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IN THE SUPREME COURT OF THE STATE OF IDAHO

NAMPA HIGHWAY DISTRICT NO. 1,  
body politic corporate of the State of Idaho,

Supreme Court No. 47029-2019

Plaintiff- Respondent,  
vs.

BRIAN K. KNIGHT and LISA M.  
KNIGHT, husband and wife, MANUEL  
DOMINGUEZ and MARIA DOMINGUEZ,  
husband and wife,

Defendant -Appellants  
and

CHICAGO TITLE INSURANCE, et al.,  
  
Defendants.

**DEFENDANT/APPELLANT KNIGHTS' OPENING BRIEF**

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Appeal from the District Court of the Third Judicial  
District of the State of Idaho, in and for the County of Canyon  
The Honorable George A. Southworth

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## **1. STATEMENT OF THE CASE**

### **a. Nature of the Case**

The Idaho Recording Act bars Nampa Highway District No. 1 (“Nampa Highway District” or the “Respondent”) from quieting the right of way’s title against Brian K. Knight and Lisa M. Knights’ (the “Knights”) fee simple ownership of the real property located at 2303 W. Orchard Ave. Nampa Idaho, 83631 (the “Property”). Although the Nampa Highway District was granted a right of way deed in 1945, it failed to record the right of way deed until 1989. In 1963, 18 years before the right of way deed was recorded, the Property was sold to Billy and Vonda Downs (“the Downs”). The Downs acquired the Property as good faith and bona fide purchasers.

The Downs then conveyed the Property to the Knights in 1998. In 2012, the Knights granted a deed of trust on the Property to Mortgage Electronic Registration Systems, Inc. (“MERS”) as nominee for Quicken Loans Inc. (“Quicken Loans”) and its successors and assigns. Since the Knights received the property from the Downs, the Shelter Rule protects the Knights’, MERS’ and Quicken Loans’ respective interests in the Property against the Nampa Highway District’s quiet title claim.

### **b. Course of Proceedings**

On October 25, 2018, Nampa Highway District filed suit to quiet title to a 33’ wide strip of land described in a 1941 “Right of Way Deed.” The land in the “Right of Way Deed” was deeded to Nampa Highway District in 1941 from the then-current owners of the land, J.G. and Ora Lupton. Unfortunately, the Nampa Highway District waited until 1989, more than 45 years later, to record the deed. That delay resulted in the confusion that precipitated this case.

After filing its complaint, Nampa Highway District moved for summary judgment asking the trial court to decree that it had a fee simple title, or, in the alternative, a right of way across the 33' wide strip of land contained within the Lupton deed.

Defendants Brian K. Knight and Lisa M. Knight ("Knights"), as owners, Quicken Loans, Inc. ("Quicken Loans"), as servicer, and Mortgage Electronic Registration System, Inc. ("MERS"), as the current beneficiary under a deed of trust from the Knights, filed cross-motions for summary judgment and opposed Nampa Highway District's Motion for Summary Judgment. The Knights and Quicken Loans asserted that, except for 11' of the strip of land occupied by W. Orchard Ave., the Recording Act and Shelter Rule made Nampa Highway District's claims to title void. MERS joined the Knights' and Quicken Loans' briefing.

On April 1, 2019 the trial court entered an Order on Motions for Summary Judgment, granting Nampa Highway District's Motion for Summary Judgment. The final judgment and decree quieted title to the entire 33' strip of land in favor of Nampa Highway District, declaring that Nampa Highway District had a fee simple interest in the 33' strip of land. That judgment was entered on April 10, 2019.

The Knights filed a timely notice of appeal on May 10, 2019. Quicken Loans and MERS filed timely notices of appeal on May 22, 2019.

**c. Statement of facts**

1. The underlying lawsuit involves the real property located at 2303 W. Orchard Ave. Nampa Idaho, 83631 (the "Property").<sup>1</sup> For reference, please see the aerial photograph attached as **Appendix 1** which shows the Property with the label 'Knight.'<sup>2</sup>

2. J.G. and Ora Lupton acquired the Property on April 5, 1920.<sup>3</sup>

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<sup>1</sup> R. pp. 324, 333-34.

<sup>2</sup> The photograph is Exhibit E to the Affidavit of Eric Shannon, R. p. 338

3. In 1921, Nampa Highway District built W. Orchard Avenue over a strip of land along the front of the Property.<sup>4</sup> W. Orchard Avenue occupies the front eleven (11) feet of the Property.<sup>5</sup>

4. Twenty years after the construction of W. Orchard Avenue, on August 4, 1941, the Luptons conveyed a 33-foot-wide strip of land on the front of their Property (the “Right of Way”) to Nampa Highway District (the “Right of Way Deed”).<sup>6</sup> The strip of land included W. Orchard Avenue.

5. The purpose of the right of way was to “improve the road.”<sup>7</sup> However, Nampa Highway District did not improve the road—it simply maintained the same 11 foot road it built in 1921.<sup>8</sup>

6. Nampa Highway District failed to record the Right of Way Deed.

7. In 1945, Ora Lupton died, and all of her right, title and interest in the Property transferred to her surviving spouse, J.G. Lupton.<sup>9</sup>

8. JG Lupton died in 1958. A decree of partial distribution conveyed property including the Property from JG Lupton’s estate to his heirs, Marvin Carroll Lupton and Howard Wayne Lupton.<sup>10</sup>

9. On May 18, 1958, Marvin Carroll Lupton conveyed his interest in the Property to Howard Wayne Lupton.<sup>11</sup> The conveyance recites on its face that the transfer was for valuable consideration.<sup>12</sup>

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<sup>3</sup> R. p. 269, para. 6.

<sup>4</sup> R. p. 325, para. 9 a-c.

<sup>5</sup> R. p. 406.

<sup>6</sup> R. p. 323-24, 331-32.

<sup>7</sup> R. p. 326, para. 9.g (emphasis added).

<sup>8</sup> R. p. 406.

<sup>9</sup> R. p. 475, 271.

<sup>10</sup> R. p. 475; R. p. 256-261, p. 271-2.

10. Howard Wayne Lupton conveyed the Property to the Downs in exchange for “good and valuable consideration” on June 2, 1963.<sup>13</sup> The conveyance was recorded in the Canyon County Real Property Records on June 25, 1963.<sup>14</sup>

11. Nampa Highway District finally recoded the Right of Way Deed on February 21, 1989, 48 years after receiving it.<sup>15</sup>

12. The Downs conveyed the Property to the Knights on July 10, 1998. The conveyance was recorded in the Canyon County Records on July 10, 1998.<sup>16</sup>

13. The Knights are the current owners of the Property.<sup>17</sup>

14. In 2012, the Knights granted a Deed of Trust to their Property to Chicago Title Insurance Company as Trustee on behalf of MERS, as the beneficiary as nominee for Quicken Loans, and its successors and assigns.<sup>18</sup>

15. No conveyance from the 1945 decree transferring Ora Lupton’s interest in the Property to J.G though the conveyance to the Knights, or deed of trust to MERS as nominee for Quicken Loans and its successors and assigns, makes any exception for the right of way claimed by the Nampa Highway District under the Right of Way Deed.<sup>19</sup> And beyond the pavement marking the 11 feet of road it was on, there were no boundaries or markers indicating the presence of the Right of Way Deed.

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<sup>11</sup> R. p. 475; R. pp. 262-63, 272.

<sup>12</sup> R. p. 386.

<sup>13</sup> R. p. 388.

<sup>14</sup> R. p. 272, 367, 388-89.

<sup>15</sup> R. p. 323-24, 331-32.

<sup>16</sup> R. p. 269, 281-82,

<sup>17</sup> R. pp. 324, 333-34.

<sup>18</sup> R. pp. 67, 77-94, 122.

<sup>19</sup> R. 365-389 Exs. A, E-G.



16. The District Court granted summary judgment in favor of Nampa Highway District.<sup>20</sup> The District Court concluded that because Howard Lupton and the Downs had actual notice of 11 feet of highway that was constructed in 1921, they were on constructive notice of the Right of Way Deed executed in 1941 prior to its recording in 1989.<sup>21</sup> Accordingly, the District Court found the Shelter Rule did not protect the Knights, MERS, or Quicken Loans because they did not acquire title through a bona fide purchaser.<sup>22</sup> Because the District Court erroneously concluded that neither Howard Lupton or the Downs were bona fide purchasers, it erroneously failed to give the Knights, MERS and Quicken Loans the benefit of the Shelter Rule by voiding any right of way beyond the paved edge of W. Orchard Ave.<sup>23</sup>

17. This appeal followed.

## **2. ISSUES ON APPEAL**

- a) Did the District Court err in refusing to protect the Knights under the “Shelter Rule” which provides that one who is not a bona fide purchaser, but who takes an interest in property from a bona fide purchaser, may be sheltered in the latter’s protective status?
- b) Did the District Court err in finding that Howard Lupton and/or the Downs had constructive notice of a deeded right of way extending 22’ beyond the edge of W. Orchard Ave.?
- c) Did the District Court err in granting Nampa Highway District fee simple title to the land in the Right of Way Deed?

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<sup>20</sup> R. p. 474-484.

<sup>21</sup> R. p. 480.

<sup>22</sup> Id.

<sup>23</sup> Id.

### **3. LEGAL STANDARD**

#### **a. Standard of Review**

The standard of review of an order granting summary judgment is the same standard used by the trial court in ruling on the motion. Summary judgment is only allowed “if the pleadings, affidavits, and discovery documents on file with the court, read in a light most favorable to the nonmoving party, demonstrate no material issue of fact such that the moving party is entitled to a judgment as a matter of law.”<sup>24</sup>

### **4. ARGUMENT**

#### **a. The Court Erred in Ruling that the Knights, and thus MERS and Quicken Loans, Were Not Protected Under the Shelter Rule.**

##### ***i. The District Court misapplied the Recording Act and Shelter Rule.***

###### ***1. The Recording Act***

“Purchasers of real property must record their interests in order to protect them from other claimants. In Idaho, the first recorded conveyances of real property, taken in good faith and for valuable consideration, except leases not exceeding one year, have priority over subsequent purchasers or mortgagees of the same property.”<sup>25</sup> See also Idaho Code §55-812 (“[e]very conveyance of real property other than a lease for a term not exceeding one (1) year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.”).

Further, Idaho Code §55-606 provides “[e]very grant or conveyance of an estate in real property is conclusive against the grantor, also against everyone subsequently claiming under him, except a purchaser or encumbrancer, who in good faith, and for a valuable consideration,

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<sup>24</sup> See e.g. *Dickinson Frozen Foods v. J.R. Simplot Co.*, 164 Idaho 669, 434 P.3d 1275 (2019) (citations omitted).

<sup>25</sup> *Sun Valley Land & Minerals, Inc. v. Burt*, 123 Idaho 862, 866, 853 P.2d 607, 611 (Ct. App. 1993)

acquires a title or lien by an instrument or valid judgment lien that is first duly recorded.” “The purpose of the recording act in a race-notice jurisdiction, like Idaho, is to allow recorded interests to be effective against unrecorded interests when the recorded interest is taken for a valuable consideration and in good faith, i.e., without knowledge, either actual or constructive, that unrecorded interests exist.”<sup>26</sup>

**ii. The Shelter Rule**

“A bona fide purchaser is one who takes real property by paying valuable consideration and in good faith, i.e., without knowing of adverse claims.”<sup>27</sup> “The theory behind the rule is to protect innocent purchasers and to allow them to obtain and convey unsullied interests.”<sup>28</sup> “Generally, a person must take property through a ‘conveyance’ in order to be afforded the protective status of a bona fide purchaser.”<sup>29</sup>

“The ‘Shelter Rule’ provides that one who is not a bona fide purchaser, but who takes an interest in property from a bona fide purchaser, may be sheltered in the latter’s protective status.”<sup>30</sup> When adopting this rule, the *Sun Valley Land* court recognized “a bona fide purchaser can transfer good title to a person who has notice of a prior adverse equity or right.”<sup>31</sup> “Once the right to have a mistake in a deed rectified is shut off by conveyance to a bona fide purchaser, a grantee from such purchaser is entitled to the same protection.”<sup>32</sup>

The District Court concluded that because Howard Lupton and the Downs had actual notice of 11 feet of highway that was constructed in 1921, they were on constructive notice of

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<sup>26</sup> *Regan v. Jeff D.*, 157 Idaho 758, 763-764, 339 P.3d 1162, 1167-1168 (2014) (internal quotations omitted).

<sup>27</sup> *Sun Valley Land & Minerals, Inc. v. Burt*, 123 Idaho 862, 866, 853 P.2d 607, 611 (Ct. App. 1993) citing I.C. § 55-606; § 55-812.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Sun Valley Land & Minerals v. Burt*, 123 Idaho 862, 868, 853 P.2d 607, 611 (1993).

<sup>31</sup> *Id.*

<sup>32</sup> *Regan v. Jeff D.*, 157 Idaho at 763, 339 P.3d at 1167 (internal quotations omitted).

the Right of Way Deed executed in 1941 prior to its recording in 1989.<sup>33</sup> Accordingly, the District Court found the Shelter Rule did not protect the Knights, Quicken Loans, or MERS, because they did not acquire title through a bona fide purchaser. Because the District Court erroneously concluded that neither Howard Lupton nor the Downs were bona fide purchasers, it erroneously failed to give the Knights, MERS and Quicken Loans the benefit of the Shelter Rule by voiding any right of way beyond the paved edge of W. Orchard Ave.

J.G. and Ora Lupton acquired the Property in 1920.<sup>34</sup> J.G. and Ora did not grant Nampa Highway District the Right of Way deed until 1941.<sup>35</sup>

In 1945, J.G. Lupton acquired full title to the Property through a judicial decree after his wife passed away.<sup>36</sup> J.G. passed away in 1958. His heirs, Marvin and Howard, inherited the Property.<sup>37</sup> On the same day, Marvin conveyed his interests to Howard.<sup>38</sup> The warranty deed between Marvin and Howard stated the conveyance was made “for and in consideration” and did not provide a reservation for the Right of Way Deed.<sup>39</sup>

In 1963, Howard and his wife Maxine, conveyed the Property to the Downs “for and in [monetary] consideration” and for “other good and valuable consideration.”<sup>40</sup> The deed did not reserve an exception for the Right of Way Deed.<sup>41</sup>

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<sup>33</sup> *Order* p. 7.

<sup>34</sup> *See Statement of Facts (“FACTS”)* at para. 2.

<sup>35</sup> *FACTS* at para. 4.

<sup>36</sup> *FACTS* at para. 7.

<sup>37</sup> *FACTS* at para. 8.

<sup>38</sup> *FACTS* at para. 9.

<sup>39</sup> *Id.*

<sup>40</sup> *FACTS* at para. 10.

<sup>41</sup> *Id.*

There is no evidence that Howard Lupton or the Downs had actual knowledge of the Right of Way Deed. The only possible way to deny them bona fide purchaser status is to establish they have constructive notice of the Right of Way Deed.

In 1998, nine years after Nampa Highway District finally recorded the Right of Way Deed, the Downs conveyed their interest in the Property to the Knights. In 2012, the Knights granted a Deed of Trust to their Property to Chicago Title as Trustee for the beneficiary – MERS, as nominee for Quicken Loans and its successors and assigns. The Knights, MERS and Quicken Loans would not be bona fide purchasers, but are protected by the Shelter Rule. The Knights took title to Property from bona fide purchasers, the Downs. Under the Shelter Rule, the Knights thus gain the benefit of the Downs protective status and received clean title to the Property.<sup>42</sup>

The Shelter Rule also protects the interests of MERS and Quicken Loans under the Deed of Trust. The Knights granted the legal title they received from the Downs to MERS as nominee for Quicken Loans and its successors and assigns. The grantee under the deed of trust obtained an interest the same rights to the title as those held by the Knights.<sup>43</sup> (“When a deed of trust is executed and delivered, the legal title of the property passes to the trustee [from the borrower]”).

Because Howard Lupton and the Downs are bona fide purchasers, there can be no dispute that the Shelter Rule invalidates the Right of Way Deed as against the Knights, MERS, Quicken Loans, or their successors in interest.

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<sup>42</sup> See *Sun Valley Land & Minerals*, 123 Idaho at 868.

<sup>43</sup> See *ParkWest Homes, LLC v. Barnson*, 302 P.3d 18, 24 (Idaho 2013)

**b. The District Court erred in finding that Howard Lupton and/or the Downs had constructive notice of a deeded right of way extending 22' beyond the edge of W. Orchard Ave.**

“Imputed or constructive knowledge is the law's substitute for actual knowledge. It is a legally postulated notice of facts not otherwise perceived and recognized.”<sup>44</sup> “Such notice may arise from official records and other documents by which a person is legally bound, from communications to an agent or predecessor in interest, or from knowledge of certain facts which should impart notice of the ultimate fact in issue. . . In [the later situation], extemporaneous facts which are sufficient to lead a reasonably prudent person upon an inquiry of a possible conflicting interest, will be treated as providing constructive notice.”<sup>45</sup> Further, “[w]hen a property owner possesses knowledge of extemporaneous facts which would reasonably indicate the possibility of an adverse use on the property, the owner is required to investigate.<sup>46</sup> But courts have recognized that the existence of a physical street, alone, is no indication of any rights or title that may exist *beyond* the bounds of that street. *See State of Indiana v. Anderson*,<sup>47</sup> (“[t]he general rule [is] that a purchaser is not charged with notice of a right-of-way which is not discoverable upon an inspection of the premises at the time of his purchase.”). *See also State of Indiana v. Cinko*<sup>48</sup>(*same*); *W. Cent. Elec. Co-op., Inc. v. James River Broad. Co.*,<sup>49</sup> (holding the same).

Idaho has adopted similar logic. In *Kaupp*,<sup>50</sup> the district court found that the mere existence of a manhole in a city street adjacent to property was sufficient notice to impute

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<sup>44</sup> *Kaupp v. Hailey*, 110 Idaho 337, 340, 715 P.2d 1007, 1010 (Ct. App. 1986)(*citing* 58 Am. Jur. 2d Notice secs. 2-11 (1971)) (emphasis added).

<sup>45</sup> *Kaupp v. Hailey*, 110 Idaho 337, 340, 715 P.2d 1007, 1010 (Ct. App. 1986)(*citing* 58 Am. Jur. 2d Notice secs. 2-11 (1971)).

<sup>46</sup> *Id.* (*citing* 55 A.L.R.2d 1144 (1951)).

<sup>47</sup> *State of Indiana v. Anderson* 170 N.E. 2d 812, 815 (Ind. 1960)

<sup>48</sup> *State of Indiana v. Cinko* 292 N.E. 2d 847 (Ind. 1973)

<sup>49</sup> *W. Cent. Elec. Co-op., Inc. v. James River Broad. Co.* 393 N.W.2d 83, 86 (S.D. 1986)

<sup>50</sup> *Kaupp v. Hailey*, 110 Idaho 337, 340, 715 P.2d 1007, 1010 (Ct. App. 1986)

knowledge to a property owner of a pipeline running under the property.<sup>51</sup> The Court of Appeals squarely rejected that contention. Instead, it found that “the mere existence of the manhole does not create a duty to inquire.”<sup>52</sup> Instead, the Court confirmed that only the facts of the case (such as “line markers and stakes, above ground fixtures and controls and exposed lines themselves”) would create a duty to inquire further.

In this case, the use of an eleven-foot strip of road does not logically imply the existence of a thirty-three foot right of way or create a duty to investigate the road any further. To the contrary, the evidence in record establishes that the Nampa Highway district used the eleven feet of Knights property for W. Orchard Ave. for twenty years with no right of way, whatsoever. Thus, undisputed evidence shows that it is outside the scope of a reasonable inquiry to check for a large and unused right of way simply because a road is present. The additional twenty-two feet (22’) was not necessary for the construction or maintenance of the existing road. It was only granted in anticipation of some future improvement of the road, (although it was evidently never used after it was granted). There is nothing about the existence of the road itself that would reasonably indicate the existence of an additional deeded, but unrecorded, twenty-two foot (22’) right of way. As such, the evidence in the record does not support any finding that Howard Lupton or the Downs (as predecessors to the Knights) have constructive notice of the Right of Way Deed.

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<sup>51</sup> The *Kaup* case was analyzing the “open and notorious” element for prescriptive easements, but considered that element to be in accord with the concepts of imputed or constructive knowledge.

<sup>52</sup> *Id.*

- c. **The district court erred by finding that the Nampa Highway District owns the 33 feet of land in fee simple. If Nampa Highway District has any property interest, it is an easement.**

The presumption is “[w]hen land is dedicated as a street for public use, the landowner owns to the center of the street and the public acquires an easement, not a title in fee simple.”<sup>53</sup>

“An easement is the right to use the land of another for a specific purpose that is not inconsistent with the general use of the property by the owner.”<sup>54</sup> “Express easements may be created by either reservation or exception.”<sup>55</sup> “An express easement by reservation reserves to the grantor some new right in the property being conveyed; an express easement by exception operates by withholding title to a portion of the conveyed property.”<sup>56</sup> “Because an express easement is an interest in real property, it may only be created by a written instrument.”<sup>57</sup> “At a minimum, a valid express easement must identify the land subject to the easement and express the intent of the parties.”<sup>58</sup> “Thus, while specific words are not required to create an express easement, the writing must make clear the parties’ intention to establish a servitude.”<sup>59</sup>

“When this Court interprets or construes a deed, ‘the primary goal is to seek and give effect to the real intention of the parties.’”<sup>60</sup> “If the deed is ambiguous, the trier of fact must

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<sup>53</sup> See e.g. *Neider v. Shaw*, 138 Idaho 503, 507, 65 P.3d 525, 529 (2003) citing Idaho Rev.Code § 3091 (1908)) (current version with amendments at Idaho Code § 55–309 (2002)) (emphasis added); I.C. 55-309.

<sup>54</sup> *Beckstead v. Price*, 146 Idaho 57, 62, 190 P.3d 876, 881 (2008) (internal citations and quotations omitted).

<sup>55</sup> *Machado v. Ryan*, 153 Idaho 212, 218, 280 P.3d 715, 721 (2012)(internal citations omitted).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* (internal quotations omitted).

<sup>58</sup> . *Id.* citing *Hodgins v. Sales*, 139 Idaho 225, 233, 76 P.3d 969, 977 (2003) (citing *Nw. Pipeline Corp. v. Forrest Weaver Farm, Inc.*, 103 Idaho 180, 181, 646 P.2d 422, 423 (1982) (emphasis added).

<sup>59</sup> *Id.*

<sup>60</sup> *Machado v. Ryan*, 153 Idaho 212, 218, 280 P.3d 715, 721 (2012) citing *Porter v. Bassett*, 146 Idaho 399, 404, 195 P.3d 1212, 1217 (2008).



‘determine the intent of the parties according to the language of the conveyance and the circumstances surrounding the transaction.’”<sup>61</sup> “However, if the language of a deed is plain and unambiguous, the intention of the parties must be ascertained from the deed itself and extrinsic evidence is not admissible.”<sup>62</sup> “Ambiguity may be found where the language of the deed is subject to conflicting interpretations.”<sup>63</sup>

Preliminarily, the Idaho Supreme Court ruled that “when land is dedicated as a street for public use, the landowner owns to the center of the street and the public acquires an easement, not a title in fee simple.”<sup>64</sup> More substantively, the Right of Way Deed specifically noted the parties’ intentions. The Right of Way Deed limits the conveyance of the strip of land “for use as a public highway.”<sup>65</sup> No other purpose or intention was noted in the Right of Way Deed. And because the language specifies the use, the grant is limited to that of an easement. *See Drew v. Sorensen*,<sup>66</sup> (“In Idaho, ‘an easement is the right to use the land of another for a specific purpose that is not inconsistent with the general use of the property by the owner.’”).

To the extent the Right of Way Deed survived, the District Court’s construction of fee simple title conveyance is in error.

## **5. CONCLUSION**

The District Court erred in its application of the Recording Act and Shelter Rule. Nampa Highway District’s Right of Way Deed is void against the Knights, MERS, Quicken Loans, and their successors and assigns. The judgment should be reversed and vacated. Further, since there

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<sup>61</sup> *Id.* (citing *Neider v. Shaw*, 138 Idaho 503, 508, 65 P.3d 525, 530 (2003)).

<sup>62</sup> *Machado v. Ryan*, 153 Idaho 212, 218, 280 P.3d 715, 721 (2012) (internal citations and quotations omitted).

<sup>63</sup> *Read v. Harvey*, 141 Idaho 497, 499, 112 P.3d 785, 787 (2005) (citing *Neider*, 138 Idaho at 508, 65 P.3d at 530).

<sup>64</sup> *Neider v. Shaw*, 138 Idaho 503, 507, 65 P.3d 525, 529 (2003) (internal citations omitted).

<sup>65</sup> R. p. 323-24; 331-32.

<sup>66</sup> *Drew v. Sorensen* 133 Idaho 534, 540, 989 P.2d 276, 282 (1999)(*citations omitted.*)

are no questions of material fact, the case should be remanded with instructions to the District Court to quiet title to the Property by voiding the Right of Way Deed and recognizing only the eleven feet of right of way that undisputedly exists as a matter of law for the current W. Orchard Avenue.

DATED this 23<sup>rd</sup> day of September, 2019.

  
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WYATT JOHNSON  
*Attorney for Appellant*

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that on this 23<sup>rd</sup> day of September, 2019, I caused to be served a true copy of the foregoing DEFENDANT/APPELLANT KNIGHTS' OPENING BRIEF by the method indicated below, and addressed to those parties marked served below:

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\_\_\_\_\_  
Wyatt Johnson

# Appendix 1

**Exhibit "E"**

