

SUPREME COURT OF IDAHO

Nampa & Meridian Irrigation District v. Mussell, 139 Idaho 28

72 P.3d 868 (2003) · No. No. 28713 · Decided June 18, 2003

SUMMARY

The Idaho Supreme Court held that property owners were liable for unreasonably interfering with an irrigation district's easement after excavating the bank supporting an irrigation lateral. The court upheld use of reasonable repair costs as the measure of damages, subject to specified reductions on remand, and affirmed denial of treble damages because the conduct did not constitute cutting the ditch bank within the meaning of Idaho Code § 42-902. No attorney fees or costs were awarded on appeal.

CASE DETAILS

COURT	Supreme Court of Idaho
WRITING FOR THE COURT	Eismann, Justice; Trout, Chief Justice; Schroeder, Justice; Walters, Justice; Kidwell, Justice
JURISDICTION	Idaho
DECIDED	June 18, 2003
DOCKET	No. 28713
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal by the defendants and cross-appeal by the plaintiff from a district-court judgment awarding \$127,245.41 in repair damages for interference with an irrigation easement and denying treble damages.
STANDARD OF REVIEW	Findings of fact are reviewed for clear error and will not be set aside if supported by substantial and competent evidence. The appellate court does not reweigh evidence or assess witness credibility. Statutory interpretation and the legal measure of damages are reviewed as questions of law.
PRECEDENTIAL VALUE	Published Idaho Supreme Court opinion; precedential
PARTIES	Tim J. Mussell and Carol M. Mussell, dba Victory Greens Nursery, Nampa & Meridian Irrigation District, cross-appellant v. Nampa & Meridian Irrigation District, Tim J. Mussell and Carol M. Mussell, dba Victory Greens Nursery, cross-respondents

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QUESTIONS PRESENTED

1. Whether the Mussells were liable for damages resulting from their excavation along the Kennedy Lateral.
2. Whether the reasonable cost of repairing or replacing the lateral was the proper measure of damages.
3. Whether the evidence supported the various components of the district court's damage award.
4. Whether the District was entitled to treble damages under Idaho Code section 42-902.
5. Whether either party was entitled to attorney fees on appeal under Idaho Code section 12-121.

HOLDINGS

1. A servient-estate owner may use the property in any manner that is not inconsistent with or materially interferes with the dominant estate owner's use of its easement. The Mussells' excavation, which left the Kennedy Lateral vulnerable to failure when filled with water, was an unreasonable interference with the District's easement and supported liability for damages.
2. Under the circumstances, the reasonable cost of repairing or restoring the Kennedy Lateral so that it could transmit water was the proper measure of damages, rather than the diminution in the market value of the easement.
3. The District could recover the reasonable value of employee labor, equipment use, pipeline construction, bridge reconstruction, and necessary pipeline extensions used to restore the lateral, even when the District used its own personnel and equipment rather than outside contractors.
4. Idaho Code section 42-902 is penal and must be strictly construed. The phrase 'cuts any ditch or the banks thereof' means cutting through the bank of a ditch, ordinarily to cause water to run out; excavating and reshaping the sloping bank without cutting through it does not satisfy the statute.
5. Neither party was entitled to attorney fees on appeal because neither the appeal nor cross-appeal was brought or defended frivolously, unreasonably, or without foundation.

KEY QUOTATIONS

"As the owners of the servient estate, the Mussells could use their property in any manner not inconsistent with, or which did not materially interfere with, the District's use of its easement." (873)

"The portion of the Kennedy Lateral at issue has value only because of its ability to transmit water as part of the District's larger water distribution system." (874)

"Giving the statute a strict construction, we hold that the phrase 'cuts any ditch or the banks thereof' means cutting through the bank of the ditch." (877)

FACTUAL BACKGROUND

The Nampa & Meridian Irrigation District held an easement along the northeastern boundary of the Mussells' property for the Kennedy Lateral, an earthen irrigation canal serving thousands of downstream acres. After discovering seepage and boggy conditions, Tim Mussell excavated nearly the entire sloping bank of the lateral without first consulting the District or obtaining engineering approval, leaving the bank vertical and vulnerable to failure when the canal was filled. The District replaced the damaged portion with a concrete pipeline and sought recovery of its repair costs. The district court found the excavation negligent and awarded damages, but denied treble damages.

PROCEDURAL HISTORY

The irrigation district sued the Mussells for negligence, unreasonable interference with an easement, negligence per se under Idaho Code section 55-310, injunctive relief, and later treble damages under Idaho Code section 42-902. After a bench trial, the district court found the Mussells liable, awarded \$127,245.41, and denied treble damages. The Idaho Supreme Court affirmed liability and the repair-cost measure of damages, reduced the award by \$352.85, ordered a further deduction for the cost of constructing an improved road, and remanded for recalculation.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must reduce the damages award by \$352.85 for labor time not attributable to the Kennedy Lateral and determine and deduct the District's labor, equipment, and material costs attributable to constructing the new road to the extent those costs exceeded the cost of replacing the preexisting road. The district court may take additional evidence necessary to make that determination.

CASES CITED

- Bramwell v. South Rigby Canal Co., 136 Idaho 648, 39 P.3d 588 (2001)
- Rowley v. Fuhrman, 133 Idaho 105, 982 P.2d 940 (1999)
- Row v. State, 135 Idaho 573, 21 P.3d 895 (2001)
- Nampa & Meridian Irr. Dist. v. Washington Fed. Sav., 135 Idaho 518, 20 P.3d 702 (2001)
- Young v. Extension Ditch Co., 13 Idaho 174, 89 P. 296 (1907)
- Alesko v. Union Pac. R.R. Co., 62 Idaho 235, 109 P.2d 874 (1941)
- Orndorff v. Christiana Cmty. Builders, 217 Cal. App. 3d 683, 266 Cal. Rptr. 193 (Ct. App. 1990)
- Board of County Comm'rs v. Slovek, 723 P.2d 1309 (Colo. 1986)
- Barth v. Canyon County, 128 Idaho 707, 918 P.2d 576 (1996)
- Simonson v. Moon, 72 Idaho 39, 237 P.2d 93 (1951)
- Tomchak v. Harris, 54 Idaho 448, 32 P.2d 1025 (1934)

- Frost v. Penfold, 44 Idaho 651, 258 P. 534 (1927)
- Gustaves v. Gustaves, 138 Idaho 64, 57 P.3d 775 (2002)

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