

Fitzpatrick v. Kent, 166 Idaho 365 (2020)

Idaho Real Property Law Section

November 2, 2022

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Facts

1996 – Widgeon Lakes Estates Subdivision Plat was approved by Eagle City Council and recorded.

1997 – Fitzpatricks purchased three lots in the Widgeon Lakes Estates Subdivision. Lots 3-5.

2016 – Fitzpatricks decide to sell Lot 4.

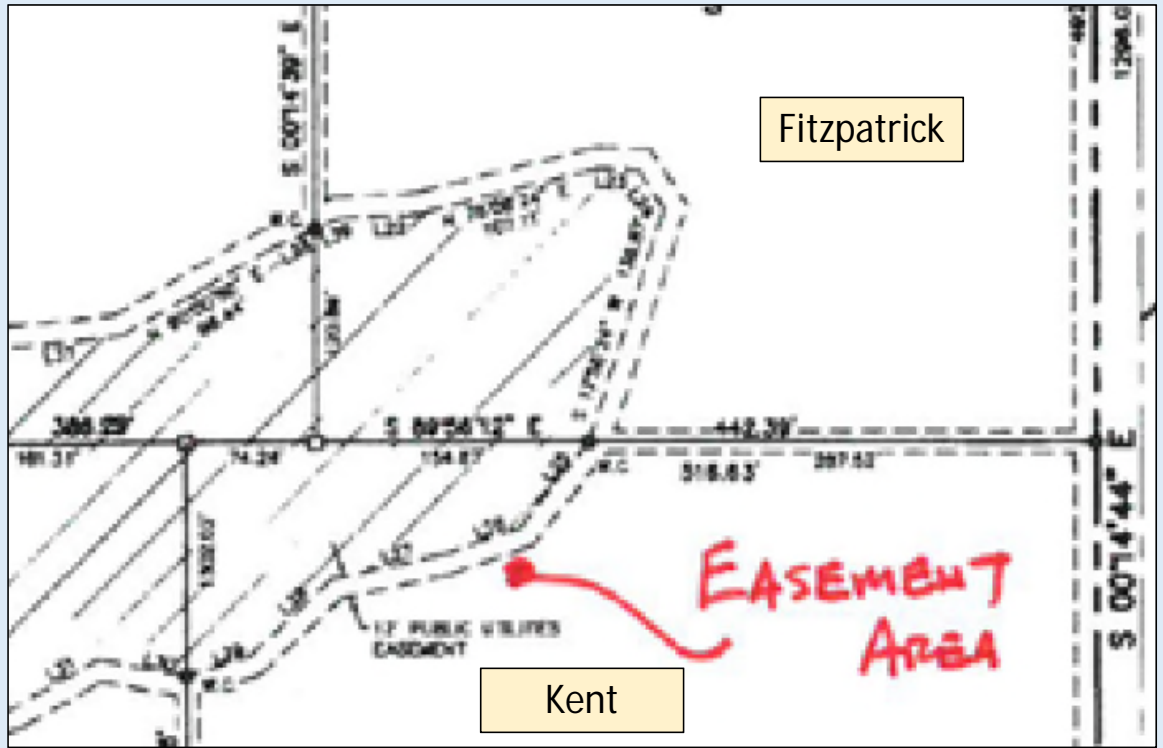
- On the same day Lot 4 was listed on the MLS, Fitzpatricks filed an Easement Agreement with the intention of preserving access and maintenance rights to the pond.
- The Pond Easement encumbered Lot 4 for the benefit of Lot 3.
- Fitzpatrick was both grantor and grantee of the Easement Agreement.

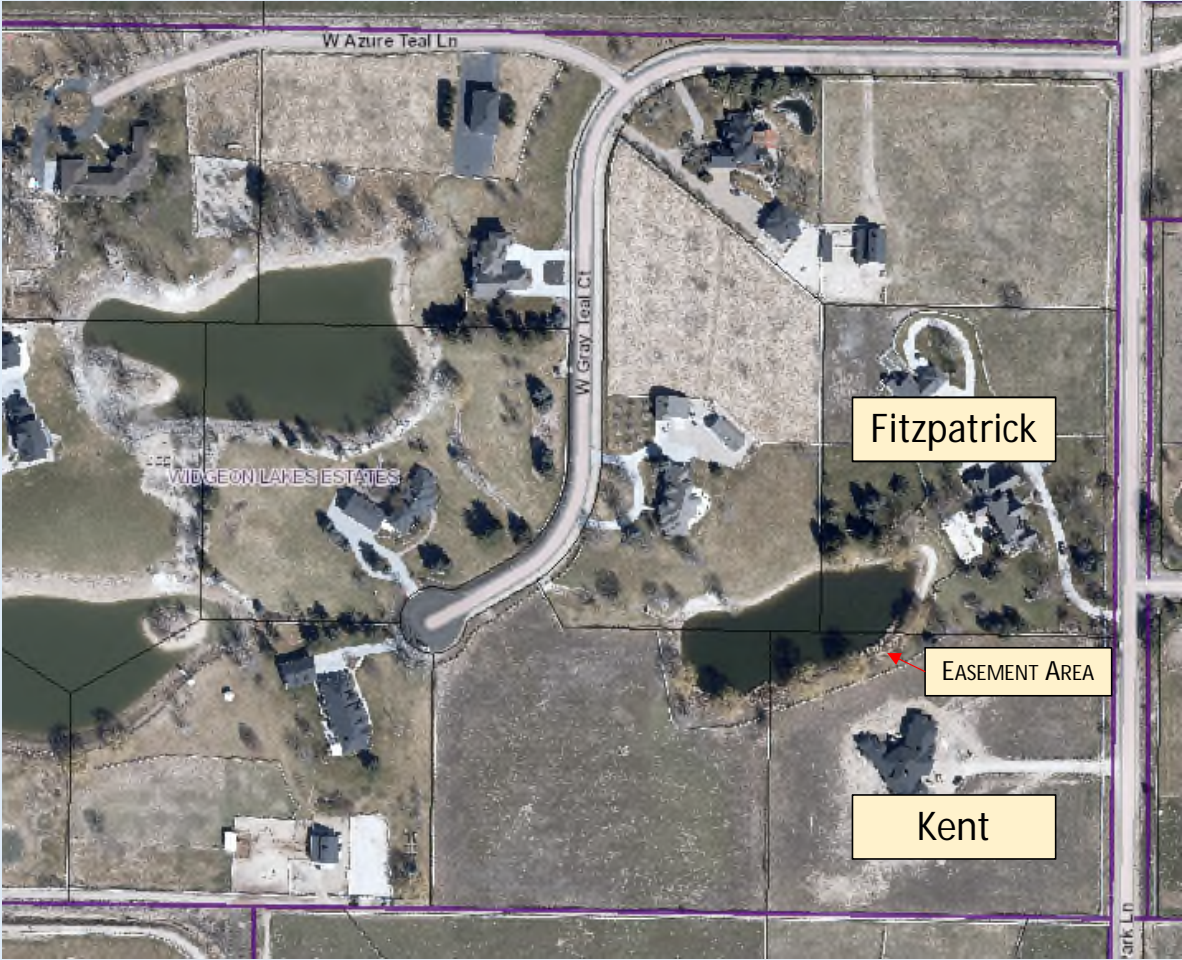
2017 – Kents purchased Lot 4.

- Kents had actual knowledge of the Easement Agreement.

2018 – Around July, Kents began making modifications to the Pond Easement inconsistent with the Easement Agreement.

- Fitzpatricks came in and restored the modifications that Kents made.
- Kents communicated to Fitzpatricks rejecting the Easement Agreement and expressed their intention to make modifications.





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Procedural History

Oct. 19, 2018 – Fitzpatrick's filed a quiet title action against Kents.

Nov. 16, 2018 – Kents file answer and counterclaim.

Nov. 18, 2018 – Kents file motion for summary judgment.

Nov. 19, 2018 – Fitzpatrick's file answer to counterclaim.

Nov. 20, 2018 – Fitzpatrick's file cross motion for summary judgment.

Dec. 18, 2018 – Hearing on cross summary judgment motions.

Dec. 31, 2018 – Trial court enters its memorandum decision concluding that the Pond Easement was invalid.

Feb. 14, 2019 – To avoid trial prior to appeal, the parties entered into Stipulation and joint Motion for Entry of Final Judgment; final judgment entered by the court.

Feb. 21, 2019 – Fitzpatrick filed notice of appeal.

Dec. 9, 2019 – Idaho Supreme Court heard oral arguments from the parties.

Feb 21, 2020 – Idaho Supreme Court filed its opinion.

District Court Ruling

- District Court granted summary judgment in favor of Kents.
- Holding: The Pond Easement had been extinguished by the merger doctrine.
- Rule: "When land burdened by Easement and land benefitted by Easement come into common ownership, the need for the easement is destroyed and the Easement is extinguished."

Supreme Court Holding and Reasoning

- Conclusion: The Pond Easement is invalid
- Rule: An easement is defined as a right in the lands of another.
- Reasoning: “No easement was ever created here because there was unity of title from the very beginning.”
 - Supreme Court declined to apply the merger doctrine at all.
 - Did not address the merits of Fitzpatrick’s arguments raising exceptions to the merger doctrine.

Your reactions to the Supreme Court's holding?

What are the practical implications of the *Fitzpatrick* decision?

Hints by the Supreme Courts about possible limitations of *Fitzpatrick*?

- At oral argument, not in the decision.
- Justice Brody points potential complicated implications with the subdivision platting process.
- Kents argue that the common law rule is not going to effect the subdivision process given the statutory requirement to include easements in plats—which occurs prior to the sale of lots.

I.C. § 50-1302

§ 50-1302. Duty to file

Currentness

Every owner creating a subdivision, as defined in [section 50-1301, Idaho Code](#), shall cause a land survey and a plat thereof to be made which shall particularly and accurately describe and set forth all the streets, **easements**, public grounds, blocks, lots, and other essential information, and shall record said plat. This section is not intended to prevent the filing of other survey maps or plats. Description of lots or parcels of land, according to the number and designation on such recorded plat, in conveyances or for the purposes of taxation, shall be deemed good and valid for all intents and purposes.

Discussion Questions:

What other implications of *Fitzpatrick v. Kent*?

How common was/is the practice of granting easements just like in *Fitzpatrick*?

What are you advising your clients?

What attempts are you making to draft around *Fitzpatrick*?

What are you doing about easements you drafted with the same grantor, grantee prior to *Fitzpatrick*?

Is legislation needed?

EXAMPLE: 2009 Easement anticipating potential issues

East a distance of 60.94 feet; thence South 89°38'43" East a distance of 565.80 feet to the True Point of Beginning.

The common ownership of the benefited and servient parcels shall not work to void this easement. It is the intent of the undersigned to create a perpetual easement as set forth above.

The location of this easement is illustrated on the attached Attachment 'A'.

IN WITNESS WHEREOF the undersigned has executed this instrument this 6 day of July, 2009.

Would this language overcome Fitzpatrick v. Kent?

EXAMPLE: 2021 Easement anticipating potential issues

ARTICLE 3 EASEMENT DECLARATION

3.1 Driveway Easement. Grantors hereby declare, grant, establish, and impose a non-exclusive, perpetual easement on, over, under, across, and through the Driveway for the benefit of each Lot and the Association described in Article 4 herein (the "**Driveway Easement**").

3.2 Merger Doctrine Will Not Apply. All easements conveyed by Grantors herein are for the purpose of real estate development, which requires the establishment of easements prior to the sale of Lots. Grantors intend to retain one Lot for themselves and sell all other Lots. Grantors do not intend for the merger doctrine to apply. To the extent the merger doctrine does apply, the easements declared herein will not be deemed created or existing for any given Lot until the date that Lot is conveyed by Grantors to another Owner.

Would this language overcome *Fitzpatrick v. Kent*?

Easements were also reserved in each warranty deed.

EXAMPLE: 2022 Easement anticipating potential issues

Would this language overcome the Fitzpatrick?

Client is advised that an easement must be reserved in warranty deed too.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals which are incorporated below, the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grants of Easement.

- A. **Grant from Barber to C. & P. Hoagland and M. & M. Hoagland.** Barber does hereby grant to C. & P. Hoagland and M. & M. Hoagland, for the benefit of Parcels 1, 3, and 4, a perpetual, nonexclusive Easement and right-of-way on over, under, across and through that portion of the Easement Premises located on Parcel 2 for ingress and egress to and from the Irrigation Infrastructure to facilitate the irrigation of Parcels 1, 3, and 4.
- B. **Grant from C. & P. Hoagland to M. & M. Hoagland.** C. & P. Hoagland does hereby grant to M. & M. Hoagland, for the benefit of Parcel 3 a perpetual, nonexclusive Easement and right-of-way on over, under, across and through that portion of the Easement Premises located on Parcel 1 to access, construct, inspect, operate, clean, maintain, and repair the Irrigation Infrastructure to facilitate the irrigation of Parcel 3.
- C. **Reservation of Easement by C. & P. Hoagland.** C. & P. Hoagland intends to reserve for the benefit of Parcel 4, a perpetual, nonexclusive Easement and right-of-way on over, under, across and through that portion of the Easement Premises located on Parcel 1 to access, construct, inspect, operate, clean, maintain, and repair the Irrigation Infrastructure to facilitate the irrigation of Parcel 4. The Easement reserved in this Section 1.C. shall not be deemed created or existing or effective until the date that Parcel 1 and Parcel 4 are no longer owned by the same party.

Questions?
Final Thoughts?

Thank you!