

1-1-2015

Brown v. Greenheart, 335 P.3d 1 (Idaho 2014)

Blaine Bengston

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>

Custom Citation

Blaine Bengston, Court Report, Brown v. Greenheart, 335 P.3d 1 (Idaho 2014), 18 U. Denv. Water L. Rev. 443 (2015).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

way to the Chattooga. However, the Court noted that the Forest Service's 2012 decision only authorized floating on portions of the river that are downstream from the Rust family's property. Accordingly, the Court characterized this concern, and any associated environmental impact, as too speculative to require NEPA analysis.

Last, the Court quickly addressed whether the district court had erred in limiting the scope of ForestWatch's intervention. On appeal, ForestWatch attempted to depart from its assigned role of defending the Forest Service's remaining restrictions and instead challenge the Forest Service's decision to permit any floating at all under NEPA and the WSRA. The Court declined to address these new arguments on appeal, and found that the only issue ForestWatch could properly raise on appeal was the district court's decision to limit its scope of intervention. The parties disputed the proper standard of review, but the Court determined, and ForestWatch's counsel admitted at oral argument, that a review of the district court's decision to limit ForestWatch's intervention ultimately hinged on whether the decision was fundamentally unfair. Because the district court preserved ForestWatch's opportunity to raise its NEPA and WSRA claims in a pending lawsuit related to the matter, and carefully limited its decision to insulate ForestWatch's claims against the Forest Service, the Court found no evidence of fundamental unfairness.

Accordingly, the Court dismissed all challenges brought against the Forest Service by American Whitewater, the Rust family, and ForestWatch, and held that the Forest Service's WSR management and oversight plan for the Chattooga River was not arbitrary and capricious under the APA, that the Forest Service's WSR management and oversight plan complied with the WSRA, and that the Forest Service's analysis satisfied NEPA.

R.J. Colwell

STATE COURTS

IDAHO

Brown v. Greenheart, 335 P.3d 1 (Idaho 2014) (holding (i) the statute of limitations for a quiet title action does not begin to run until a party claims a right in property that is adverse to another; (ii) the statute of limitations for mutual mistake does not begin to run until the facts constituting the mistake are discovered, not when the mistake is discoverable; (iii) the plaintiffs adequately pleaded the issue of mutual mistake; and (iv) the property conveyance was ambiguous and, therefore, the trial court did not err in considering extrinsic evidence to resolve the ambiguity).

Jay Brown and Christine Hopson-Brown owned a 320-acre parcel of land in Elmore County, Idaho ("Brown Property"). In 2000, the Snake River Basin Adjudication Court decreed water rights associated with the parcel to the Browns. The rights authorized the Browns to irrigate a total of 287 acres. In

2003, the Browns agreed to idle 160 acres of their property from irrigation and lease the associated water rights to the Idaho Water Resource Board. Three years later, the Browns listed sixty unirrigated acres of their property for sale, communicating to their real estate agent that they did not wish to transfer any water rights with the listed sixty acres.

Augusta Greenheart purchased the sixty acres of land from the Browns. The real estate agent verbally informed Greenheart that the land was “dry,” and that there were no water rights associated with the property. The purchase and sale agreement included two provisions about the associated water rights. The first provision stated: “Seller represents that the property does have the following utilities, improvements, & other rights available.” The provision was marked “not applicable.” The second provision, paragraph 16, stated: “WATER RIGHTS: Description of water rights, water systems, wells springs, water, ditches, ditch rights, etc. if any, that are appurtenant thereto that are on or used in connection with the premises and shall be included in the sale unless otherwise provided herein.” This provision was left blank. Additionally, in the Seller’s Disclosure Form accompanying the purchase and sale agreement, the parties marked the disclosure “Irrigation water provided by” as not applicable.

In 2007, First American Title prepared a warranty deed conveying the sixty-acre piece of land to Greenheart, granting the premises “with their appurtenances.” Soon after, Greenheart noticed that, contrary to the conversations she had with the real estate agent and the Browns, her new property was classified as irrigated agriculture for tax purposes. Greenheart submitted a challenge with the Elmore County Board of Equalization to have the property classified as dry-grazing. The Elmore County Board of Equalization adjusted the classification, which decreased her taxes by six hundred dollars annually.

In 2012, the City of Mountain Home entered into discussions with the Browns to purchase their water rights for two thousand dollars per acre. During the negotiations, the Browns’ attorney notified the city that the Browns might have conveyed some of their water rights to Greenheart during the 2006 sale because of the “appurtenances” language contained in the 2007 warranty deed. After the Browns notified Greenheart of the possible mistake, Greenheart filed a notice of change of water right ownership with the Idaho Department of Water Resources (“IDWR”). IDWR approved Greenheart’s request, granting her ownership of a portion of the Browns’ water rights.

The Browns filed a quiet title action “and sought declaratory judgment that they owned the water rights because the claim that the water rights passed under the appurtenances clause of the warranty deed was rebuffed by facts demonstrating that the parties did not intend to convey water rights.” The district court found that inclusion of the appurtenance language in the warranty deed was based on a mutual mistake between the parties, that the Browns were entitled to equitable relief on the grounds of quasi-estoppel and waiver, and entered a judgment reforming the warranty deed to reserve the water rights to the Browns.

On appeal, the Supreme Court of Idaho (“Court”) first addressed Greenheart’s contention that the Browns’ quiet title action and mutual mistake claim were both time-barred. The Court agreed with the district court and held that the statute of limitations provided in Idaho Code section 5-224 did not pro-

hibit the Browns' quiet title action. The court noted that a cause of action for quiet title does not begin until a party "claims an interest in property 'adverse to' another." The Court determined that the statute of limitations period did not begin to run until Greenheart asserted a claim to the water rights by filing the notice to change ownership with the IDWR.

The Court also rejected Greenheart's assertion that the three-year statute of limitations provided in Idaho Code section 5-218(4) prohibited the Browns' mutual mistake claim. Greenheart argued that the Court should adopt "a bright line rule that a party is expected to realize the alleged fraud or mistake at the time of execution of a deed." In refusing to adopt such a rule, the Court noted that the statute expressly states a cause of action does not accrue "until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." The Court held that this did not occur until the Browns' attorney discovered the mistake in 2012. Prior to that, both parties had operated under the assumption that the sale did not transfer water rights. Greenheart failed to produce evidence to the contrary.

Next, the court addressed the Browns' mutual mistake claim. The district court ruled that the Browns were entitled to reformation of the deed based on mutual mistake. The district court found that "both parties shared a vital misconception about the water rights . . . and that the misconception was so substantial and fundamental as to defeat the object of the parties, which was the sale of dry-grazing land." Greenheart did not challenge the factual basis of the district court's ruling, but argued that the district court erred because the Browns did not plead mutual mistake, or in the alternative, that they did not plead mutual mistake with sufficient particularity. The Court disagreed and found that the Browns sufficiently pleaded the mutual mistake claim and that Greenheart had adequate notice that the issue would be litigated.

Greenheart also asserted a negligence claim against the Browns, arguing that they were negligent in protecting their interests in the water rights by not seeking legal advice during the sale. The district court concluded that the Browns acted reasonably because they sought the assistance of a licensed real estate agent. Because the district court's discussion of negligence was only in the context of the statute of limitations argument, Greenheart's independent negligence claim was being raised for the first time on appeal and the Court declined to address it.

Last, Greenheart appealed the district court's decision that the purchase and sale agreement was ambiguous. The Court noted that, "[a] contract term is ambiguous when there are two different, reasonable interpretations of the language." The Court held that the district court did not err in finding paragraph 16—providing for a "[d]escription of water rights . . . if any, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein"—ambiguous because the term "herein" is inherently ambiguous. The Court also held that the agreement was ambiguous as to whether water rights were transferred, because the Browns checked the box indicating that a water rights transfer fee was not applicable. The Court stated that, "[i]f water rights were intended to be transferred, then the payment of the transfer fee would very much be applicable." As a result, the Court held that the district court did not err in considering extrinsic evidence to resolve the ambiguity.

Accordingly, the court affirmed the district court's findings in all respects, and held that the Browns were entitled to reformation of the original deed to specifically reserve all water rights to the Browns.

Blaine Bengston

MONTANA

Eldorado Co-op Canal Co. v. Lower Teton Joint Objectors, 337 P.3d 74 (Mont. 2014) (holding that (i) water commissioners' use of a ditch to divert water to a property was a management tool, not a right personal to the user; and (ii) the Water Court acted properly in listing the water rights that could be diverted through the ditch).

The Ninth Judicial District Court of Montana ("district court") appointed Water Commissioners to administer certain water rights diverted from the Teton River pursuant to a 1908 water rights decree in *Perry v. Beattie*. That case determined the priority date and flow rate of dozens of Upper Teton water right claims, all located upstream of the Plaintiffs' property. The Plaintiffs held priority dates senior to or contemporary with the upstream users.

Around 1950, the Water Commissioner appointed to administer the *Perry* decrees began diverting most of the Teton's flow into the Bateman Ditch. The ditch runs parallel to the Teton River's natural channel, bypassing a several-mile-long section of gravel riverbed. The gravel riverbed soaks up a significant amount of water. The Water Commissioner did not establish this practice in accordance with an express order or written agreement among appropriators. Choteau Cattle had the most senior right in the *Perry* decree, with a priority date of 1876. In exercising its water right, Choteau Cattle diverted water through the Bateman Ditch, returning it to the natural channel during times of low flow. If the Bateman Ditch were not utilized in this manner, upstream junior right holders (including Saylor and Eldorado) would have had to substantially restrict their water use. The Lower Teton Joint Objectors ("Lower Users") challenged this practice.

In 2011 the Lower Users commenced an action claiming that the Water Commissioners' diversion of water out of the Teton River and into the Bateman Ditch harmed their appropriation rights by depriving the Teton River aquifer of recharge water. The Water Court found that Saylor had a protectable right to divert Teton River water through the Bateman Ditch downstream. The Lower Users and Saylor appealed.

The Supreme Court of Montana (Court) addressed two predominant issues on appeal. It first considered whether the Water Court erred in establishing the Bateman Ditch diversion as a right belonging to Saylor. Subsequently, the Court considered whether the Water Court erred by including Choteau Cattle on the tabulation of water rights holders authorized to divert water from the Teton River into the Bateman Ditch.

In addressing the first issue, the Court reiterated portions of the Water Court's opinion, emphasizing two main points. First, water law recognizes