

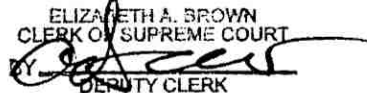
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD STUBBE; AND TANYA  
STUBBE,  
Appellants,  
vs.  
PAUL FENNER; AND RENA FENNER,  
Respondents.

No. 86388-COA

**FILED**

JUN 10 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Donald Stubbe and Tanya Stubbe appeal from a district court order granting summary judgment in a real property dispute. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

The Stubbes own real property located at 1650 Alpine Drive, Fernley, Nevada (Stubbe Parcel). The Stubbe Parcel was previously owned by Lee and Jean Smith. In May 1993, the Smiths recorded a parcel map which depicted the boundary lines and easements encumbering the Stubbe Parcel and three adjoining parcels (Smith Parcel Map). The Stubbe Parcel is Parcel 3 on the Smith Parcel Map. The Smith Parcel Map delineates a fifty-foot access and public utility easement across the southern border of the Stubbe Parcel designated as Smith Lane (Smith Lane Easement). In the top right corner of the Smith Parcel Map, the Smiths explicitly certified that they "are the owners of the tract of land shown hereon and hereby consent to the preparation and recordation of this map and do hereby grant forever those easements for access and utility installation shown hereon."

In June 1993, the Smiths conveyed the Stubbe Parcel by way of a grant, bargain and sale deed recorded in the official records of Lyon County and described the property being conveyed as "Parcel 3, as shown

on the [Smith Parcel Map].” The Smith Parcel Map has been referenced in each subsequent deed conveying the Stubbe Parcel. In September 2020, the Stubbes purchased the Stubbe Parcel. Adjacent to the southeast corner of the Stubbe Parcel and directly connected to the Smith Lane Easement is real property located at 4205 Smith Lane, Fernley, Nevada (Fenner Parcel). The previous owner of the Fenner Parcel recorded a parcel map that included the Smith Lane Easement in the top left corner, and directly referenced the Smith Parcel Map. In May 2020, the Fenners purchased the Fenner Parcel from the previous owner.

However, in early 2021, the Stubbes began prohibiting the Fenners and others from accessing the Smith Lane Easement. The Stubbes also constructed speed bumps on the easement in front of the Fenner Parcel. Subsequently, in December 2021, the Stubbes recorded a document entitled, “Termination and Elimination 50 foot access easement,” which purported to “release, terminate and extinguish the 50 foot access easement.” Additionally, the Stubbes installed a gate across the Smith Lane Easement and erected a fence in front of the driveway of the Fenner Parcel to prevent access to the easement.

In January 2022, the Fenners subsequently filed a complaint against the Stubbes for declaratory relief (seeking a declaration that the Smith Lane Easement was a valid easement); permanent injunctive relief to prevent the Stubbes from interfering with or blocking access to the easement; damages for nuisance and tortious interference with the easement; and attorney fees as special damages. The Fenners also sought a temporary restraining order and preliminary injunction to prevent the Stubbes from prohibiting them from accessing the Fenner Parcel via the Smith Lane Easement. The district court granted the temporary

restraining order and required the Stubbes to remove the physical barriers they erected to prohibit access to the Smith Lane Easement. The Stubbes filed an answer and asserted counterclaims for injunction for trespass on private property and injunction for trespass for deprivation of quiet enjoyment.

In November 2022, the Fenners moved for summary judgment arguing that they were entitled to judgment as a matter of law because the Smith Lane Easement was an express easement created by the Smiths when executing the Smith Parcel Map. The Fenners asserted that each subsequent deed conveying the Stubbe Parcel referenced the Smith Parcel Map, and there was no dispute that the Stubbes purchased their parcel subject to the Smith Lane Easement. Additionally, the Fenners argued that the City of Fernley acknowledged the validity of the easement by including Smith Lane as a street on the City of Fernley Street Map and assigning the Fenner Parcel with a Smith Lane address. The Fenners also asserted that the prior owner of the Fenner Parcel obtained two letters confirming the validity of the Smith Lane Easement: a letter from the City of Fernley indicating that the City determined that the Smith Lane Easement was a legal easement and a letter from a licensed professional land surveyor that the Smith Lane Easement was valid and intended to benefit the public. The Fenners also asserted that there was no language on the Smith Parcel Map to limit use of the easement to any specific parcel or property owner.

In response, the Stubbes argued that there was no express easement. Specifically, the Stubbes asserted that there was no independent recorded or unrecorded document creating or documenting the Smith Lane Easement. They further argued that the Smith Parcel Map and the language contained on the map was insufficient to establish an easement.

Thus, the Stubbes contended that Smith Lane was a private road to which the Fenners had no property rights. The Stubbes also alleged that the Fenners had alternative access they could use rather than the Smith Lane Easement. The Stubbes further argued that the word "access" on the Smith Parcel Map was too vague and should be interpreted to mean access within their discretion. Finally, the Stubbes contended that tort damages and attorney fees were not warranted. The Stubbes attached as exhibits to their response the Smith Parcel Map, the parcel map depicting the Fenner Parcel, and a declaration from the Stubbes contending that the Fenners had access to their property via an alternate route. The Fenners separately filed a motion for attorney fees as special damages pursuant to NRCP 9(g).

After a hearing, the district court entered an order granting in part and denying in part the motion for summary judgment and granting attorney fees and costs. The court found that the Fenners were entitled to judgment for a declaration that the Smith Lane Easement was a valid, express easement. The court noted that the Smith Parcel Map explicitly delineated Smith Lane as an access and public utilities easement and specified that the Smiths "do hereby grant forever those easements for access and utility installation shown hereon." The court further found that there was no language on the Smith Parcel Map which would limit use of the easement to any specific parcel or property owner, rendering it as an "easement in gross." The court also noted each subsequent deed conveying the Stubbe parcel referenced the Smith Parcel Map, and thus, the Stubbes obtained their parcel subject to the easements of record. The court also noted that the City of Fernley included Smith Lane as a street on the City of Fernley Steet Map and assigned the Fenner Parcel with a "Smith Lane" address. Because Smith Lane was not reserved for the benefit of a

particular parcel, the court found that there was no question of law or fact that Smith Lane was intended to benefit the public and neighboring landowners. Accordingly, the court found that the termination of easement document recorded by the Stubbes was void ab initio, and the Fenners were entitled to judgment as a matter of law as to their cause of action for declaratory relief. The court further found that the Fenners were entitled to permanent injunctive relief to prevent the Stubbes from blocking access to the easement.<sup>1</sup>

With respect to attorney fees, the district court found that the Fenners were entitled to attorney fees as special damages because the Fenners were forced to seek court intervention through their declaratory relief and permanent injunction claims to confirm the validity and legality of the easement and restore their real property rights. Thus, the Fenners were entitled to recover attorney fees as special damages due to the Stubbes' wrongful conduct. The court ultimately awarded \$56,732.30 in attorney fees and \$4,224.06 in costs for a total of \$60,956.36. The court also denied the Stubbes' counterclaims. The Stubbes now appeal.

On appeal, the Stubbes first argue that the district court erred in validating the express easement because the easement was not recorded properly. The Stubbes further argue that the district court erred in granting permanent injunctive relief to the Fenners because the Smith Parcel Map did not specify that it was granted to the public for public use. Finally, the Stubbes argue that the district court erred in granting attorney fees as special damages because they did not engage in wrongful conduct.

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<sup>1</sup>We note that the parties stipulated to dismissing the Fenners' claims for nuisance and tortious interference, which were the claims on which the district court had denied summary judgment.

We review a district court 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 on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* All evidence “must be viewed in a light most favorable to the nonmoving party.” *Id.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31. We likewise review the interpretation of an instrument allegedly creating an easement and the district court’s decision to grant injunctive relief de novo. *City of Las Vegas v. Cliff Shadows Pro. Plaza*, 129 Nev. 1, 7, 293 P.3d 860, 863 (2013); *see also Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 41, 293 P.3d 874, 878 (2013) (“When a district court’s decision to grant declaratory and injunctive relief depends on a pure question of law, our review is de novo.”).

“An easement is a right, distinct from ownership, to use in some way the land of another.” *Boyd v. McDonald*, 81 Nev. 642, 647, 408 P.2d 717, 720 (1965) (internal quotation marks omitted). In Nevada, an easement can be “created by express agreement, by prescription or by implication.” *Alrich v. Bailey*, 97 Nev. 342, 344, 630 P.2d 262, 263 (1981). Express easements are easements made in writing. 25 Am. Jur. 2d *Easements and Licenses* § 14. “The scope of an express easement is determined by the terms used to create it.” *Brooks v. Bonnet*, 124 Nev. 372, 375, 185 P.3d 346, 348 (2008).

Here, the Stubbes primarily assert that the Smith Parcel Map was insufficient to create a valid easement because there was no independent document creating or recording the easement, but this

argument is without merit as the map sufficiently created the easement. The Smith Parcel Map was a written instrument that clearly delineated that Smith Lane was a fifty-foot access and public utility easement. See *Brooks*, 124 Nev. at 374, 185 P.3d at 347 (stating that “a parcel map filed in 1975, Parcel Map 191, indicates the existence of the public road easement”). The Smith Parcel Map also contained language that the Smiths explicitly certified that they “do hereby grant forever those easements for access and utility installation shown hereon.” In addition, the Smith Parcel Map itself was properly signed and recorded. See NRS 111.205 (stating an interest in land cannot be “created, granted, assigned, surrendered or declared” unless the conveyance has been signed by the party “creating, granting, assigning, surrendering, or declaring the same”); NRS 111.320 (providing that a recorded easement imparts notice to all persons of the contents of the easement). Thus, the Smith Parcel Map properly created the Smith Lane Easement. Moreover, subsequent deeds conveying the Stubbe parcel specifically described the parcel “as shown on the Smith Parcel Map.” *Probasco v. City of Reno*, 85 Nev. 563, 565, 459 P.2d 772, 773 (1969) (“The recording of a deed of a positive easement makes it binding upon all subsequent owners.”). Thus, the Smith Lane Easement is a valid express easement.<sup>2</sup>

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<sup>2</sup>To the extent the Stubbes’ brief cites to eminent domain actions, rights of ways, easements for the collection of solar energy, and lease interests, we reject these arguments for a failure to present relevant authority or cogent argument. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument or relevant authority). We also reject the Stubbes’ assertion that the Smith Lane Easement was not intended to benefit the public because the City of

Next, we turn to whether the district court erred in finding that the easement was intended to benefit the public. An express easement is construed strictly in accordance with its terms to give effect to the parties' intentions. *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 408, 23 P.3d 243, 247 (2001); *see also Brooks*, 124 Nev. at 375, 185 P.3d at 348 (an instrument creating an easement should be interpreted like a contract); *Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004) (“[W]hen a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written . . .”).

Here, the Smith Parcel Map broadly designated Smith Lane as an access and public utilities easement without language limiting or restricting it for the benefit of a specific person or parcel. Additionally, the Stubbes failed to produce evidence to support that the Smith Lane Easement was not intended to benefit the public or to suggest that a genuine dispute of material fact remained as to the scope of the easement based on the Smiths' intent. *See Wood*, 121 Nev. at 732, 121 P.3d at 1031 (explaining that while pleadings and evidence “must be construed in a light most favorable to the nonmoving party,” the nonmoving party cannot rely on speculation or conjecture to avoid summary judgment being entered against it but instead “must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine [dispute] for trial” (quoting *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992))). The Fenners produced evidence in addition to the parcel maps and deeds to support that the Smith Lane Easement was intended to benefit the public: the letter from the City of Fernley confirming the validity of the Smith Lane

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Fernley does not maintain it, as the Stubbes fail to support this assertion with relevant legal authority. *Id.*



Easement; the letter from the land surveyor also confirming that the easement benefitted the public; the City of Fernley Street Map, which included Smith Lane; and the fact that the Fenner parcel had a Smith Lane address. Therefore, summary judgment was appropriate because the Stubbes failed to produce evidence to support their argument or demonstrate that a genuine dispute of material fact remained, and the district court did not err in granting injunctive relief to the Fenners.


Finally, we turn to the Stubbes' argument as to the award of attorney fees as special damages. We review the issue of attorney fees as special damages de novo because it involves a question of law. *Pardee Homes of Nev. v. Wolfram*, 135 Nev. 173, 176, 444 P.3d 423, 426 (2019) (citing *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006)). Attorney fees cannot be awarded "unless there is a statute, rule, or contract providing for such an award." *Id.* at 174, 444 P.3d at 424. Attorney fees as special damages may be recovered in three instances: (1) as "an element of damage in cases when a plaintiff becomes involved in a third-party legal dispute as a result of a breach of contract or tortious conduct by the defendant"; (2) when a party incurs fees while recovering real or personal property taken because of the wrongful conduct of the defendant or when clarifying or removing a cloud upon the title of the property; and (3) in actions for declaratory or injunctive relief when "the actions were necessitated by the opposing party's bad faith conduct." *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 957-58, 35 P.3d 964, 970 (2001). Additionally, attorney fees may only be recovered when they are pleaded according to NRCP 9(g). *Id.* at 956, 35 P.3d at 969.

In this case, the Fenners had a property right to use the Smith Lane Easement, and the Stubbes denied the Fenners access to that

easement, thereby depriving them of their property right. See *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 658, 137 P.3d 1110, 1119 (2006) (“The term ‘property’ includes all rights inherent in ownership, including the right to possess, use, and enjoy the property.”); *Boyd*, 81 Nev. at 647, 408 P.2d at 720 (stating an easement gives the right to enjoy the land). Moreover, to the extent the Stubbes challenge the district court’s finding that they engaged in wrongful conduct, this court will not disturb a district court’s factual findings unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). Upon a review of the record, this finding is not clearly erroneous and is based on substantial evidence. Thus, the district court did not err in granting attorney fees as special damages.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

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<sup>3</sup>To the extent the Stubbes raise other arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.

cc: Hon. John Schlegelmilch, District Judge  
Donald Stubbe  
Tanya Stubbe  
Viloria, Oliphant, Oster & Aman L.L.P.  
Third District Court Clerk