirton McConkie, Boise; and Wagstaffe, von Loewenfeldt, Busch & Radwick LLP, San Francisco, California (pro hac vice), for Appellant/Cross-Respondent Michael Boren.

Moore Elia & Kraft, LLP, Boise, for Respondent Richard Douglas Fosbury.

Bailey & Glasser LLP, Boise; and Foundation for Individual Rights & Expression, Washington, District of Columbia (pro hac vice), for Respondent Gary Gadwa.

Ferguson Durham, PLLC, Boise, for Respondent/Cross-Appellant Sarah Michael.

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 is 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 argues 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.