IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRET O. WHIPPLE, INDIVIDUALLY AND AS PRESIDENT AND DIRECTOR OF WHIPPLE CATTLE COMPANY, INC., A NEVADA CORPORATION; CODY K. WHIPPLE, INDIVIDUALLY AND AS TREASURER OF WHIPPLE CATTLE COMPANY, INC., A NEVADA CORPORATION; KIRT R. WHIPPLE, INDIVIDUALLY AND AS SECRETARY OF WHIPPLE CATTLE COMPANY, INC., A NEVADA CORPORATION; JANE E. WHIPPLE, TRUSTEE OF JANE WHIPPLE FAMILY TRUST AND AS MANAGING MEMBER OF KENT WHIPPLE RANCH LLC; KATHRYN WETZEL, INDIVIDUALLY; AND WHIPPLE CATTLE COMPANY, INC., A NEVADA CORPORATION,
Appellants,
vs.
BETSY L. WHIPPLE,
Respondent.

No. 82994-COA

FILED
SEP 22 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Bret O. Whipple, Cody K. Whipple, Kirt R. Whipple, Jane E. Whipple, and the Whipple Cattle Company, Inc. (WCC), appeal from a district court order granting a motion for reconsideration and denying a renewed motion to change venue. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

Respondent Betsy L. Whipple filed the underlying action in Clark County, and appellants sought to have venue changed to Lincoln County, arguing that doing so was appropriate for the convenience of the

witnesses and because the case concerned the parties' respective interests in real property situated in Lincoln County. The district court initially granted that motion over Betsy's opposition. However, the district court granted Betsy's subsequent motion for reconsideration and denied appellants' request to change venue. In doing so, the district court rejected appellants' attempt to demonstrate that venue was proper in Lincoln County because this case involved a dispute concerning the parties' respective interests in real property, reasoning that the case instead involved a business dispute concerning the parties' respective rights and interests in a corporation. Moreover, the district court found that venue was proper in Clark County because at least one of the appellants resided there and that they failed to provide affidavits sufficient to establish the exceptional circumstances necessary for a discretionary change of venue based on forum non conveniens. This appeal followed.

We review district court orders resolving motions for reconsideration and motions to change venue for an abuse of discretion. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010); *Kenning Car Rental, Inc. v. Desert Rent-A-Car*, 105 Nev. 118, 120, 771 P.2d 150, 151 (1989).

The threshold issue in this appeal is whether appellants were correct in arguing below that venue was proper in Lincoln County pursuant to NRS 13.010(2)(a), which provides that, when an action is "[f]or the recovery of real property, or an estate, or interest therein, or for the determination in any form of such right or interest, and for injuries to real property," venue is proper in the county in which the real property is situated. Based on our review of the record, appellants' reliance on NRS 13.010(2)(a) was misplaced. Indeed, although many of the parties

allegations concerned real property owned by WCC, resolution of the related claims and counterclaims requires a determination of the parties' rights and interests in WCC rather than the real property itself.[1] Thus, the district court correctly determined that this case was governed by NRS 13.040, which provides in pertinent that, if NRS 13.010 and certain other statutes that are not relevant here are inapplicable, then venue is proper "in the county in which the defendants, or any one of them, may reside at the commencement of the action." Likewise, the district court correctly determined that venue was proper in Clark County since it was undisputed that at least one of the appellants, who are the defendants below, resided there at the commencement of this case. *See* NRS 13.040.

Nevertheless, even when venue is proper in the county where an action is filed, the district court has discretion to transfer venue under certain circumstances, including where the county is an inconvenient forum, which is the position that appellants took below. *See* NRS

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[1]Even if any of the claims and counterclaims in this case could be construed to fall within the ambit of NRS 13.010(2)(a) such that Lincoln County was the proper venue, they failed to file a timely demand to change venue, and as a result, could not obtain a change of venue as a matter of right. *See* NRS 13.050(1) (providing that, even when an action is not brought in the proper county, it may proceed in the county where it was filed unless the defendant demands in writing, within the time for answering the complaint, that the action be transferred to the proper county). And while a discretionary change of venue would still be available under NRS 13.050(2)(a) (providing the district court discretion to change venue when an action is brought in the wrong forum), it would not constitute an abuse of discretion to deny such relief under the circumstances presented here given that a business dispute is at the core of this case and that Lincoln County does not have a business court. *See* NRS 13.050(2)(d) (stating that the district court may transfer an action brought in a county without a business court to a county with a business court).

13.050(2)(c) (authorizing the district court to transfer an action brought in the proper forum "[w]hen the convenience of the witnesses and the ends of justice would be promoted by the change"); *Mountain View Recreation, Inc. v. Imperial Commercial Cooking Equip. Co.*, 129 Nev. 413, 418, 305 P.3d 881, 884 (2013) (recognizing the district court's "wide discretion" in deciding motions to transfer venue for forum non conveniens). However, "a plaintiff's selected forum choice may only be denied under exceptional circumstances strongly supporting another forum." *See Mountain View Recreation*, 129 Nev. at 419, 305 P.3d at 885. Moreover, when the defendant seeks to transfer venue based on forum non conveniens, the defendant must submit affidavits with specific facts rather than "general allegations regarding inconvenience or hardship" so that the district court may assess any relevant factors that would demonstrate exceptional circumstances. *Id.*

Here, although several of the appellants submitted declarations to support their request to change venue, they simply stated, as relevant here, that they resided in Lincoln County or had some connection with that jurisdiction without offering any explanation as to the inconvenience or hardship that they would suffer if the case proceeded in Clark County. Consequently, the district court correctly determined that appellants' declarations were insufficient to demonstrate that a change of venue was warranted under NRS 13.050(2)(c) and that its initial decision to grant appellants' request to change venue was clearly erroneous. *See Mountain View Recreation*, 129 Nev. at 419, 305 P.3d at 885. And in light of the foregoing, we conclude that the district court did not abuse its discretion by granting Betsy's motion for reconsideration of its initial venue order or by denying appellants' request to change venue. *AA Primo*, 126 Nev. at 589, 245 P.3d at 1197; *Kenning Car Rental*, 105 Nev. at 120, 771 P.2d at 151; *see*

also R.J. Reynolds Tobacco Co. v. Eighth Judicial Dist. Court, 138 Nev., Adv. Op. 55, 514 P.3d 425, 432 (2022) (explaining that the district court may grant reconsideration when a previous decision was clearly erroneous regardless of whether new evidence exists).[2]

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

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[2]After the district court granted Betsy's motion for reconsideration and denied appellants' motion to change venue, they moved for reconsideration of the order denying their motion to change venue. While appellants separately appealed that decision, the supreme court correctly dismissed the appeal because that decision was not independently appealable. *Whipple v. Whipple*, Docket Nos. 82964 & 82994, 2022 WL 1085629 (Nev. Apr. 8, 2022) (Order Dismissing Appeal). Insofar as appellants challenge the order denying their motion for reconsideration in context of the present appeal, we may review their challenge. However, we discern no basis for relief. *See R.J. Reynolds Tobacco Co.*, 514 P.3d at 432; *see also AA Primo*, 126 Nev. at 582, 245 P.3d at 1193 (identifying "newly discovered or previously unavailable evidence" as "[a]mong the basic grounds for a Rule 59(e) motion" (internal quotation marks omitted)); *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 892 n.6 (9th Cir. 1994) ("Evidence is not newly discovered if it was in the party's possession at the time of [the original motion] or could have been discovered with reasonable diligence.").

cc: Hon. Adriana Escobar, District Judge
Hon. Nancy L. Allf, District Judge
Carolyn Worrell, Settlement Judge
Justice Law Center
The Law Firm of C. Benjamin Scroggins, Esq.
Howard & Howard Attorneys PLLC
Eighth District Court Clerk