IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALAN DILL, AN INDIVIDUAL; AND JOAN DILL, AN INDIVIDUAL,
Appellants,
vs.
ENOCH VEGA, AN INDIVIDUAL; AND JUDY VEGA, AN INDIVIDUAL,
Respondents.

No. 68199

FILED

MAR 17 2016

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

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is an appeal from a district court order denying appellants' request for a preliminary injunction and granting in part respondents' request for a preliminary injunction. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

This appeal arises out of a dispute between neighbors regarding a wall that respondents built on the property line between the parties' parcels of real property. Respondents sought a preliminary injunction to allow them to finish the wall and leave it up pending trial, while appellants sought a preliminary injunction requiring respondents to remove the wall pending trial. In denying appellants' motion for a preliminary injunction, the district court found that, although appellants had demonstrated a reasonable likelihood of success on the merits, they had not shown that they would suffer irreparable harm that could not be compensated if the wall was allowed to stand pending trial. *See Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987) (providing that a preliminary injunction is generally available to preserve the status quo "upon a showing that the party seeking it enjoys a reasonable probability

of success on the merits and that the defendant's conduct, if allowed to continue, will result in irreparable harm for which compensatory damage is an inadequate remedy."). On appeal, appellants argue that their request for an injunction should have been granted because any injury to real property constitutes irreparable harm.

While it is true that, "real property and its attributes are considered unique[, such that a] loss of real property rights generally results in irreparable harm," *id.* at 416, 742 P.2d at 1030, the cases cited by appellants in this regard generally concern the potentially permanent loss of title to real property. *See id.* (noting that if the property at issue was sold at a trustee's sale, the party seeking the injunction would not be able to reclaim it); *Thirteen S. Ltd. v. Summit Vill., Inc.*, 109 Nev. 1218, 1220, 866 P.2d 257, 259 (1993) (concluding that a party had demonstrated irreparable harm by showing that it would lose title to the property at issue in the absence of an injunction); *Pickett v. Comanche Constr., Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992) (holding that a party would be subject to irreparable harm if the opposing party were allowed to sell certain real property). Moreover, the remaining cases appellants cite do not address whether an encroachment such as the one at issue in this case constitutes irreparable harm for the purpose of granting a preliminary injunction. *See S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 416, 23 P.3d 243, 251 (2001) (concluding that the threat of continuing trespass by canvassers soliciting business on the sidewalks in front of respondent's property warranted an injunction); *Leonard v. Stoebling*, 102 Nev. 543, 551, 728 P.2d 1358, 1363 (1986) (ordering entry of a permanent injunction consistent with restrictive covenants imposed on the enjoined party's property); *Cook v. Maremont-Holland Co.*, 75 Nev. 380, 388, 344 P.2d 198,

202 (1959) (holding that an injunction was proper in light of the threat of continuing trespass of sheep on the plaintiff's land).

Here, if appellants are ultimately successful at trial, they will be able to have the wall removed from their property. Thus, they do not face the permanent loss of their real property, as was the case in *Dixon*, *Thirteen S. Ltd.*, and *Pickett*. Although appellants will not have the use of the portion of their property on which the wall sits during the trial, they have not identified any authority holding that a relatively minor encroachment, such as the one at issue here,[1] always results in irreparable harm.

Additionally, appellants' appendix on appeal does not include any of the motion practice before the district court with regard to the requests for a preliminary injunction, and as a result, we necessarily presume that these portions of the record support the district court's decision in this case. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603-04, 172 P.3d 131, 135 (2007) (noting that it is an appellant's burden to make an adequate appellate record and concluding that the court could not meaningfully review the district court's summary judgment where the appellant failed to include the opposition to the summary judgment motion in the appendix on appeal). Thus, we conclude that the district court acted within its discretion in holding that appellants had not demonstrated irreparable harm in this case, and we affirm the denial of the preliminary injunction to appellants.

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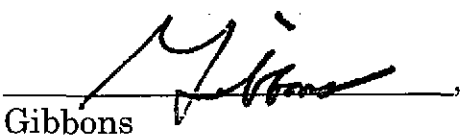
[1]The district court found that the wall encroached on appellants' property by two-and-one-half to five inches.

With regard to the grant of an injunction to respondents, NRCP 65(c) provides that "[n]o . . . preliminary injunction shall issue except upon the giving of security by the applicant." And the Nevada Supreme Court has held that, in the absence of the bond required by NRCP 65(c), an order granting a preliminary injunction is void. *See Strickland v. Griz Corp.*, 92 Nev. 322, 323, 549 P.2d 1406, 1407 (1976). Thus, we must reverse the district court's order to the extent that it granted an injunction to respondents without ordering that a bond be posted.[2] *See id.*

It is so ORDERED.



_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Gloria Sturman, District Judge
Janet Trost, Settlement Judge
Ashcraft & Barr LLP
Enoch Vega
Judy Vega
Eighth District Court Clerk

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[2]In light of our order reversing the preliminary injunction in favor of respondents and appellants' failure to include the motion practice in the appendix, we do not reach the merits of whether the injunction was otherwise properly granted to respondents.