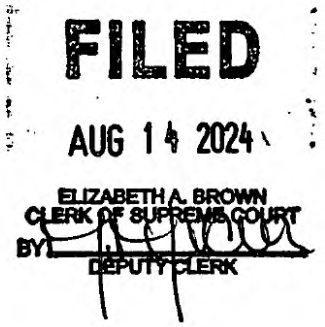
IN THE SUPREME COURT OF THE STATE OF NEVADA

TOBIN A. GEORGE AND MARGARET M. GEORGE, INDIVIDUALLY AND AS TRUSTEES OF THE GEORGE FAMILY TRUST, DATED JULY 1, 2002,
Appellants/Cross-Respondents,
vs.
DAVID D. WINKLER, AN INDIVIDUAL; AND VALERIE D. WINKLER, AN INDIVIDUAL,
Respondents/Cross-Appellants.

No. 85318



ORDER OF AFFIRMANCE

The Georges appeal and the Winklers cross-appeal from a district court amended findings of fact, conclusions of law, and judgment, and an order denying costs. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

This case is about water rights between neighbors. Appellants/cross-respondents Tobin and Margaret George live next door to respondents/cross-appellants David and Valerie Winkler in Douglas County. The Georges live on a 40-acre parcel north of the Winklers' 20-acre parcel. Both parcels used to be part of a much larger ranch, which has since been subdivided into these parcels, and both parcels came with water rights originating from the Alpine decree. The Winklers conducted construction on their parcel, which the Georges maintain impeded the historical flow of water across the Winklers' property to their property, impeding their water rights as a result. The Georges brought suit, seeking, among other relief, easements to ensure all water subject to "historically permitted" water rights made it across the Winklers' property to their property.

24-28756

The case proceeded to a bench trial. The parties testified, as did another neighbor and a federal water master. In addition to hearing testimony, the district court conducted a site visit of the parties' properties.

On this evidence, the district court concluded that the allegation that the Winklers "altered the topography so as to prevent what was a historical water flow" to the Georges' land "is unproven." Still, the district court granted an easement for a ditch on the east side of the Winklers' property to connect to an existing ditch and to convey water "to which they have a right." It did not grant an easement on the western side of the Winklers' property—an additional easement the Georges sought.

The district court also designated a rotation schedule between the parties for the water flowing across the eastern easement, hoping to ensure fair water delivery in spite of the parties' acrimonious relationship. In post-trial motion practice, the district court clarified that the parties had to "submit themselves to the federal water master" to effectuate that rotation schedule. Doing so involved conducting a survey recommended by the federal water master. The district court also denied the Georges' motion for costs. Both parties appeal.

Substantial evidence supports imposing only one easement

The Georges argue that the district court erred in granting only one easement by necessity, since they also need the second easement on the western side to ensure their water rights are not impaired. Continuing, they challenge the district court's finding that there was no evidence proving the Winklers' construction impeded a historical flow of such water. These challenges turn on the district court's factual findings. Factual findings are left "undisturbed unless they are clearly erroneous or not supported by substantial evidence." *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018). A decision is clearly erroneous if

it leaves "the reviewing court . . . with the definite and firm conviction that a mistake has been committed." *Unionamerica Mortg. & Equity Tr. v. McDonald*, 97 Nev. 210, 211-12, 626 P.2d 1272, 1273 (1981) (quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948)). Substantial evidence is evidence that "a reasonable mind might accept as adequate to support a conclusion." *King v. St. Clair*, 134 Nev. 137, 139, 414 P.3d 314, 316 (2018) (internal quotation marks omitted). The use of these standards in appeals from fact-intensive issues is necessary where we are ill-positioned to weigh evidence or to make credibility determinations on a cold record. *See Jackson v. Groenendyke*, 132 Nev. 296, 300, 369 P.3d 362, 365 (2016).

Such principles apply with force here. We are asked whether the district court, which held a bench trial and conducted a site visit in deciding the historical water issue as part of that trial, clearly erred or lacked substantial evidence for its decision. We cannot say either is true, even in view of the conflicting evidence the Georges cite on appeal. Conflicting evidence does not render a district court's findings erroneous so long as substantial evidence otherwise supports the decision. *Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 130 Nev. 540, 548, 331 P.3d 850, 856 (2014). That substantial evidence exists here; the district court pointed to (1) the lack of evidence proving there was a headgate on the now-Winklers' property diverting water towards the now-Georges' property, (2) one neighbor's testimony that a headgate 600 feet inward from the eastern border only existed for 14 months, and (3) the fact that the only testimony explicitly stating water historically ran northwest across the Winklers' property came from Mr. George. Coupled with the site visit, "a reasonable mind might accept" this evidence "as adequate" to justify the district court's

decision regarding historical flow. *King*, 134 Nev. at 139, 414 P.3d at 316 (internal quotation marks omitted).

And, absent evidence justifying that historical flow, we are not persuaded the district court's decision to grant one easement and deny the second is an "impermissible impairment" of the Georges' water rights. Namely, an easement by necessity under Nevada law requires (1) prior common ownership and (2) necessity at the time of severance. *Jackson v. Nash*, 109 Nev. 1202, 1209, 866 P.2d 262, 268 (1993). Given the district court's findings, which are supported by substantial evidence, we are not persuaded the district court clearly erred in granting only one easement under this framework.

The district court did not err in denying costs

Because the Georges obtained one of the requested easements, the Georges argue that they were entitled to costs under NRS Chapter 18. "In an action for the recovery of real property or a possessory right thereto," NRS 18.020(1) authorizes courts to award costs to "the prevailing party against any adverse party against whom judgment is rendered.

Yet, in denying costs, the district court concluded that "neither party prevailed in this matter." It explained that the Winklers had "little objection" to the easement granted and that the overall outcome in this case was more about making the parties "work together" than the legal merits of Georges' claims. The decision to deny costs under these circumstances does not require reversal, despite the fact the Georges obtained an easement. *See Las Vegas Metro. Police Dep't v. Buono*, 127 Nev. 1153, 373 P.3d 934 (2011) (assessing whether the district court abused its discretion in determining who qualified as a prevailing party under NRS 18.020); 20

C.J.S. *Costs* § 11 (2019) (recognizing that courts can deny costs to parties "where neither entirely prevails").

And the Georges' reliance on *Herbst v. Humana Health Insurance of Nevada, Inc.*, 105 Nev. 586, 781 P.2d 762 (1989), does not change our mind. There, we acknowledged that a party may still qualify as a prevailing party if they succeed on some claims but not others arising from "a common core of facts." *Herbst*, 105 Nev. at 591-92, 781 P.2d at 765. But obtaining one of two requested easements, largely by virtue of the Winklers' non-objection and not by virtue of having proved up their claims at trial, is not the same thing as having successful and unsuccessful claims arising "from a common core of facts." *Id.*; *cf. Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 596, 879 P.2d 1180, 1189 (1994) ("If a plaintiff ultimately wins on a particular claim, she [or he] is entitled to all attorney's fees reasonably expended in pursuing that claim—even though she may have suffered some adverse rulings." (quoting *Corder v. Gates*, 947 F.2d 374, 379 n.5 (9th Cir. 1991)). Thus, we conclude the district court's decision does not require reversal. *See Meiri v. Hayashi*, 2018 WL 4700735, at *2 (Nev. Sept. 28, 2018) (affirming denial of costs under NRS 18.020 where the district court concluded neither party prevailed).

The cross-appeal lacks merit at this juncture

On cross appeal, the Winklers mainly argue that the rotation schedule cannot stand because nearby property owners are "necessary parties" to the rotation schedule and the district court lacked jurisdiction over those property owners, violating NRCP 19(a)(1) and NRS 533.075. But in the amended order, the district court referred the matter of the rotation schedule to the federal water master. This reference was appropriate given the federal decree court's exclusive jurisdiction. *Cf. Mineral County v. State, Dep't of Conservation & Nat. Res.*, 117 Nev. 235, 244, 20 P.3d 800, 806 (2001)

(recognizing that the adjudication of decree rights is within the exclusive jurisdiction of decree courts). Not only does the record indicate the survey and the federal water master's input remain unsettled, but also the district court's amended order on the rotation schedule specifically deferred to and is in fact subject to the federal water master's oversight. And deferring to the federal water master in this way was jurisdictionally appropriate, even assuming the nearby property owners may qualify as necessary parties. Under the district court's amended order, the issues the Winklers raise on cross-appeal are not properly before us and fail for that reason.

We have carefully considered the parties' other arguments not specifically addressed herein and conclude they lack merit. We therefore ORDER the judgment of the district court AFFIRMED.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Nathan Tod Young, District Judge
Debbie Leonard, Settlement Judge
Robertson, Johnson, Miller & Williamson
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP/Reno
Douglas County Clerk