

**BOISE, MONDAY, APRIL 6, 2026, AT 10:00 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**DONE-RITE TREE COMPANY, INC., an )  
Idaho corporation, )  
 )  
 **Plaintiff-Cross Respondent,** )  
 )  
 **and** )  
 )  
 **TINA BUTCHER, an individual,** )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )  
 )  
 **GARY BUTCHER, an individual; 2 RIVERS )  
TREE & HARDSCAPE, LLC, an Idaho )  
limited liability company; and LINDSEY )  
FACINELLI, an individual; and MINDFUL )  
GARDENING & DESIGN, LLC, )  
 )  
 **Defendants-Cross Appellants.** )  
 )****

**Docket No. 52070**

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Joseph W. Borton, District Judge.

Fundwise Legal, PLLC, Lehi, Utah, for Cross-Appellants.

Eberle, Berlin, Kading, Turnbow & McKlveen, Chartered, for Cross-Respondents.

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Gary Butcher appeals from a jury verdict finding him liable on an indemnification claim filed by Done-Rite Tree Company, Inc. (“Done-Rite”). Gary, 2 Rivers Tree & Hardscape, LLC, Lindsey Facinelli, and Mindful Gardening & Design, LLC also appeal the district court’s decision denying their motion for an award of attorney fees against Done-Rite and Tina Butcher.

In 2020, the then-owners of Done-Rite, Tina and Gary Butcher, divorced. Gary thereafter entered into an agreement with Done-Rite to sell his shares back to the company (“Agreement”). The Agreement included an indemnification clause in which Gary agreed to “indemnify, defend and hold [Done-Rite] harmless from and against any and all loss . . . suffer[ed] or incur[red] by reason of any action, claim or proceeding brought by a third-party against [Done-Rite], or arising from any breach of [the] Agreement.”

In 2022, the United States Department of Labor (“Department”) investigated Done-Rite for wage and labor violations. The Department concluded that Done-Rite violated federal law and contacted its owner, Tina Butcher, concerning the violations and imposition of civil penalties.

Done-Rite later entered into a settlement agreement with the Department concerning the violations, which included payment of over \$90,000.

Following the settlement, Done-Rite sent a demand letter to Gary, seeking indemnification in the amount of \$65,898.65, the amount Done-Rite considered apportionable to Gary's time as owner/operator of the company. Gary refused the demand. Done-Rite and Tina filed a lawsuit which pleaded claims for: (1) indemnification against Gary; (2) breach of a non-compete agreement against Gary and his new company, 2 Rivers Tree & Hardscape, LLC; (3) defamation and defamation per se against Gary's girlfriend, Lindsey Facinelli, and Facinelli's company, Mindful Gardening & Design, LLC; (4) tortious interference with a contract against Facinelli and Mindful Gardening; (5) tortious interference with a prospective economic advantage against all defendants; (6) civil conspiracy against all defendants; and (7) injunctive relief against all defendants.

The defendants moved for summary judgment on all claims. The district court granted the motion as to Gary's co-defendants and dismissed the claims against them. The district court granted Gary's motion in part and dismissed all but the indemnification claim. The district court also dismissed Tina from the lawsuit because she was not a party to the Agreement that contained the indemnification clause at issue. Each of the defendants filed motions seeking an award of attorney fees against Done-Rite and Tina pursuant to Idaho Code sections 12-120(3) and 12-121. The district court denied the motions for attorney fees.

The indemnification claim proceeded to trial. Gary requested jury instructions that would advise the jury that an indemnitor must be provided prior notice and an opportunity to defend a claim that was covered by the indemnification clause. The district court declined to give Gary's proposed instructions, and the jury found that Gary was obligated to indemnify Done-Rite in the amount of \$29,788.92.

This appeal was initiated by Done-Rite and Tina. They later voluntarily dismissed their appeal. Gary and his co-defendants cross-appealed. On appeal, Gary argues the district court erred when it denied his motion for summary judgment on the indemnification claim and when it declined to give his requested jury instructions. Gary and his co-defendants also appeal the district court's denial of their motions for an award of attorney fees.