

Uldaho Law

Digital Commons @ Uldaho Law

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

9-28-2020

Ada County v. Browning Respondent's Brief Dckt. 47984

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Ada County v. Browning Respondent's Brief Dckt. 47984" (2020). *Idaho Supreme Court Records & Briefs, All*. 8215.

https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/8215

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.

IN THE SUPREME COURT OF THE STATE OF IDAHO

ADA COUNTY,)
)
Plaintiff/Respondent,) **Supreme Court Docket No. 47984**
)
vs.) **Ada County Case No. CV01-18-18530**
)
PHILLIP J. BROWNING,)
)
Defendant/Appellant,)
)
and)
)
CONSOLIDATED SUPPLY CO., IDAHO)
STATE TAX COMMISSION, WILMINGTON)
SAVINGS FUND SOCIETY, FSB, AS)
TRUSTEE OF STANWICH MORTGAGE)
TRUST A,)
)
Defendants.)

RESPONDENT'S BRIEF

Appeal from the District Court of the Fourth Judicial District
Of the State of Idaho, in and for the County of Ada

Hon. Steven J. Hippler, District Judge, Presiding

JAN M. BENNETTS
Ada County Prosecuting Attorney

CLAIRE S. TARDIFF
Deputy Prosecuting Attorney, Civil Division
200 W. Front Street, Room 3191
Boise, ID 83702
Email: civilpfiles@adacounty.id.gov

Attorneys for Plaintiff / Respondent

SETH DIVINEY
Idaho Injury Law Group, PLLC
7253 W. Franklin Road
Boise, ID 83709
Email: seth@idahoinjurylawgroup.com

Attorneys for Defendant / Appellant

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES CITED	ii
STATEMENT OF THE CASE.....	1
I. Facts.....	1
II. Chronology	1
ISSUES ON APPEAL	2
STANDARD OF REVIEW	3
ARGUMENT	3
I. The denial of fees was based on the matter being one of first impression.....	3
II. There was only one claim, which was the county’s claim that it was entitled to foreclose on the Defendant’s property	5
CONCLUSION.....	6

TABLE OF CASES AND AUTHORITIES CITED

Cases:

Bremer, LLC v. East Greenacres Irrig. Dist., 155 Idaho 736, 316 P.3d 1091 (2013)4

Buckskin Properties, Inc. v. Valley Cnty., 154 Idaho 486, 300 P.3d 18 (2013)3

City of Osborn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012).....3

Idaho Dep’t of Environmental Quality v. Gibson, 166 Idaho 424, 461 P.3d 706 (2020)5

In Re Hendricks, 2010 WL 7442593

Inclusion, Inc. v. Idaho Dep’t of Health and Welfare, 161 Idaho 239, 385 P.3d 1 (2016) ...5

Lemhi Cnty. v. Boise Live Stock Loan Co., 47 Idaho 712, 278 P. 214 (1929).....4

Lincoln Land Co., LLC v. LP Broadband, Inc., 163 Idaho 105, 408 P.3d 465 (2017).....3

Marshall v. Dep’t of Transp., 137 Idaho 337, 48 P.3d 666 (Ct. App. 2002)4

People v. Johnson, 53 Cal.4th 519, 528, 267 P.3d 1125 (2012)4

Petrus Family Trust dated May 1, 1991 v. Kirk, 163 Idaho 490, 415 P.3d 358 (2018)5

Saint Alphonsus Reg’l Med. Ctr. v. Ada Cnty. (In Re Ferdig), 146 Idaho 862, 204 P.3d 502 (2009)4

United Investors Life Ins. Co. v. Severson, 143 Idaho 628, 151 P.3d 824 (2007)4

Wheeler v. Idaho Dep’t of Health and Welfare, 147 Idaho 257, 207 P.3d 988 (2009)4

Statutes:

Idaho Code 12-1173,4,5

Idaho Code 31-35041

Idaho Code 56-2182,4

Idaho Code 56-218A2,4

STATEMENT OF THE CASE

Appellant Browning has appealed from the district court's denial of fees on the basis that the matter raised is one of first impression. This is Ada County's response to Appellant's brief.

I. Facts.

Ada County approved a medical indigency application on behalf of Gloria Browning in 2000 for emergency medical services. In connection with the application, Ada County recorded its Notice of Lien in the Ada County Records on September 26, 2000, thereby perfecting its lien. The lien was unliquidated until the County paid the medical bills, but the Notice of Lien was never modified to reflect the amount needed to satisfy the lien.

Ada County was never repaid the \$10,989.65 that the County had expended, either by way of reimbursement payments from Gloria Browning or through the lien on Gloria Browning's real property located at 3939 Lemhi Street, Boise, Idaho. Ada County learned of multiple conveyances of this property after the death of Gloria Browning in September of 2006 and brought its foreclosure action against the current titleholder, Phillip Browning, seeking to obtain possession of the property in order to subject it to the payment of the lien.

II. Chronology

The Complaint for Foreclosure was filed in this matter on October 4, 2018. A.R., pp. 14-20. The Defendant's Answer was filed on November 6, 2018, asserting in part an affirmative defense that the action was not authorized under Idaho Code § 31-3504(4). A.R., pp. 21-26.

Ada County filed its Memorandum in Support of Motion for Summary Judgment on March 20, 2019. A.R., pp. 266-75. The County argued that the lien had no expiration and there was no statute of limitations governing the foreclosure of Ada County's unsatisfied lien. Defendant filed

its memo opposing the County's motion, challenging the validity of the lien and claiming that the foreclosure action was barred by Idaho Code §§ 56-218 and 56-218A. A.R., pp. 206-18. Defendant filed its separate motion for summary judgment on June 14, 2019, A.R., pp. 57-118, and a motion for judgment on the pleadings on June 29, 2019. A.R., pp. 206-18.

The Memorandum Decision on Summary Judgment and Other Motions was issued on July 26, 2019, granting summary judgment to Browning. A.R., pp. 266-75. The Court concluded that the County's action was untimely filed and further concluded that the issue that the Court was asked to resolve on summary judgment was a matter of first impression. A.R., p. 272.

The Court thereafter issued a Memorandum Decision and Order on Fees and Costs on January 29, 2020, denying the requested fees in the amount of \$117,772.50 to the Defendant as the prevailing party. A.R., pp. 353-57. Having previously concluded that the issue raised was an issue of first impression, the Court stated that, as a result, the Court could not find that the County had pursued the action without a reasonable basis in fact or law. In response to the Defendant's Motion to Amend Judgment, which was treated as a Motion to Reconsider, the Court issued its Memorandum Decision and Order on Motion to Reconsider, awarding costs but affirming its prior ruling denying fees. A.R., pp.402-11. The Defendant appealed from the Memo and Order dated March 29, 2020. A.R., pp. 414-19.

ISSUES ON APPEAL

1. Whether the district court erred by relying on facts not in the record?
2. Whether Idaho Code §§ 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?

STANDARD OF REVIEW

The Court reviews a district court denial of attorney fees under Idaho Code § 12-117 for an abuse of discretion. *Buckskin Properties, Inc. v. Valley Cnty.*, 154 Idaho 486, 300 P.3d 18, 29 (2013); *City of Osborn v. Randel*, 152 Idaho 906, 908, 277 P.3d 353, 355 (2012). To prove an “abuse of discretion,” the Supreme Court looks to three factors: (1) whether the trial court perceived the issue as one of discretion, (2) whether the trial court acted within the bounds of its discretion and consistent with legal standards applicable to the specific choices available to it, and (3) whether the trial court reached its decision by an exercise of reason. *Lincoln Land Co., LLC v. LP Broadband, Inc.*, 163 Idaho 105, 113, 408 P.3d 465, 472 (2017).

ARGUMENT

I. The denial of fees was based on the matter being one of first impression.

The only question involved in this appeal is whether the district court erred in holding that the issue before it on summary judgment was an issue of first impression. The issue as stated by the district court was “[w]hether medical indigency liens arising under Title 31 of the Idaho Code are subject to a statute of limitations.” A.R., pp. 271-72.

In determining the appropriate statute of limitations for enforcement of a medical indigency lien, the court examined the medical indigency statutes with regard to the related questions regarding the expiration of the lien and the time within which the lien could be enforced. The court found the Medical Indigency Act silent as to the life of the lien. A.R., p. 272. Notwithstanding the perpetual nature of the lien, however, the court relying on *In Re Hendricks*, 2010 WL 744259, (Bankr. D. Idaho March 1, 2010), concluded that the county could recover on a

medical indigency lien pursuant to Idaho Code §§ 56-218 and 56-218A). A.R., p. 273. The court further found that none of the statutes of limitations set forth in Title 5 of the Idaho Code unambiguously apply to perpetual statutory liens, and distinguished the perpetual lien from the tax lien at issue in *Lemhi Cnty. v. Boise Live Stock Loan Co.*, 47 Idaho 712, 278 P. 214 (1929). A.R., p. 410. The district court correctly held that *Lemhi County* was specific to tax liens and that no appellate court in Idaho has ever been asked to extend *Lemhi County* to determine the appropriate statute of limitations for enforcement of a medical indigency lien. A.R., p. 407.

An issue of first impression is one that has never been addressed by an Idaho appellate court. *Wheeler v. Idaho Dep't of Health and Welfare*, 147 Idaho 257, 207 P.3d 988 (2009), citing *Marshall v. Dep't of Transp.*, 137 Idaho 337, 341, 48 P.3d 666, 670 (Ct. App. 2002). It is not one previously addressed by an appellate court. *Bremer, LLC v. East Greenacres Irrig. Dist.*, 155 Idaho 736, 316 P.3d 1091 (2013). It is one that deals with a not well-settled area of law. *United Investors Life Ins. Co. v. Severson*, 143 Idaho 628, 151 P.3d 824 (2007). Therefore, whether Idaho Code § 56-218 barred the County's action to foreclose a perpetual medical indigency lien was the issue to be resolved by the district court, with no prior guidance from an appellate court.

This Court has held that where issues of first impression are raised, attorney fees will not be awarded. See *Saint Alphonsus Reg'l Med. Ctr. v. Ada Cnty. (In Re Ferdig)*, 146 Idaho 862, 863, 204 P.3d 502, 503 (2009) (denying attorney fees under Idaho Code § 12-117). Lower courts may decide questions of first impression and if a higher court believes the lower court decided a question erroneously, it can take appropriate action. *People v. Johnson*, 53 Cal. 4th 519, 528, 267 P.3d 1125 (2012).

II. There was only one claim, which was the county's claim that it was entitled to foreclose on the Defendant's property

The district court's ruling on the Defendant's request for attorney fees was issued on January 29, 2020. The district court's ruling on the Motion to Reconsider was issued on March 29, 2020, which was only days after this Court's opinion in *Idaho Dep't of Environmental Quality v. Gibson*, 166 Idaho 424, ___, 461 P.3d 706, 731 (2020). Defendant argues that based on the Supreme Court's opinion analyzing Idaho Code § 12-117(2), the district court herein should have examined claim-by-claim or issue-by-issue rather than to deny attorney's fees under § 12-117. However, the denial of fees was based upon the district court's conclusion that the matter was a matter of first impression.

When assessing attorney's fees, the court must take into account the basis for such claims. *Id.* Defendant contended for the first time in his response to the county's summary judgment motion that the county's action was barred because it was untimely filed under various statutes contained in Title 5, Idaho Code. The entire focus of the Defendant's efforts up to that time was seeking to invalidate the lien attached to the Defendant's real property by collaterally attacking the decision of the Ada County Board of Commissioners which approved the medical indigency application of Gloria Browning and by repeatedly requesting disclosure of the contents of the indigency file that supported the propriety of the lien.

Had the district court found that the Defendant was entitled to fees pursuant to Idaho Code § 12-117, it would have been guided by a reasonableness standard as "Idaho law does not equate reasonable attorney fees to actual attorney fees." *Inclusion, Inc. v. Idaho Dep't of Health and Welfare*, 161 Idaho 239, 241, 385 P.3d 1, 3 (2016). In *Petrus Family Trust dated May 1, 1991 v. Kirk*, 163 Idaho 490, 503, 415 P.3d 358, 371 (2018), the court reasoned that it would be inequitable

to make a six-figures award when an early statute of limitations challenge might have nipped the litigation in the bud. “The statute of limitations could’ve been raised much earlier in the course of the litigation and obviated the need to litigate the claim any further. Show-stopping defenses that don’t require much discovery, like the statute of limitations defense here, should be tested early.”

Id.

Here, the Defendant’s claim for an attorney fee award of \$117,772.50 can be viewed in a similar light and deemed unreasonable. Notwithstanding, it was the district court’s holding that the matter before it was a matter of first impression that precluded any award under the statute.

CONCLUSION

Respondent respectfully asks the Court to affirm the decision of the district court on the denial of attorney fees.

DATED this 28th day of September, 2020.

JAN M. BENNETTS
Ada County Prosecuting Attorney

By:



Claire S. Tardiff
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of September, 2020, I served a true and correct copy of the foregoing RESPONDENT’S BRIEF to the following person(s) by the following method:

SETH DIVINEY
Idaho Injury Law Group, PLLC
7253 W. Franklin Road
Boise, ID 83709

Hand Delivery
 U.S. Mail
 Certified Mail
 E-serve: seth@idahoinjurylawgroup.com

/s/ Chyvonne Tiedemann
Chyvonne Tiedemann
Legal Assistant