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King, P.E. v. St. Clair, 134 Nev. Adv. Op. 18 (Mar. 29, 2018)

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King, P.E. v. St. Clair, 134 Nev. Adv. Op. 18 (Mar. 29, 2018)¹

Property Law: Water Rights

Summary

There must be clear and convincing, substantial evidence that a real property owner intentionally abandoned his water rights in order for the Court to find he actually abandoned them.

Background

St. Clair purchased real property and found an abandoned well on the property. He applied for a temporary license to divert the well water to another location on his property and submitted the application to State Engineer King. King decided that a prior owner had abandoned the water right after years of nonuse, even though the prior owner had established a right to the well water. St. Clair filed a lawsuit seeking to overturn King's determination. The district court overruled King's decision because there was insufficient evidence that St. Clair or the prior property owners intended to abandon their water rights. King filed the instant appeal seeking to reinstate his initial determination that St. Clair did not possess water rights on his real property.

Discussion

King's decision should be overturned only if he made his decision without supporting substantial evidence, or "evidence which a reasonable mind might accept as adequate to support a conclusion."²

The State Engineer misapplied Nevada law in finding that nonuse alone established a prior owner's intent to abandon water rights

A real property owner who intends to abandon water rights must take actions aligned with that intent. King argued that the district court should have focused on the previous property owner's actions, not St. Clair's actions. According to King, nonuse for decades by a previous property owner was sufficient, substantial evidence to establish that the owner intended to abandon water rights. In *United States v. Alpine Land & Reservoir Co.*, the Court held "Nevada law does not presume abandonment of a water right from nonuse alone."³ Following *Alpine Land*, the Court disagreed with King. It held that nonuse evidence was insufficient to prove that St. Clair did not possess water rights. King must show additional clear and convincing evidence to illustrate that St. Clair did not have water rights.

¹ Joseph K. Fabbi

² *Bacher v. Office of the State Eng'r*, 122 Nev. 110,1121 (2006).

³ 510 F.3d 1035, 1038 (2007).

The State Engineer's additional claims lack merit

King argued that the district court should have remanded the question rather than ruling on it. The Supreme Court deemed this argument moot because St. Clair's temporary application expired June 10, 2017.

Also, according to King, the district court abused its discretion when it considered evidence not in the record by viewing legal briefs and prior State Engineer decisions unrelated to this matter. The Court ruled that the King had not preserved the issue for the appeal.

Further, King contended that the district court violated Nevada Rule of Civil Procedure 52 when it adopted an order that St. Clair drafted because King did not get an opportunity to object to any language in the draft order. The Court dismissed the appellant's complaint because it is common practice in Clark County district courts that a judge will ask the prevailing party to draft the court order.

Conclusion

The Court affirmed the district court's judicial review and overruled the State Engineer's decision. The Court held that a subsequent owner of St. Clair's real property did not intentionally abandon his water rights. Therefore, King did not have clear and convincing, substantial evidence when he ruled that St. Clair's water rights were intentionally abandoned by a subsequent property owner because the prior property owner did not use the water rights.