

IN THE SUPREME COURT OF THE STATE OF IDAHO

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

Respondent,

vs.

BRIAN K. KNIGHT and LISA M.
KNIGHT, husband and wife, MANUEL
DOMINGUEZ and MARIA DOMINGUEZ,
husband and wife, QUACKEN LOANS INC.,
a Michigan corporation, MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC., a Delaware corporation,

Appellants.

Supreme Court No. 47029-2019

APPELLANTS' REPLY BRIEF

Appeal from the District Court of the Third Judicial
District of the State of Idaho, in and for the County of Canyon

Honorable George A. Southworth

District Judge, Presiding

E Don Copple
Davison, Copple, Copple & Copple
P.O. Box 1583
Boise, ID 83701
edcopp@davisoncopp.com

Attorneys for Appellants Manuel & Maria
Dominguez

Kimball Gourley
Jones Williams Fuhrman Gourley
225 N. 9th St., Ste. 820
Boise, ID 83701
kgourley@idalaw.com

Attorney for Respondent Nampa Highway
Dist. No. 1

Wyatt Johnson
Angstman Johnson
199 N. Capitol Blvd., Ste. 200
Boise, ID 83702
wyatt@angstman.com

Attorneys for Appellants Brian & Lisa Knight,
Quicken Loans

Sheila R. Schwager
Hawley Troxell Ennis Hawley
P.O. Box 1617
Boise, ID 83701
sschwager@hawleytroxell.com

Attorney for MERS

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II. REPLY ARGUMENT

All of the issues generated in the case before the Court are based on Nampa Highway District's failure to record a deed executed in 1941 for 48 years. During that period of time the property involved was transferred to subsequent owners who constructed homes, lived on the property, transferred the lands to other parties, and Nampa Highway District did not place any monuments or markings on the ground that the Nampa Highway District owned any property other than the roadway.

The Nampa Highway District is now asking this Court to affirm the District Courts ruling on three theories:

(1) Defendants are not bona fide purchasers because Defendants submitted no evidence of to what actual knowledge or notice the prior owners did or did not have.

(2) Nampa Highway District's possession and use of W. Orchard Avenue is by law deemed actual or constructive notice to a subsequent purchaser of Nampa Highway District's claim to additional property.

(3) Pursuant to Idaho Code §40-2312 (and its predecessors) and *Halvorson v. N. Latah Highway District*, 151 Idaho 196, 254 P.3d 497 (2011), "all public highways are a minimum width of 50 feet wide unless (i) otherwise stated in an applicable deed, plat dedication, other documents, etc. or (ii) a bridge, alley, or in a townsite or city."

Nampa Highway District now takes no issue with the law of "the Shelter Rule" adopted by the Court of Appeals, in *Sun Valley Land and Minerals, Inc. v. Burt*, 123 Idaho 862, 853 P.2d 607, (1993) but contends that it is not applicable because Defendants submitted no evidence as to what inquiries or investigations the prior owners did or did not make.

This argument was made to the District Court- however, there is no evidence in the record showing that the grantees in the deeds involved were not bona fide purchasers, only Nampa Highway District's argument. One examining the Canyon County records would have no reason to believe that the Nampa Highway District had an interest in the property. The Nampa Highway District failed to protect itself by recording its deed for 48 years. *See Kalange v. Rencher*, 136 Idaho 192, 30 P.3d 970 (2001).

The Nampa Highway District's actions, or more properly stated, failure to act, has caused all of the issues in this case.

As stated in Appellant's opening brief the District Court declined to apply the Shelter Rule on the grounds that the rule directly contradicts Idaho precedent and every prior purchaser on Orchard Avenue had constructive notice that Orchard occupied a portion of the land. Nampa Highway District's brief supports this District Court conclusion by citing Idaho cases on constructive notice.

Nampa Highway District has not commented on the Indiana cases cited in Appellants' opening brief, page 11 and 12 that are directly on point, i.e. 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. The photos of the Appellants' properties in the record clearly show that there were no markers or monuments marking the extent of the Nampa Highway District's right-of-way on Appellants' property- no physical indication on the property itself that the Nampa Highway District had additional right-of-way on Defendants' property.

The Nampa Highway District added a brand new defense in this appeal - it is now claiming that it owns a 50 foot right-of-way on West Orchard Avenue because of I.C. §40-2312 and its predecessors and the *Halvorson* case. This claim was not, in any form, presented to the

District Court and it is therefore waived. *Johannsen v. Utterbeck*, 146 Idaho 423, 196 P.3d 341 (2008); *McLean v. Cheyovich Family Trust*, 153 Idaho 425, 283 P.3d 742 (2012).

In *State of Idaho v. Gonzalez*, 165 Idaho 95, 439 P.3d 1267 (2019) this Court went into the subject matter of a legal position advocated in the lower court when the specific legal arguments used to support that position has evolved. The Court stated that a parties' rumination on issues and case law that may need to be applied to specific facts of a case is permissible. The Court then said,

However, these pragmatic evolutions do not leave room for a party to raise new substantive issues on appeal or adopt a new position on an issue that the trial court has not had the opportunity to rule on.

Id. at 165 Idaho 97.

The claim to a 50 foot right-of-way is clearly a new substantive issue presented for the first time on appeal- the District Court never had an opportunity to consider this argument.

In its concluding remarks Nampa Highway District invites the court to rule that the Orton deed was a valid conveyance and since Appellant did not appeal that point specifically the deed is valid. Appellant appealed the failure of the Court to apply prior existing precedence, i.e. The Shelter Rule. If the District Court decision is reversed, the grantors in the 1941 deed interest was terminated in the properties involved in this case by the subsequent conveyance from the Ortons to Appellants' previous owners.

III. CONCLUSION

The District Court ruled that the "Shelter Rule" directly contradicts Idaho precedence that the street involved had existed as a public street since at least 1921, every prior purchaser had constructive notice that the street occupied a portion of the property and was therefore charged with a duty to inquire. This Rule if adopted by this Court will require Idaho purchasers of real

