

BOISE, WEDNESDAY, AUGUST 26, 2009 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

DRY CREEK PARTNERS, LLC,)	
)	
Plaintiff-Appellant,)	
)	
v.)	
)	Docket No. 35641
ADA COUNTY COMMISSIONERS, ex rel)	
STATE OF IDAHO, and JOHN DOES I)	
through X,)	
)	
Defendants-Respondents.)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. D. Duff McKee, District Judge.

Susan L. Mimura, Meridian, for appellant.

Greg Bower, Ada County Prosecutor, Boise, for respondent.

Dry Creek Partners, LLC (Dry Creek) holds an ownership interest in a subdivision project known as Red Hawk Estates Subdivision (Red Hawk). Dry Creek intended to develop the property in phases and obtained the Ada County Board of Commissioners' (Board) approval of the preliminary plats for the first two phases. Two years after the Board approved the preliminary plat for Phase II, Dry Creek received a time extension granting it an additional year to obtain the Board's approval of the final Phase II plat. Approximately eleven months after receiving the extension, Dry Creek filed a second request for a time extension seeking one more year to complete the final plat for Phase II. Ada County Development Services (ACDS) denied Dry Creek's request, relying on an ordinance that specifically provides for one time only extension per applicant.

Dry Creek appealed the denial to the Board and also filed a request for mediation, claiming the delay in submitting the final plat was due to an easement dispute with neighboring property owners. After holding a public hearing, the Board ordered mediation between Dry Creek and the adjacent property owners and tabled consideration of Dry Creek's appeal until a later meeting, which was to be held in approximately six weeks. By the time of the next meeting, no mediation had occurred and, consequently, the Board rescinded its mediation order and affirmed ACDS's decision to deny Dry Creek's request for a second time extension. Dry Creek appealed to the district court, which affirmed both of the Board's decisions. Dry Creek now appeals to this Court, arguing the district court erred in upholding the Board's decisions

because the Board neglected Idaho law, violated Dry Creek's fundamental rights, and caused Dry Creek actual harm. In addition, it argues the County's ordinance governing time extensions is arbitrary, capricious, and an abuse of discretion.

BOISE, WEDNESDAY, AUGUST 26, 2009 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**OREGON MUTUAL INSURANCE)
COMPANY, an Oregon corporation,)
individually and on behalf of its insureds Dale)
and Kelly Bramlette, and Tananda Bramlette,)
Plaintiff-Appellant,)**

v.)

**FARM BUREAU MUTUAL INSURANCE)
COMPANY OF IDAHO, an Idaho)
corporation, and WESTERN COMMUNITY)
INSURANCE COMPANY, an Idaho)
corporation, and CHRIS KEISER, an)
individual, and LOWELL THOMPSON, an)
individual,)
Defendants-Respondents.)**

Docket No. 35269

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Darla S. Williamson, District Judge.

Lopez & Kelley, Boise, for appellant.

Saetrum Law, Boise, for respondent.

This case arises from a declaratory action between insurance companies to determine whether a driver had permission to drive an insured's vehicle at the time of an automobile collision. Appellant Oregon Mutual Insurance Company (Oregon Mutual) appeals from the district court's trial decision, arguing that *res judicata* (collateral estoppel) should have precluded Respondents Farm Bureau Mutual Insurance Company of Idaho (Farm Bureau), Western Community Insurance Company (Western Community), and Chris Kiser (Kiser) from litigating the issue of permissive use. Alternatively, Oregon Mutual contends that the district court erred in finding that defendant Lowell Thompson (Thompson) had permission to drive the insured's vehicle at the time of the accident.

On January 21, 2006 Thompson and Kiser were involved in an automobile accident near Middleton, Idaho. At the time of the accident, Thompson was driving a 1989 Toyota Celica (the vehicle) owned by his girlfriend Tananda Bramlette and her mother Kelly Bramlette. The vehicle was insured by Oregon Mutual, in the name of Tananda's father, Dale Bramlette.

Kiser's insurers, Farm Bureau and Western Community, subsequently filed arbitration claims against Oregon Mutual, seeking indemnification and reimbursement for benefits paid to Kiser for losses related to the accident. In November 2006, Oregon Mutual filed a declaratory action against Farm Bureau, Western Community, Kiser, and Thompson, seeking a judgment that Thompson did not have express or implied permission to drive the vehicle, and therefore, Oregon Mutual was not required to defend, indemnify, or otherwise provide coverage for Thompson for all claims arising from the January 21, 2006 accident. Oregon Mutual also sought a declaration that Kiser did not have any claims against Dale, Kelly, or Tananda Bramlette because Thompson did not have permission, express or implied, to drive the vehicle.

Farm Bureau, Western Community, and Kiser filed an Answer to Oregon Mutual's Complaint in December 2006. Thompson failed to respond to the Complaint, and the district court entered a default order and judgment against him on January 3, 2007. Oregon Mutual's motion for summary judgment against the remaining defendants was denied. After a bench trial in January 2008, the district court issued its Trial Decision and Judgment, determining that at the time of the accident, Thompson had permission of co-owner Tananda Bramlette to drive the vehicle and the owner's insurance covered him while driving.

BOISE, WEDNESDAY, AUGUST 26, 2009 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	
)	Docket No. 34965
v.)	
)	
JEROME L. KORN,)	
)	
Defendant-Appellant.)	

Appeal from the District Court of the Third Judicial District of the State of Idaho, Payette County. Honorable Renae J. Hoff, District Judge.
Honorable William B. Dillon, Magistrate Judge.

Kelly Whiting, Fruitland, for Appellant.

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

This case arises from a jury's conviction of Jerome L. Korn for possession of wild or exotic animals and possession of deleterious exotic animals without a permit. Korn appeals the district court's decision affirming the magistrate court's denial of his motion to dismiss the case against him and the magistrate court's exclusion of uncertified copies of orders from a bankruptcy court. The magistrate judge ruled that Payette County's (the County) passing of an ordinance prohibiting the possession of exotic animals did not violate the contract clauses of either the U.S. or Idaho constitutions and sustained the State's objections to admitting copies of orders from Korn's bankruptcy because they were not certified.

In 2004, Korn lived in Nampa, Idaho, where he operated a zoo. In late 2004, he filed for bankruptcy protection. In March or April of 2005, the bankruptcy court ordered Korn to sell his zoo property in Nampa. In late April of 2005, Korn looked at a property in the county, and upon learning that exotic animals were not mentioned in the County's ordinances, entered into an agreement with his mother to buy the property. The property was to serve both as a residence for Korn and as a place to build a new facility to house Korn's zoo animals. Korn's mother put up \$30,000 in order commence construction on the new zoo building on May 5, 2005. A corporation known as Diversified Developmental Resources (DDR) agreed to purchase Korn's Nampa property in May or June of 2005, and in addition DDR committed \$50,000 towards building the new zoo facility in the county so that it could more quickly take possession of the Nampa property. DDR took over construction of the new facility in August, 2005, and eventually contributed approximately \$600,000 towards the project.

On May 16, 2005, and again on May 23, 2005, the County passed an ordinance that prohibits the possession of certain exotic animals. The County published the ordinance, and it became effective on June 1, 2005.

On February 23, 2006, the Idaho Department of Agriculture denied Korn's application for a permit to possess deleterious exotic animals. On March 13, 2006, the County served Korn with a notice that he was in violation of its ordinance prohibiting possession of certain exotic animals and requested that he abate and remove his exotic animals from the new facility. On April 19, 2006, the State of Idaho (the State) filed a criminal complaint against Korn alleging in Count I that Korn possessed exotic animals in violation of the County's ordinance and in Count II that he was in violation of I.C. § 25-3905 and Idaho Administrative Code (IDAPA) § 02.04.27.111 for possessing deleterious exotic animals without a permit. On June 12, 2006, Korn filed a motion to dismiss Count I of the complaint, alleging that the County's ordinance violates the contract clauses of the U.S. and Idaho constitutions. The magistrate court denied Korn's motion on August 4, 2006.

During a jury trial on August 4, 2006, in his effort to prove the defense of necessity, Korn attempted to admit copies of two orders from a bankruptcy court. The State objected on the grounds that the copies were not certified, and the magistrate judge sustained the State's objections. The jury convicted Korn on both counts. Korn appealed the magistrate judge's denial of his motion to dismiss and its exclusion of the bankruptcy orders to the district court, and the district court affirmed the magistrate court. Korn timely appeals to this Court.