IN THE SUPREME COURT OF THE STATE OF NEVADA

NYE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,
Appellant,
vs.
LOYAL WATKINS AND ANNA WATKINS,
Respondents.

No. 48636

FILED

AUG 12 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court judgment entered after a bench trial granting a permanent injunction in a real property action. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

This matter concerns a road in the Allen Estates development in Pahrump, Nevada. Allen Estates' developer dedicated the road to appellant Nye County as a public road in 1981. The developer placed the original road surface and, although it had dedicated the road to Nye County, apparently continued to maintain the road until 2003.

Respondents Loyal and Anna Watkins have resided in a home along the road since 1984. Around that time, the developer encouraged the Watkins to make improvements to an area next to the road surface, near a large tree that the developer had planted, but within the area that the parties agree was dedicated to Nye County as a public road. The Watkins planted additional trees and shrubs along the road and eventually added an approximately 40-foot cement sidewalk. For those improvements, the Watkins have been assessed a total of $25 in property taxes.

In 2003, Nye County began a project to improve the public road's surface. During this project, Nye County discovered that the Watkins' improvements encroached into the area dedicated to the County

as a public road. As a result, Nye County issued a notice to the Watkins informing them that their improvements encroached into the public road and directing them to remove the encroachments or to pay Nye County's costs of removing the encroachments.

In response, the Watkins instituted the underlying action against Nye County to prevent Nye County from removing, without just compensation, the improvements that it asserted encroached into the area dedicated as a public road. The Watkins essentially alleged that, because Nye County had acquiesced to their encroachments for approximately 18 years, Nye County was estopped from removing the encroachments without first compensating them. Nye County argued that, as a municipality, its alleged mere acquiescence to the Watkins' encroachments was insufficient to divest it of its right to any portion of the dedicated road. Thereafter, the Watkins ultimately obtained from the district court a permanent injunction, enjoining Nye County from removing the encroachments without first justly compensating the Watkins. This appeal followed. Churchill County has filed an amicus brief, as permitted.

In considering this appeal, the district court's decision to grant the Watkins a permanent injunction is reviewed for an abuse of discretion.[1] We give deference to the district court's factual findings so long as they are not clearly wrong and are supported by substantial

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[1]See Labor Comm'r v. Littlefield, 123 Nev. 35, 38, 153 P.3d 26, 28 (2007) (noting that the decision to grant a preliminary injunction is within the district court's discretion); A.L.M.N., Inc. v. Rosoff, 104 Nev. 274, 277, 757 P.2d 1319, 1321 (1988) (recognizing that the district court's decision to grant a permanent injunction is generally reviewed for an abuse of discretion).

evidence,[2] which has been defined as evidence that "a reasonable mind might accept as adequate to support a conclusion."[3] Questions of law are reviewed de novo.[4]

In its order, the district court determined that, although the Watkins could not and did not acquire an interest in the road dedicated to Nye County by virtue of their improvements,[5] they had a compensable possessory interest in their improvements—plants, trees, and a sidewalk—that encroached on area dedicated to Nye County as a public road. That conclusion was substantially based on Nye County's purported 18-year acquiescence to the encroachments.

On appeal, Nye County essentially contends that, notwithstanding the district court's statement that the Watkins did not acquire an interest in any portion of the road dedicated to Nye County, the district court's ultimate conclusion effectively divested it of its interest in the entire dedicated road and granted the Watkins an interest in its property, which, under well-settled principles of law, they cannot acquire from a municipality under the circumstances of this case. We agree.

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[2]See NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004); Gibellini v. Klindt, 110 Nev. 1201, 1204, 885 P.2d 540, 542 (1994).

[3]First Interstate Bank v. Jafbros Auto Body, 106 Nev. 54, 56, 787 P.2d 765, 767 (1990) (internal quotation marks omitted).

[4]SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993); U.S. v. Sage Pharmaceuticals, Inc., 210 F.3d 475, 477 (5th Cir. 2000) (noting that a trial court's conclusions of law with respect to granting or denying a permanent injunction are reviewed de novo).

[5]See Anderson v. Richards, 96 Nev. 318, 323, 608 P.2d 1096, 1099 (1980).

Although the district court's decision provided that the Watkins had an interest only in the plants, trees, and sidewalk that they placed within the public road, that conclusion effectively grants the Watkins an interest in land belonging to Nye County for the public's benefit. The district court determined that this interest existed by virtue of Nye County's purported acquiescence for approximately 18 years to the presence of the improvements within the area dedicated as a public road.

But mere acquiescence to encroachments on a public roadway or a municipality's nonuse of any portion of a public roadway does not divest the municipality or, by extension, the public of its interest in the road.[6] It is a well-settled principle that, absent extraordinary circumstances, neither adverse possession, nor equitable estoppel, nor any related doctrine may be invoked against a municipality to divest it of any interest in a public road.[7]

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[6]See id.

[7]See id.; City of Rochelle v. Suski, 564 N.E.2d 933, 936 (Ill. App. Ct. 1990) (recognizing that "adverse possession cannot be asserted against a public body"); City of Myrtle Beach v. Parker, 197 S.E.2d 290, 297 (S.C. 1973) (recognizing that, absent exceptional circumstances, principles of estoppel will not divest a municipality of its rights in a public road); Webb v. City of Demopolis, 13 So. 289, 295 (Ala. 1892) (recognizing that "[n]either the statute of limitation, nor the rule which carries title to adverse possession, nor the doctrines of staleness, equitable estoppel, or prescription, can be invoked or applied against the right of [a municipality] and of the public to have [a public road] opened from end to end, and from side to side"); Town of West Seattle v. West Seattle Land & Imp. Co., 80 P. 549, 550 (Wash. 1905) (noting that, in general, "a party cannot acquire title by adverse possession to property held by a municipality in its governmental capacity for public purposes"); In Re Willard Parker Hospital, 111 N.E. 256, 260 (N.Y. 1916) (recognizing the "well-settled rule of law that no title by adverse possession can be obtained

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And, as Nye County points out, extraordinary circumstances warranting deviation from that principle are not present here. In particular, Nye County's mere nonuse of the public road or any portion thereof does not constitute acquiescence and is insufficient to divest it of its interest in any part of the road—particularly in the absence of any affirmative conduct by Nye County on which the Watkins relied to their detriment.[8] The developer's encouragement to the Watkins to add improvements to the area at issue does not constitute affirmative conduct by Nye County to warrant divesting it of its interest in that portion of the

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to lands in a highway"); Devine v. City of Seward, 258 P.2d 302, 305 (Kan. 1953) (noting that, when a road is dedicated to a municipality for the public's benefit, "the public benefit cannot ordinarily be lost through nonuse, laches, estoppel, or adverse possession" (internal quotations omitted)); Dabney v. City of Portland, 263 P. 386, 388 (Or. 1928) (recognizing that only in "special cases" may land dedicated to a municipality be acquired by adverse possession).

[8]See generally Attorney General v. Nevada Tax Comm'n, 124 Nev. ___, ___, 181 P.3d 675, 679 (2008) (noting that

> "(1) the party to be [equitably] estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; [and] (4) he must have relied to his detriment on the conduct of the party to be estopped"

(quoting NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 1160, 946 P.2d 163, 169 (1997))).

public road, as the Watkins suggest.[9] To conclude otherwise imposes a considerable burden on municipalities to expend significant resources continually monitoring their public roads to ensure that no road is encroached upon by their citizens, lest they be divested of any of their interest in the roads.

Further, although Nye County collected a tax assessment from the Watkins, the nominal tax assessment that they paid with regard to their improvements is likewise insufficient to support turning aside from the fundamental rule of law that a municipality's nonuse of a public road or any inaction with respect to encroachments on it will divest neither the municipality of its interest in the road nor the public of its benefit from the road.[10]

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[9]Further, the Watkins' reliance on the Nye County district attorney's purported comments to them in 2002 suggesting that the Watkins' need not worry about whether their improvements encroached on the public road is unavailing to support their argument that Nye County acquiesced to the improvements or should be estopped from removing them. By 2002, the Watkins' encroachments had been in place for years. Certainly, they did not rely on the district attorney's purported statement in placing the encroachments.

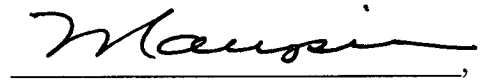
[10]See West Seattle Land & Imp. Co., 80 P. at 550-51 (providing that "[m]ere lapse of time and the payment of personal taxes on . . . improvements" is insufficient to bar a municipality from removing encroachments on a public road); Dabney, 263 P. at 388 (providing that "[m]ere lapse of time, nonuser, or improper levying and assessment of taxes will not constitute an estoppel").

The district court noted that the tax assessment, although nominal, suggests that Nye County acquiesced to the Watkins' encroachments, but the tax assessment appears only to suggest the assessor's unfamiliarity with the Watkins' property line. As the assessor testified, the assessor's office does not determine property boundaries, but rather assesses improvements that appear to belong to a parcel.

Thus, because the circumstances of this case do not fit within any exception to the principle that a municipality's nonuse of a public road will not divest it of its interest, even when private citizens have encroached on the road for a number years, the district court abused its discretion when it granted the Watkins a permanent injunction, enjoining Nye County from removing their encroachments without first justly compensating them.[11] The Watkins have no interest in the public road and are not entitled to just compensation before Nye County may utilize the portion on which the Watkins encroached.

Accordingly, we

ORDER the judgment of the district court REVERSED.



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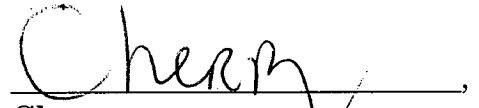
Maupin



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Cherry

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[11]In light of this conclusion, we do not address Nye County's challenge to the district court's order denying its motion for reconsideration of the order granting the Watkins a preliminary injunction.

cc: Hon. John P. Davis, District Judge
Ara H. Shirinian, Settlement Judge
Nye County District Attorney/Pahrump
Jeffrey B. Ferguson
Churchill County District Attorney
Nye County Clerk