

**FRIDAY, DECEMBER 10, 2021, AT 8:50A.M.**

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

**ELEANOR J. MARTIN, an individual; )  
JOHN A. GARRETT, an individual, JACK L. )  
GARRETT, an individual; and MARILYN G. )  
ROSENBERGER, an individual, )**

**Plaintiffs-Appellants, )**

**v. )**

**THE THELMA V. GARRETT LIVING )  
TRUST, an Idaho Trust; CYNTHIA A. )  
SWARTZ, an individual; and JAMES J. )  
SWARTZ, an individual; and collectively )  
husband and wife, and anyone else claiming )  
an interest in the real property described as: )**

**The West 26 2/3 acres of land located in the )  
Southwest quarter of the Southeast quarter )  
(SW 1/4 of SE 1/4) Township 5 North, Range )  
2 West, Section 32, Boise Meridian, Canyon )  
County, Idaho. )**

**Decribed more fully as follows: )**

**Commencing at the Southwest corner of )  
Southeast quarter, Section 32, Township 5 )  
North, Range 2 West, Canyon County, Idaho, )  
53 1/3 rods East, 80 rods North 53 1/3 rods )  
West, 80 rods South, in the above described )  
land, together with their appurtenances, )**

**Defendants-Respondents, )**

**and )**

**THE ESTATE OF THELMA V. GARRETT, )**

**Defendant. )**

**Docket No. 48512**

Appeal from the District Court of the Third Judicial District of the State of Idaho,  
Canyon County. Andrea L. Courtney, District Judge.

Murphy Law Office, PLLC, Meridian, for Appellants.

Sherer & Wynkoop, LLP, Meridian, for Respondents.

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Alva and Thelma Garrett married in 1976 and had a blended family of Alva's four children and Thelma's three children. Prior to Alva's death, Alva and Thelma executed their Wills and a Contract for Wills which incorporated those Wills. The Contract for Wills stated that upon the death of the first spouse, the surviving spouse would receive all of the deceased spouse's property, and, upon the death of the second spouse, all property would be divided among the seven children in equal shares. The Garretts possessed one parcel of real property. After Alva's death, Thelma created the Thelma V. Garrett Living Trust of which she was grantor, beneficiary, and trustee. Under the terms of the amendment to the Trust, the real property would go to Thelma's daughter, Cynthia Swartz, upon Thelma's death. After Thelma's death, Cynthia, as successor trustee, conveyed the real property from the trust to herself and her husband James. Alva's children filed a complaint against the Thelma V. Garrett Living Trust, the Estate of Thelma, and Cynthia and James Swartz, alleging that Thelma had breached the terms of the Contract for Wills by transferring the real property to her Trust. The district court granted summary judgment in favor of the Swartzes, holding that Thelma's conveyance of the real property to the Trust did not breach the contract. The district court also awarded the Swartzes attorney fees. Alva's children timely appealed.