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### Jones v. Ghadiri, 140 Nev. Adv. Op. 27 (Apr. 28, 2024)

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## SETTING THE GROUND BETWEEN ADVERSE POSSESSION AND PRESCRIPTIVE EASEMENTS

### **Summary**

This case establishes an important distinction between adverse possession and prescriptive easements in Nevada. Adverse possession requires hostile, actual, peaceable, open, notorious, continuous, and uninterrupted possession for five years, plus the payment of any relevant taxes. A prescriptive easement, on the other hand, only requires adverse, continuous, open, and peaceable use for five years, without any tax payments. The Court rejected the Joneses' attempt to claim a comprehensive prescriptive easement that would grant them exclusive control over a 591-square-foot area that was owned by Ghadiri. The Court's analysis hinged on the fact that comprehensive prescriptive easements blur the line between adverse possession and prescriptive easements. Comprehensive prescriptive easements are permissible only under exceptional circumstances, which the Joneses failed to demonstrate. As such, the Court affirmed the District Court's grant of summary judgment in favor of Ghadiri, since the Joneses' claims did not meet the criteria for either adverse possession or a comprehensive prescriptive easement. Ultimately, this case strengthens Nevada's property law by providing new case law and an analysis that better differentiates between adverse possession and prescriptive easements.

### **Background**

The Joneses in 2015 bought property in Las Vegas and made significant improvements near a block wall built in 1989 between their property and their neighbor's property. The improvements made consisted of installing RV utility hookups and an iron gate, where they would store their RV nearby. Later in 2016, Ghadiri purchased the neighboring property and years later Ghadiri discovered that part of his property, about 591 square feet, was on the Joneses' side of the wall. A survey of the property later confirmed that the wall was not on the property line, confirming that the disputed property was on Ghadiri's side of the lot line. Ghadiri then obtained a permit to demolish the wall and build a new one on the property line at his expense.

The Jones family then decided to sue Ghadiri, seeking a prescriptive easement, adverse possession, and a temporary restraining order. The District Court granted a temporary restraining order but denied their motion for a preliminary injunction. This denial was later upheld, and Ghadiri removed the wall sometime after. Ghadiri sought summary judgment on the Joneses' claims; he argued that the Joneses did not pay property taxes on the disputed land and that a prescriptive easement, which would exclude him entirely, was not permissible under the law of neighboring states like Arizona and California. The Joneses contended that who paid the taxes was a factual issue and that Nevada law allows for prescriptive easements that exclude the landowner.

The District Court granted summary judgment in favor of Ghadiri on the adverse possession claim and noted that the Joneses' prescriptive easement claim was a mix of adverse possession with a prescriptive easement. In making its decision, the District Court considered cases from neighboring states like Arizona and California, concluding that a prescriptive easement could not exclude the landowner entirely. Despite an unpublished Nevada case

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<sup>1</sup> By Matthew L. Malters.

suggesting otherwise, the District Court found it unpersuasive and nevertheless ruled in Ghadiri's favor. The Joneses appealed this decision.

## **Discussion**

### ***Adverse possession versus easements***

In writing its decision, the Court acknowledged that the Joneses' arguments for adverse possession and a prescriptive easement were muddled. The Joneses did not challenge the rejection of their adverse possession claim, but the Court decided it was important to distinguish between the two concepts. Adverse possession allows a party to acquire valid title to someone else's property through hostile, actual, peaceable, open, notorious, continuous, and uninterrupted possession for five years, along with payment of all relevant taxes.<sup>2</sup> On the other hand, a prescriptive easement is a common law claim by which one may acquire the legal right to use land that he or she does not own.<sup>3</sup> Adverse, continuous, open, and peaceable use for five years are the requisite elements for claiming a prescriptive easement.<sup>4</sup>

The Joneses sought a prescriptive easement but made demands that provided for exclusive control of the disputed property, which would more closely align with an adverse possession claim. Since the Jones family did not pay the property taxes on the disputed property, their claim for adverse possession was invalidated. The Court recognized that the Joneses sought adverse possession under the guise of a comprehensive prescriptive easement, which would exclude the landowner entirely.<sup>5</sup> The Court decided to reject this approach by emphasizing the need to maintain and further the distinction between adverse possession and prescriptive easements. The statutory requirements for adverse possession to stand must be complied with.

### ***Comprehensive prescriptive easements are Available only in exceptional circumstances***

The Joneses argue that Nevada law supports comprehensive prescriptive easements and the District Court improperly relied on California law in its decision, which rejects such easements. The Real Property Section of the Nevada State Bar, as amicus curiae, supports maintaining the distinction between adverse possession and prescriptive easements. Ghadiri argues that the Court should follow California case law, which rejects the use of comprehensive prescriptive easements.

In *CSA*, a block wall intruded on an adjacent property, and the District Court recognized a prescriptive easement for the intrusion.<sup>6</sup> Although *CSA* affirmed the District Court's ruling<sup>7</sup>, this Court did not consider or analyze the circumstances under which comprehensive prescriptive easements should be recognized. This ultimately led the Court to disavow any implications that *CSA* might have supported in terms of comprehensive prescriptive easements. The Joneses also relied on *Boyd*, where an easement was granted for a motel wall and roof encroaching 2.6 feet onto the adjacent property.<sup>8</sup> In this case, the Court recognized that an easement is a right, distinctive from ownership concluding that the sign could not be classified as an easement because it was too

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<sup>2</sup> 142 Am. Jur. 3d *Proof of Facts* 349; *Triplett v. David H. Fulstone Co.*, 109 Nev. 216, 219, 849 P.2d 334, 336 (1993).

<sup>3</sup> Restatement (Third) of Property (Servitudes) § 1.2(1) (1998).

<sup>4</sup> *Jordan v. Bailey*, 113 Nev. 1038, 1044, 944 P.2d 828, 832 (1997).

<sup>5</sup> Will Saxe, *When "Comprehensive" Prescriptive Easements Overlap Adverse Possession: Shifting Theories of "Use" and "Possession,"* 33 B.C. Env't Aff. L. Rev. 175, 193 (2006).

<sup>6</sup> *CSA Development, LLC v. Bryant*, No. 68444, 2016 WL 7105072, \*1 (Nev. Dec. 2, 2016) (Order of Affirmance).

<sup>7</sup> *Id.* at \*3.

<sup>8</sup> *Boyd v. McDonald*, 81 Nev. 642, 652, 408 P.2d 717, 722 (1965).

far from the boundary line. Additionally, the *Boyd* case did not involve a prescriptive easement (or more specifically a comprehensive prescriptive easement), but instead an easement by implication.<sup>9</sup>

Since Nevada lacks case law directly on point, the Court turned to other jurisdictions, many of which reject comprehensive prescriptive easements to avoid blurring the line between adverse possession and easements, while upholding statutory tax requirements for adverse possession.<sup>10</sup> California's approach recognizes comprehensive prescriptive easements in exceptional circumstances, such as for essential services or public health reasons.<sup>11</sup> By adopting California's approach, the Court held that comprehensive prescriptive easements might be warranted in exceptional circumstances, but ultimately found that the Joneses' circumstances did not demonstrate such circumstances. Here, the Joneses merely made improvements to an RV parking space and the grant of a prescriptive easement would ultimately deprive Ghadiri of 591 square feet of useable space. As such, the Court affirmed the District Court's summary judgment in favor of Ghadiri.

### **Conclusion**

Nevada has long recognized the distinction between adverse possession and prescriptive easements. Nevada will continue to recognize the important distinction between the two by outlining the exceptional circumstances that may warrant comprehensive prescriptive easements. Since the Jones family failed to demonstrate any such circumstance, the Court affirmed the judgment of the District Court.

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<sup>9</sup> *Id.* at 650 n.8, 408 P.2d at 721 n.8.

<sup>10</sup> *Etz v. Marnerow*, 233 P.2d 443, 444 (Ariz. 1951); *Platt v. Pietras*, 382 So. 2d 414, 416 (Fla. Dist. Ct. App. 1980); *Oakley Valley Stone, Inc. v. Alastra*, 715 P.2d 935, 938-39 (Idaho 1985); *Burlingame v. Marjerrison*, 665 P.2d 1136, 1140 (Mont. 1983); *Nyman v. Anchor Dev., LLC*, 73 P.3d 357, 362 (Utah 2003).

<sup>11</sup> *Mehdizadeh v. Mincer*, 54 Cal. Rptr. 2d 284, 290 (Ct. App. 1996); *Otay Water Dist. v. Beckwith*, 3 Cal. Rptr. 2d 223, 226 (Ct. App. 1991).