

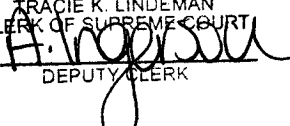
IN THE SUPREME COURT OF THE STATE OF NEVADA

RB PROPERTIES, INC., A NEVADA
CORPORATION; AND SOUTH POINTE
PROPERTIES, INC., A NEVADA
CORPORATION,
Appellants,
vs.
CLARK COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA, AND ITS BOARD OF
COMMISSIONERS,
Respondents.

No. 57003

FILED

MAY 23 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a regulatory takings action. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellants RB Properties, Inc. and South Pointe Properties, Inc. (collectively, RB Properties) owned land in Laughlin, Nevada that they planned to develop into multiple resort hotels with casinos. RB Properties later sued respondents Clark County and its Board of Commissioners, alleging that a 1998 amendment to the Clark County Code's definition of a resort hotel constituted a regulatory taking. See Bill No. G-10-6-98-1, Liquor and Gaming Licensing Board of Clark County (1998). The district court granted Clark County summary judgment because RB Properties' takings claim was not ripe and RB Properties had no constitutionally protected property interest.

We conclude that the district court properly granted Clark County summary judgment because (1) no genuine issues of material fact exist regarding the ripeness of RB Properties' takings claim since it failed



to submit the necessary applications for land use approvals or for a gaming license, and (2) RB Properties does not have a constitutionally protected property right to gaming.¹

The parties are familiar with the facts and procedural history of this case, and we do not recount them further except as necessary for our disposition.

DISCUSSION

I. Standard of review

We review a district court's order granting summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. Id. When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. Id. However, the nonmoving party bears the burden of demonstrating that a genuine issue of material fact exists. Id. at 732, 121 P.3d at 1031. General allegations and conclusory statements do not create genuine issues of fact. Id. at 731, 121 P.3d at 1030-31.

¹We also conclude that RB Properties waived its arguments relating to due process, equal protection, and a takings claim under the Nevada Constitution because RB Properties failed to specifically raise these issues before the district court. See Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

II. The district court properly granted Clark County summary judgment because RB Properties' takings claim is not ripe

RB Properties argues that the district court erred by granting Clark County summary judgment because RB Properties' takings claim is ripe under the futility exception to the ripeness doctrine. We disagree.

Prior to examining a regulatory takings claim, a court must determine that the claim is ripe. Palazzolo v. Rhode Island, 533 U.S. 606, 618 (2001); McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 664, 137 P.3d 1110, 1123 (2006). A takings claim is not ripe unless "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." Williamson Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 186 (1985). However, the futility exception to the ripeness doctrine allows a court to evaluate a takings claim even if a party has not submitted an issue to the government entity for final decision, if such submission would be futile. Kinzli v. City of Santa Cruz, 818 F.2d 1449, 1454 (9th Cir. 1987).

RB Properties failed to demonstrate any genuine issues of material fact regarding the ripeness of its takings claim or the application of the futility exception. At the time of the alleged taking, RB Properties had only obtained H-1 zoning on part of its property and had not applied for any of the other land use approvals or the gaming license that the Clark County Code required to establish a resort hotel with a casino. See Clark County Code § 8.04.030(A) (requiring license to offer gaming); id. §

29.30.015(7) (1998)² (operation of casino requires conditional use permit). Because RB Properties failed to submit the necessary land use applications, RB Properties' takings claim is not ripe. See Vacation Village, Inc. v. Clark County, Nev., 497 F.3d 902, 912 (9th Cir. 2007) (citing Southern Pacific v. City of Los Angeles, 922 F.2d 498, 503 (9th Cir. 1990)) (stating that a landowner must make at least one meaningful application to the appropriate decision-making body prior to bringing a takings claim). Further, the futility exception does not save RB Properties' takings claim. See Southern Pacific, 922 F.2d at 504 (requiring one meaningful application to the appropriate decision-making body before the futility exception may apply). Thus, the district court properly granted Clark County summary judgment because RB Properties' takings claim is not ripe.

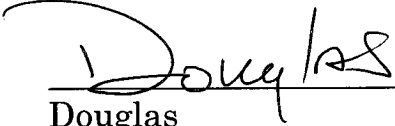
III. The district court properly granted Clark County summary judgment because RB Properties lacks a constitutionally protected property interest in gaming


RB Properties argues that the district court erred by granting Clark County summary judgment because genuine issues of material fact exist regarding whether RB Properties has a constitutionally protected property interest in gaming. We disagree. Even if RB Properties had obtained a gaming license and use permit, that alone would be insufficient to comprise a constitutionally protected property right. See Coury v. Robison, 115 Nev. 84, 88, 976 P.2d 518, 520 (1999) (stating that the acquisition of a gaming license and use permit constitutes a privilege, not

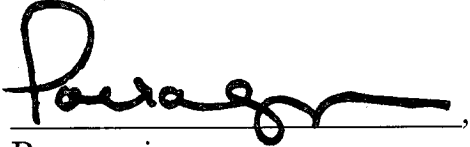
²Clark County's code was revised in 2011, and this provision is now found in section 30.48.250 (2011).

a property right). Thus, the district court properly granted Clark County summary judgment because RB Properties cannot have a constitutionally protected property interest in gaming. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Saitta


_____, J.
Parraguirre

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Lansford W. Levitt, Settlement Judge
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas
Clark County District Attorney/Civil Division
Eighth District Court Clerk