IN THE SUPREME COURT OF THE STATE OF NEVADA

MILLIGAN-TAHOE, LLC; JACKSON RANCHERIA BAND OF MIWUK INDIANS; JEFFREY AND SUZANNE LUNDAHL; THOMAS H. AND NANCY T. TORNGA, TRUSTEES OF THE TORNGA 1998 TRUST; PAUL K. AND N. K. CHAMBERLAIN; AND TODD AND ANNE TARICCO,
Appellants,
vs.
DOUGLAS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA; WILLIAM C. ALLEN; JOHN C. ALLEN; EDWIN M. MILLER, TRUSTEE; GERALD GODFREY PAGE AND ALMA IRENE PAGE, CO-TRUSTEES; JOSEPH POHL; MEGAN CLANCY; DICK L. ROTTMAN; JEAN M. ROTTMAN; ROBERT F. STELLABOTTE; GLORIA STELLABOTTE; WARREN C. TUCKER; LUANN M. TUCKER; WILBUR E. TWINING; ROSMARIE M. TWINING; GRETA MARKS VALLERGA, TRUSTEE; JAMES M. WILHOYTE, JR; MARY WILHOYTE; THOMAS CHARLES WILHOYTE; JOHN GEORGE WILHOYTE; DONALD W. WINNE; AND DORIS L. WINNE,
Respondents.

No. 46015

FILED

NOV 2 1 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

07-25382

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

This is an appeal from a district court judgment concerning title to a recreational easement. Ninth Judicial District Court, Douglas County; David R. Gamble, Judge.

FACTS

Appellants are lakefront property owners on Lake Tahoe who dispute the right of other homeowners in a subdivision to use a strip of land between the homes and Lake Tahoe. Douglas County is a respondent along with various other property owners in the subdivision that originally moved to intervene (Intervenors).

A 1921 plat map dedicated a piece of irregularly-shaped property that runs in a north-northwest direction, approximately one thousand feet long along Lake Tahoe. The width of the property fluctuates between fifteen and fifty feet and is just south of Cave Rock, alongside the Lincoln Park subdivision. On the plat map, an eighteen-foot strip of the dedicated property is designated for a future street referred to as the "unnamed beach road". The eighteen-foot strip runs along the original property lines of blocks A, C, E, and F. Two perpendicular roads join the unnamed beach road to a parallel road (Lincoln Park Circle). Douglas County possesses an easement for public use, and for highway and street purposes, excluding the previously abandoned areas of blocks A, B, and C. The irregular strips of land bordering the unnamed beach road were dedicated to Douglas County and later accepted in 1946.

Appellants filed a petition for declaration of rights as to real property seeking a determination as to Douglas County's interest in the

The district court determined that Douglas County and the Intervenors did possess easements over the disputed strip of land.

subdivision. ~~The district court ultimately determined that no easement for Douglas Country or the Intervenors exists.~~ This appeal followed.

deleted and replaced per order 2-25-08 SY

DISCUSSION

We review questions of law de novo.[1] The district court's findings of fact will not be disturbed if supported by substantial evidence.[2] An award of attorney fees will not be overturned absent a manifest abuse of discretion.[3]

On appeal, the lakefront owners challenged 1) the district court's finding that a public and private easement exists over the unnamed beach road behind the lakefront lots; 2) the district court's finding that three prior quiet title actions were void for lack of notice; 3) the district court's finding that the appellants did not terminate the easement by adverse possession; and 4) the district court's $69.229.74 award of attorney fees to the Intervenors.

Implied easement for public and private use

The district court found that the recording of a plat map in 1921 created an implied easement over the disputed strip of land for public and private use. We agree. In Shearer v. City of Reno,[4] we held that a plat map was controlling on the use of the land. Under Shearer, a plat map cannot be changed once it is filed, advertised, or any of the lots

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[1]State Industrial Insurance System v. United Exposition Services, 109 Nev. 28, 30, 864 P.2d 294, 295 (1993).

[2]Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003).

[3]Bergmann v. Boyce, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993).

[4]36 Nev. 443, 447, 136 P. 705, 707 (1913).

described by the map are sold.[5] Here, the 1921 Map clearly notes that a strip along the beach is designated as a future street. The 1921 Map also contains an easement possessed by Douglas County for the public use and for highway and street purposes. The district court found that it was reasonable to conclude that "a dedication of a street over a beach area should be interpreted as providing a path for access along the beach to those that may also make use of the public streets." We conclude that substantial evidence supports the district court's determination that ~~a~~ public and private ~~easement exists~~ easements exist over the unnamed beach road behind the lakefront lots.

modified per order 2-25-08 sy

Prior quiet title actions

Appellants also argue that the district court erred in finding that three prior quiet title actions were void for lack of notice. The appellant lakefront owners brought three actions quieting title. Two judgments were entered in 1999, and one in 2002. Respondent Douglas County was served by mail. The intervening backlot residents of Lincoln Park were served by publication, pursuant to a district court order for publication. No one was present to contest the matters. All three judgments quieting title were awarded to appellants by default.

NRS 40.090(2) states in pertinent part that:

> The complaint must include as defendants in such action, in addition to such persons as appear of record to have some claim, all other persons who are known, or by the exercise of reasonable diligence could be known, to plaintiff to have some claim to an estate, interest, right, title,

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[5]Id. at 448, 136 P. at 707.

> lien, or cloud in or on the land described in the complaint adverse to plaintiff's ownership.

The plat map shows sixty-five lots in the entire Lincoln Park subdivision. The only named defendants were "[t]he eight original owners, Does 1-100, and Douglas County," in those actions. The district court overruled the previous default actions for a lack of "reasonable diligence" in ascertaining individuals who may have had some claim to the beachfront. Although reasonable diligence would have revealed the identity of the backlot owners who may have had some claim to the beach front, the only certificate of mailing available in the record is on the Douglas County District Attorney's office.[6] We conclude that the district court was provided substantial evidence with which it could find that the backlot owners were not notified of the default actions going forward, and that the disputed judgments quieting title are of no effect and are not valid given the lack of service on the backlot owners.

Termination by adverse possession

Appellants also contend that the district court erred in finding that the appellants did not terminate the easement by adverse possession. But title to government land cannot be obtained through adverse possession.[7] "[A]bsent a statute allowing adverse user against the state,

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[6]Mullane v Central Hanover Bank & Trust Co., 339 U.S. 306, 313, (1950) (providing that the U.S. Constitution's Due Process Clause requires that "deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case").

[7]See Sloat v. Turner, 93 Nev. 263, 266, 563 P.2d 86, 88 (1977).

no rights as to state property can be acquired by prescription."[8] The 1921 plat map established the government's fee interest through a statutory dedication. It is irrelevant that the landowners had made improvements to the land and had fenced it in. The dedication was complete under the filing of the plat map on September 7, 1921. Because government land cannot be taken through adverse possession, we agree with the district court that the lakefront landowners do not own title in fee to this parcel of land.

Attorney fees

Appellants contend that the district court erred in awarding attorney fees to the Intervenors in the amount of $69,229.74. We agree. We have recently concluded in Horgan v. Felton,[9] that attorney fees generally cannot be recovered unless authorized by an agreement, statute, rule, and we recently clarified that "in cases concerning title to real property, attorney fees are only allowable as special damages in slander of title actions." No authority supports the award of attorney fees in this case.[10] We therefore

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[8]Id.

[9]Horgan v. Felton, 123 Nev. ____, ____ P.3d ____ (Adv. Op. No. 53, Nov. 21, 2007); see also Young v. Nevada Title Co., 103 Nev. 436, 442, 744 P.2d 902, (1987); see Sun Realty v. District Court, 91 Nev. 774, 776, 542 P.2d 1072, 1074 (1975).

[10]~~Notwithstanding, the district court may consider whether the award of attorneys fees is appropriate pursuant to NRS 18.010(2)(b) or under any provisions of the Nevada Rules of Civil Procedure.~~ We note that it is not clear from the record whether attorney fees may be permissible on some other basis. The district court remains free to consider such an award, if appropriate.

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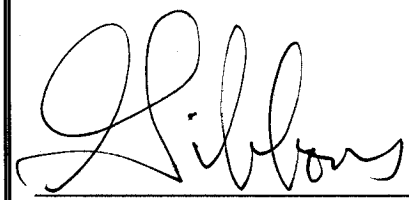
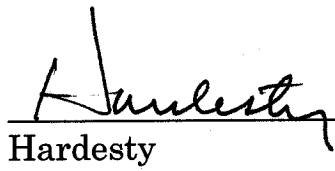
Vacated & replaced text of fn 10 per 2-26-08 order. IC

conclude that the district court's award of attorney fees as an abuse of discretion, and

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, AND REMANDED for further proceedings consistent with this order.



_____, J.
Gibbons



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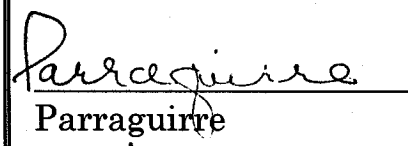

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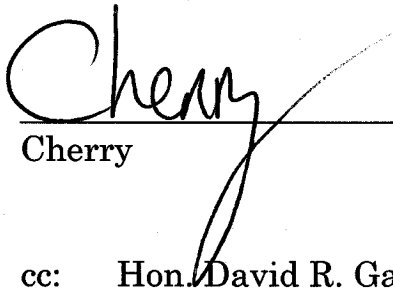
Douglas



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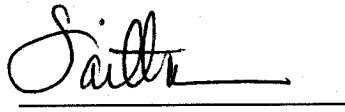

_____, J.
Saitta

cc: Hon. David R. Gamble, District Judge
Madelyn Shipman, Settlement Judge
Alling & Jillson, Ltd.
Douglas County District Attorney/Minden
Thomas J. Hall
Douglas County Clerk

MAUPIN, C.J., concurring:

I concur in the result reached by the majority.

 , C.J.
Maupin