

Uldaho Law

## Digital Commons @ Uldaho Law

---

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

---

8-31-2020

### Ada County v. Browning Appellant's Brief Dckt. 47984

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

#### Recommended Citation

"Ada County v. Browning Appellant's Brief Dckt. 47984" (2020). *Idaho Supreme Court Records & Briefs, All*. 8214.

[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/8214](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/8214)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

ADA COUNTY,

Plaintiff-Respondent,

v.

PHILLIP BROWNING,

Defendant-Appellant,

and

CONSOLIDATED SUPPLY CO., IDAHO  
STATE TAX COMMISSION,  
WILMINGTON SAVINGS FUND  
SOCIETY, FSB, as Trustee of Stanwich  
Mortgage Trust A,

Defendants.

Supreme Court Docket No. 47984

---

**APPELLANT'S BRIEF**

---

**Appeal from the Fourth Judicial District for Ada County  
Honorable Steven Hippler, District Judge, Presiding**

---

Seth H. Diviney  
Idaho Injury Law Group, PLLC  
7253 W. Franklin Rd.  
Boise, ID 83709  
seth@idahoinjurylawgroup.com  
*Attorneys for Appellant*

Jan Bennetts  
Claire S. Tardiff  
Ada County Prosecutor's Office  
200 W. Front St., Room 3191  
Boise, ID 83702  
civilpfiles@adaweb.net  
*Attorneys for Respondent*

**TABLE OF CONTENTS**

I. STATEMENT OF THE CASE .....1  
    A. Nature of the Case .....1  
    B. Concise Statement of the Facts .....1  
II. ISSUES PRESENTED ON APPEAL .....2  
III. ATTORNEY FEES ON APPEAL .....2  
IV. ARGUMENT .....3  
    A. The County’s Arguments Were Unreasonable.....4  
        1. Standard of Review. ....4  
        2. The County did not present the argument credited to it. ....4  
        3. The County did not present reasonable arguments or a  
            legitimate question for the district court to address. ....10  
    B. Lemhi County’s holding was not limited to tax liens. ....12  
        1. Standard of Review .....12  
        2. District court erred by misconstruing the case law. ....12  
    C. Court erred by holding that Title 5 is ambiguous. ....15  
        1. Standard of Review. ....15  
        2. Court erred by misconstruing Title 5 and Title 31.....15  
    D. Browning was entitled to fees on a claim by claim or issue by issue basis. ....18  
        1. Standard of Review .....18  
        2. The district court abused its discretion by ignoring baseless arguments.....19  
        3. The County’s request for a personal judgment was baseless. ....20  
    E. Appellant deserves attorney fees because Ada County’s actions  
        violate the policy behind IC 12-117. ....21  
        1. The purpose behind Idaho Code 12-117 is to serve as a  
            deterrent to baseless government action.....21  
        2. Attorney fees serve as both a deterrent to government  
            action and as an incentive for attorneys to defend the defenseless. ....22  
        3. Matters of first impression are not a free pass to bring litigation.....23  
V. CONCLUSION.....25

## TABLE OF CASES AND AUTHORITIES

### CASES

<i>Arambarri v. Armstrong</i> , 152 Idaho 734, 741 (2012).....	10, 11, 15
<i>Arnold v. Stanley</i> , 158 Idaho 218 (2015).....	10, 23, 24
<i>Bogner v. State Dep't of Revenue &amp; Taxation</i> , 107 Idaho 854 (1984).....	21
<i>Childers v. Wolters</i> , 115 Idaho 527 (Ct. App. 1988).....	13
<i>City of Idaho Falls v. H-K Contrx., Inc.</i> , 163 Idaho 579 (2018).....	13
<i>Clark v. Jones Gledhill Fuhrman Gourley, P.A.</i> , 163 Idaho 215 (2017).....	20
<i>Friends of Farm to Market v. Valley Cty.</i> , 137 Idaho 192 (2002).....	15
<i>Goodman Oil Co. v. Scotty's Duro-Bilt Generator, Inc.</i> , 147 Idaho 56, 58 (2009).....	12
<i>Idaho Dep't of Env'tl. Quality v. Gibson</i> , 461 P.3d 706 (Idaho 2020).....	19
<i>Inclusion, Inc. v. Idaho Dep't of Health &amp; Welfare</i> , 161 Idaho 239, 242 (2016).....	22
<i>In re Hendricks</i> , 10.1 I.B.C.R. 5 (Bankr. D. Idaho 2010).....	5, 6, 8, 9, 10
<i>In re Estate of Kaminsky</i> , 141 Idaho 436 (2005).....	21, 22
<i>Inv'r Recovery Fund, LLC v. Hopkins</i> , 467 P.3d 406 (Idaho 2020).....	4, 19
<i>Jassaud v. Samuels</i> , 58 Idaho 191 (1937).....	5, 8, 10
<i>Kelly v. Leachman</i> , 3 Idaho 629 (1893).....	13, 14
<i>Kootenai County v. Harriman-Sayler</i> , 154 Idaho 13, 20-21 (2012).....	11
<i>Lemhi County ex rel. Gilbreath v. Boise Live Stock Loan Co.</i> , 47 Idaho 712 (1929).....	2, 3, 9, 13, 14
<i>Lane Ranch P'ship v. City of Sun Valley</i> , 145 Idaho 87 (2007).....	10, 14, 15
<i>Mendini v. Milner</i> , 47 Idaho 439 (1929).....	13, 14
<i>State v. Neal</i> , 159 Idaho 439, 444 (2015).....	16
<i>State v. Steensland</i> , 33 Idaho 529 (1921).....	13
<i>Verska v. Saint Alphonsus Reg'l Med. Ctr.</i> , 151 Idaho 889 2011).....	15, 16
<i>Waller v. Idaho Dep't of Health &amp; Welfare</i> , 146 Idaho 234 (2008).....	11
<i>Westover v. Cundick</i> , 161 Idaho 933 (2017).....	23

### STATUTES

I.C. § 12-117(1).....	1, 2, 3, 10, 19, 21, 22, 23, 24
I.C. § 5-201.....	15, 16, 17
I.C. § 5-218(1).....	2, 6, 15, 17, 18
I.C. § 5-224.....	2, 6, 9, 15, 18
I.C. § 15-3-803(a)(1).....	21
I.C. § 31-3504(4).....	18
I.C. § 31-3510A.....	20
I.C. § 45-901.....	17
I.C. § 45-1906(3).....	17
I.C. § 56-218A.....	17
I.C. § 56-218.....	21

## I. STATEMENT OF THE CASE

### A. Nature of the Case

This is an appeal of the district court's denial of a motion to reconsider an award of attorney fees under Idaho Code § 12-117. The case involves both de novo and abuse of discretion review.

### B. Concise Statement of the Facts

On April 12, 2012, the Appellant Phillip Browning (hereinafter Browning), was transferred real property by quit claim deed. The transfer took place without using a title company. On October 4, 2018, Ada County (hereinafter "County"), filed a complaint to foreclose against the property. The lawsuit also sought a personal judgment against Browning for his late aunt Gloria Browning's medical debt. (R. 34 at ¶ b.) Gloria Browning incurred this debt nineteen years before the County's lawsuit.

The lawsuit alleged that on August 31, 2000, Gloria and Marvin Browning filed a Uniform County Medical Assistance Application. (R. 31 at ¶ 9.) Then, on September 26, 2000, Ada County filed a Notice of Lien. (R. 36.) The County described the indigent lien as a "statutory lien." (R. 31 at ¶ 7.) Marvin Browning died November 25, 2004. Gloria Browning survived her husband Marvin and died September 3, 2006. Gloria Browning's estate was not probated. (R. 268.) "The County learned of the deaths of Marvin and Gloria on the date of their respective deaths." *Id.* From September 3, 2006 until October 4, 2018 the County took no action to enforce the statutory lien.

Both parties filed motions for summary judgment and Browning also filed a motion for judgment on the pleadings. On July 10, 2019, oral argument was held for these motions and the district court issued a written decision granting Browning's motion for summary judgment and motion for judgment on the pleadings on July 26, 2019. (R. 274.) Browning sought attorney's fees pursuant to I.C. § 12-117 and was denied. Browning timely filed a motion for reconsideration, which was mislabeled as a motion to amend. The district court properly ignored the mislabeling. The district court denied the portion of the reconsideration related to his motion for attorney fees. The district court found that the County's argument was not unreasonable because the indigent lien is perpetual even though the enforcement of the lien is subject to a statute of limitations. Browning timely appealed.

## **II. ISSUES PRESENTED ON APPEAL**

1. Whether the district court erred by relying on facts not in the record?
2. Whether I.C. §§ 5-201, 5-218, or 5-224 unambiguously apply to an indigent lien?
3. Whether *Lemhi County v. Boise Live Stock Loan Co.* applies to all statutory liens?
4. Whether the district court erred by failing to apportion fees on an issue by issue basis?
5. Whether the County's request for a personal judgment was baseless?

## **III. ATTORNEY FEES ON APPEAL**

Browning is entitled to fees on appeal under Idaho Code § 12-117. Browning was entitled to fees under Idaho Code § 12-117 in the underlying case because the County brought the lawsuit with no basis in fact or law. The statute of limitations barred the County's lawsuit nine years before the County filed the action. The County never cited any legal authority that could justify a

legitimate question for the district court to answer. The County did not acknowledge the current law. Therefore, the County never made an argument that the law should be changed. Because the County acted without any basis in fact or law, Browning is entitled to fees and costs.

#### IV. ARGUMENT

The district court improperly denied awarding Browning's attorney's fees pursuant to I.C. § 12-117. Ada County had no basis in fact or law to foreclose on an indigent lien that was time barred by Title 5. The district court did not apply the correct legal standard and also did not act consistently with the legal standards applicable to the specific choices available to it. The district court's decision should be reversed and should be remanded to instruct the district court to award Browning's fees and costs.

The district court abused its discretion by applying the incorrect legal standard, inconsistently applying the standard available, and unreasonably reaching its decision by relying on facts not on the record. The district court should have examined whether the County's argument was reasonable by determining whether the County presented a legitimate question for the district court. Finally, the district court relied on facts not in the record by crediting the County for presenting an argument that the County did not present.

The district court erred by finding statutory ambiguity without conducting a proper statutory analysis. The district court determined that "none of the statutes of limitations set forth in Title 5 of the Idaho Code unambiguously apply to perpetual statutory liens." (R. 409.) The district court also erred when it misconstrued the application of *Lemhi County v. Boise Live Stock Loan Co.*, 47 Idaho 712 (1929).

Finally, the district court abused its discretion by failing to examine whether the County's claims were reasonable on an issue by issue basis. The district court specifically ignored the County's baseless claim against Browning for a personal judgment.

**A. The County's Arguments Were Unreasonable.**

The district court abused its discretion by finding that the County's arguments were reasonable. The district court reached its decision by relying upon an argument the County did not present. This purported argument was also not reasonable. The arguments presented by the County and the arguments credited to the County were baseless because they contravened the cited legal authority.

1. Standard of Review.

The standard of review in awarding attorney's fees is abuse of discretion.

When reviewing for abuse of discretion, this Court considers whether the trial court (1) perceived the issue as one of discretion, (2) acted within the outer boundaries of that discretion, (3) acted consistently with the legal standards applicable to the specific choices available to it, and (4) reached its decision by an exercise of reason."

*Inv'r Recovery Fund, LLC v. Hopkins*, 467 P.3d 406 (Idaho 2020).

2. The County did not present the argument credited to it.

The district court described an argument that the County never presented. The County argued that "there is no statute of limitations governing the foreclosure of a lien." (R. 46.) However, the district court credited the County with a more nuanced position. The district court alleged that the County made a distinction between normal statutory liens and perpetual statutory



liens. The perpetual indigent lien was not time barred by a statute of limitations since the legislature never prescribed such a limitation. The County's briefing addresses a statute of limitations two times. In the first instance, the County argued that lien foreclosure is not subject to a statute of limitations:

There is, however, no statute of limitations governing the foreclosure of a lien; and there is no expiration of the lien. To satisfy the debt secured by the lien, the County is entitled to seek a foreclosure decree and proceed to a sale of the property. *See Jassaud v. Samuels supra.*

(R. 46.) In the second instance, the County's Reply brief attempted to explain why Title 5 does not apply:

Defendants argue that the Plaintiff failed to establish that the statutory liability is not time barred by the statute of limitations. '[T]echnically, the county needs the protection of the lien until the full amount of the claim [the County portion and the CAT portion] is reimbursed, lest the county become unsecured for its proportionate share of the balance due. In sum, the five year duration limitation on certain 'state liens' does not apply to the [medical indigency] lien at issue here.' *Id.* at 6. As stated by the Court in *In Re Hendricks*, 'The legislature has not seen fit to assign a specific duration to medical indigency liens, and the Court may not judicially impose such a limitation.' *Id.* at 7. Ada County's lien continues to be a valid lien and as such, it must be foreclosed to satisfy the debt secured thereby. *Jassaud v. Samuels*, 58 Idaho 191 (1937). This argument does not raise an issue of fact.

(R. 121-22.)

Outside of the briefing, the County argued for the indigency exemption rationale during oral argument:

MS. TARDIFF: Regarding the statute of limitations defense where the defendant claimed that the action being time-barred, there is case law that states that the legislature has not seen fit to assign a specific

duration to medical indigency liens and the Court may not judicially impose such limitations.

THE COURT: Well, let's talk about that for a minute. You're talking now about the statute of limitations. As I understand the County's argument is because there is no specific statute of limitation; in other words, because the legislature did not identify a specific time period in which an action must be brought to foreclose on a lien, you can seek to foreclose on it in perpetuity. Is that the County's position?

MS. TARDIFF: Yes.

THE COURT: What about §5-218, which is a statute of limitation for statutory liabilities, and this is a liability created by statute, correct? Or Idaho Code Section §5-224, Actions For Other Relief, also known as the catchall statute of limitations, which provides that an action for relief not hereunder provided, which is all the various statutes of limitation, must be commenced within four years after the cause of action shall have accrued.

In other words, did the legislature, at a minimum, even if the statute of limitations for statutory liability doesn't apply, didn't the legislature, by enacting a catchall in which all other causes of action not otherwise enumerated fall into for accrual purposes, didn't they say that we are not going to allow actions to be pursued in perpetuity simply because we did not provided a limitation period for.

MS. TARDIFF: In the same way that the lien has no expiration date under the statute--

THE COURT: Sure, the lien can go on forever, that doesn't mean that you can sit on your hands forever and not enforce it by foreclosure. I think that even the bankruptcy court in addressing a similar issue--

MS. TARDIFF: Is it *In Re Hendricks*?

THE COURT: It may be *In Re Hendricks*. Yes, *In Re Hendricks*, a 2010 bankruptcy case, in the Federal District of Idaho, suggested

that though the lien lives in perpetuity, the cause of action is likely subject to an accrual period.

MS. TARDIFF: Okay. Well, it's the County's position that this statute, because it has no expiration and because there's no requirement that the lien can be renewed, that we're able to go forward.

(Tr. pp. 9-11.) The County's briefing and oral argument do not present the argument that the district court attributed to it:

Here, in response to Browning's argument that the foreclosure was barred by the statute of limitations, the County aptly pointed out that, unlike with other statutory liens, the legislature did not set forth an expiration date or renewal scheme for medical indigency liens arising under Title 31 of the Idaho Code, nor was there anything in the Code expressly providing that medical indigency liens continue in perpetuity until the debt is paid. Because the lien was evidently perpetual, the County reasoned that its enforcement of the lien was not subject to the statute of limitations.

(R. 409 (emphasis added).)

The County did not point out how the indigent lien is an exception. Instead, the County argued in the first quote that there is no statute of limitations governing the foreclosure of any lien. In the second quote, the County simply conflated the issue of lien renewal with lien enforcement. The County argued that the indigent lien was not subject to the renewal requirement of other statutory liens. The district court relied on an additional argument that is not contained in the above quotes when the court stated that: "Because the lien was evidently perpetual, the County reasoned that its enforcement of the lien was not subject to the statute of limitations." Nowhere, did the County reason this. Perhaps the County meant to say what the district court credited to the County. However, the district court must rely upon the arguments that the County actually presented rather than the arguments that the district court presented on the County's behalf.

The oral argument makes this obvious. The district court interpreted the County's argument and asked the County whether the interpretation was correct: "[B]ecause the legislature did not identify a specific time period in which an action must be brought to foreclose on a lien, you can seek to foreclose on it in perpetuity. Is that the County's position?" The County affirmed, later stating that "it's the County's position that this statute, because it has no expiration and because there's no requirement that the lien can be renewed, that we're able to go forward." The County did not distinguish between lien renewal and a separate time bar related to a statute of limitations that bars enforcement of a valid lien. The district court made the distinction and credited the County with it.

It is important to concentrate on three very surprising arguments in the County's quotes:

- (1) "There is, however, no statute of limitations governing the foreclosure of a lien." (citing *Jassaud*).
- (2) "Ada County's lien continues to be a valid lien and as such, it must be foreclosed to satisfy the debt secured thereby." (citing *Jassaud*).
- (3) "The legislature has not seen fit to assign a specific duration to medical indigency liens, and the Court may not judicially impose such a limitation." (quoting *Hendricks*).

The holdings in *Jassaud* and *Hendricks* do not support the County's arguments. Nothing in the *Jassaud* decision described a statute of limitations. *Id.* The statute of limitations to foreclose on a mortgage, which was not at issue in *Jassaud*, had not run because the accrual began in 1934 and the Court's ruling took place in 1937. *Id.*; see also I.C. §5-225. *Jassaud* addressed a disguised security interest and a creditor's attempt to avoid having to go through the process of foreclosure, which is inapplicable to this case. *Id.*

The County also completely missed the point made by the *Hendricks* Court. There, the court explained the vital distinction between the perpetual existence of an indigency lien and the limited time the perpetual lien can be enforced. See *In re Hendricks*, No. 09-41113, 2010 WL 744259, at 5 (Bankr. D. Idaho Mar. 1, 2010). The lien's enforceability was subject to a statute of limitations while the lien itself did not expire. *Id.* The County's failure to read beyond its citation

punctuates the County's obvious misreading. The County borrowed the following quote from page 5 of the *Hendricks* decision:

The legislature has not seen fit to assign a specific duration to medical indigency liens, and the Court may not judicially impose such a limitation.

(R. 122.) However, the *Hendricks* Court does not draw the conclusions presented by the County.

The full quote reads:

The legislature has not seen fit to assign a specific duration to medical indigency liens, and the Court may not judicially impose such a limitation. Debtor has not shown that Bingham County's statutory medical indigency lien has expired in this case.

#### C. Statute of Limitations vs. Lien Duration.

In Debtor's briefing, and again during oral argument at the motion hearing, Debtor discussed whether the debt underlying the statutory lien was 'stale.' In particular, Debtor contends that the statute of limitations provided in Idaho Code 5-224 applies to the County's claim, and that since the debt is no longer enforceable, the statutory lien is no longer valid

...

The Idaho courts have considered the interplay between statutory lien duration and the statute of limitations to enforce claims. [Citing Lemhi]...

Based upon this decision [Lemhi County], it appears that while the County may lose its right to bring an action to collect Debtor's underlying debt under the County Program, its statutory lien will nonetheless continue in effect. Even if the County's claim is no longer enforceable by legal action against Debtor, the statutory lien remains vital.

*Hendricks* at 5. The holding in *Hendricks* contradicts the argument the County was credited with presenting. *Hendricks* argues that, *even though* the legislature did not prescribe a duration to the lien, the indigent lien cannot be enforced beyond the applicable statutes of limitations.

Presumably, the County “reasoned” that *because* the legislature did not prescribe a duration to the lien “the lien was not subject to a statute of limitation.” (R. 409.) The district court ignored the County’s baseless reliance on *Jassaud* and *Hendricks*. Then, the district court credited the County for making a reasonable argument. The County did not make this argument. However, even if the County had presented this argument, the argument is not reasonable because it contravenes the County’s cited authorities.

3. The County did not present reasonable arguments or a legitimate question for the district court to address.

The district court abused its discretion when it determined the County’s argument presented a reasonable argument but did not identify the County’s legitimate question. A nonprevailing party acting without a reasonable basis in fact or law is subject to pay the prevailing party’s attorney’s fees. I.C. § 12-117. A nonprevailing party cannot simply escape liability under I.C. § 12-117 just because an appellate court has never addressed a particular legal question. *Arnold v. City of Stanley*, 158 Idaho 218 (2015). However, an argument is not frivolous just because it contravenes the plain language of the applicable statute. *Arambarri v. Armstrong*, 152 Idaho 734, 741 (2012). The “question is ultimately whether the parties presented reasonable arguments.” *Id.* “No fees are available against a party that presents a ‘legitimate question for this Court to address.’” *Id.* (quoting *Lane Ranch P’ship v. City of Sun Valley*, 145 Idaho 87, 91 (2007)).

While the majority in *Arrambi* held that the plain reading of a statute did not support the appellant’s arguments, Chief Justice Burdick explained in his dissent why the plain reading of

the statute supported the appellant's arguments. *Arambarri*, 152 Idaho at 741. In that case the party presented a legitimate question where reasonable minds disagree. *Id.* In contrast, a nonprevailing party does not present a legitimate question when he "'identified no legal authority to support his claim' and failed to address 'the district court's factual or legal findings regarding the claim.'" *Kootenai County v. Harriman-Sayler*, 154 Idaho 13, 20-21 (2012) (quoting *Waller v. Idaho Dep't of Health & Welfare*, 146 Idaho 234, 240 (2008)). "Thus, a mere allegation of error, absent legal authority...is insufficient to present a legitimate question." *Id.* at 21.

Here, the district court cited *Arrambi* in determining the applicable legal standard. The district court noted that, "[j]ust because the [County's] argument contravenes the plain meaning of the statute does not mean that the argument is frivolous." (R. 409.) The district court then asserted that the "question is ultimately whether the parties presented reasonable arguments." *Id.* (citing *Arambarri v. Armstrong*, 152 Idaho 734, 741 (2012)). However, the district court did not actually apply the legal standard from *Arrambari* because the district court did not identify a "legitimate question" that had been presented by the County.

The County foreclosed upon the indigent lien by ignoring Title 5. The County did not provide any legal authority that could support its action. The County merely alleged that the lien was perpetual. It did not articulate any rationale that excepts it from Title 5. The district court provided the only rationale. Even if the County made the arguments that the district court said were made, the rationale was baseless. The mere allegation, absent legal authority, is insufficient to present a legitimate question. The district court's holding did not address the County's failure to support its claims with a legitimate legal authority.

The district court did not identify a legitimate question that was presented by the County. The district court did not show how the County's legal question was legitimate. The County did not argue statutory ambiguity. The County did not argue that Title 31 prescribed a different statute of limitation. The County did not argue that appellate authority was inapplicable. The district court credited the County with an argument that does not satisfy the district court's cited legal standard. Because no legitimate question was presented, the district court acted inconsistently with the legal standards applicable to the choices available to it.

**B. Lemhi County's holding was not limited to tax liens.**

1. Standard of Review

Whether the district court misconstrued an appellate holding is a question of law. The Court freely reviews questions of law. *Goodman Oil Co. v. Scotty's Duro-Bilt Generator, Inc.*, 147 Idaho 56, 58 (2009).

2. District court erred by misconstruing the case law.

The district court erred by finding that "*Lemhi County's* holding was limited to tax liens." (R. 209) (referring to *Lemhi County v. Boise Live Stock Loan Co.*, 47 Idaho 712 (1929)). *Lemhi County's* holding applies beyond just tax liens. *Id.* The *Lemhi* court held that a perpetual tax lien was barred by a statute of limitations. *Id.* It concluded that "[s]tatutes of limitations are statutes of repose so far as civil actions are concerned, and do not extinguish the lien. They apply to the remedy, and cut off the right of enforcement, although the lien still exists." *Id.* at 717-8.

However, the *Lemhi* decision is not limited to tax liens. See *City of Idaho Falls v. H-K Contrx., Inc.*, 163 Idaho 579, 584 (2018) (breach of contract dispute followed the *Lemhi* holding



that statute of limitations applicable to the state are also applicable to counties of the state); and *Childers v. Wolters*, 115 Idaho 527 (Ct. App. 1988) (tax judgment where there was no issue of a lien that followed holding that county tax is a “liability created by statute”). Two months prior to the holding in *Lemhi*, the Idaho Supreme Court reasoned:

Generally, if not universally, the obligation defined in this section [statute of limitations] is expressed or implied in respect to any lien. The lien of a mortgage is to continue until the debt secured thereby is paid, but such an understanding does not abrogate the statute of limitations. Statutes of limitation do not affect the right, but only bar the remedy.

*Mendini v. Milner*, 47 Idaho 439, 444 (1929). The *Lemhi* Court cited its earlier decision when it reasoned that statutes of limitations “apply to the remedy, and cut off the right of enforcement, although the lien still exists.” 47 Idaho at 718. The *Mendini* holding related to a mortgage *not* a tax lien. Even more telling, the *Lemhi* Court relied on its rationale from a criminal case when it stated that “[s]tatutes of limitations are statutes of repose so far as civil actions are concerned and do not extinguish the lien.” 47 Idaho at 718-9. (citing *State v. Steensland*, 33 Idaho 529 (1921)). The distinction between the period of time a lien can be enforced and the period of time that a lien can exist has been established even before the turn of the 20th century. *Kelly v. Leachman*, 3 Idaho 629 (1893). There, the *Leachman* Court held that a mortgage lien was not impaired by a statute of limitation. *Id.* at 635. It reasoned that the “statute of limitations does not have the effect to extinguish a debt, nor raise a presumption of payment. It only bars the remedy, and thus becomes a statute of repose.” *Id.*

The district court erred in finding that *Lemhi*'s holding only applied to tax liens. The district court reasoned that because *Lemhi* was inapplicable to indigent liens, it was not unreasonable for the County to contend that "the County's ability to foreclose transcended a limitation period." (R. 210.). Had the district court properly applied *Lemhi*'s holding to indigency liens, the district court would have also found that Title 5 unambiguously applied to the County's foreclosure action. It was error for the district court to narrow *Lemhi*'s application. Even if *Lemhi*'s holding were inapplicable, the district court failed to explain how the earlier holdings in *Leachman*, *Steenland*, and *Mendini* were also inapplicable to indigent liens, where none of the three cases involved a tax lien but were followed by the *Lemhi* Court anyway.

Thus, those three cases obviously transcended their respective case classifications. Courts have long held that the duration of a lien is distinguishable from the statute of limitations cutting off the enforcement of a lien. While the *Lemhi* holding provided the County with the most obvious legal authority barring the County's action, the County did not need to be confused by the applicability of *Lemhi* when the legal authority barring the County's lawsuit predated *Lemhi*'s holding by almost forty years. Thus, the district court erred by holding that the indigency lien's perpetual duration created ambiguity in applying Title 5. It erred by narrowly construing the applicability of the holding in *Lemhi* and in ignoring other established case law.

**C. Court erred by holding that Title 5 is ambiguous.**

1. Standard of Review

"Interpretation of an ordinance or statute is a question of law over which this Court exercises free review." *Lane Ranch P'ship v. City of Sun Valley*, 145 Idaho 87, 89 (2007).

“Analysis of a statute or ordinance begins with the literal language of the enactment.” *Id.* “Where the language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to construe the language.” *Friends of Farm to Market*, 137 Idaho 192, 197 (2002).

2. Court erred by misconstruing Title 5 and Title 31.

The Court abused its discretion by finding that Idaho Code §§ 5-201, 5-218, and 5-224 do not unambiguously apply to the indigency lien. Statutory analysis “must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.” *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893 (2011). “This Court interprets statutes according to their plain, express meaning and resorts to judicial construction only if the statute is ambiguous, incomplete, absurd, or arguably in conflict with other laws.” *Arambarri v. Armstrong*, 152 Idaho 734, 739 (2012). “Where the language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to construe the language.” *Friends of Farm to Mkt. v. Valley Cnty.*, 137 Idaho 192, 197 (2002). “An unambiguous statute would have only one reasonable interpretation. An alternative interpretation that is unreasonable would not make it ambiguous.” *Verska*, 151 Idaho at 896. *State v. Neal*, 159 Idaho 439, 444 (2015).

The district court’s statutory analysis did not “begin with the literal words of the statute.” The court made no attempt to address the words of the statutes at all. The statute of limitations

prescribed in Title 5 apply to all cause of actions except when a different limitation is prescribed by a statute:

Civil actions can only be commenced within the periods prescribed in this chapter after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute.

Idaho Code § 5-201.

The district court did not conduct any statutory analysis whatsoever. It concluded, without analysis, that “none of the statutes of limitations set forth in Title 5 of the Idaho Code unambiguously apply to perpetual statutory liens.” Yet, no section of Title 31 designates the indigent lien as a special case. Title 31 does not prescribe any different limitation as would allow for an exception to I.C. § 5-201. The district court did not cite a statute prescribing a “different limitation.” Title 31 does not prescribe any statute of limitation related to indigent liens. More importantly, the County never cited a different statute prescribing an exception from Title 5.

In order to overcome the hurdle, the court simply concluded that section 5-201 does not unambiguously apply to indigent liens. The district court’s analysis is not an application of logic. It is arriving at a predetermined result and calling it logical. The conclusion did not explain which words in Title 5 are ambiguous when applied to perpetual liens. It did not demonstrate how the plain meaning of Title 5 is ambiguous, incomplete, absurd, or arguably in conflict with other laws. Nor did it show through an exercise of reason that an alternative interpretation of Title 5 is reasonable. Instead, the district court began and ended its statutory analysis by forming a favorable conclusion for the County and then drawing a bull’s eye around it.

The district court focused on the interplay between Title 45 and Title 56.<sup>1</sup> However, like Title 31, Title 45 and Title 56 do not designate a different statute of limitations described by I.C. § 5-201. It does not matter that Title 45 statutory liens are distinguishable from Title 31 indigent liens. This distinction is completely irrelevant to whether I.C. § 5-201 is ambiguous. Unlike Title 45 liens, which specifically require renewal, Title 31 is silent on renewal, i.e. the indigent lien's renewal exemption is not prescribed by a statute. For that reason, indigent liens are perpetual. But the fact that Title 31 is silent as to renewal can hardly replace the requirement that Title 31 prescribe a different limitation or be bound by the limitations described in Title 5. The silence does not *prescribe* "a different limitation." Yet, somehow the district court (and presumably the County) relied upon the silence to justify an exception described by I.C. § 5-201.

Further, the district court did not apply the correct legal standard in finding that I.C. § 5-218(1) does not unambiguously apply to the foreclosure of an indigency lien. The statute reads:

An action upon a liability created by statute, other than a penalty or forfeiture. The cause of action in favor of the state of Idaho or any political subdivision thereof, upon a surety bond or undertaking provided for or required by statute shall not be deemed to have accrued against any surety on such bond or undertaking until the discovery by the state of Idaho or any political subdivision thereof of the facts constituting the liability.

Idaho Code § 5-218(1). The district court does not reach its decision by applying the required legal standard in a statutory analysis. The district court does not demonstrate that the "liability created by statute" set forth in I.C. § 5-218 conflicts with the liability created by I.C. § 31-

---

<sup>1</sup> After the district court analyzed I.C. §§ 45-901; 45-1906(3); 56-218A and 56-218, it concluded that "[w]hile medical assistance liens arising under Title 56 are among those six liens [that expire], medical indigency liens arising under Title 31 are not." (R. 269-70).

3504(4). The County itself alleges in the Amended Complaint that the indigent lien is a “statutory lien.” (R.31 at ¶ 7.) The district court does not explain how the County’s statutory lien could be construed as an exception to section 5-218. The exceptions to section 5-218 are described as either “a penalty or forfeiture.” The district court did not quote any language from Title 31 that may infer that the indigent lien is a “penalty or a forfeiture.” The court does not provide any analysis that actually challenges the plain meaning of I.C. § 5-218(1). Thus, the district court erred by finding that “none of the statutes of limitations set forth in Title 5 of the Idaho Code unambiguously apply to perpetual statutory liens.”

Finally, the district court did not describe any language from I.C. § 5-224 that creates ambiguity when it is applied to an indigent lien. The section reads: “An action for relief not hereinbefore provided for must be commenced within four (4) years after the cause of action shall have accrued.” I.C. § 5-224. The district court does not identify which word in this section creates the ambiguous application. The district court’s conclusion is inconsistent with the legal standards available to it. The district court erred by determining that Title 5 is ambiguous without properly conducting the required statutory analysis.

**D. Browning was entitled to fees on a claim by claim or issue by issue basis.**

1. Standard of Review

The standard of review in awarding attorney’s fees is abuse of discretion.

When reviewing for abuse of discretion, this Court considers whether the trial court (1) perceived the issue as one of discretion, (2) acted within the outer boundaries of that discretion, (3) acted consistently with the legal standards applicable to the specific

choices available to it, and (4) reached its decision by an exercise of reason.”

*Inv'r Recovery Fund, LLC v. Hopkins*, 467 P.3d 406 (Idaho 2020).

2. The district court abused its discretion by ignoring baseless arguments.

The district court abused its discretion by failing to award attorney fees for the portion of the foreclosure action that was not based in law or fact. “If a party to a proceeding prevails on a portion of the case, and ... the political subdivision...acted without a reasonable basis in fact or law with respect to that portion of the case, [the court] shall award the partially prevailing party reasonable attorney’s fees.” I.C. § 12-117(2). Until March 11, 2020, Idaho’s appellate courts never addressed whether “section 12-117 allows courts to award attorney’s fees on a claim-by-claim, or issue-by-issue basis.” *Idaho Dep't of Env'tl. Quality v. Gibson*, 461 P.3d 706 (Idaho 2020). Courts may award section 12-117 fees on a claim-by-claim or issue-by-issue basis. *Id.* In finding this, the *Gibson* Court reasoned that section “12-117(2) demonstrates an intent by Legislature to separate claims...and makes clear that a court must take into account the basis for such claims when assessing attorney’s fees.” *Id.* For example, when a claimant makes sixteen claims, a court may award attorney’s fees for seven of the claims where there was no basis. *Id.* A claim or an issue is not baseless even if the arguments meander or the briefing is frustrating. *Id.* An issue is not baseless if it has a complex statutory scheme, is novel, or makes a reasonable challenge to an issue that has vexed other courts. *Id.* The district court did not examine whether each claim or issue was baseless.

3. The County's request for a personal judgment was baseless.

The district court specifically ignored the County's claim for a personal judgment against Browning in an in rem action related to medical bills incurred nineteen years earlier by Browning's late aunt Gloria Browning. A lien foreclosure is an in rem cause of action. *Clark v. Jones Gledhill Fuhrman Gourley, P.A.*, 163 Idaho 215, 223 (2017). "The lien statute operates in rem, and not in personam. It creates no personal charge against the owner of the property, but rather a charge against the property to the extent of its value." *Id.* "The claim is not enforceable against the person." *Id.* Under Title 31, a debt paid by the indigency fund may result in personal liability. I.C. § 31-3510A. However, in such circumstances, the liability is created as an applicant rather than as a successor to an encumbered property. *Id.*

In this case, the district court ignored the County's claim against Browning for a personal judgment. The County had no basis to request a personal judgment against Browning for \$10,989.65. Browning had never subjected himself to a personal judgment and the County cited no authority to ask for this relief. Browning was entitled to fees for any portion of the case where the County acted without any basis. The district court abused its discretion by failing to address whether Browning was entitled to an award for defending against any baseless portion of the County's claim.

**E. Appellant deserves attorney fees because Ada County's actions violate the policy behind IC 12-117.**

1. The purpose of I.C. § 12-117 serves as a deterrent to baseless government action.



“The policy behind I.C. § 12-117 is to (1) serve as a deterrent to groundless or arbitrary agency action; and (2) provide a remedy for persons who have borne unfair and unjustified financial burdens defending against groundless charges or attempting to correct mistakes agencies never should ha[ve] made.” *In re Estate of Kaminsky*, 141 Idaho 436 (2005) (quoting *Bogner v. State Dep't of Revenue & Taxation*, 107 Idaho 854 (1984)). In *Kaminsky*, the Idaho Department of Health and Welfare (Department) filed a petition to “establish” a claim in the Estate of Joe Kaminsky (“Estate”) for recovery of Medicaid benefits, pursuant to I.C. § 56-218 approximately two years and eight months after Decedent's death. *Id.* The magistrate court, the district court, and the Idaho Supreme Court all denied the Department's petition for untimeliness because it was not presented within two years of his death (as required by statute). *Id.* Even though the issue of timeliness in filing or establishing a claim under I.C. § 15-3-803(a)(1) had never been addressed by the Idaho appellate courts, the Idaho Supreme Court, in awarding fees to the Estate, held:

Here, the Department's action invokes both purposes of the statutory policy. The action was groundless because the Department clearly waited too long to present its claim. It was not even required to do so. It is appropriate to discourage such action. Further, the Department's action placed an unjustified financial burden on the Estate. Thus, we award attorney fees on appeal to the Estate pursuant to I.C. § 12-117.

*Id.* at 439-40.

Here, Browning was compelled to retain an attorney to protect his home against Ada County’s unlawful foreclosure action. Like the Idaho Department of Health and Welfare in *Kaminsky*, Ada County’s statutory authority to bring an action had expired. Like the timeliness

for bringing an action in *Kaminsky*, the timeliness issue in this case has never been specifically addressed by the appellate courts. While the appellate courts have never specifically addressed whether an indigency lien is subject to a statute of limitations, like the litigation in *Kaminsky*, the County's arguments were baseless. Like in *Kaminsky*, the County's baseless lawsuit violated both purposes of the statutory policy. The action was groundless because the County foreclosed against a lien eleven years after the statute of limitations accrued without providing any legitimate question. I.C. § 12-117 was enacted to discourage unreasonable lawsuits. Further, the County's lawsuit placed an unjustified financial burden on Browning. Thus, this Court must award attorney fees to Browning pursuant to I.C. § 12-117.

2. Attorney fees serve as both a deterrent to government action and as an incentive for attorneys to defend the defenseless.

Appellant should be awarded attorney fees to both incentivize his attorney's efforts and to deter the County's actions. In a special concurrence by Chief Justice Jones, he stressed the importance of legal assistance for Idaho's under-represented classes. *See Inclusion, Inc. v. Idaho Dep't of Health & Welfare*, 161 Idaho 239, 242 (2016) (Chief Justice J. Jones, specially concurring). Although it related specifically to pro-bono work, it illustrates the importance of policies that properly incentive attorneys to represent the underdog. *Id.* The Chief Justice explained that pro bono work could lead to attorney fee awards and possibly add incentive for more attorneys to take on pro bono work. *Id.* He argued:

If we start calculating reasonable attorney fees to be awarded a prevailing party based solely on the client's out-of-pocket costs, we would eliminate fee awards for work done by lawyers handling cases on a pro bono basis. Generally, lawyers who do pro bono work do not expect to be compensated. They clearly do not expect to

receive payment from their clients. However, if a fee award may be available to a successful lawyer, it provides some incentive for lawyers to do pro bono work. To eliminate the possibility for an attorney to receive a fee award where no payment will be forthcoming from the client would be a disservice to the pro bono effort.

*Id.*

Appellants must be awarded attorney fees for both the purpose of deterring arbitrary and groundless government action, but also to incentives other Idaho attorneys to defend Idaho's indigent class.

3. Matters of first impression are not a free pass to bring litigation.

For the reasons stated above, Appellant disputes that Ada County's actions constitute a matter of first impression. Generally, a party is not entitled to attorney's fees if the issue is one of first impression in Idaho. *Westover v. Cundick*, 161 Idaho 933 (2017). However, asserting that an action involves a matter of first impression is not a "free pass" to bring an action based on unreasonable arguments. *Arnold*, 158 Idaho 218. A litigant cannot avoid fees under I.C. § 12-117 simply because the precise issue has not been addressed by the appellate courts. *Id.* The *Arnold*, Court awarded fees under I.C. § 12-117 despite acknowledging that the issue before it was a matter of first impression. The *Arnold* Court noted that it "typically" does not award attorney's fees under I.C. § 12-117 when addressing a matter of first impression. *Id.* at 224. However, courts are required to also take into consideration the legislative purpose of the applicable statutes. The "purpose of I.C. 12-117 is to serve as a deterrent to groundless or arbitrary action and to provide remedy for persons who have borne unfair and unjustified financial burdens defending against groundless charges." *Id.* (citation omitted). The *Arnold* Court concluded that

“[a]sserting that an [action] involves a matter of first impression is not ‘free pass’ to bring an [action] based on unreasonable arguments.” *Id.* Thus, even when the lawsuit involves a matter of first impression, the courts must award fees under I.C. § 12-117 when the lawsuit is based on unreasonable arguments.

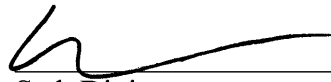
Here, the County’s arguments had no basis in fact or law. Moreover, the County has an even higher responsibility in a case involving an indigent lien. The County has a duty to care for its indigent poor. Ada County has seemingly endless resources to litigate baseless lawsuits. On the other hand, recipients of indigent medical care, by definition, do not have endless resources to litigate baseless lawsuits. The County’s great power comes with great responsibility. Ada County’s responsibility was to act consistently with the statutes of limitations as applied to lien foreclosure. The district court’s refusal to award attorney fees in this case serves as a proverbial “green light” for the County to pursue indigent citizens well beyond what is legally permitted without fear of consequence. The legislature intended to protect the public against the misuse of the County’s power by awarding the prevailing party his fees when the County acts without restraint. Because this is exactly what happened here, Browning is entitled to his attorney’s fees.

## V. CONCLUSION

The district court abused its discretion by relying on rationale that the County did not present in its argument. The arguments that the County presented and the ones credited to the County were baseless. The district court erred by misconstruing the application of the appellate authorities to the Title 5. The district court also erred by holding that Title 5 ambiguously applied to indigent liens. Finally, the district court abused its discretion by failing to award Browning’s

attorney's fees on an issue by issue basis. Specifically, the district court abused its discretion by ignoring the County's baseless request for a personal judgment against Browning in a lien foreclosure action. Browning respectfully requests this Court vacate the district court's denial of Browning's Motion for Reconsideration and remand to the district court.

DATED THIS 31st day of August 2020.

A handwritten signature in black ink, appearing to read 'Seth Diviney', written over a horizontal line.

Seth Diviney  
*Attorney for Defendant-Appellant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 31st day of August, 2020, I caused to be served a true and accurate copy of the foregoing **APPELLANT’S BRIEF** upon the following by the method indicated:

Jan M. Bennetts Claire S. Tardiff Ada County Prosecutor’s Office 200 W. Front Street, Room 3191 Boise, ID 83702 <i>Attorneys for Respondents</i>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> iCourt: <a href="mailto:civilpfiles@adaweb.net">civilpfiles@adaweb.net</a>
---	--

/s/ Seth H. Diviney \_\_\_\_\_  
Seth H. Diviney