

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUDITH L. HARVEY, AS TRUSTEE OF
THE DAVID T. & JUDITH L. HARVEY
TRUST, AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF DAVID T. HARVEY, DECEASED,
Appellant,

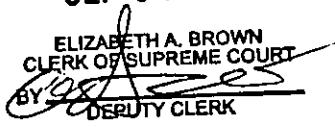
vs.

CITY OF RENO; COUNTY OF
WASHOE; THE STATE OF NEVADA,
ON RELATION OF ITS DEPARTMENT
OF TRANSPORTATION, AND GREEN
ACRES STORAGE PARTNERS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Respondents.

No. 88962

FILED

SEP 08 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a complaint in a real property action. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Facts and procedural history

David and Judith Harvey, as trustees of the David T. and Judith L. Harvey Trust, own a parcel of land located near what is now I-580 and Huffaker Place. A portion of this land was condemned to the State of Nevada in 1987 as part of its plan to construct I-580. A bridge spanning a dry creek, which the Harvey Trust used to access the northwest corner of the property, was removed during construction. As a result, the Harvey Trust began to use the Nevada Department of Transportation (NDOT) access road APN 043-282-03 (hereinafter referred to as the access road) to

access this corner of the property. The access road was sold to Green Acres Storage Partners, LLC, in 2020, however, and the Harvey Trust alleges that their use of the road was subsequently restricted. The Harvey Trust further alleges that its property line was altered during construction of I-580 and more property was taken than what was outlined in the condemnation proceeding, resulting in lost property for which the Harvey Trust was not compensated.

The Harvey Trust sought injunctive and declaratory relief and named three different defendants in its complaint, including Washoe County, the City of Reno, NDOT, and Green Acres Storage Partners, LLC. Each defendant moved to dismiss and/or joined in the codefendants' motions to dismiss. The district court concluded that the Harvey Trust failed to allege facts sufficient to state a claim for relief. The Harvey Trust appeals the dismissal.

The district court did not abuse its discretion by taking judicial notice of the documents attached to respondents' motions to dismiss

As a preliminary matter, the Harvey Trust argues that the district court abused its discretion by taking judicial notice of the documents attached to respondents' motions to dismiss.

Courts may take judicial notice of facts that are "[g]enerally known within the territorial jurisdiction of the trial court," as well as those that are "[c]apable of accurate and ready determination . . . [and] not subject to reasonable dispute." NRS 47.130(2). Furthermore, courts may appropriately take judicial notice of the public record of state district court proceedings. *See Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981) (noting that the district court may take judicial notice of closely related proceedings); *Mack v. Estate of Mack*, 125 Nev. 80, 92, 206 P.3d 98, 106 (2009) (holding that our appellate courts can take judicial notice of other

court proceedings when a valid reason presents itself). We review a district court's decision to take judicial notice for an abuse of discretion. *See FGA, Inc. v. Giglio*, 128 Nev. 271, 283, 278 P.3d 490, 497 (2012) ("We review a district court's evidentiary rulings for an abuse of discretion.").

The documents attached to respondents' motions to dismiss included subdivision maps, plat maps, parcel maps, surveys, and deeds, as well as judicial orders, highway maps, and highway plans. Because these documents are all public records, most of which were filed with the Washoe County Recorder's Office, they are capable of accurate and ready determination and are not subject to reasonable dispute. Thus, we conclude that the district court did not abuse its discretion in taking judicial notice of these documents.

The district court did not err in failing to convert the motions to dismiss into motions for summary judgment

Because the Harvey Trust argues that the documents attached to the respondents' motions to dismiss were improperly noticed, it asserts that the district court erred in relying upon them to decide the motions. If the district court wanted to consider these documents, the Harvey Trust argues that the motions to dismiss should have been treated as motions for summary judgment and reviewed accordingly.

When ruling on a motion to dismiss, a court generally "may not consider matters outside the pleading being attacked." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). If matters outside the pleadings are evaluated by the court as it considers a motion to dismiss under NRCP 12(b)(5), then "the motion must be treated as one for summary judgment under [NRCP] 56." NRCP 12(d). A court, however, may consider "matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion

to dismiss.” *Breliant*, 109 Nev. at 847, 858 P.2d at 1261; *see also United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (“A court may, however, consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment.”).

In light of our conclusion that the disputed documents were properly noticed by the district court and are matters of public record, we conclude that the district court did not err in failing to treat the motions to dismiss as motions for summary judgment.

The district court did not err in dismissing the Harvey Trust’s complaint

The Harvey Trust argues that the district court erred in dismissing its complaint. This court reviews a dismissal under NRCP 12(b)(5) de novo. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Dismissal is appropriate “only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief.” *Id.* When evaluating such a dismissal, “this court will recognize all factual allegations in [the plaintiff’s] complaint as true and draw all inferences in [the plaintiff’s] favor,” *id.*, “but the allegations must be legally sufficient to constitute the elements of the claim[s] asserted,” *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009).

The Harvey Trust’s second amended complaint alleges quiet title and inverse condemnation claims, as well as a due process claim. In the alternative, the Harvey Trust also seeks an easement. We address the claims in turn.

Quiet title

The Harvey Trust asserts that it is the rightful owner of both Huffaker Place and the access road. Thus, the Harvey Trust argues that the district court erred in applying the statute of limitations from NRS 11.080 to dismiss its two quiet title claims. Specifically, the Harvey Trust argues that more property was taken from it than agreed to in a 1987 Order of Condemnation and asserts quiet title to both Huffaker Place and the access road.

NRS 11.080 states that

No action for the recovery of real property, or for the recovery of the possession thereof other than mining claims, shall be maintained, unless it appears that the plaintiff or the plaintiff's ancestor, predecessor or grantor was seized or possessed of the premises in question, within 5 years before the commencement thereof.

This court has previously addressed when a quiet title claim accrues for purposes of NRS 11.080: “the limitations period in NRS 11.080 does not run against a plaintiff seeking to quiet title while still seized or possessed of the property,” but “the limitations period is triggered when the plaintiff is ejected from the property or has had the validity or legality of his or her ownership or possession of the property called into question.” *Berberich v. Bank of Am., N.A.*, 136 Nev. 93, 96-97, 460 P.3d 440, 442-43 (2020).

After careful review of the record, we conclude that the district court did not err in dismissing the quiet title claims as time-barred. With respect to Huffaker Place, we conclude that the Harvey Trust was ejected from the relevant portion of Huffaker Place prior to five years before bringing this action. With respect to the access road, we conclude that the 1987 Order of Condemnation encompassed the access road and that the State of Nevada therefore became the rightful owner of the access road in 1987. Even assuming that more property was indeed taken from the

Harvey Trust than permitted, the Harvey Trust was on notice that its possession and ownership rights had been disturbed when the property was physically altered and converted into a highway over 35 years ago. Thus, we conclude that the Harvey Trust's quiet title claims are barred by NRS 11.080 and the district court did not err in dismissing them.

Special right of easement

The Harvey Trust argues that the district court erred in dismissing its special right of easement claim to the access road pursuant to *State ex rel. Department of Highways v. Linnecke*, 86 Nev. 257, 468 P.2d 8 (1970).

Linnecke held that “[a]n abutting owner of a public highway has a special right of easement in a public road for access purposes” that cannot be taken away without compensation. *Id.* at 260, 468 P.2d at 9. The court clarified *Linnecke* in *Brooks v. Bonnet*, 124 Nev. 372, 185 P.3d 346 (2008). *Brooks* recognized an abutter's right to an easement only “insofar as there is an easement by necessity that exists.” *Id.* at 378, 185 P.3d at 350. “An easement by necessity will generally be found to exist if two requirements are met: (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). Prior common ownership requires both the benefited parcel and the burdened parcel to have once been owned by the same person. *Id.* “Without such prior common ownership, no easement by necessity will be implied, no matter how strict the necessity.” *Id.* at 1210, 866 P.2d at 268. “[T]o demonstrate reasonable necessity[,] the party claiming the easement must show both necessity at the time of severance and *present necessity*.” *Brooks*, 124 Nev. at 377, 185 P.3d at 349.

A special right of easement can only exist insofar as an easement by necessity exists, and we conclude that the Harvey Trust failed

to show an easement by necessity. The Harvey Trust never owned the entirety of the access road so as to establish prior common ownership. Thus, we conclude that the district court did not err in dismissing this claim.

Easement by prescription or implication

Alternatively, the Harvey Trust argues that the district court erred in finding that the second amended complaint failed to allege an easement by implication or prescription over the access road.

"It is a well-settled principle that absent a statute allowing adverse user against the state, no rights as to state property can be acquired by prescription." *Sloat v. Turner*, 93 Nev. 263, 266, 563 P.2d 86, 87-88 (1977). Separately, an easement by implication requires showing "(1) unity of title and subsequent separation by grant of the dominant tenement; (2) apparent and continuous use; and (3) the easement must be necessary to the proper or reasonable enjoyment of the dominant tenement." *Jackson*, 109 Nev. at 1213, 866 P.2d at 270.

Because the access road was condemned to the State of Nevada in 1987 and an easement cannot be acquired to state property, we conclude that the Harvey Trust could not have legally acquired an easement by prescription. We further conclude that the Harvey Trust failed to plead facts to establish unity of title and subsequent separation by the dominant tenement so as to establish an easement by implication. Thus, the district court did not err in dismissing the Harvey Trust's remaining easement claims.

Inverse condemnation

The Harvey Trust argues that the district court erred in dismissing its inverse condemnation claims. First, the Harvey Trust asserts that NDOT took more of the Harvey Trust's property than outlined

in the Order of Condemnation when constructing I-580. Second, it asserts that the loss of access to the access road has caused direct economic harm.

“When a governmental entity takes property without just compensation, . . . an aggrieved party may file a complaint for inverse condemnation.” *Fritz v. Washoe County*, 132 Nev. 580, 583-84, 376 P.3d 794, 796 (2016). “Inverse condemnation is an action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.” *State, Dep’t of Transp. v. Cowan*, 120 Nev. 851, 854, 103 P.3d 1, 3 (2004) (internal quotation marks omitted). “If there was no existing right in the appellants of access to their property either by covenant or by prescription, the state’s condemnation of the property over which the easement allegedly crossed was not a deprivation of access compensable under Article I, Section 8, of the Nevada Constitution.” *Sloat*, 93 Nev. at 267, 563 P.2d at 88.

In light of our conclusion that the Harvey Trust never owned the access road and has not established an easement over it, we conclude that the Harvey Trust has not pleaded facts sufficient to establish that it possessed an interest to be taken in the first place. Furthermore, with respect to the Harvey Trust’s claim that more property was taken in 1987 than permitted, we conclude that the Harvey Trust did not plead facts sufficient to establish this claim, and even if it had, this claim is time-barred for the reasons outlined above. We therefore conclude that the district court properly dismissed these claims.

Due process

Lastly, the Harvey Trust argues that the district court erred in dismissing its due process claim.¹ Specifically, the Harvey Trust asserts that its property lines were altered and portions of the property were taken in 1987 without proper proceedings or compensation.

The Due Process Clauses of the United States and Nevada Constitutions prohibit the State from depriving any person of life, liberty, or property, without due process of law. There are two steps to analyzing a procedural due process claim: first, it must be determined whether there exists a liberty or property interest which has been interfered with by the State, . . . [and second] whether the procedures attendant upon that deprivation were constitutionally sufficient.

Malfitano v. County of Storey, 133 Nev. 276, 282, 396 P.3d 815, 819 (2017) (alteration in original) (citations and internal quotation marks omitted).


As outlined above, the Harvey Trust did not have an interest in the access road that was taken away. Furthermore, the Harvey Trust did not plead sufficient facts to establish that it had land taken by NDOT in the 1980s during the construction of I-580. Thus, we conclude that the district court properly dismissed the Harvey Trust's due process claim.

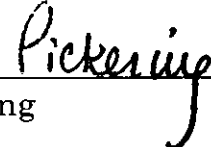
The Harvey Trust failed to demonstrate that it was entitled to relief under the facts and circumstances presented, and therefore the district court did not err in dismissing the second amended complaint pursuant to NRCP 12(b)(5).

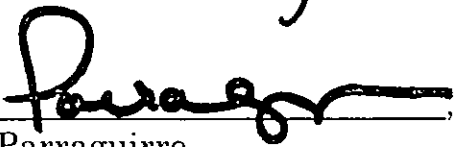
¹The Harvey Trust also argues that the district court erred by not addressing the implications of NRS 408.533 on the Harvey Trust. Because the Harvey Trust did not raise this argument below, it is waived. See *Diamond Enters., Inc. v. Lau*, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997) ("It is well established that arguments raised for the first time on appeal need not be considered by this court.").

Accordingly, we


ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Herndon


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Bell


_____, J.
Stiglich


_____, J.
Cadish


_____, J.
Lee

cc: Hon. Connie J. Steinheimer, District Judge
Jonathan L. Andrews, Settlement Judge
Luke A. Busby
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Washoe County District Attorney/Civil Division
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Washoe District Court Clerk