

Adaven Mgmt. v. Mountain Falls Acquisition 124 Nev. Adv. Op. No. 67

(September 11, 2008)

Property Law – Water Rights/Quiet Title¹

Summary

This case is an appeal from the District Court’s grant of summary judgment in a water rights/quiet title case.

Disposition/Outcome

Affirmed. The Nevada Supreme Court affirmed the District Court’s order granting summary judgment in favor of Mountain Falls Acquisition. The Court concluded that alienability of water rights is not limited by either Nevada Revised Statute (NRS) 533.040 or the anti-speculation doctrine, and that a recorded deed for water rights need not include reference to the parcel to which it is appurtenant in order to place a prospective buyer on notice of another party’s interest in the water right.

Factual and Procedural History

In 1998, E.A. Collins Development Corporation purchased 520 acres and the appurtenant water rights in Nye County. In 1999, E.A. Collins pledged by deed of trust, several parcels of land and water rights, including a water rights permit (Permit 22735) – but not the appurtenant land, to secure a loan from Commercial Federal Bank (CFB). CFB recorded the deed of trust.

CFB foreclosed on the secured property a year and a half after the loan agreement, then purchased the property at a foreclosure sale. On March 3, 2001, CFB recorded a trustee’s deed upon sale, which included the water rights permit. Later, CFB sold Permit 22735 and other foreclosed property to its subsidiary, Mountain Falls Acquisition Corporation (MFAC).

After the foreclosure sale, E.A. Collins sold to Adaven the parcel of land to which Permit 22735 was appurtenant. The deed included “[a]ll water rights relating to, upon, benefiting, belonging or appertaining to the real property.” On December 18, 2001, Adaven recorded the deed, and filed a report of conveyance with the State Water Engineer for Permit 22735 seven months later. Adaven then applied to the State Water Engineer to change the use of water from agricultural to quasi-municipal in an effort to begin development of home sites on the land.

CFB learned of Adaven’s application and wrote to the Department of Water Resources to assert its interest in Permit 22735 on behalf of MFAC. Adaven filed a quiet title action with the district court. In response, MFAC filed an answer, a counterclaim, and moved for summary judgment. The district court granted MFAC’s summary judgment motion. Adaven appealed, arguing that NRS 533.040 and the anti-speculation doctrine barred E.A. Collins from pledging Permit 22735 as collateral for a loan without the land to which Permit 22735 was appurtenant, and that a genuine issue of material fact existed as to whether Adaven had notice of CFB’s interest in Permit 22735 when Adaven

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took title to the parcel of land to which Permit 22735 was appurtenant because CFB's interest was not discoverable through a reasonable search of records for that parcel.

Discussion

The Nevada Supreme Court reviews all orders from the district court granting summary judgment *de novo*.²

Under NRS 533.040, water used for beneficial purposes remains appurtenant to the place of use unless "it is impracticable to use water beneficially or economically at the place to which it is appurtenant."³ Under the anti-speculation doctrine, the owner of a particular water right is prevented from transferring his right "without a showing of beneficial use."⁴

The Court held that NRS 533.040 and the anti-speculation doctrine do not apply to the transferability of water rights and that they merely apply to use of water rights and not alienability. Therefore, the Court held that water rights are freely alienable interests that are separate from the land to which they are appurtenant and that Permit 22735 was validly transferred from E.A. Collins to CFB in a deed of trust as security on a loan.

The Court further held that no genuine issue of material fact existed as to whether Adaven was on notice of CFB's interest in Permit 22735 because CFB had properly recorded its interest before Adaven took title of the land to which the water right was appurtenant. The Court held that although the chain of title did not include the trustee (CFB)'s deed of sale, Adaven was required to make a further inquiry into the title due to the existence of the deed of trust. Furthermore, the Court held that Permit 22735 was clearly encumbered by the deed of trust because the first page of the deed stated that the deed conveyed water rights that were later described in a supplemental document to the deed.

Finally, the court stated that NRS 111.312 only requires deeds to display parcel numbers for the property being transferred. Because Permit 22735 was not assigned its own parcel number and the deeds acquired by CFB, which included Permit 22735, did not transfer the parcel to which Permit 22735 was appurtenant, no parcel number for Permit 22735 or the parcel to which it was appurtenant was required.

Conclusion

The Court concluded that Permit 22735 was separately alienable from the parcel to which it was appurtenant and that Adaven should have been on notice of CFB's interest. Therefore, Permit 22735 is validly owned by MFAC, and the district court's grant of summary judgment in MFAC's favor was appropriate.

² Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

³ NEV. REV. STAT. §533.040 (2003).

⁴ Bacher v. State Engineer, 122 Nev. 1110, 146 P.3d 793 (2006) (adopting anti-speculation doctrine from Colorado River Water Conservation v. Vidler Tunnel, 594 P.2d 566, 568-69 (Colo. 1979)).