IN THE SUPREME COURT OF THE STATE OF NEVADA

JEAN MERKELBACH AND CHAD SMITTKAMP, AS THE TRUSTEES OF THE ROCKWELL - 1997 TRUST,
Appellants,
vs.
GLENBROOK HOMEOWNERS ASSOCIATION, A NEVADA NON-PROFIT CORPORATION AND KATHRYN TAYLOR,
Respondents.

No. 43268

JEAN MERKELBACH AND CHAD SMITTKAMP, AS THE TRUSTEES OF THE ROCKWELL - 1997 TRUST,
Appellants,
vs.
GLENBROOK HOMEOWNERS ASSOCIATION, A NEVADA NON-PROFIT CORPORATION AND KATHRYN TAYLOR,
Respondents.

No. 43577

FILED

NOV 08 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court judgment in a real property easement dispute and a post-judgment order awarding costs. Ninth Judicial District Court, Douglas County; David R. Gamble, Judge.

Appellants Jean Merkelbach and Chad Smittkamp, trustees for Rockwell 1997 Trust (Rockwell), challenge the district court's detrmination that residents of Glenbrook Planned Unit Development (PUD) possess an express easement to use a portion of Slaughterhouse Canyon Road that crosses Rockwell's property (the Rockwell parcel). Rockwell also challenges the district court's award of costs to respondents

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Glenbrook Homeowners Association and Kathryn Taylor (collectively GHOA). For the following reasons, we affirm.

Res Judicata

Rockwell first argues that the doctrine of res judicata bars GHOA from claiming an express easement exists on the Rockwell parcel because it failed to raise the issue during previous litigation between GHOA and Robert Nahas, PUD's developer. This claim lacks merit.

"Generally, the doctrine of res judicata precludes parties . . . from relitigating a cause of action or an issue which has been finally determined by a court of competent jurisdiction."[1] We conclude that the issue presented in this action was not and could not have been raised and adjudicated in the previous lawsuit. The scope of the previous litigation between GHOA and Nahas was relatively narrow, only operating to determining which parcels should be conveyed to GHOA pursuant to the Code of Covenants, Conditions and Restrictions of Glenbrook (Glenbrook CC&R's) and Nahas's representations. In contrast, GHOA's purported right to an easement stems from the language of the 1976, 1977, and 1978 deeds conveyed from William Bliss to Nahas. These deeds were never at issue in the previous litigation. Therefore, introducing the easement issue into the previous lawsuit would have injected collateral matters into the case that were wholly unrelated to GHOA's other claims for relief. As a result, the district court properly denied Rockwell's motion for summary judgment.

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[1]University of Nevada v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994).

Conclusion that an express easement exists on the Rockwell parcel

Rockwell makes several arguments to support its contention that the district court erred in finding that three deeds from Bliss to Nahas–issued in 1976, 1977, and 1978–created an express easement over the Rockwell parcel in favor of Glenbrook residents. We conclude that Rockwell's claims lack merit.

First, Rockwell asserts that Slaughterhouse Canyon Road is not within the deeds' right of access provision, which provides the right to use roads and trails for ingress and egress from the General Forest Lands and the Recreational Lands. Rockwell argues that Slaughterhouse Canyon Road does not provide "ingress and egress" because it briefly crosses U.S. Forest Service land before entering the Recreational Lands. However, nothing in the deeds indicates that Glenbrook residents only have the right to use existing roads and trails that provide direct, contiguous access to the Recreational Lands; instead, the deeds' plain language provides a right of access "for the purpose of providing ingress and egress." The parties stipulated that Slaughterhouse Canyon Road has been used for decades for exactly this purpose. Even if the language was ambiguous, it is clear that Bliss himself intended Slaughterhouse Canyon Road to fall within the scope of the conveyed easement.[2]

Second, Rockwell contends that the deeds do not explicitly mention Slaughterhouse Canyon Road and that this omission indicates the trail was not included in the deeds. However, it is clear from the record that Slaughterhouse Canyon Road was an existing road that

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[2]See Skyland Water v. Tahoe Douglas Dist., 95 Nev. 289, 291-92, 593 P.2d 1066, 1067 (1979) (holding that reliance on parol evidence is appropriate where a deed's language is ambiguous).

provided ingress and egress to the Recreational Lands; as a result, the fact that it was not explicitly mentioned is of no consequence.

Third, Rockwell argues that an easement may not cross a third-party's property and still be legally valid. This claim lacks merit because the district court's judgment only served to grant an easement on the Rockwell parcel and nothing else. The fact that the United States could later attempt to enjoin Glenbrook residents from crossing the U.S. Forest Service land does not affect the validity of the court's grant of an easement over the Rockwell parcel. The existence of U.S. Forest land between the Rockwell parcel and the Recreational Lands is thus legally irrelevant.[3]

Fourth, Rockwell argues that the district court erred in finding easement rights over the Rockwell parcel in favor of all Glenbrook residents. We conclude Rockwell is barred from raising such a claim because it failed to raise it before the district court.[4] In fact, Rockwell expressly stipulated that each lot and parcel within the Glenbrook PUD was included in the land conveyed by the 1976, 1977, and 1978 deeds. "Stipulations are of an inestimatable value in the administration of justice . . . and valid stipulations are controlling and conclusive and both trial and appellate courts are bound to enforce them."[5] Rockwell has offered no compelling reason to set aside this stipulation.

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[3]See Jensen v. Ritter, 8 Cal. Rptr. 263, 266-67 (Ct. App. 1960).

[4]Laird v. State of Nev. Pub. Emp. Ret. Bd., 98 Nev. 42, 46, 639 P.2d 1171, 1173 (1982) ("We shall not entertain issues raised for the first time on appeal.").

[5]Second Bapt. Ch. v. Mt. Zion Bapt. Ch., 86 Nev. 164, 172, 466 P.2d 212, 217 (1970) (citations omitted).

Rockwell's remaining arguments challenging the express easement are without merit. The district court's conclusion that an express easement existed on the Rockwell parcel was not erroneous.

Award of costs

Rockwell also challenges the district court's post-judgment award of costs to GHOA and Taylor, arguing that they were not prevailing parties. This claim lacks merit.

A plaintiff may be considered a prevailing party if he or she succeeds on "'any significant issue in litigation'" achieving some of the benefit sought in bringing the suit.[6] A district court's award of costs, including its determination of the prevailing party, will not be overturned absent a manifest abuse of discretion.[7]

Rockwell contends that it prevailed on a significant issue because the district court imposed significant limitations on the scope and use of the easement. However, GHOA and Taylor unquestionably prevailed on the primary issues in controversy–the existence of an access easement across Rockwell's property and the right of Glenbrook residents to use that easement. The district court's injunctive relief did not limit the original scope of the easement and instead was only intended to prevent residents from improperly broadening the scope of this original right. As a result, the district court's conclusion that GHOA and Taylor were prevailing parties was not an abuse of discretion.

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[6]Hornwood v. Smith's Food King, 105 Nev. 188, 192, 772 P.2d 1284, 1287 (1989) (quoting Women's Federal S & L Ass'n. v. Nevada Nat. Bank, 623 F.Supp. 469, 470 (D.Nev. 1985)).

[7]Chowdry v. NVLH, Inc., 109 Nev. 478, 485, 851 P.2d 459, 463-64 (1993).

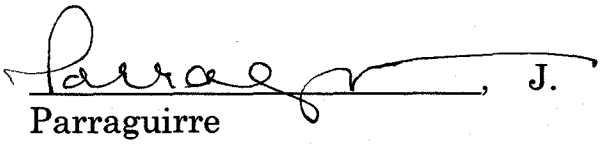
Conclusion

The district court properly denied Rockwell's motion for summary judgment, did not err in concluding an easement existed across the Rockwell parcel, and did not abuse its discretion in awarding costs to GHOA and Taylor. As a result, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Rose

_____, J.
Becker



_____, J.
Parraguirre

cc: Hon. David R. Gamble, District Judge
Terry A. Simmons, Settlement Judge
Hale Lane Peek Dennison & Howard/Reno
Keker & Van Nest, LLP
Mark H. Gunderson, Ltd.
Robison Belaustegui Sharp & Low
Douglas County Clerk