

SUMMARY STATEMENT

Cook v. Van Orden, Docket No. 48687

This appeal concerned whether a prescriptive easement exists on a road accessing property owned by Shelley and Roger Cook near the Bingham and Bonneville County line. The Cooks' property was originally owned by Shelley's grandfather, John Harker, and has stayed in the Harker family ever since. The Harker family (including the Cooks) claimed to have used what the parties call "Tower Road" to access their property for as long as the family can remember. Tower Road connects the Cook Property to a county road and runs through property owned by Jay and Shelli Van Orden. The Cooks filed suit against the Van Ordens claiming a prescriptive easement across the Van Ordens' property via Tower Road. The district court ruled in the Van Ordens' favor, holding that because the Cooks' longstanding use of the land was not adverse, it need not address the remaining elements of a prescriptive easement.

The Cooks appealed to this Court, contending that the district court erred in finding their family's use of Tower Road was with implied permission and in not addressing the remaining elements of a prescriptive easement. The Idaho Supreme Court reversed and remanded the case to the district court. The Court determined that it is essential to know what period of time the district court based its conclusions on because the record contains disputed evidence suggesting that there may have been periods when the use was adverse.

******This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.******