IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID MORGAN,
Appellant,
vs.
COUNTY OF CLARK, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, ON RELATION OF MCCARRAN INTERNATIONAL AIRPORT,
Respondent.

No. 38481

FILED
APR 21 2005
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a condemnation judgment. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

The district court granted partial summary judgment, certified under NRCP 54(b), in favor of the County, valuing David Morgan's property interest at $450,000, based on the date of service of summons. On appeal, Morgan contends that the court should have used the date of trial when valuing his property, pursuant to the 1999 version of NRS 37.120. We disagree and affirm.

DISCUSSION

Standard of Review

A district court's conclusions of law are reviewed de novo.[1] Additionally, questions of statutory interpretation are subject to de novo

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[1]Bopp v. Lino, 110 Nev. 1246, 1249, 885 P.2d 559, 561 (1994) (citing City of Reno v. Van Ermen, 79 Nev. 369, 381, 385 P.2d 345, 351 (1963)).

review by this court on appeal.[2] We have held, "[w]here the language of a statute is plain and unambiguous, and its meaning is clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself."[3] Additionally, "[i]t is well settled in Nevada that words in a statute should be given their plain meaning unless this violates the spirit of the act."[4]

Valuation Date

Morgan argues that the district court erred when it valued his property at the date of first service of summons rather than the date of trial. The complaint was filed in April 1994, and the trial was scheduled for March 1999. Because nearly five years had passed before the scheduled trial date, Morgan asserts that the court should have determined the value of his property rights so as to provide a higher compensation. According to Morgan, the delay in trial was caused by the County's failure to move the case to trial and the court's crowded calendar. Morgan claims that this delay justifies evaluating the property's value at the 1999 rate of $640,000. Morgan has thus far been paid $480,000, but argues that the County owes him an additional $160,000. In support of his argument, Morgan requests that this court look at the intent of the

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[2]SIIS v. Snyder, 109 Nev. 1223, 1227, 865 P.2d 1168, 1170 (1993) (citing SIIS v. United Exposition Services Co., 109 Nev. 28, 846 P.2d 294 (1993)).

[3]Attorney General v. Board of Regents, 114 Nev. 388, 392, 956 P.2d 770, 773 (1998) (quoting State v. Jepsen, 46 Nev. 193, 196, 209 P. 501, 502 (1922)).

[4]Id. (quoting McKay v. Bd. of Supervisors, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986)).

amended 1999 version of the statute, which he contends clarifies the Legislature's intent to place any delay due to court congestion on the plaintiff.[5]

In rebuttal, the County argues that Morgan contributed to the delay when he failed to contest the County's appraisal figures and submit an appraisal report by his expert. According to the County, it was unaware that Morgan would contest the County's valuation, as Morgan failed to forward his own appraisal information until the eve of trial. Moreover, the County asserts that when Morgan's report was finally submitted, the figures were based on a new "triangle-billboard" theory.

Additionally, the County argues that it is not responsible for court congestion. The County encourages this court to look at the 1991 version of the statute since the condemnation proceeding commenced on April 20, 1994. Pursuant to the 1991 version of NRS 37.120, the district

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[5]The 1999 version of NRS 37.120 states in pertinent part:

> **NRS 37.120 Assessment of compensation and damages; Date of valuation; exceptions.**
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> 1. To assess compensation and damages as provided in NRS 37.110, the date of the first service of the summons is the date of valuation, except that, if the action is not tried within 2 years after the date of the first service of the summons, and the court makes a written finding that the delay is caused primarily by the plaintiff or is caused by congestion or backlog in the calendar of the court, the date of valuation is the date of the actual commencement of the trial. If a new trial is ordered by a court, the date of valuation used in the new trial must be the date of valuation used in the original trial. (Emphasis added.)

court was required to determine the value of the condemned property based on the date of the first service of summons. However, if the condemnation trial did not commence within two years, the court had to determine the reason for the delay. If the delay was caused "primarily" by the County, then the court had to select either the date of first service of summons or the date of trial, whichever value supported the higher compensation. If however, the delay was caused "primarily" by Morgan, then the court was required to select either the date of first service of summons or the date of trial, whichever value supported the lower compensation.[6]

The County further argues that this was not a straight condemnation taking (where payment is given after trial) but rather a

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[6]The 1991 version of NRS 37.120 states in pertinent part:

> 1. To assess compensation and damages as provided in NRS 37.110, the date of the first service of the summons is the date of valuation, except that:
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> (a) If the action is not tried within 2 years after the date of the commencement of the action and the delay is caused primarily by the plaintiff, the date of valuation is the date of the first service of the summons or the date of the trial, whichever results in the greater compensation and damages.
>
> (b) If the action is not tried within 2 years after the date of the commencement of the action, and the delay is caused primarily by the defendant or, if there is more than one defendant, the total delay caused by all the defendants, the date of valuation is the date of the first service of summons or the date of the trial, whichever results in the lesser compensation and damages.

declaration taking (where payment is given at the onset and again at the end of trial). The County contends that once it initiated the declaration of taking, and deposited a fair market value in the amount of $326,000 for Morgan's billboard rights, the County locked in the value at date of service of summons.[7] The monies were released to Morgan on July 18, 1994, giving Morgan the benefit of the funds. Thereafter, in April and December of 1999, the County deposited additional funds ($74,000 and $80,000 respectively) to bring the purchase price to its highest compensation value and to offset interest, attorney fees and costs. Again, Morgan removed the funds from the court. Thus, the County reasons, the delays resulted in a minimum of prejudice.

We conclude that the 1991 version of NRS 37.120 governs this appeal since the condemnation proceeding against Morgan originated in 1994 when the 1991 version of NRS 37.120 was in effect.

Primary Fault

In order to trigger the alternative method of valuing property at the time of trial (NRS 37.120(1)(a) and (b)), the district court must first find fault "primarily" with one of the parties. In the case at bar, the district court determined that the trial was indeed delayed, and that the County, Morgan and the court all contributed to the delay. According to

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[7]Declaration of Taking Act, § 1, 40 U.S.C.A. § 258a. The Declaration of Taking Act allows the government to pay the estimated just compensation value of the property to the owner and gives the government immediate possession. This relieves the government of the burden of interest accruing on the sum deposited from date of taking to date of judgment in an eminent domain proceeding. It also gives the former owner immediate cash compensation to the extent of the government's estimated value of the property.

the district court, no one party was 'primarily' at fault; thus, the alternative method of valuing property would not apply.

We conclude that the district court did not err when it determined that neither party primarily delayed the trial. Careful review of the record indicates that the case entered a thirty-two month slumber after the July 20, 1995, joint case conference until the March 16, 1998, calendar call. At the NRCP 16.1 conference, the County presented Morgan with three appraisal reports and a witness list. Morgan did not provide his expert report until forty-six months later. Trial was originally set for March 24, 1998, and was moved to accommodate the parties as well as the court's crowded calendar.[8]

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[8]The following changes took place despite the trial setting of March 24, 1998:

- 06/28/97 - reassignment from Judge Bonaventure to Judge Huffaker;
- 03/17/98 - County's preemptory challenge of Judge Huffaker;
- 03/17/98 - reassignment from Judge Huffaker to Judge Becker;
- 01/21/99 - reassignment from Judge Becker to Judge Saitta;
- 02/19/99 - preferential trial setting requested;
- 04/02/99 - trial set for April 7, 1999, later moved to April 8, 1999;
- 04/23/99 - Order moving trial date to May 18, 1999;
- 05/10/99 – Morgan's motion for date of trial valuation;

continued on next page . . .

We therefore conclude that the district court did not err when it found that neither party was "primarily" at fault.

Judicial Notice of an Unpublished Order

The County requests that we take judicial notice of County of Clark v. Plane Realty Corp., an unpublished order that determined issues similar to the issues at bar.[9] The County argues that Morgan should be estopped from pursuing the case at bar because of his relationship to the Plane Realty case. According to the County, appellate courts have held that it is appropriate to take judicial notice of unpublished intra-jurisdiction orders to effectuate the exceptions for res judicata, collateral estoppel and law of the case provided in rules similar to SCR 123. The County asks this court to do likewise.

Morgan objects to the County's request for judicial notice and moves to strike the submission of documents that refer to the Plane Realty case, the Plane Realty unpublished order and the Morgan v. Demitrius[10] case. Morgan requests sanctions against the County for the improper citation to an unpublished decision, proffer of an incomplete record and improper reference to materials outside the record of this case.

. . . *continued*

- 05/18/99, 05/25/99, 09/21/99 – new trial dates;
- 10/14/99 – Morgan's motion for reconsideration;
- 10/14/99 - Parties stipulate to $480,000.

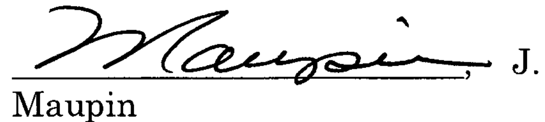
[9]County of Clark v. Plane Realty, Corp., Docket Nos. 34904/35205 (Order of Reversal and Remand, July 13, 2001).

[10]Morgan references Clark County v. Plane Realty Corp., and Morgan v. Demitrius, cases he was allegedly involved in.

This court will not take judicial notice of the records from a different case, even though the cases are connected. The request of the County for this court to give judicial notice to the unpublished order is hereby denied. Morgan's request for sanctions is also denied.

We conclude that the district court did not err in granting partial summary judgment, valuing Morgan's property rights at $450,000. Accordingly, we

ORDER the judgment of the district court AFFIRMED.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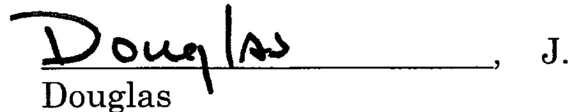
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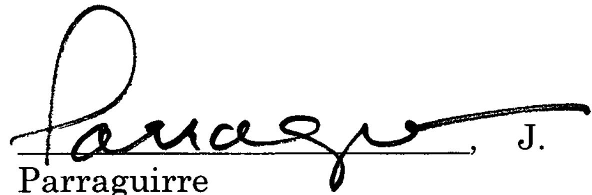
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Parraguirre

cc: Hon. Nancy M. Saitta, District Judge
Amesbury & Schutt
Clark County District Attorney David J. Roger/Civil Division
Clark County Clerk