

## **SUMMARY STATEMENT**

*Mortensen v. Berian*

Docket No. 44303

In an appeal from a decision of the Madison County District Court, the Supreme Court affirmed the district court's decision that a ditch that served the Mortenson property had not been abandoned and that Berian was entitled only to nominal damages on his trespass counterclaim. The Supreme Court held, first, that the district court's factual findings regarding abandonment of the ditch were not clearly erroneous. Second, the court explained that Idaho Code section 6-202, the trespass statute governing Berian's counterclaim, allows only for nominal damages because Berian and Sturgis were unable to show any actual damages from Mr. Mortenson's trespass. Further, the Court explained that Berian and Sturgis were not entitled to attorney fees on this claim because they were not the prevailing party. Finally, the Court awarded attorney fees to the Mortensons under Idaho Code section 12-121. The Court explained that Berian and Sturgis's position on appeal was unreasonable because (1) their briefs ignored the applicable standard of review that would have indicated their issues on appeal were likely unreasonable, (2) their briefs did not contain citations to the record as required by Idaho Appellate Rule 35, and (3) their briefs did not provide discussion of the relevant legal authority as required by Idaho Appellate Rule 35.