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# Jackson v. Groenendyke, 132 Nev., Adv. Op. 409 (April 7, 2016)

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## EXCEPTIONS TO WATER RIGHTS DETERMINATIONS

### **Summary**

The court determined that (1) a district court may consider supplements to a party's timely filed exceptions to a water rights determination; and (2) the district court's determination of water rights was supported by substantial evidence.

### **Background**

In 2008, the State Engineer issued a final order of determination of water rights affecting the parties. "Spring A", the water at issue in the case, was improved with pipes and a valve that allow water access to Appellant, Jerald Jackson and Irene Windholz's (collectively "Jackson's"), property, and then eventually to Respondent, Edward Groenendyke's, property. In the other direction, the pipeline allows water access to a set of properties known as the Green Acres properties. After the State Engineer's determination, the parties were permitted to file exceptions to the State Engineer's order in district court, which both Jackson and Groenendyke did. Due to the large number of claims, the district court did not hear arguments on the final order regarding Spring A until November 2012.

In September 2012, Groenendyke filed a supplement to his earlier filed exceptions, moving for the district court to allow him access to Jackson's property. Groenendyke sought access to repair and maintain facilities related to the waterway, because Jackson's land was upstream from Groenendyke's land. Although the issue of land access was not part of the State Engineer's final order, or either party's initially filed exceptions, the district court granted Groenendyke's request. The district court, after considering aerial photos, geological maps, and hearing testimony from the State Engineer's expert and Jackson's expert, also concluded that Jackson, Groenendyke, and the Green Acres properties all had vested water rights in Spring A.

### **Discussion**

On appeal, Jackson argued the district court did not have jurisdiction to grant Groenendyke's request for access. He also argued that the district court erred in finding that the Green Acres properties had vested rights to the water. The court held that the district court properly heard Groenendyke's request for access, because the Nevada Rules of Civil Procedure allow a party to later add a claim "when that later claim arises out of the same transaction or occurrence as the existing action." The court also found that the district court's water right determinations were based on substantial evidence.

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<sup>1</sup> By Kory Koerperich.

### *Standard of review*

The court reviewed the district court's factual findings for an abuse of discretion, according "deference to the point of view of the trial judge since he had the opportunity to weigh evidence and evaluate the credibility of witnesses. . . ." <sup>2</sup> The court would not disturb the district court's findings unless they were clearly erroneous or not supported by substantial evidence.

### *Groenendyke's access to Jackson's land*

The court affirmed the district court's judgment granting Groenendyke limited access to conduct maintenance and repairs on the water line. NRS 533.170(5) requires that district court proceedings on a final order determining water rights be in accordance with the Nevada Rules of Civil Procedure as much as possible, and the Nevada Rules of Civil Procedure allow for amended pleadings. <sup>3</sup> NRCP 15(c) specifically allows for an amended pleading arising out of the same transaction or occurrence to relate back to the date of the original filing, so long as the initial pleading gave "fair notice of the fact situation" <sup>4</sup> that gave rise to the claim, and "the opposing party will be put to no disadvantage." <sup>5</sup> The court noted that when no statutory authority prevents a district court from hearing related claims, "the rules of civil procedure are intended to allow the court to reach the merits of claims. . . ."

As a result, the court held NRS 533.170 allowed Groenendyke's additional related claim, because amended pleadings arising from the same transaction or occurrence accord with the Nevada Rules of Civil Procedure. Because Groenendyke timely filed his initial exceptions, his request for access concerned the same water that the State Engineer made decisions regarding, and the vested right to receive the water necessarily included actions to ensure the water continued to flow to Groenendyke's property, the court concluded the amendment related to the same transaction or occurrence, and Jackson was not prejudiced by the amendment.

### *Green Acres' vested water rights*

The court also held that the district court's determination that the Green Acres properties possessed a vested water right was supported by substantial evidence. NRS 533.035 provides that "[b]eneficial use shall be the basis, the measure and the limit of the right to the use of water." The court noted that the State Engineer made findings that the natural channel of the water flowed to the Green Acres properties, that water flowed through a pipe to the Green Acres properties, and that the water from the pipe was put to beneficial use to irrigate the properties. As a result, the court concluded it would not substitute its judgment for that of the district court when the district court's decision was not clearly erroneous.

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<sup>2</sup> Harris v. Zee, 87 Nev. 309, 311, 486 P.2d 490, 491-92 (1971).

<sup>3</sup> NEV. R. CIV. P. 15(a)

<sup>4</sup> Nelson v. City of Las Vegas, 99 Nev. 548, 556, 665 P.2d 1141, 1146 (1983).

<sup>5</sup> Costello v. Casler, 127 Nev. 436, 441, 254 P.3d 631, 634 (2011).

## **Conclusion**

Proceedings regarding exceptions to an order of determination of water rights are conducted in accordance with the Nevada Rules of Civil Procedure, which allow amended pleadings for claims resulting from the same transaction or occurrence. As a result, the district court could properly consider Groenendyke's supplemental exception, which requested access to Jackson's property to repair and maintain the water line. Further, the district court's determination that the Green Acres properties had vested water rights was not clearly erroneous, because substantial evidence supported the finding that the Green Acres properties put the water to beneficial use.