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### Summary of Schneider v. County of Elko, 119 Nev. Adv. Op. No. 43

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*Nevada Law Journal*

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***Schneider v. County of Elko*, 119 Nev. Adv. Op. No. 43 (Aug. 28, 2003)<sup>1</sup>**

**Property – Recordation**

**Summary**

Appeal from a district court order dismissing a property owner’s complaint for failure to state a claim upon which relief can be granted.

**Disposition/Outcome**

Affirmed. Recordation of the survey was proper because the survey satisfied the statutory requirements for a record of survey.

**Factual and Procedural History**

In 1971, Spring Creek Association filed a subdivision map of eighty lots in Spring Creek Tract 102 located in Spring Creek, Elko County, Nevada. Spring Creek Association subsequently had a record of survey prepared, depicting Lot 80 of Tract 102 as divided into twelve parcels with an access road circling through the parcels. In 1983, the Elko County Recorder completed the recordation of the record of survey at the request of Spring Creek Association.

Terry and Jana Schneider purchased Parcel 2 of Lot 80 in 1995. In 1999, Spring Creek Association brought an action against the Schneiders to determine the existence of an easement (the access road depicted in the survey) across the Schneiders’ property. The district court found that there was no express easement because the record of survey did not meet the statutory requirements for a parcel or subdivision map. There were no other means for creating an easement and, therefore, Spring Creek Association did not have an easement across the Schneiders’ property. The district court concluded that the action was brought in good-faith and did not award attorneys costs or fees.

The Schneiders then filed a complaint against Elko County, seeking fees and costs incurred as a result of their defense of the Spring Creek Association lawsuit. The Schneiders alleged that the Elko County was liable for recording the record of survey because the county recorder should have known that the record of survey was intended to serve as, yet failed to meet the statutory requirements of, a subdivision map.

Judge Robert E. Estes of the Fourth Judicial District Court granted the County’s motion to dismiss for failure to state a claim.

**Discussion**

The district court concluded that the county recorder properly recorded the record of survey pursuant to NRS 247.110(3).<sup>2</sup> The Schneiders do not argue that the record of

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<sup>1</sup> By Hilary Barrett

<sup>2</sup> NRS 247.110(3) states: “A county recorder shall not refuse to record a document on the grounds that the document is not legally effective to accomplish the purposes stated therein.”

survey was statutorily insufficient but rather that the record of survey was intended to create a subdivision and, therefore, must meet the statutory requirements for a subdivision map. The Schnieders allege that because the record of survey failed to meet the statutory requirements for a subdivision map, the county recorder is liable under NRS 247.410(2).<sup>3</sup>

The Nevada Supreme Court held that NRS 247.410(2) is not applicable because recording a document is purely a ministerial task<sup>4</sup> and a county recorder, therefore, has no duty to determine whether a document serves its intended purpose. Further, because the record of survey satisfied the statutory requirements for recordation, the county recorder, acting pursuant to NRS 247.110(3), was not liable.

### **Conclusion**

Because recording a document is a ministerial task, a county recorder has no duty to determine whether the document serves its intended purpose. A county recorder cannot refuse to record a document on the grounds that it is not legally effective to accomplish the purposes stated therein. A county recorder is only liable in those cases where there is a willful, negligent, or untrue recordation of a document that does not meet the statutory requirements of its stated purpose, regardless of its intended purpose.

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<sup>3</sup> NRS 247.410(2) provides that a county recorder is liable to an aggrieved party for three times the amount of damages that may be occasioned if the recorder willfully, negligently, or untruly records a document in any manner other than as directed in NRS chapter 247.

<sup>4</sup> *See, e.g.* Bionomic Church of Rhode Island v. Gerardi, 414 A.2d 474, 476 (R.I. 1980).