

SUMMARY STATEMENT

Simmons v. Loertscher

Docket No. 50558-2023

This appeal involved review of a grant of summary judgment in favor of cattle owners in an action seeking injunctive relief and trespass damages based on alleged herd district violations. Blaine Simmons owned land in a designated herd district (the “Herd District”) within Bonneville County, which bordered open range. The Herd District, which was created in 1919, prohibited livestock, including cattle, from roaming at large within the boundaries of Herd District during all seasons of the year. After cattle alleged to be owned by Tom Loertscher and Josh Williams strayed from open range onto Simmons’s unfenced property, Simmons filed an action against Loertscher and Williams alleging nuisance and herd district violations.

Loertscher and Williams filed a motion for summary judgment alleging the claims should be dismissed because: (1) herd district laws do not apply to the Loertscher Allotment, which is on BLM land and designated as open range land, or to the cattle in question; (2) under Idaho Code section 25-2402, Simmons, as the owner of land within a herd district, was required to construct and maintain fencing along the Herd District’s boundaries to protect his land from livestock that “roam, drift or stray from open range into the district;” and (3) Loertscher and Williams have a common law right to enter Simmons’s property at reasonable times and in a reasonable manner to retrieve their cattle. Simmons filed a cross motion for summary judgment. He argued that the fencing requirement did not apply to the Herd District because it was created prior to the 1963 amendment of Idaho Code section 25-2402 that first added the fencing requirement. Simmons argued that the 1963 amendment included a savings clause that he contended exempted pre-existing herd districts from the fencing requirement. He also asked the magistrate court to order Loertscher and Williams to comply with conditions that Simmons imposed on Loertscher’s and Williams’s ability to retrieve their cattle from Simmons’s land.

The magistrate court granted summary judgment in favor of Loertscher and Williams, concluding that the saving clause contained in the 1963 amendment to Idaho Code section 25-2402 did not exempt the Herd District from the statute’s fencing requirement. The magistrate court also concluded that Loertscher and Williams had a common law right to enter Simmons’s property to retrieve their cattle and imposed its own conditions of reasonableness. The magistrate court did not impose Simmons’s conditions for retrieval but did impose other conditions for Loertscher’s and Williams’s retrieval of their cattle from Simmons’s land. Simmons appealed to the district court, which affirmed the magistrate court’s decision. Simmons then appealed to the Idaho Supreme Court.

The Idaho Supreme Court affirmed the district court’s decision affirming the magistrate court. The Court held that the savings clause contained in the 1963 amendment to Idaho Code section 25-2402 did not exempt pre-existing herd districts from the fencing requirement but rather protected the legal existence of a pre-established herd district. The Court also held that the district court did not err when it affirmed the conditions that the magistrate court imposed on Loertscher and Williams’s retrieval of cattle from Simmons’s land.