

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SZ INCOME TRUST,
Appellant,
vs.
ROBERT ANSARA.
Respondent.

No. 86583-COA

FILED

AUG 21 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

ORDER OF AFFIRMANCE

BY

DEPUTY CLERK

SZ Income Trust appeals from a district court order granting in part and denying in part competing motions for summary judgment in a declaratory relief and quiet title action.¹ Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

This matter arose from a dispute over the use of a parcel of land located in Las Vegas. The Nhu Tran Foundation (Foundation) owned the parcel at issue, and respondent Robert Ansara is the appointed receiver for the Foundation. SZ Income Trust (Trust) is a revocable trust established by Sam Zeer, and the Trust owns and manages the adjacent property to the south of the Foundation's parcel. Express Building, a corporation controlled by Zeer, is the Trust's tenant on its parcel. Express Building manages the parcel and enters into agreements with trucking companies to park and store their semi-trucks and trailers on the Trust's parcel. Viking Business Park (Viking), another Zeer affiliate, owns the parcel adjacent to the Foundation's and the Trust's respective parcels, which provides street access to the three properties. Beginning in or around 2016, tenants of the

¹The Nevada Supreme Court dismissed respondent Robert Ansara's cross appeal on December 3, 2024.

Trust or its affiliates would occasionally park and store vehicles on the Foundation's side of the property line. The Trust also installed some temporary fencing on both its own parcel and the Foundation's parcel to keep vagrants out.

In October 2020, when Ansara was preparing to sell the Foundation's parcel, the Foundation's realtor circulated letters to the owners of the neighboring parcels and any of their affiliates requesting that they disclose any claims they might have to the parcel. Zeer did not submit any claim on behalf of the Trust at that time.

In February 2022, Ansara listed the parcel for sale. Zeer offered to purchase the parcel, but Ansara accepted a higher bid from a third party. In March, Ansara sent a letter to Zeer instructing him to remove any vehicles or other items from the parcel so the sale could be closed. A few days later, Zeer sent a letter asserting, for the first time, a prescriptive easement over the Foundation's parcel.

In early April, Ansara filed a petition for declaratory relief to challenge the alleged prescriptive easement, to quiet title, and for slander of title against the Trust. The Trust filed a complaint of its own for declaratory relief in favor of the alleged prescriptive easement. The Trust also filed a lis pendens on the parcel and opposed Ansara's petition.

In February 2023, Ansara moved for summary judgment on his claims of declaratory relief, quiet title, and slander of title. Primarily, he argued that the Trust had failed to establish the elements of a prescriptive easement by clear and convincing evidence. In support of his motion, Ansara attached numerous exhibits: letters from the Foundation to the Trust, including the one that asked the Trust to remove all vehicles, equipment, or other property from the Foundation's parcel in light of the

pending sale; declarations from Ansara, the Foundation's realtor, and the Foundation's real estate lawyer, which all stated that Zeer never asserted a prescriptive easement until after the sale, despite having other discussions about the sale regarding the purchase price and an unrelated utility easement; the purchase agreement; selected sections of Zeer's deposition transcript; and a copy of the lis pendens filed on the parcel.

The same day, the Trust also moved for summary judgment, claiming that it had established the elements of a prescriptive easement. However, it did not argue that it met each element by clear and convincing evidence. In support of its motion, the Trust attached a declaration from Zeer, the letter from the Foundation to the Trust advising of the pending sale and requesting the removal of all property, a copy of the lis pendens, and 18 aerial photographs of the parcels taken between 2015 and 2022. The Trust also attached these exhibits to its opposition to Ansara's motion.

Following a hearing, the district court entered an order granting Ansara's motion for summary judgment for declaratory relief and to quiet title, but denying his motion as to slander of title. In the same order, the court denied the Trust's motion for summary judgment for declaratory relief but granted the Trust's motion for summary judgment as to Ansara's slander of title claim. The court found that the Trust did not present clear and convincing evidence that it "openly, adversely, or continuously" used the parcel for the last five years to establish a prescriptive easement. Further, it noted the Trust did not present the court with maps, plats, or surveyor's assessments to declare the scope of the easement with reasonable certainty. Thus, the district court found that the Trust's prescriptive easement claim failed. The Trust now appeals.

On appeal, the Trust argues that the 18 aerial photographs and Zeer's declaration showed that Zeer and his affiliates were continuously using the Foundation's parcel for the requisite time period, thereby interfering with the Foundation's ability to use its parcel. It also argues that Ansara failed to produce any evidence proving that the Trust did *not* adversely use the parcel for the requisite time period. The Trust contends the court may construe this absence of evidence in the Trust's favor and infer that the Trust's use of the Foundation's parcel was adverse, continuous, open, and peaceable from spring 2016 to the time this action arose. We disagree.

"This court reviews a district court order granting or denying summary judgment de novo." *Nev. State Educ. Ass'n v. Clark Cnty. Educ. Ass'n*, 137 Nev. 76, 80, 482 P.3d 665, 670 (2021). "Summary judgment is warranted 'when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine [dispute] of material fact exists, and the moving party is entitled to judgment as a matter of law.'" *Id.* at 80, 482 P.3d at 670-71 (quoting *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005)). "Summary judgment must be granted 'against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case . . .'" *Id.* at 80, 482 P.3d at 671 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)). When reviewing a motion for summary judgment, the evidence and any reasonable inferences drawn therefrom "must be viewed in a light most favorable to the nonmoving party." *Wood*, 121 Nev. at 729, 121 P.3d at 1029.

To establish a prescriptive easement in Nevada, there must be adverse, continuous, open, and peaceable use of the property for a five-year

period. *Dean v. Pollard*, 93 Nev. 105, 107, 560 P.2d 911, 911 (1977); *see also Jones v. Ghadiri*, 140 Nev., Adv. Op. 27, 546 P.3d 831, 835 (2024). The burden of proof to establish the existence of a prescriptive easement is clear and convincing evidence. *Wilfon v. Cyril Hampel 1985 Tr.*, 105 Nev. 607, 608, 781 P.2d 769, 770 (1989). “The district court ruling on a motion for summary judgment ‘must view the evidence presented through the prism of the substantive evidentiary burden.’” *Ferguson v. LVMPD*, 131 Nev. 939, 944, 364 P.3d 592, 595 (2015) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986)); *see also Anderson*, 477 U.S. at 255 (holding that “the clear-and-convincing standard of proof should be taken into account in ruling on summary judgment motions”).

Because the Trust would have the burden at trial to prove the existence of the easement by clear and convincing evidence, to prevail on his motion for summary judgment, Ansara had to demonstrate that a reasonable jury could not find at least one of the elements of an easement by clear and convincing evidence, even when the evidence is viewed in the light most favorable to the Trust. *See Ferguson*, 131 Nev. at 945, 364 P.3d at 596 (“Clear and convincing evidence is a higher standard than proof by the preponderance of the evidence and requires ‘evidence establishing every factual element to be highly probable.’” (quoting *In re Discipline of Drakulich*, 111 Nev. 1556, 1567, 908 P.2d 709, 715 (1995))).

A party seeking a prescriptive easement “must use the property in a manner that is hostile or adverse to the owner.” 28A C.J.S. *Easements* § 42 (2025); *see also Jones*, 140 Nev., Adv. Op. 27, 546 P.3d at 835. “Mere use does not constitute adverse use: [a]dverse use occurs when the user asserts a claim of right to use the land.” *Michelsen v. Harvey*, 107 Nev. 859, 863, 822 P.2d 660, 663 (1991); *see also 28A C.J.S. Easements* § 42. “The

term ‘adverse use’ does not imply that the person claiming a prescriptive easement has animosity, personal hostility, or ill will toward the landowner; instead, adverse use is measured by the observable actions and statements of the person claiming a prescriptive easement and the owner of the land.” 28A C.J.S. *Easements* § 42. “The presumption is that [a] neighbor’s use is not adverse but is permissive and the result of neighborly accommodation on the part of the landowner.” *Turrillas v. Quilici*, 72 Nev. 289, 292, 303 P.2d 1002, 1003 (1956).

The Nevada Supreme Court has not defined what constitutes “continuous” use. However, courts generally agree that “[t]o satisfy the requirement that the use be continuous it is not necessary that it be constant.” Restatement (First) of Prop. § 459 cmt. b (Am. L. Inst. 1944) (updated Oct. 2024). “The existence of gaps in time between the claimant’s use of another’s land will not necessarily destroy the continuity of use required to establish prescriptive easement; however, the continuity element requires more than occasional or sporadic use of the right-of-way.” 28A C.J.S. *Easements* § 37 (2025). Continuous use requires that such use be “of normal or reasonable frequency for the kind of easement claimed.” *Id.* It also requires that “the prescriptive user remain in an adverse posture to the holder of the servient estate throughout the prescriptive period,” and that “the use [was] open or notorious throughout the prescriptive period.” *Id.*

Here, the district court found that the Trust did not present clear and convincing evidence that it “adversely possessed any portion of the [p]roperty in a manner that was sufficient to satisfy the adverse element of a prescriptive easement claim.” The court further explained that the

aerial photographs did not show adverse or continuous possession of the property.

Ansara presented substantial evidence indicating the Trust did not assert a claim of right to the land until March 2022 and that any prior use of the land was occasional, and not continuous. He presented evidence indicating the Foundation's property was adjacent to two other parcels: one owned by Viking, and one owned by the Trust. The Foundation's realtor, David Boyer, sent a letter to Zeer on October 9, 2020, stating the Foundation was going to sell the property and inquiring into "what type of access [the Trust had] to the property." Although this letter recognized that some trucks that park on the Trust's parcel "[o]ccasionally" park on the Foundation's parcel, it did not request that the Trust stop using the Foundation's parcel. Rather, it merely sought details regarding the Trust's use of the property so it could disclose such facts in conjunction with a sale.

Ansara and Boyer submitted declarations stating they had met with Zeer in late 2020 and negotiated separate easement and license agreements between Viking and the Foundation. They also stated that Zeer never claimed the Trust had an easement over the Foundation's property during these negotiations.² Ansara also presented deposition testimony from Zeer stating that (1) when someone wanted to rent space from him to park a semi-truck, he would tell them not to park on the Foundation's property; and (2) he did not make any representations about the Trust's easement during the entire negotiation process with Ansara and Boyer. Ansara also produced a letter that he had sent to Zeer on March 3, 2022, asking him to remove any vehicles from the Foundation's property in light

²In his own declaration, Zeer admitted that he negotiated the separate easement and license agreements on behalf of Viking.

of the pending sale. Zeer's attorney responded in a letter dated March 8, 2022, stating for the first time that the Trust had an easement on the property.

Ansara's evidence indicates that while the Trust may have been occasionally using the Foundation's land, the Trust did not assert a claim of right to use the land until after the Foundation asked the Trust to remove any vehicles from the property on March 3, 2022. This evidence also strongly indicates the Foundation permitted the Trust to use its property: the Foundation was aware vehicles were occasionally being parked on its property as early as October 9, 2020, but did not request that the Trust remove any vehicles from the property until after the Foundation had entered into the purchase agreement with the other buyer.

In response, the evidence presented by the Trust in support of its claimed prescriptive easement did not establish a genuine dispute of material fact as to whether its use of the Foundation's property was adverse or continuous prior to March 2022. *See* NRCP 56(c)(1) (stating that "[a] party asserting that a fact . . . is genuinely disputed must support the assertion by," as relevant here, citing materials in the record). On appeal, the Trust relies on Zeer's declaration and 18 aerial photographs taken on various occasions between "Spring 2015" and "June 2022" to support the alleged prescriptive easement. However, even viewing this evidence in the light most favorable to the Trust, it does not establish that the elements of adversity or continuity are "highly probable" as required to satisfy the clear and convincing evidence standard. *See Ferguson*, 131 Nev. at 945, 364 P.3d at 596.

In his declaration, Zeer did not dispute that the Trust first asserted the claimed easement in March 2022 after the Foundation

requested the removal of vehicles and other property from its parcel. Zeer did not dispute that vehicles would only “occasionally” park on the Foundation’s parcel. Zeer did not allege that the Trust’s prior use of the property was continuous or adverse, nor did Zeer allege that the Trust did not have permission to use the Foundation’s property. Rather, Zeer vaguely asserted that Express Building and Viking had, for over 10 years, used a portion of the Foundation’s property that was enclosed by a chain link fence; that the Trust cleared and graded its own parcel and a portion of the Foundation’s property; that at some point Zeer installed “temporary fencing” on both parcels “to help keep vagrants out”; and that the Foundation’s property was “used for access, storage, parking, maneuvering, and driving purposes.” Zeer also described what was depicted in several of the aerial photographs, highlighting the storage of vehicles, the placement of gravel, and the temporary fencing on both parcels.

As noted by the district court, the 18 aerial photographs were not continuous in nature. They included one photograph from 2015, four photographs from 2016, three photographs from 2017, two photographs from 2018, two photographs from 2019, two photographs from 2020, one photograph from 2021, two photographs from 2022, and one undated photograph. Although the photographs show some use of the Foundation’s property, only two photographs were presented for most years, with some photographs being taken up to six months apart. Thus, while Zeer’s declaration and the 18 aerial photographs indicate that the Trust occasionally used the Foundation’s property, they do not establish that the Trust lacked permission to use the property, or that its use was adverse or continuous.


Although the Trust argues that its storage of vehicles “obviously interfered” with the Foundation’s use of the property, it did not present any evidence that the Foundation had attempted to use the property or that the Foundation had tried to prevent it from using the property prior to March 3, 2022. For these reasons, the Trust fails to demonstrate the presumption of permissive use established in *Turrillas* does not apply in this matter. See 72 Nev. at 291-92, 303 P.2d at 1003 (presuming a neighbor’s use of a roadway was permitted as a “neighborly accommodation” where the neighbor’s use “in no way interfere[d] with use by the landowner himself”).

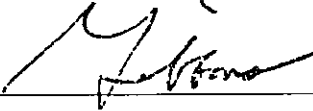
To the extent the Trust contends that Ansara failed to produce evidence demonstrating his use of the property was not adverse or continuous, such that the court can infer its use *was* adverse and continuous, the Trust misconstrues the applicable standard. Ansara did not have an obligation to produce evidence to prevail on his motion for summary judgment; rather, because the Trust bore the burden of persuasion at trial, Ansara only had to “point[] out . . . that there [was] an absence of evidence to support the [Trust’s] case,” at which point the Trust was required to produce evidence to show a genuine dispute of material fact. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007). And here, Zeer’s declaration and the 18 aerial photographs failed to establish a genuine dispute of material fact as to the elements of adversity and continuity.

Even when viewed in the light most favorable to the Trust, Zeer’s declaration and the 18 aerial photographs do not constitute clear and convincing evidence that the Trust’s use of the Foundation’s property was continuous or adverse, nor did they rebut the presumption of permissive

use. *See Michelsen*, 107 Nev. at 863, 822 P.2d at 663 (stating “[m]ere use does not constitute adverse use”); *see also Turrillas*, 72 Nev. at 292, 303 P.2d at 1003. Because the Trust failed to establish all essential elements of a prescriptive easement, the district court properly granted summary judgment in Ansara’s favor. *See Nev. State Educ. Ass’n*, 137 Nev. at 80, 482 P.3d at 671; *see also Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992) (“Where an essential element of a claim for relief is absent, the facts, disputed or otherwise, as to other elements are rendered immaterial and summary judgment is proper.”).³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

³The Trust raises other arguments on appeal, but these arguments are either non-cogent or need not be reached in light of our disposition. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant’s argument that is not cogently argued or lacks the support of relevant authority); *see also Miller v. Burk*, 124 Nev. 579, 588-89 & n.26, 188 P.3d 1112, 1118-19 & n.26 (2008) (explaining that this court need not address issues that are unnecessary to resolve the case at bar).

cc: Hon. Mark R. Denton, District Judge
Law Offices of Michael F. Bohn, Ltd.
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