IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNSON INVESTMENTS LIMITED PARTNERSHIP, A NEVADA LIMITED PARTNERSHIP; CHARLENE K. FRANK, AS SUCCESSOR TRUSTEE OF THE FRANK FAMILY REVOCABLE LIVING TRUST DATED OCTOBER 21, 1986; LOUIE R. BURGARELLO, AN INDIVIDUAL; JANICE M. BURGARELLO, AN INDIVIDUAL; DONALD G. ZUNDEL AND KAREN K. ZUNDEL, AS TRUSTEE OR SUCCESSOR TRUSTEE OF THE DONALD & KAREN ZUNDEL LIVING TRUST DATED MAY 6, 2002; HARLAN H. ELGES AND JUDITH ANN ELGES, AS CO-TRUSTEES OF THE ELGES FAMILY TRUST DATED MAY 3, 1996; BRUCE PENDLETON, AN INDIVIDUAL; PEGGY PENDLETON, A/K/A MARGARET PENDLETON, AN INDIVIDUAL; BRUCE PENDLETON, D.D.S., LTD., A NEVADA CORPORATION; MONTY NEUGEBAUER, AN INDIVIDUAL; PATRICK JAMES MARTIN AND SALLY S. MARTIN, AS TRUSTEES OF THE MARTIN FAMILY TRUST DATED JUNE 20, 2000; ANTHONY N. MAVRIDES, AN INDIVIDUAL; ROBIN R. MAVRIDES, AN INDIVIDUAL; DON RICHTER, AN INDIVIDUAL; PATRICIA RICHTER, AN INDIVIDUAL; AND STEVEN J. SCOTT, AS TRUSTEE OF THE STEVEN J. SCOTT REVOCABLE LIVING TRUST DATED JUNE 9, 1998,
Appellants,
vs.
MICHAEL A. LAUB, AN INDIVIDUAL; TAMARA M. LAUB, AN INDIVIDUAL; AND SIMON ABITTAN, AS TRUSTEE OF EAGLE FALLS DOMESTIC NON GRANTOR TRUST DATED JULY 30, 2003,
Respondents.

No. 48456

FILED

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TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK



08-29617

MICHAEL A. LAUB, AN INDIVIDUAL; TAMARA M. LAUB, AN INDIVIDUAL; AND SIMON ABITTAN, AS TRUSTEE OF EAGLE FALLS DOMESTIC NON GRANTOR TRUST DATED JULY 30, 2003,
Appellants,
vs.
LAKESIDE COVE HOMEOWNERS ASSOCIATION,
Respondent.

ORDER OF REVERSAL AND REMAND

This is an appeal and cross-appeal from a district court order dismissing a real property action. Ninth Judicial District Court, Douglas County; Richard Wagner, Judge.

The underlying action stems from a boundary dispute regarding a common area lot in the Lakeside Cove resort subdivision in Douglas County. Lakeside Cove is a residential subdivision consisting of 12 separate lots. Lots 1 though 11 are individually owned. Lot 12, however, is a common area lot jointly owned by the owners of Lots 1 though 11. The appellants in this case are owners of several individual lots at Lakeside Cove. It appears that the parties' dispute stems from respondents Michael and Tamara Laub's (collectively "the Laubs") expansion of their residence on Lot 1 onto Lot 12, the common area.

The appellants' complaint against the Laubs alleged the following: (1) in 2001, the Laubs had new Lot 1 boundary lines surveyed and documented as the "Record of Survey, Boundary Line Adjustments" (Line Adjustment) to allow the expansion of their residence into the common area of Lot 12; (2) the Laubs needed all of the property owners to approve the Line Adjustment; (3) the Line Adjustment, however, was never presented to the property owners, but was instead presented to Norm E. Scoggins, then President of Lakeside Cove Homeowners

Association (Homeowners Association); (4) Scoggins, without authorization from all of the property owners, executed the Line Adjustment; (5) the Laubs also executed the Line Adjustment, and recorded the document with the Douglas County Recorder in September 2001; and (6) the Laubs then began constructing an addition onto their residence that expanded onto Lot 12.

In their complaint, appellants asked for declaratory and injunctive relief. Appellants sought a declaration that the Line Adjustment was "null and void and of no effect." Additionally, the appellants sought an injunction that prohibited the Laubs from "encroaching or trespassing on [appellants'] property, including, but not limited to, the Common Area within Lakeside Cove."[1]

The Laubs subsequently moved for judgment on the pleadings, based upon the appellants' failure to join necessary parties. Specifically, the Laubs noted that the instant complaint was initiated by owners of six of the lots at the subdivision, and that they sought a judgment outlining the ownership rights of Lot 12, the common area, which was owned by all of the owners of the eleven lots in the subdivision. Thus, the Laubs

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[1]The Laubs filed a third-party complaint against the Homeowners Association, arguing, inter alia, that (1) the Laubs had requested permission from the Homeowners Association to expand their driveway onto Lot 12; (2) the Homeowners Association authorized an agreement in which the Laubs would deed "certain property" to the Homeowners Association and in exchange, the Homeowners Association would deed "certain property" to the Laubs; and (3) confusion regarding ownership of the property was a direct result of misrepresentations made by various members of the Homeowners Association. The Laubs sought judgment declaring correct ownership of the property at issue and equitable indemnity for all costs and attorney fees incurred by the Laubs in this matter.

argued, because (1) complete relief could not be awarded in the absence of all of the owners of all of the lots at the subdivision, and (2) appellants failed to join the non-party owners, the district court should grant their motion for judgment on the pleading based upon appellants' failure to join necessary and indispensable parties. The district court agreed with the Laubs, finding (1) that the other lot owners who also owned an interest in Lot 12 who were not parties to the lawsuit were indispensable parties pursuant to NRCP 19, who could be directly affected by the court's ruling; and (2) that the parties should have been joined in the action, and the action could not proceed in their absence. Accordingly, the district court granted the Laubs' motion for judgment on the pleadings, and dismissed the entire action.[2] Both parties' timely appeal followed.[3]

Having reviewed the record and the parties' briefs, we conclude that the district court erred in dismissing the complaint based on appellants' failure to join indispensable parties to this action.[4].

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[2]It is undisputed, that the district court dismissal of the "action" also encompassed the third-party complaint asserted by the Laubs. See United Ass'n of Journeymen v. Manson, 105 Nev. 816, 820, 783 P.2d 955, 957 (1989) ("an action includes the original claim and any crossclaims, counterclaims, and third-party claims").

[3]The Laubs appeal the dismissal of their third-party complaint "solely as a precautionary measure." That is, if we reverse "the district court's dismissal of the 'action' . . . then the entire case should be returned to the district court in the posture that existed before the dismissal, i.e. with the third-party complaint in tact." The Homeowners Association agrees with this assessment.

[4]See Bonicamp v. Vazquez, 120 Nev. 377, 379, 91 P.3d 584, 585 (2004) (stating that "[a]n order granting judgment on the pleadings under NRCP 12(c) is appropriate only when material facts are not in dispute and the movant is entitled to judgment as a matter of law").

In resolving this matter, we look to NRCP 19 for guidance. The term "necessary parties" is defined by NRCP 19(a). In relevant part, under this rule, a person is necessary if: "the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may [ ] as a practical matter impair or impede the person's ability to protect that interest."[5] We agree that the absent non-party lot owners are necessary parties to this action. The appellants' complaint essentially seeks declaratory relief regarding the property interests and boundaries of the common area lot. Any judicial determinations of these issues would affect not only the parties' rights with respect to the common area, but the non-party lot owners' interests as well.

That being said, however, "[i]f the person has not been so joined" and if joinder is feasible, "the court shall order that the person[s] be made a party."[6] In this case, the district court found that the non-party lot owners were "indispensable," meaning that joinder of the non-party lot owners was not feasible.[7] The court went on to dismiss the action because the appellants failed to join the non-party lot owners. There is nothing in the record, however, to indicate that any of the non-party lot owners were unavailable to join the underlying action. Thus, the district court's conclusion that the non-party lot owners were indispensable appears to be

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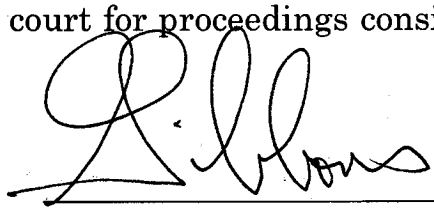
[5]See NRCP 19(a)(2)(i)

[6]See NRCP 19(a).

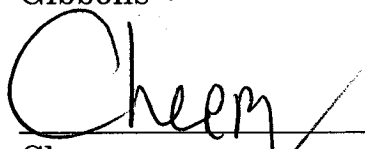
[7]We have previously noted that "NRCP 19(a) defines such parties as indispensable only when joinder of that party is not feasible under NRCP 19(a)(2)." Blaine Equip. Co. v. State, Purchasing Div., 122 Nev. 860, 864 n.6, 138 P.3d 820, 822 n.6 (2006).

incorrect. Additionally, even though the appellants failed to join any available non-party lot owners, the district court had a duty to sua sponte order that they be made a party to the lawsuit.[8] We therefore conclude that dismissal of the appellants' lawsuit for failure to join the non-party lot owners was improper. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[9]



_____, C.J.
Gibbons



_____, J.
Cherry

_____, J.
Saitta

cc: Hon. Richard Wagner, District Judge
Madelyn Shipman, Settlement Judge
Holland & Hart LLP/Reno
Georgeson Angaran, Chtd.
Lemons Grundy & Eisenberg
Douglas County Clerk

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[8]It is undisputed that the appellants below never moved to join the non-party lot owners. Nonetheless, "a district court is obligated to, sua sponte, join a necessary party under NRCP 19(a)." See Blaine Equip. Co., 122 Nev. at 864, 865 n.8, 138 P.3d at 822, 823 n.8; see also NRCP 19(a).

[9]In light of our decision to reverse the dismissal of appellants' case, the dismissal of the Laubs' third-party complaint is also reversed and remanded for further proceedings.