

IN THE SUPREME COURT OF THE STATE OF NEVADA

LV MALL LIMITED PARTNERSHIP, A  
LIMITED PARTNERSHIP; ELK  
INVESTMENTS, A GENERAL  
PARTNERSHIP; DANIEL KAY, AN  
INDIVIDUAL; AND EDWARD KAY, AN  
INDIVIDUAL,

Appellants,

vs.

MCCARRAN INTERNATIONAL  
AIRPORT AND CLARK COUNTY,  
POLITICAL SUBDIVISIONS OF THE  
STATE OF NEVADA,

Respondents.

No. 55712

**FILED**

**MAR 18 2011**

TRACIE A. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a complaint under NRCP 12(b)(5) in an inverse condemnation action. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

In 2009, appellants instituted an inverse condemnation action against respondents, arguing that they were entitled to just compensation for the alleged taking of their airspace by virtue of a 1990 Clark County, Nevada, ordinance that limits appellants' development of the space above their property.<sup>1</sup> Respondents moved to dismiss the action, arguing that appellants' claims were barred by NRS 40.090's 15-year limitation period for bringing such actions. See White Pine Lumber v. City of Reno, 106 Nev. 778, 801 P.2d 1370 (1990) (concluding that NRS 40.090's 15-year limitation period applies to claims stemming from a purported government

<sup>1</sup>Appellants' district court complaint alleged that respondents took their airspace through the general "imposition of height restrictions." But appellants base their argument on appeal on the height restrictions imposed by Clark County Ordinance 1221, enacted in 1990.

taking). The district court granted the motion and dismissed the action. This appeal followed.

The district court's order granting respondents' motion to dismiss under NRCP 12(b)(5) is "subject to a rigorous standard of review on appeal." See Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (quoting Seput v. Lacayo, 122 Nev. 499, 501, 134 P.3d 733, 734 (2006)). Accordingly, this court will treat all factual allegations in appellants' complaint as true and draw all inferences in their favor. Id. at 228, 181 P.3d at 672. Appellants' complaint was properly dismissed only if it appears beyond a doubt that they could prove no set of facts that, if true, would entitle them to relief. Id. A district court may dismiss a complaint under NRCP 12(b)(5) if the action is barred by the statute of limitations, Bemis v. Estate of Bemis, 114 Nev. 1021, 1024, 967 P.2d 437, 439 (1998), and although a district court generally may not consider matters outside of the pleadings when reviewing a motion to dismiss, the court "may take into account matters of public record, orders, items, present in the record of the case, and any exhibits attached to the complaint." Breliant v. Preferred Equities Corp., 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). We also review the district court's legal conclusions de novo. See Buzz Stew, LLC, 124 Nev. at 228, 181 P.3d at 672.

Having reviewed the briefs and appendix in this matter, we conclude that the district court did not err when it granted respondents' motion to dismiss appellants' inverse condemnation action. Appellants' inverse condemnation action, to which a 15-year limitation period applies, accrued when the 1990 Clark County ordinance was adopted. See NRS 40.090; McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 675, 137 P.3d 1110, 1130 (2006) (indicating that an inverse condemnation action based

on the 1990 Clark County ordinance accrues on the date of the taking, when the ordinance was enacted); White Pine Lumber, 106 Nev. 778, 801 P.2d 1370. But appellants did not initiate their inverse condemnation action based on that ordinance until November 10, 2009, when they filed their complaint—well beyond the 15-year limitation period for doing so. Thus, the district court correctly concluded that appellants failed to state any claim on which relief could be granted and dismissed the complaint.

Accordingly, we

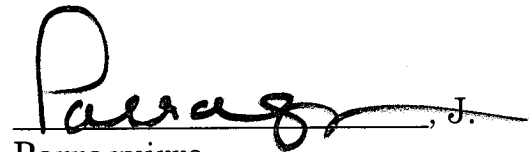
ORDER the judgment of the district court AFFIRMED.<sup>2</sup>



\_\_\_\_\_, J.  
Saitta



\_\_\_\_\_, J.  
Hardesty



\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Valorie Vega, District Judge  
Candace Carlyon, Settlement Judge  
Adams Law Group  
Brownstein Hyatt Farber Schreck, LLP/Las Vegas  
Clark County District Attorney/Civil Division  
Jones Vargas/Las Vegas  
Eighth District Court Clerk

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<sup>2</sup>Having considered all the arguments raised by appellants, including their contentions that the 1990 Clark County ordinance's enactment violated constitutional procedural due process principles or was otherwise deficient, that the 15-year limitation period for instituting inverse condemnation actions is unconstitutional, and that the district court abused its discretion when it denied their NRCP 56(f) request for time to conduct further discovery, we conclude that those arguments lack merit and thus do not warrant reversal of the district court's judgment.