

Foster Swift Scores Win in Complex Property Dispute Appeal

FOR IMMEDIATE RELEASE

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Foster Swift Shareholder Julie Fershtman, representing a defendant/appellee, recently won a complex, multi-issue appeal in the Michigan Court of Appeals. In the case, the parties were neighboring landowners who resided in Monroe County. The plaintiffs claimed that in 2013 the defendant constructed a new roadway on his property that involved placement of fill dirt over a stretch of the defendants land. Plaintiffs alleged that this roadway caused water to collect on their adjacent land, oversaturating the land, and killing over 100 trees that plaintiffs planted as well as causing damage to their basement. The plaintiffs also claimed that defendants actions on his neighboring property raised the water table substantially. Damage claims asserted against the defendant were very substantial, and the case endured two jury trials. The first trial involved claims of negligence, trespass, and nuisance, which was followed by the plaintiffs first appeal. After a court of appeals ruling resulted in a second trial, the case was tried again, which concluded in 2022. This time, the jury returned a verdict awarding plaintiffs nothing. Foster Swift did not handle either jury trial.

Fershtman was hired to defend the defendant in the second appeal, which involved several issues, some unique. Among the issues, plaintiffs challenged the trial court allowing the second jury to learn the outcome of the first jury trial. Another appellate issue involved the trial court's refusal to adjourn the second trial after it was learned that one of the plaintiffs' expert witnesses died weeks before trial; instead, the trial court remained on schedule and allowed the expert's discovery deposition transcript to be read to the jury. Another appellate issue involved the trial court refusing to declare a mistrial despite insistence from plaintiffs that a juror uttered the word "Jesus" more than once during the trial while witnesses were testifying.

Over its 10-year pendency, this case amassed thousands of pages of court filings, hearing transcripts, and trial transcripts. After a comprehensive review, Fershtman briefed the multiple-issue appeal on behalf of the defendant. Earlier this year, the Michigan Court of Appeals sided for the defendant, our client, and allowed the second jury's

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verdict to stand and the case against the client to be dismissed. No appeal was filed.

For more than 120 years, Foster Swift Collins & Smith has provided outstanding client service and legal excellence for businesses, organizations, municipalities, families and individuals across Michigan. Our reputation for being effective litigators extends to the state and federal appellate courts. At the forefront of success on appeal is an experienced appellate advocate who understands the institutional roles of supreme and intermediate appellate courts, the differing decisional approaches, the governing standards of review and the legal regimes and philosophies.