IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVE HARMSEN, AND HARMSEN FAMILY LIMITED PARTNERSHIP, A UTAH LIMITED PARTNERSHIP,
Appellants,
vs.
ROCKY MOUNTAIN COMPANY, A UTAH LIMITED PARTNERSHIP,
Respondent.

No. 42136

FILED

JUN 30 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court declaratory judgment in a quiet title action. Seventh Judicial District Court, Lincoln County; Steve L. Dobrescu, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Harmsen argues that the district court erred when it found that no evidence was presented to support his claim that SR 317 is not the same as old SR 55. Harmsen contends that in his affidavit to this court, which was intended to supplement the record in place of the hearing transcript that was not obtained, he avers that "evidence was presented disclosing that [Harmsen] own[s] all of the land west of State Route 55 as it was constituted and [RMC] owns all of the land east of State Route 55." According to Harmsen, this testimony should have been sufficient to create a genuine issue of material fact and defeat summary judgment.

RMC responds that the district court correctly found that Harmsen merely showed that he believed that the alleged realignment of the road created an issue of material fact, and that Harmsen's "mere unsubstantiated belief" was insufficient for that purpose. RMC further

points out that its action "was a quiet title action sounding in adverse possession not an action to determine the location, alignment or proper description of any roadway abutting the properties," and thus summary judgment was appropriate.

On appeal from a grant of summary judgment, this court reviews the record to evaluate the district court's finding that there were no genuine issues of material fact. "Since we review the entire record anew and without deference to the findings of the district court, in that sense our review is de novo."[1] "In reviewing a summary judgment, this court must accept as true the allegations and reasonable inferences favorable to the position of the non-moving party."[2]

NRCP 56(a) permits a plaintiff to seek summary judgment by a motion "with or without supporting affidavits." Under NRCP 56(c), such a motion shall be granted if the pleadings and papers already on file, with or without affidavits, "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Under NRCP 56(e):

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth

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[1]Caughlin Homeowners Ass'n v Caughlin Club, 109 Nev. 264, 266, 849 P.2d 310, 311 (1993).

[2]Howard Hughes Med. Inst. v. Gavin, 96 Nev. 905, 909, 621 P.2d 489, 491 (1980).

specific facts showing that there is a genuine issue for trial.[3]

NRCP 56(e) further mandates that "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."[4]

No evidence, other than Harmsen's belief, has been presented to suggest that SR 317 does not follow the route of old SR 55 as it crosses the disputed property. Harmsen has not affirmatively shown that he is competent to testify as to the allegedly differing routes. The letter from the surveyor to Harmsen does not support an inference that the routes of the two roads differ, nor does it indicate which portions of old SR 55 or new SR 317 cross the disputed property. The maps apparently provided at the summary judgment hearing are not before this court on appeal.

In regard to the hearing transcript and map exhibits, this court has held that "[w]hen evidence on which a district court's judgment rests is not properly included in the record on appeal, it is assumed that the record supports the lower court's findings."[5]

We conclude that the evidence contained in the record on appeal to this court is not sufficient to create a genuine issue of material

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[3]See also Adamson v. Bowker, 85 Nev. 115, 119-20, 450 P.2d 796, 799-800 (1969).

[4]See also Gunlord Corp. v. Bozzano, 95 Nev. 243, 245, 591 P.2d 1149, 1150 (1979).

[5]Stover v. Las Vegas Int'l Country Club, 95 Nev. 66, 68, 589 P.2d 671, 672 (1979).

fact. Therefore, we find that the district court's grant of summary judgment was proper. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Steve L. Dobrescu, District Judge
Earl Monsey
Mackedon, McCormick & King
Lincoln County Clerk