

SUMMARY STATEMENT

Cook v. Van Orden, Docket No. 50143

This is the second appeal of this matter, which concerns Roger and Shelley Cook's claim to a prescriptive easement over Tower Road and the presumption of permissive use. In 2017, the Cooks sought to quiet title to Tower Road. Following a bench trial in 2020, the district court concluded that the Cooks did not hold a prescriptive easement and quieted title in favor of the Van Ordens. On appeal from that decision, the Idaho Supreme Court reversed and remanded this matter to the district court to determine the relevant statutory period and analyze whether the use of Tower Road was adverse during that time. *See Cook v. Van Orden*, 170 Idaho 46, 53, 507 P.3d 119, 126 (2022) ("*Cook I*").

On remand, the district court identified the statutory period and granted a prescriptive easement to the Cooks. The district court noted that, under case law decided prior to *Cook I*, it would find that the Cooks failed to establish the adverse use element for a prescriptive easement claim. However, the district court determined that it was obligated to find the adverse use element under its interpretation of *Cook I*. The Van Ordens appealed.

The Idaho Supreme Court reversed and remanded the case to the district court to enter judgment in favor of the Van Ordens. First, the Court held that the district court did not err when it determined that the initial use of Tower Road was presumptively permissive because the Van Orden Property was wild, unenclosed, and unimproved at the time the Cooks' predecessors began using Tower Road. Second, the Court determined that the district court was not obligated to find that the Cooks had established the adverse use element under *Cook I*. Finally, the Court determined that the Cooks had not established that the permissive use of Tower Road changed to adverse use. Therefore, the Court held that the Cooks failed to prove all the elements for a prescriptive easement by clear and convincing evidence, and the district court erred in granting the Cooks a prescriptive easement.

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