

IN THE SUPREME COURT OF THE STATE OF NEVADA

GILBERT COLEMAN, PH.D.,
Appellant,
vs.
JOY PANICARO,
Respondent.

No. 43005

FILED

DEC 01 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a district court summary judgment and an order granting a permanent injunction in a real property dispute. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

This case involves more than a decade of litigation between the parties. We recite only the relevant facts and presume that the parties are familiar with the remaining facts. In 1995, Dr. Gilbert Coleman caused a judicial sale of Joe Panicaro's, Joy Panicaro's brother, one-half interest in real property located at 906 Reno Industrial North in Reno, Nevada, based on a judgment Dr. Coleman had received against Joe. Dr. Colman purchased Joe's one-half interest at the judicial sale. Afterwards, Joe assigned his redemption rights to Kevin Mirch, who purported to redeem Joe's one-half interest in December 1996. Mirch quitclaimed the one-half interest to Joy in 2002, making her the owner of the entire property. Both Mirch's redemption and quitclaim deed were recorded.

Dr. Coleman filed the instant action in response to a Washoe County petition for judicial examination of a sheriff's deed issued to Dr. Coleman for the entire property. The parties stipulated to rescinding the sheriff's deed, effectively dismissing Washoe County's action. Joy moved for dismissal, or in the alternative, for summary judgment and sought an

injunction against Dr. Coleman to prohibit him from further litigation regarding the property. The district court granted Joy summary judgment and issued the injunction.

Dr. Coleman appealed, claiming that (1) he is not barred under NRCP 41(e), (2) he never brought an adverse possession claim, (3) he has a property interest because Mirch's redemption was invalid, and (4) the injunction is invalid because he never had an opportunity to argue against the injunction. However, we conclude that the district court correctly granted Joy's motion for summary judgment and issued the injunction. Therefore, we affirm the district court's judgment and order.

NRCP 56(c) provides that summary judgment "shall be rendered forthwith if . . . there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "Orders granting summary judgment are reviewed de novo."¹

Regarding Dr. Coleman's quiet title claim, while we recognize that Dr. Coleman did not plead adverse possession, the district court was attempting to find some basis on which to rest a claim of quiet title. We conclude that the district court was correct that Dr. Coleman did not meet the elements for an adverse possession claim. Without adverse possession, Dr. Coleman has no claim to the one-half interest in this property on which to base a quiet title action. His claim, based upon an invalid redemption, expired upon the running of the five-year statute of

¹Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

limitations for property actions.² Therefore, we conclude that Dr. Coleman does not have an interest in the property on which to base a quiet title claim.

Regarding Dr. Coleman's partition claim, NRCP 41(e) provides that unless dismissal for failure to prosecute is without prejudice, it acts as res judicata for future lawsuits with the same claims against the same defendant. Dr. Coleman's August 1996 action for partition and sale against Joy was dismissed under NRCP 41(e) in July 2002 and did not mention prejudice. Dr. Coleman did not appeal the dismissal of that case. As this is not an appeal of the NRCP 41(e) dismissal, we have no jurisdiction at the present time to address whether the district court in that case erred when it dismissed the case without mentioning prejudice. Thus, we conclude that res judicata applies and Dr. Coleman is barred from asserting his claim for partition and sale.³

Regarding the claim for rents, without a property interest as a basis for rents, Dr. Coleman has no standing to seek rents. Therefore, we

²NRS 11.080. Dr. Coleman asserts that the statute of limitations began running when Joy acquired the one-half interest through the quitclaim deed from Mirch. However, the statute began running as to Dr. Coleman not when Joy acquired the property, but when Mirch's redemption purported to divest Dr. Coleman of his one-half property interest. As the evidence shows that Dr. Coleman knew about the redemption more than five years before the instant litigation, Dr. Coleman is now barred from asserting a claim to the property based on an invalid redemption.

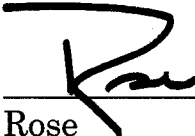
³Even if NRCP 41(e) res judicata did not apply, as we conclude that Dr. Coleman does not have a property interest for purposes of quiet title, he also has no property interest on which to base a claim for partition and sale.


conclude that the district court correctly granted summary judgment on all claims.

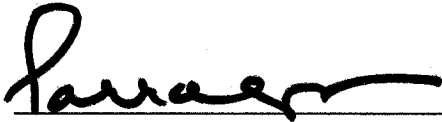
Regarding the injunction, Joy did request the injunction and, as discussed above, has been successful on the merits. Dr. Coleman is foreclosed by res judicata and the statute of limitations from seeking quiet title to, or partition and sale of, the one-half interest in the property. Therefore, we conclude that the district court did not err when it granted the injunction.⁴

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Rose


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge
Cathy Valenta Weise, Settlement Judge
Brian R. Morris
Martin G. Crowley
Washoe District Court Clerk

⁴As we affirm the district court's order and injunction, we do not reach the evidentiary issues regarding Dr. Coleman's deposition or examine Mirch's redemption.