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### Summary of Gold Ridge Partners v. Sierra Pacific Power Company, 128 Nev. Adv. Op. 47

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*Nevada Law Journal*

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## PROPERTY – STATUTORY INTERPRETATION

### **Summary**

The Court considered a motion to remand a case on appeal to the district court. Specifically, the Court weighed whether an eminent domain plaintiff could abandon its claim after the plaintiff paid just compensation and the district court entered a final condemnation order, but before the resolution of a pending appeal. In reaching its conclusions, the Court examined when a “final judgment” for the purposes of N.R.S. § 37.180(1) takes place, when an eminent domain taking is completed under the Constitution,<sup>2</sup> and whether a district court maintains limited jurisdiction to dismiss an eminent domain claim on appeal if the plaintiff abandons its claim.

### **Disposition/Outcome**

The Court concluded that an eminent domain plaintiff may abandon its claim while the case is on appeal, even if the plaintiff has paid just compensation and the district court has entered an order of condemnation. This is because, pursuant to N.R.S. § 37.180(1), there is no “final judgment” until all appeals are resolved, and the plaintiff has 30 days from the date of final judgment to abandon. Additionally, while the Court cannot force an eminent domain defendant to retake property once the taking is completed, pursuant to the Constitution and N.R.S. § 37.180(1), a taking is not complete until 30 days after “final judgment.” Furthermore, because N.R.S. § 37.180(1) requires the district court to dismiss an eminent domain action upon notice of abandonment, the district court retains limited jurisdiction to dismiss the claim even if it is on appeal. Since the plaintiff timely abandoned the claim, and since the district court maintained limited jurisdiction to dismiss it based on the plaintiff’s abandonment, the motion for remand was moot.

### **Factual and Procedural History**

The district court awarded plaintiff, Sierra Pacific (“Sierra”), possession of land owned by defendants, Gold Ridge Partners, et al. (“Landowners”). A jury determined that Sierra owed Landowners \$4.4 million in compensation for the taking. Sierra paid the compensation, which Landowners took and used to pay off various encumbrances on the land, and the district court entered a judgment and order of condemnation, which Sierra recorded. At the same time, Landowners appealed issues related to the valuation of land, and Sierra cross-appealed on similar grounds. While the appeal was pending, Sierra noticed the district court of its intent to abandon the condemnation and asked the district court to vacate the condemnation judgment and order. The Nevada Supreme Court considered a motion to remand this case to the district court so that the district court could act on Sierra’s motion to vacate based on abandonment.<sup>3</sup>

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<sup>1</sup> By Adam Tully, Junior Staff Member, Nevada Law Journal.

<sup>2</sup> Although the Court is not explicit, presumably it is referring to the Nevada Constitution.

<sup>3</sup> The Nevada Supreme Court opinion treats Sierra’s motion to vacate as a motion to dismiss based on abandonment, as described in N.R.S. § 37.180(1), because both motions have the same practical effect.

## **Discussion**

Justice Parraguirre authored the opinion, joined by Justices Douglas, Saitta, and Hardesty. Justice Gibbons, joined by Chief Justice Cherry, wrote separately, concurring. Justice Pickering did not participate in this decision.

A “final judgment” refers to any judgment that can no longer be attacked by appeal, motion for new trial, or motion to vacate.<sup>4</sup> According to the plain meaning of N.R.S. § 37.180(1), an eminent domain plaintiff has 30 days from the date of “final judgment” to abandon its claims.<sup>5</sup> This statutory provision allows eminent domain plaintiffs to know the exact compensation due before deciding whether to take the property or abandon the proceedings. Landowners urged the Court to use the date that Sierra paid the \$4.4 million as the date of final judgment, as opposed to the date when appeal would no longer be available. This construction directly conflicts with the language and apparent intent of N.R.S. § 37.180(1). Under Landowners’ proposed rule, if the Court determined on appeal that Sierra owed Landowners significantly more compensation, Sierra would have no choice but to pay the enhanced compensation because its opportunity to abandon would have passed. As such, the plain meaning and apparent intent of N.R.S. § 37.180(1) demonstrate that Sierra had 30 days from the date when appeal was no longer available to abandon its eminent domain claim.

Furthermore, an eminent domain defendant has no constitutional, vested interest in compensation until the taking is complete. Landowners argued that Sierra could not constitutionally abandon because the taking was completed, the plaintiff held title, and Landowners acquired a vested interest in the compensation. While it is true that once a taking is complete, an eminent domain defendant cannot be forced to retake the property,<sup>6</sup> each state determines for itself when a taking in its jurisdiction is completed.<sup>7</sup> According to the Court’s interpretation of N.R.S. § 37.180(1), a taking is not completed until 30 days after final judgment. As such, Landowners did not acquire a constitutional interest in compensation because, according to Nevada law, the taking was not completed.

Even when an eminent domain claim is on appeal, the district court maintains limited jurisdiction to dismiss that claim if the plaintiff timely abandons. This is because N.R.S. § 37.180(1) requires the district court to dismiss an eminent domain claim upon plaintiff’s timely notice of abandonment.<sup>8</sup> This is distinguishable from the Court’s interpretation of the language “at any time” in a child custody statute. In *Mack-Manley v. Manley*, this Court held that a statute that permitted the district court to modify a child custody order “at any time” did not give the district court the jurisdictional power to modify a child custody order while the case was on appeal.<sup>9</sup> Because N.R.S. § 37.180(1) obliges the district court to dismiss an eminent domain claim upon timely abandonment, the district court maintains limited jurisdiction to dismiss those

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<sup>4</sup> NEV. REV. STAT. § 37.009(2) (2007) (“Final judgment’ means a judgment which cannot be directly attacked by appeal, motion for new trial or motion to vacate the judgment.”).

<sup>5</sup> NEV. REV. STAT. § 37.180(1) (2007) (“The plaintiff may abandon the proceedings at any time after filing the complaint and before the expiration of 30 days after final judgment . . .”).

<sup>6</sup> *Carl Roessler, Inc. v. Ives*, 239 A.2d 538, 541 (Conn. 1968).

<sup>7</sup> *Id.*

<sup>8</sup> NEV. REV. STAT. § 37.180(1) (2007) (“Upon that abandonment, on motion of any party, a judgment must be entered dismissing the proceedings . . .”) (emphasis added).

<sup>9</sup> *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006) (interpreting NEV. REV. STAT. § 125.510(1)(b) (2007)).

claims, even if they are on appeal. This is a sensible rule in light of the fact that abandonment will likely render any issues on appeal moot.

### **Conclusion**

Sierra timely noticed the district court that it had abandoned its eminent domain claim. The district court maintained limited jurisdiction to dismiss the eminent domain claim based on Sierra's abandonment. As such, the motion to remand was moot because the district court is empowered to determine the appropriateness of dismissal.

### **Concurrence**

Justice Gibbons, joined by Chief Justice Cherry, wrote separately to emphasize the fact that Landowners may be entitled to equitable estoppel, and the district court should consider those arguments when deciding whether abandonment and dismissal are appropriate.