

SUPREME COURT OF MONTANA

Collins v. Swinger

2001 MT 265N (2001) · No. No. 01-157 · Decided December 17, 2001

SUMMARY

The Montana Supreme Court affirmed a district court judgment recognizing an implied ditch easement over the defendants' property and enjoining interference with the easement. The court held that Montana Code Annotated § 70-17-112 protects easements by implication and awarded the prevailing respondent appellate costs and attorney's fees. The decision was designated noncitable precedent and remanded for determination of costs and fees.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Terry N. Trieweiler; Karla M. Gray; Jim Regnier; James C. Nelson; Jim Rice
JURISDICTION	Montana
DECIDED	December 17, 2001
DOCKET	No. 01-157
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a nonjury judgment of the Fourth Judicial District Court granting the plaintiff injunctive relief, damages, and attorney's fees in an action concerning interference with a ditch easement.
STANDARD OF REVIEW	Findings of fact are reviewed under Rule 52(a), M.R.Civ.P., and will not be set aside unless clearly erroneous. The court applies a three-part test: whether the findings are supported by substantial evidence, whether the trial court misapprehended the effect of the evidence, and whether the reviewing court has a definite and firm conviction that a mistake was made. Conclusions of law are reviewed for correctness.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Keith R. Swinger, Marie E. Swinger v. Gary E. Collins

TOPICS

- implied easements
- easements
- real estate
- equitable relief
- appellate procedure

PRACTICE AREAS

real estate

easements

injunctive relief

appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court erred in concluding that a ditch easement by implication existed over the Swingers' property.
2. Whether Montana Code Annotated § 70-17-112 applies to easements by implication.
3. Whether the District Court erred by adopting Collins's proposed findings of fact.

HOLDINGS

1. The District Court correctly concluded that a ditch easement by implication arose when the common ownership of the Collins and Swinger parcels was severed in 1948.
2. Montana Code Annotated § 70-17-112 protects easements by implication from interference; its reference to easements obtained by prescription or conveyance is not an exclusive limitation on the statute's scope.
3. The District Court did not err by adopting Collins's proposed findings of fact because the findings were sufficiently comprehensive and pertinent, supported by substantial evidence, and not clearly erroneous.

KEY QUOTATIONS

“To establish an easement by implication, three elements must be satisfied: (1) separation of title; (2) a long-standing, obvious use before the separation, which shows that the use was meant to be permanent; and (3) necessity of the easement for the beneficial enjoyment of the land granted or retained.” (¶ 23)

“Easements by implication are recognized in Montana and, like any other legally recognized easement, are protected from interference by § 70-17-112, MCA.” (¶ 31)

“First, the Court will review the record to see if the findings are supported by substantial evidence. Second, if the findings are supported by substantial evidence, we will determine if the trial court has misapprehended the effect of the evidence. Third, if substantial evidence exists and the effect of the evidence has not been misapprehended, this Court may still determine a finding clearly erroneous if a review of the record leaves the court with “a definite and firm conviction that a mistake has been committed.”” (¶ 18)

FACTUAL BACKGROUND

Collins held an irrigation water right from Hayes Creek, with a diversion point on the Swingers' property. A ditch serving the water right was visible and in use before the parties' properties were severed from common ownership in 1948, and it remained in continuous use thereafter. The Swingers removed an access gate in approximately 1993 and denied Collins access to the diversion point beginning in 1996, impairing his ability to control irrigation water and reducing hay production. The parties' prior water-right dispute had already been adjudicated by the Montana Water Court and affirmed on appeal.

PROCEDURAL HISTORY

Collins sued to enjoin the Swingers from interfering with his ditch easement and statutory secondary easement across their property. The Swingers counterclaimed for injunctive relief, removal of the diversion point, and damages. After a nonjury trial, the District Court found an easement by implication, awarded Collins injunctive relief, \$2,317 in actual damages, and attorney's fees, and denied the counterclaim. The Swingers appealed, and the Montana Supreme Court affirmed and remanded for determination of appellate costs and attorney's fees.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Remanded to the District Court for determination of Collins's costs and reasonable attorney's fees incurred on appeal.

CASES CITED

- In re Adjudication of Existing Water Rights (Swinger v. Collins), 1999 MT 202, 295 Mont. 447, 984 P.2d 151
- Wareing v. Schreckendgust, 280 Mont. 196, 930 P.2d 37 (1996)
- Carbon County v. Union Reserve Coal Co., 271 Mont. 459, 898 P.2d 680 (1995)
- Graham v. Mack, 216 Mont. 165, 699 P.2d 590 (1985)
- Wangen v. Kecskes, 256 Mont. 165, 845 P.2d 721 (1993)
- Albert G. Hoyem Trust v. Galt, 1998 MT 300, 292 Mont. 56, 968 P.2d 1135
- In re Marriage of Nikolaisen, 257 Mont. 1, 847 P.2d 287 (1993)
- Sharon v. Hayden, 246 Mont. 186, 803 P.2d 1083 (1990)
- Brault v. Smith, 209 Mont. 21, 679 P.2d 236 (1984)
- Rieman v. Anderson, 282 Mont. 139, 935 P.2d 1122 (1997)