

SUMMARY STATEMENT

Whitham v. Creamer

Docket No. 48876

Kent and Linda Whitham, trustees of the Kent G. Whitham and Linda M. Whitham Revocable Trust, (the “Whithams”) appealed a district court’s decision that Jeff Creamer should be permitted to install a French drain across the portion of an easement that encumbers his property and benefits their property. The Whithams argued that the district court erred when it found that they had damaged Creamer’s property by filling in the French drains, and in so doing, acted negligently. They also appealed the district court’s prohibition of their removal of future French drains installed on Creamer’s property. Creamer cross-appealed, arguing that the district court erred when it dismissed his claim against the Whithams for trespass and when it failed to award him damages and attorney fees.

The Idaho Supreme Court largely affirmed the findings and conclusions of the district court. First, the Court held that the district court did not err in finding that the Whithams created an additional burden on the Creamer property by filling in the French drains that had been created by Creamer. Following that determination, the Court concluded that the district court did not err in permitting Creamer to install French drains across the easement. The Court also affirmed the district court’s prohibition against the Whithams for interfering with those installations and its conclusion that Kent Whitham acted negligently when he filled in the French drains. However, the Idaho Supreme Court reversed the district court’s decision in which it failed to award adequate damages to Creamer to repair the French drain that Kent Whitham had rendered inoperable.

Regarding Creamer’s cross-appeal, the Idaho Supreme Court held that the district court did not err by failing to address the common law trespass claim because it was subsumed by Creamer’s negligence claim. This Court further affirmed the district court’s dismissal of Creamer’s statutory trespass claim and its refusal to award attorney fees to Creamer. The Idaho Supreme Court finally held that Creamer was not entitled to attorney fees on appeal because he did not prevail in his statutory trespass claim, nor could he show that the Whithams appealed frivolously, unreasonably, or without foundation.

******This summary constitutes no part of the Court’s opinion. It has been prepared by court staff for the convenience of the public.******