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City of Eagle v. Two Rivers Subdivision Appellant's Reply Brief Dckt. 47193

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

CITY OF EAGLE, a municipal corporation of the State of Idaho,

Plaintiff-Appellant,

vs.

TWO RIVERS SUBDIVISION HOMEOWNERS ASSOCIATION, INC., an Idaho Corporation, KEVIN ZASIO, President,

Defendants-Respondents.

Docket No. 47193-2019

Ada County District Court
Case No. CV01-17-18705

APPELLANT'S REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE JONATHAN MEDEMA, DISTRICT JUDGE, PRESIDING

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REPLY ARGUMENT

"That the public access remain the same with the public parking at the trailhead." R. at 164. With that remark the motion for approval of the Developer's request showed clear intent of the City of Eagle ("**City**") that approval of the Two Rivers land use application should include public parking at the trailhead. The Developer did not object, it is exactly what he wanted to provide. As later stated "[I]t was our intention to offer that for public use. We were very pleased that the City accepted our offer for the benefit of the public and approved our application with that condition. We did not appeal or object to the condition because that was our intent." R. at 102, 141. The Developer then built that public parking at the trailhead upon Lot 35, Block 24 in Phase 8 of the Two Rivers Subdivision. R. at 116, 140, and 147.

Once built, the City returned to the Developer his $251,996.00 letter of credit, and the public began using it, just as the grantor and grantee intended. No one was surprised. No one objected. The Two Rivers Homeowners Association, Inc ("**HOA**") had actual knowledge that Lot 35 was encumbered with a public parking lot because the grant was made when the HOA was owned and operated by the grantor. For the next ten years, the public showed its acceptance by using it without interference or concern. Under these unique facts, a common law dedication occurred as a matter of law.

A. The HOA in response did not dispute many arguments raised by the City.

In its Opening Brief on Appeal the City disputed several factual and legal findings of the District Court, many of which were not argued or disputed by the HOA in its Respondent's Brief. For example, the HOA does not dispute the City's argument (noted as C(1)(a) in the City's Opening Brief) that a recorded plat can be one of several independent sources of evidence to prove a common law dedication. The existence or nonexistence of a notation on a plat is not dispositive;

the analysis does not end there. All of the surrounding circumstances are also investigated for the purpose of determining intent.

Next, the HOA did not dispute the City's argument (noted as C(1)(b)) that Dan Torfin had actual authority to make the offer of a public parking lot on behalf of the landowner. This fact was clearly noted in the record (R. at 104) and specifically admitted in the HOA's Answer. (R. at 119). Finally, the HOA did not dispute the City's argument (noted as C(1)(c)) that the HOA knew its land had been offered for public use at the time the offer was made. This fact was also admitted by the HOA in the litigation. R. at 100, 117.

These concessions are an important part of the unique factual record that affords the City the relief they are requesting on appeal. These facts, among others, form the narrow basis upon which this Court should find that a common law dedication occurred and reverse the decision of the District Court on appeal.

B. The HOA misreads the argument regarding the motion to dismiss which limited the City of Eagle to advancing a single basis of relief: common law dedication.

The HOA focuses its response on the single issue of whether the City would be entitled to relief as pled and concludes that there was no "relief" the Court could afford the City that it already didn't have. However, what the respondent misses is that the relief requested is the same for all three counts; declaratory and injunctive relief. A claimant is not precluded from asserting multiple theories of a claim, all of which afford the claimant the same relief. Alternate theories have been a part of civil litigation in Idaho for many years, and this case is no different. The City sought a declaration that the HOA may no longer restrict access to the public parking lot, and for a permanent injunction (Count IV) to prevent further harm. Count II relied on §50-214 as an alternate

basis the Court could have granted the relief requested. It was a source of statutory authority. Similarly, Count III relied on as an ordinance-based authority.

Each of the counts look to alternative bases to allow the City to restore the public's right to use the parking lot on Lot 35 as the developer and city had expressly intended. Whether the City would prevail on any or all of these claims was not before the Court. Consistent with the liberal pleading standards of IRCP 8(a) and the inferences which must be drawn in favor of the City, the District Court's decision must be reversed.

C. The HOA's argument fails to see that the unique facts of this case do sustain a cause of action for common law dedication.

The City presented a record to this Court unlike any before that has dealt with assessing "intent" and "acceptance" for a common law dedication. The focus of these unique facts is this: both the Grantor and the Grantee each provided direct sworn testimony as to what each intended with the original offer, and the acceptance of that offer. The express direct evidence of intent from these two critical participants is very unique. It is also very valuable evidence because a common law dedication is premised upon intent. When an offer by an owner clearly and unequivocally indicated by his words or acts evidencing his intention to dedicate land to a public use, and it is followed by an acceptance of the offer by the public, a common law dedication of land occurred. *Paddison Scenic Properties v. Idaho County*, 153 Idaho 1, 3 (2012).

Here the District Court was presented with evidence from both parties to the transaction. The substance of the action taken by the City at the city council meeting was included within the motion made to approve the Developer's request. Councilwoman Sedlacek's motion to approve the request (and the offer of public parking) included the condition that "the public access remain the same with the public parking at the trailhead." R at 129. There is only one location for public

access to the trailhead within the application that was before the city council, and that is exactly where the parking lot was built. There is great clarity on what was offered and accepted by viewing the physical evidence of what was actually built (a small parking lot), who paid for it (the developer), what the developer got in return (usage of private streets and return of his letter of credit), and how the public used this lot for over ten years without interruption. Use by the public is a sufficient acceptance of a dedication for the purpose of a way to invest a right of way to the public. *Paddison v. Idaho County*, 153 Idaho 1, 3 (2012). Public use alone can constitute acceptance, and once accepted the servient estate owner has no right to obstruct the public's use. *Id.*

These unique facts, all of which were not in dispute, provide clear evidence of a common law dedication under these circumstances. Based upon this record, the decision of the District Court ruling otherwise on summary judgment should be reversed.

D. Attorney's fees are not warranted on appeal.

Respondents argue that they are entitled to attorney fees under I.C. §12-117, I.C. §12-121 and I.A.R. 41. This argument is without merit. First, a decision of this Court to overturn the District Court's decision would eliminate any claim that the HOA was the "prevailing party" on appeal. Second, if either party were to prevail on this appeal, neither party would be entitled to attorney fees under Idaho Code §12-117. Neither side has pursued their position without any basis in law or fact. Neither side has acted frivolously or unreasonably[1].

[1] Here the District Court exercised its discretion and denied in full the HOA's request for attorney's fees under §12-117. The Court determined that the City's claims did have a reasonable basis in law and fact. That ruling is not on appeal.

As this Court has clearly stated, I.C. §12–117[2] is the exclusive means for awarding attorney fees for the entities to which it applies, such as the City of Eagle. *City of Osburn v. Randel*, 152 Idaho 906, 910, 277 P.3d 353, 357 (2012). Application of this statute only allows for attorney fees on appeal if the non-prevailing party acted without any reasonable basis in fact or law. The Respondents cite to the *City of Osburn v. Randel*, 152 Idaho 906 (2012), yet in that case this Court applied I.C. §12-117 and not only affirmed the denial of attorneys fees to the prevailing party by the District Court but also denied attorney's fees on appeal. While the City believes it should prevail on appeal, if this Court rules otherwise *Osburn* provides good direction for denying attorney's fees on appeal.

In *Osburn*, the City of Osburn and residents David and Pamela Randel litigated the interpretation of a local zoning ordinance and how that ordinance may apply to the Randels. *Id*, at 907, 354. The dispute centered around the Randels' building of two storage sheds on an adjacent parcel of land that the City contends was on a different lot than their primary residence. The outcome centered on differing interpretations of the word "lot" in the City's ordinance regarding zoning. The district court found "lot" could reasonably have been interpreted in more than one way and found it ambiguous as written in the ordinance, and therefore the Court entered judgment against the City.

The Randels next requested attorney fees under both I.C. §12-117 and I.C. §12-121. In denying the Randel's attorney fees, the District Court reasoned that the City did not unreasonably construe its zoning statute, which had not yet been subject to judicial interpretation. The Court

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[2] "Unless otherwise provided by statute, in any proceeding involving as adverse parties a state agency or a political subdivision and a person, the state agency, political subdivision or the court hearing the proceeding, including on appeal, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the non-prevailing party acted without a reasonable basis in fact or law." Idaho Code § 12-117(1).

concluded that "the language [of the code] and the surrounding circumstances lend support to both parties' interpretation of the meaning of 'lot'." *Id.*, at 909, 356. The Randels appealed the denial of their attorney fees request. On appeal, this Court affirmed, finding the decision of the district court "eminently reasonable". The Idaho Supreme Court also denied the Randels' requests for attorney's fees on appeal. This Court concluded by clarifying the basis for attorney's fees against a municipality is found "exclusively" in I.C. §12–117. *Id.*, at 910, 357.

In the case before this Court, there were many facts which provided a reasonable basis for the City to pursue its appeal. For over ten years following the approval of Phase 8 of the Two Rivers subdivision, a parking lot was built and used by the public for access to the Boise River Greenbelt and the adjacent public trailhead. At a public hearing, the City expressed concern regarding the public's access to the trailhead and its connection to the Boise River Greenbelt. The developer, by himself and through his agent, committed to include a public parking lot in Phase 8. The exact location of this parking lot was then delivered in writing to the City within the landowner's design review application in 2003. That writing was accepted by the City, and construction soon followed. The landowner made his intentions (offer) known through his words and his act of submitting a written location and design for a public parking lot, and then building at his own expense a public parking lot exactly as he depicted to the City. Once constructed, the City in return released to the landowner his $251,996.00 letter of credit held by the City to ensure all improvements – including the parking lot – were installed. As the Court in *City of Osburn* saw that an unclear ordinance allowed for conflicting yet reasonable interpretations of its scope, this case required application of conflicting yet reasonable views as to whether the facts were a "clear and unequivocal" expression of intent.

The City of Eagle did not stand to profit from this litigation, but rather pursued this case to promote and protect a public benefit. The City sought to protect the interests of the public and their ability to continue to access the public trailhead as they had been doing for years. When analyzing these facts this Court is without a statute to read and interpret that could provide a clear answer, there is only decades of fact-specific case law that provides guidance on what may or may not be considered an offer and acceptance. Surely, if ambiguity surrounding one word in an ordinance can provide a reasonable basis to pursue a case, then a very unique set of facts applied to the law surrounding common law dedications can also provide a reasonable basis for bringing a case and further an appeal. Based on these unique facts, the District Court did not find attorney's fees were warranted under §12-117. This Court, like the Court in *Osburn*, should reach the same conclusion regarding the City's appeal.

CONCLUSION

For the reasons stated above, the City respectfully requests that this Court reverse the trial court and remand the case to the District Court for further proceedings consistent with this decision and deny the Respondent's request for attorney's fees on appeal.

RESPECTFULLY SUBMITTED this 13th day of January, 2020.

BORTON-LAKEY LAW & POLICY

By:_____
Joseph W. Borton
Attorneys for Plaintiff-Appellant, City of Eagle

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 2020, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

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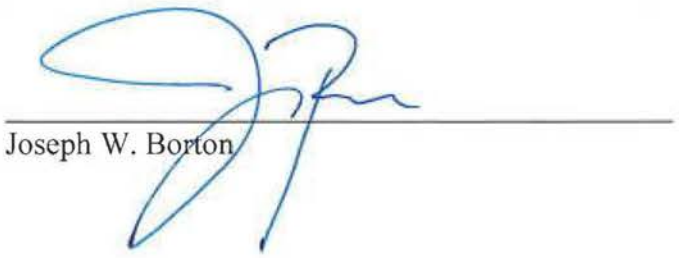

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