

BOISE, MONDAY, AUGUST 24, 2009 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

DAVID NELSON and LOY PEHRSON, et al,)

Plaintiffs-Counterdefendants-Appellants,)

Docket No. 35543

v.)

BIG LOST RIVER IRRIGATION DISTRICT; Board of Directors, RICHARD REYNOLDS, CHARLIE HUGGINS, KENT HARWOOD, JOEL ANDERSON, BRUCE WARNER, IDAHO DEPARTMENT OF WATER RESOURCES, and DAVID R. TUTHILL, JR., Director,)

Defendants-Counterclaimants-Crossdefendants-Respondents,)

and)

ROBERT WADDOUPS, et al, JAY F. PEARSON, et al,)

Intervenors-Counterclaimants-Crossclaimants-Respondents)

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Custer County. Hon. Shindurling, District Judge.

Hutchinson and Brown, LLP, Twin Falls, for Plaintiffs-Counterdefendants-Appellants D. Nelson and L. Pehrson, et al.

Kent Fletcher Law Office, Burley, for Defendants-Counterclaimants Crossdefendants-Respondents Big Lost River Irrigation District, and Board of Directors R. Reynolds, C. Huggins, K. Harwood, J. Anderson and B. Warner.

Hon. Lawrence G. Wasden, Attorney General, Boise, for Defendants-Counterclaimants Crossdefendants-Respondents Idaho Department of Water Resources and D. Tuthill, Jr., Director.

Holden, Kidwell, Hahn & Crapo, Idaho Falls, for Intervenors-Counterclaimants-Crossclaimants-Respondents R. Waddoups, et al, J. Pearson, et al.

This appeal arises from the district court's summary judgment declaring that water distribution rules promulgated by the Idaho Department of Water Resources (IDWR) for Water District 34 do not control the manner in which the Big Lost River Irrigation District (BLRID) assesses conveyance losses among its members, and that a 1936 judicial decree confirming the establishment of the BLRID does not prevent the BLRID from instituting the universal shrink method of conveyance loss.

The appellants are 63 water users who brought an action for declaratory judgment challengingly BLRID's decision to allocate water loss incurred when water stored by BLRID in the Mackay Reservoir is conveyed through the channel of the Big Lost River to its members on a universally proportionate basis.

Two main issues are presented on appeal. First, whether BLRID has discretion to determine the method in which it assigns conveyance loss to its water users, or is it bound to follow the method prescribed by IDWR's *Water Distribution Rules for Water District 34*. Second, whether a 1936 Judgment and Decree controls the manner in which BLRID allocates water conveyance loss among its members. In addition, BLRID challenges whether the district court had jurisdiction over the dispute. Finally, the appellants, BLRID and the Intervenor-Respondents all seek an award of attorney fees on appeal.

BOISE, MONDAY, AUGUST 24, 2009 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

VERNON K. SMITH, JR.,)	
)	
Employer/Appellant,)	
v.)	Docket No. 35651
)	
IDAHO DEPARTMENT OF LABOR,)	
)	
Respondents.)	

Appeal from the Industrial Commission of the State of Idaho.

Vernon K. Smith, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

This case arises from the Idaho Department of Labor's (the Department) determination that Vernon K. Smith (Smith) willfully failed to file a fourth quarter 2007 Idaho Employer's Quarterly Unemployment Insurance Tax Report. Smith appealed the Department's determination to the Appeals Examiner and the Appeals Examiner affirmed the Department. Smith appealed to the Industrial Commission (the Commission). The Commission determined Smith's appeal to be untimely. Smith appeals that determination to this Court. Smith's appeal to the Commission bears a private postage meter date which would make his appeal timely. Smith contends that the meter stamp date is the same as a postmark date applied by the United States Postal Service. Whether a private postage meter date constitutes a postmark for purposes of filing an appeal with the Commission is a question of first impression in Idaho.

BOISE, MONDAY, AUGUST 24, 2009 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

GENE FRANCIS STUART,)	
)	
Petitioner-Appellant,)	
)	
v.)	Docket No. 34198
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	
)	
GENE FRANCIS STUART.)	
)	
Petitioner-Appellant,)	
)	Docket No. 34199
v.)	
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	
)	
IN RE: PAUL EZRA RHOADES/ RANDY)	
LYNN MC KINNEY/GERALD ROSS)	
PIZZUTO, JR./ DAVID LESLIE CARD/)	
JAMES H. HAIRSTON,)	Docket No. 35187
)	
Defendants-Appellants,)	
)	
v.)	
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

Appeal from the District Court of the Second Judicial District of the State of Idaho, Clearwater County. Honorable Ron Schilling, District Judge. (Stuart)

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Butte County. Honorable James C. Herndon, District Judge. (McKinney)

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Bonneville County. Honorable Jon J. Shindurling, District Judge. (Rhoades)

Appeal from the District Court of the Second Judicial District of the State of Idaho, Idaho County. Honorable John Bradbury, District Judge. (Pizzuto)

Appeal from the District Court of the Third Judicial District of the State of Idaho, Canyon County. Honorable Juneal C. Kerrick, District Judge. (Card)

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, Bannock County. Honorable Peter D. McDermott, District Judge. (Hairston)

Nevin, Benjamin, McKay & Bartlett, LLP, Boise, and Federal Defender Services of Idaho, Moscow, for appellants Stuart, Rhoades, Card and Hairston.

Office of the Federal Defender for the Eastern District of California, Sacramento, for appellants McKinney and Pizzuto.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

This case asks this Court to decide whether *Ring v. Arizona*, 536 U.S. 584 (2002), a decision by the United States Supreme Court requiring juries and not judges to pronounce death sentences, is entitled to retroactive effect under the Idaho State Constitution, in light of another U.S. Supreme Court decision, *Danforth v. Minnesota*, 128 S.Ct. 1029 (2008).

Petitioners Paul Rhoades, Randy McKinney, Gerald Pizzuto, David Card, James Hairston, and Gene Stuart (collectively referred to as Petitioners) were all convicted of first degree murder. At the time each Petitioner was sentenced, I.C. § 19-2525 set forth the procedure a court must follow when the State sought the death penalty. The statute required that a judge find certain aggravating circumstances beyond a reasonable doubt before the court could sentence the defendant to death. The trial court at each of Petitioners' trials complied with I.C. § 19-2525 and sentenced each Petitioner to death. Petitioners subsequently directly appealed their convictions and sought postconviction relief. The judgment against each Petitioner was final when the U.S. Supreme Court issued *Ring*.

Within 42 days of the issuance of *Ring*, each Petitioner filed with the appropriate district court a petition for postconviction relief, petition for writ of habeas corpus, and a motion to correct an illegal sentence pursuant to I.C.R. 35. In each case, the district court dismissed Petitioners' claims for relief. Petitioners each appealed to this Court. This Court previously addressed all of Petitioners' appeals except Stuart's appeal, which this Court addresses for the first time in the instant case. This Court dismissed Petitioners' appeals. All Petitioners, except Stuart subsequently petitioned the U.S. Supreme Court for a writ of certiorari. The U.S. Supreme Court vacated the judgments and remanded the cases to this Court for further

consideration in light of its decision in *Danforth*. This Court consolidated all of Petitioners' remanded appeals into the instant proceeding, in addition to Stuart's appeal.

Petitioners argue that under *Danforth* and Idaho's retroactivity doctrine, this Court must give retroactive effect to *Ring* and vacate Petitioners' death sentences for resentencing. The State argues that I.C. § 19-2719 requires this Court to again dismiss Petitioners' appeals. Alternatively, the State urges this Court to adopt the federal retroactivity doctrine from *Teague v. Lane*, 489 U.S. 288 (1989), and hold that *Ring* is not retroactive under Idaho law.