

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

10-3-2013

Summary of McKnight Family, LLP v. Adept Mgmt. Services, Inc., et. al., 129 Nev. Adv. Op. 64

Whitney E. Short
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Civil Procedure Commons](#), and the [Dispute Resolution and Arbitration Commons](#)

Recommended Citation

Short, Whitney E., "Summary of McKnight Family, LLP v. Adept Mgmt. Services, Inc., et. al., 129 Nev. Adv. Op. 64" (2013). *Nevada Supreme Court Summaries*. 58.

<https://scholars.law.unlv.edu/nvscs/58>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

CIVIL PROCEDURE: MANDATORY ALTERNATIVE DISPUTE RESOLUTION

Summary

The Court determined three issues: (1) whether the district court had the authority to dismiss the complaint pursuant to NRS 38.310;² (2) whether the district court erred in dismissing all seven claims (preliminary/permanent injunction, negligence, breach of contract, violation of NAC 116.300,³ violation of NAC 116.341,⁴ violation of NRS 116.1113 and 116.3103, and slander of title/wrongful foreclosure/quiet title) subject to NRS 38.310; and (3) whether the district court erred in setting aside the default judgment against Design 3.2.

Disposition

NRS 38.310(2) “mandates the court to dismiss any civil action initiated in violation of NRS 38.310(1).” However, NRS 38.310 does not control if the action “relates to an individual’s right to possess and use his or her property.”

Factual and Procedural History

Respondents/appellants Torrey Pines Homeowners, Adept Management, and Nevada Association Services (collectively “TP HOA”) sold appellant/respondent McKnight Family, LLP’s (“McKnight”) properties at a trustee sale due to alleged unpaid assessments. Design 3.2 bought one of the properties.

McKnight filed a complaint alleging seven claims against TP HOA and Design 3.2. McKnight also filed a motion to set aside the sale based on improper notice. The district court denied McKnight’s motion because it found TP HOA properly notified McKnight of the sale. The district court also concluded that McKnight’s claims were subject to NRS 38.310 and dismissed them because McKnight did not submit them to a form of alternative dispute resolution before bringing them in district court. Additionally, the district court entered a default judgment against Design 3.2 for failing to answer McKnight’s complaint, but later set aside the judgment due to the Nevada Supreme Court’s “liberal” attitude regarding setting aside a default judgment.

Discussion

The district court erred in dismissing McKnight’s entire complaint

¹ By Whitney E. Short

² “No civil action based upon a claim relating to . . . conditions or restrictions applicable to residential property . . . may be commenced in [state court] unless the action has been submitted to mediation or arbitration . . .” NEV. REV. STAT. § 38.310 (2013)

³ The Nevada Administrative Code has since been revised. This provision was recodified at NAC 116A.320.

⁴ Recodified at NAC 116A.345.

NRS 38.310 requires the court to dismiss any civil action that violates NRS 38.310(1) even if the party has already commenced a complaint. However, an action is exempt from NRS 38.310 “if the action relates to an individual’s right to possess and use his or her property.” After reviewing *Hamm v. Arrowcreek Homeowners Ass’n*,⁵ the Court concluded that if a party brings an action that is not exempt from NRS 38.310, the court has the authority to dismiss the complaint. The Court then analyzed the claims under NRS 38.310 to determine whether each was exempt.

Injunctive relief claim

Without an immediate threat of a future irreparable harm, claims are subject to NRS 38.310. McKnight filed its amended complaint after TP HOA sold the properties. Therefore, there was no immediate threat and the district court did not err in dismissing this claim.

Negligence, breach of contract, NAC, and NRS claims

All of these claims are civil actions as defined in NRS 38.300. Therefore, the district did not err in dismissing these claims.

Slander of title

Slander is subject to NRS 38.310 because it does not infringe upon a person’s right to use or possess his property. Therefore, the district did not err in dismissing this claim.

Wrongful foreclosure

Wrongful foreclosure is subject to NRS 38.310 because the claim “challenges the authority behind the foreclosure, not the foreclosure act itself.” Additionally, in cases involving wrongful foreclosure claims against an HOA, the court must interpret the CC&Rs to determine their applicability pertaining to the individual. The court held that “[t]his type of interpretation falls under NRS 38.310. Therefore, the district court did not err in dismissing this claim.

Quiet title claim

This claim is exempt from NRS 38.310 because it requires the court to determine which party holds a superior title to a piece of land. Therefore, this is not a civil action as defined in NRS 38.300(3) and the district court erred in dismissing this claim.

Motion to set aside the sale of the properties

The outcome of this motion depends on the resolution of the quiet title claim. Therefore, “the district court should reconsider the motion to set aside once it resolves the quiet title claim.”

Default judgment

The Court could not determine if the district court abused its discretion in setting aside

⁵ 124 Nev. 290, 183 P.3d 895 (2008).

the default judgment because the district court did not conclude if McKnight served Design 3.2 and the Court cannot answer disputed questions of fact. Therefore, the Court vacated the district court's order and remanded the issue to determine whether McKnight properly served Design 3.2.

Conclusion

The Court held that the district court had authority to dismiss any civil action that violated NRS 38.310(1), regardless of when the action was commenced. The quiet title claim was exempt, however, because it related to McKnight's right to possess and use his property. Therefore, the Court affirmed the district court's decision on six of the seven claims; reversed on the quiet title claim; reversed the district court's order denying the motion to set aside the trustee's sale; and ordered the district court to determine McKnight's claim to quiet title and whether McKnight properly served Design 3.2.