IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL T. HOWELL; AND CHERI A. HOWELL,
Appellants,
vs.
PACIFIC RECLAMATION WATER COMPANY, A NEVADA CORPORATION; AND METROPOLIS WATER IRRIGATION DISTRICT, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,
Respondents.

No. 57004

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a water rights quiet title action. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge.

This action is the third iteration of a water rights dispute that was most recently addressed by this court in Howell v. State Engineer, 124 Nev. 1222, 197 P.3d 1044 (2008) (Howell II). Appellants Michael and Cheri Howell own real property in Elko County, Nevada, on one of the tributaries of the Humboldt River. The Howells, through their immediate predecessors in interest, submitted a record of conveyance to the Nevada State Engineer, requesting that the State Engineer affirm ownership of the appurtenant water rights in their favor. The State Engineer denied this request because a conflict existed in the chain of title due to appropriation permits granted in 1944 that transferred the water rights from the Howells' property onto land owned by respondent Pacific Reclamation Water Company (PR). PR is in the process of conveying its water rights to respondent Metropolis Water Irrigation District, whereby

Metropolis will administer all of the water rights previously administered by PR. In response to the State Engineer's denial, the Howells filed a petition for judicial review, which they later amended to add a claim to quiet title. However, they subsequently amended their pleadings to remove the quiet title claim. The district court denied the Howells' petition and this court heard the resulting appeal. We concluded that the State Engineer's issuance of the permits in 1944 effectively transferred ownership of the disputed water rights to PR, leaving the Howells' purchased land with no ownership in the water rights at issue. Howell v. State Engineer, Docket No. 39788 (Order of Affirmance, April 1, 2004) (Howell I).

Subsequently, the Legislature enacted several amendments to NRS Chapter 533, a chapter that addresses adjudication of vested water rights and the apportionment of public waters. 2005 Nev. Stat., ch. 493, §§ 1-4, at 2560-64. The Legislature, in making these amendments, declared that permits authorizing change in the place of diversion have no effect on the ownership of the underlying water rights. Id. § 1, at 2560-61; § 4, at 2564. Because this was a clarification of the operation of NRS chapter 533 regarding the ownership of water rights, the Legislature provided that this explanation applied retroactively. Id. §§ 22, 25, at 2573.

Thereafter, the Howells wrote to the State Engineer requesting that he comply with the new amendments and declare the 1944 transfers invalid. The State Engineer replied that he could not take any further action regarding the transfers until a court of competent jurisdiction entered a judgment confirming ownership of the water rights. This led the Howells to file an alternative petition for writ of mandamus or judicial review of the State Engineer's decisions with the district court,

again seeking to reverse PR's ownership of the water rights. After dismissal by the district court based on res judicata, collateral estoppel, and the law of the case doctrine, we affirmed the district court's denial of the Howells' petition for judicial review. Howell II, 124 Nev. at 1229-31, 197 P.3d at 1049-50. We concluded that the amendments to NRS Chapter 533 did not have any effect on the Howells' case. Id. at 1231, 197 P.3d at 1050. We stated that these amendments were clarifications of existing law, which reaffirm that the State Engineer cannot adjudicate questions of title as "'only a court of competent jurisdiction has the power to determine conflicting claims to ownership of a water right.'" Id. at 1230, 197 P.3d at 1050 (quoting NRS 533.024(2)). As a result, we concluded that "title questions must be resolved by a quiet title action in district court, and seeking resolution through a petition for judicial review is improper." Id. at 1231, 197 P.3d at 1050.

The Howells subsequently commenced another action in the district court for the purpose of quieting title to the water rights at issue. Upon completion of discovery, PR filed a motion for summary judgment, reasserting the affirmative defense of claim preclusion. The district court then granted summary judgment on the ground of claim preclusion. This appeal followed.[1]

[1]The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

The focus of this appeal is on whether the Howells' quiet title claims are barred by the doctrine of claim preclusion based on the previous judicial review proceedings and related proceedings before this court in which the Howells had raised, and then removed, a claim to quiet title.[2] We conclude that the underlying quiet title action related to the water rights is barred by the doctrine of claim preclusion.

Standard of review

Because this appeal is from an order granting summary judgment, the appropriate standard of review is de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. NRCP 56(c); see Wood, 121 Nev. at 729, 121 P.3d at 1029. "[W]hen reviewing a motion for

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[2]The Howells also take issue with PR's standing to defend. They assert that PR is no longer a real party in interest pursuant to NRCP 17(a). Despite the fact that the district court did not explicitly rule on this issue, because it was raised below and was impliedly denied by the district court, it is properly before this court on appeal. See Bd. of Gallery of History v. Datecs Corp., 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (noting that the district court's failure to rule on a request constitutes a denial of the request). We conclude that the rule as stated in NRCP 17(a), that "[e]very action shall be prosecuted in the name of the real party in interest," by its plain language does not include defendants. See 6A Wright, Miller, & Kane, Federal Practice and Procedure: Civil § 1543, at 482 (2010) (discussing the federal counterpart to NRCP 17(a) and stating that, "[b]y its very nature, Rule 17(a) applies only to those who are asserting a claim."); Salazar v. Allstate Texas Lloyd's, Inc., 455 F.3d 571, 573 (5th Cir. 2006) (stating that Federal Rule of Civil Procedure 17(a) "applies only to plaintiffs . . . the rule does not provide a mechanism for ensuring that a defendant is a real party in interest"). Accordingly, the Howells' argument fails as a matter of law.

summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." Id.

Whether the underlying quiet title action related to certain water rights is barred by the doctrine of claim preclusion

The Howells contend that they withdrew their quiet title claim in Howell I because they recognized that the district court's decision would have no preclusive effect. The Howells argue that it would have been pointless to pursue a quiet title action until this court retracted its position in Howell I that their land had been divested of its water rights by the State Engineer.[3]

Broadly speaking, claim preclusion bars parties or their privies from litigating claims or any part of them that were or could have been brought in a prior action concerning the same controversy. Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008). The policy underlying this doctrine is to preserve scarce judicial resources and to prevent vexation and undue expense to parties. University of Nevada v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994). This court applies a three-part test for determining whether claim preclusion bars a

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[3]The parties undertake a lengthy debate over whether or not this court's statement that "nothing in this opinion precludes the Howells from contesting title ownership to the water rights in a quiet title action" is dicta. Howell II, 124 Nev. at 1231 n.24, 197 P.3d at 1050 n.24. We conclude that it is dicta as it is "'unnecessary to a determination of the questions involved.'" Argentena Consol. Mining Co. v. Jolley Urga, 125 Nev. 527, 536, 216 P.3d 779, 785 (2009) (quoting St. James Village, Inc. v. Cunningham, 125 Nev. 211, 216, 210 P.3d 190, 193 (2009)). Moreover, we point out that this statement was not a prediction of how the claim would fare at the district court level.

subsequent action: (1) the same parties or their privies are involved in both cases, (2) a valid final judgment has been entered, and (3) "the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." Five Star, 124 Nev. at 1054, 194 P.3d at 713.

We conclude that claim preclusion applies in this case as all three prongs of the test have been met. The first element is not in dispute—PR and the Howells were parties in both Howell I and Howell II, and Metropolis is in privity with PR as the successor-in-interest to PR's water rights.

The second element has also been satisfied—a valid final judgment has been entered. Concerning this element, the parties dispute whether the district court had jurisdiction to enter a final judgment. The Howells argue that any court reviewing the State Engineer's decision is not a court of competent jurisdiction that has the authority to quiet title as a court reviewing an agency action does not have the jurisdiction to decide matters that were beyond the authority of the agency.[4] See NRS 533.024(2). We conclude that the district court was not reviewing an agency action when determining the ownership contention; it was acting under its own jurisdiction. While generally speaking a party may not raise an argument for the first time on judicial review of an agency action, State, Bd. of Equalization v. Barta, 124 Nev. 612, 621, 188 P.3d 1092, 1098 (2008), there is nothing to suggest that a related claim not under the purview of the agency may not be brought at the same time. Accordingly, we

[4]While PR contends that this issue was not raised below, the Howells raised the issue of limited jurisdiction on judicial review in their opposition to PR's second motion for summary judgment.

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conclude that the district court had jurisdiction to enter a final judgment and that valid final judgments were entered in satisfaction of the second part of the test.

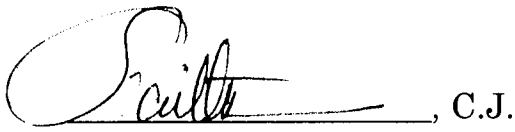
Concerning the third element, that "the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case," Five Star, 124 Nev. at 1054, 194 P.3d at 713, we conclude that this element was also satisfied. Not only could claims to quiet title have been legally presented in Howell I and Howell II, but the Howells actually presented their claim to quiet title in Howell I only to later amend their pleadings to inexplicably remove that claim. Both the district courts in Howell I and Howell II had jurisdiction to resolve the very title conflict that was later presented in this case, but the Howells did not provide those courts with the opportunity. Accordingly, the last element has been met.

As in Five Star, we conclude that the Howells have failed to demonstrate "that this court should disrupt sound claim preclusion principles merely to attempt to correct [the Howells'] mistake." 124 Nev. at 1059, 194 P.3d at 716. "This is the exact type of case for which claim preclusion is necessary—to prevent a party from continually filing additional lawsuits until it obtains the outcome it desires by merely asserting an additional claim for relief." Id. at 1060, 194 P.3d at 716.

Consequently, we conclude that claim preclusion applies, and the district court properly granted summary judgment in favor of PR.

Accordingly, we[5]

ORDER the judgment of the district court AFFIRMED.



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Saitta

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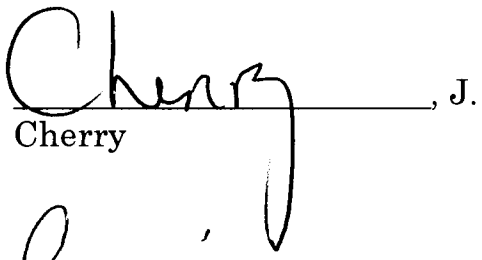

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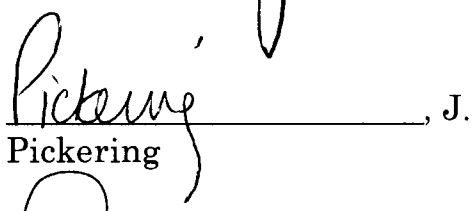

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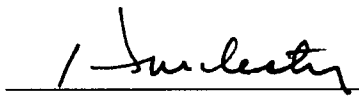

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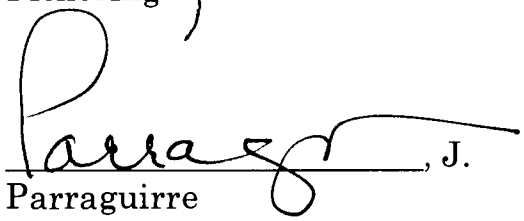

_____, J.
Parraguirre

cc: Fourth Judicial District Court Dept. 1, District Judge
Robert L. Eisenberg, Settlement Judge
Wilson Barrows & Salyer, Ltd.
Goicoechea, Di Grazia, Coyle & Stanton, Ltd.
Elko County Clerk

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[5]Following oral argument, this case was transferred to the en banc court.