

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN HAYES; DEBORAH HAYES; MICHAEL L. SCHOFIELD, INDIVIDUALLY AND AS TRUSTEE OF THE MICHAEL LEO SCHOFIELD TRUST, DATED MAY 26, 2010; OSCAR HARTMAN; SAVANNAH HARTMAN; STEVEN RASMUSSEN; KATHLEEN RASMUSSEN; LARRY W. ROBERTS; MARY A. ROBERTS; JOHN W. BLUFF; MARGARET A. BLUFF, AS TRUSTEES OF THE JOHN W. BLUFF AND MARGARET A. BLUFF LIVING TRUST; WILLIAM B. JACOBSEN, INDIVIDUALLY AND AS TRUSTEE UNDER TRUST AGREEMENT UDT MAY 5, 2002; JUDITH A. JACOBSEN, INDIVIDUALLY AND AS TRUSTEE UNDER TRUST AGREEMENT UDT MAY 5, 2002; LEIF JACOBSEN; AND SOILFUME, INC.,
Appellants,
vs.
LYON COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,
Respondent.

No. 71502

FILED

APR 20 2018

EMERELTH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellants appeal from an order granting Lyon County's motion to dismiss appellants' case for failure to join a necessary party. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

NV Energy applied for a special use permit to expand an existing electrical substation and transmission line located on four acres of a 22-acre parcel in Wellington, Nevada.¹ The Lyon County Board of County

¹We do not recount the facts except those necessary to our disposition.

18-980803

Commissioners (“the Board”) unanimously approved the permit (except for one abstention) at a regularly scheduled meeting on February 4, 2016.

Appellants filed an application for Writs of Mandamus and Prohibition, or in the Alternative, Complaint for Declaratory Relief and Injunction on March 1, 2016. Appellants named Lyon County as the sole defendant and did not include any “Doe” defendants. Lyon County filed a motion to dismiss alleging that appellants failed to join NV Energy as a necessary party as required by NRCP 19 and NRCP 12(b)(6).

The district court granted Lyon County’s motion to dismiss concluding that NV Energy was a necessary party.² The district court also concluded that appellants could not relate back to the date of their original filing to add NV Energy under NRCP 10(a) or NRCP 15(c), and that the 25-day statute of limitations under NRS 278.0235 (2015) applied to NV Energy, which precluded appellants from joining the entity.

Appellants concede on appeal that NV Energy is a necessary party. They raise two primary issues: (1) the statute of limitations under NRS 278.0235 was never triggered because the Board never filed its final action with its clerk or secretary; and, (2) the statute only required appellants to initially name Lyon County so any necessary parties could be added later. As to appellants’ first claim, they did not raise this argument before the district court so we will not consider it now.³ *See Old Aztec Mine, Inc. v.*

²The district court referred to NV Energy as a real-party-in-interest. Appellants and Lyon County also interchange the terms necessary, indispensable, and real-party-in-interest. The correct term for NV Energy is “necessary party.” *See Humphries v. Eighth Judicial Dist. Court*, 129 Nev. 788, 792, 312 P.3d 484, 487 (2013) (“NRCP 19(a) provides that a person must be joined in an action if that person is necessary to the action.”).

³But, we note that the record appears to contradict this assertion, as appellants filed the underlying action in district court the day before the statute of limitations ran against Lyon County.

Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”). We turn to appellants’ second claim.

The district court properly concluded that NV Energy cannot be joined because the statute of limitations expired

Appellants argue that the district court erred by determining that the 25-day statute of limitations under NRS 278.0235 applies to NV Energy. They only cite to one case, which is an out-of-state case,⁴ and do not distinguish that case from or explain how it should apply in the context of the Nevada relation-back cases cited by Lyon County and relied upon by the district court. Thus, we conclude that appellants do not cogently argue their claim or support it with relevant authority and we do not need to consider it on appeal. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating the court does not have to consider claims not cogently argued or supported by relevant authority).

Even if appellants had properly argued on appeal that NV Energy can be joined under a relation-back doctrine, they would have to satisfy NRCP 10(a) or NRCP 15(c). For the reasons stated below, we conclude that appellants do not satisfy either.

Standard of review

We “review[] a district court’s interpretation of the Nevada Rules of Civil Procedure and statutory construction de novo, even when considered in a writ petition.” *Humphries*, 129 Nev. at 792, 312 P.3d at 487.

⁴*Friends of Clark Mountain Found., Inc. v. Bd. of Supervisors of Orange Cty.*, 406 S.E.2d 19 (Va. 1991).

Appellants failed to satisfy the NRCPC 10(a) relation-back requirements

NRCPC 10(a) requires that “[a] party whose name is not known may be designated by any name, and when the true name is discovered, the pleading may be amended accordingly.” For an amendment to relate back under NRCPC 10(a), (1) the pleading must include “Doe” defendants in the complaint’s caption, (2) the pleading must also include the reason for not naming defendants by their true name, and, (3) the party must “exercis[e] reasonable diligence” in discovering the true identity of the unknown defendants. *Nurenberger Hercules-Werke GMBH v. Virostek*, 107 Nev. 873, 881, 822 P.2d 1100, 1106 (1992) (abrogated on other grounds by *Costello v. Casler*, 127 Nev. 436, 440 n.4, 254 P.3d 631, 634 n.4 (2011)). All elements must be satisfied for an amended pleading to relate back to the date the original pleading was filed. *Id.* In *Garvey v. Clark County*, the court considered a relation-back argument under NRCPC 10(a). *Garvey*, 91 Nev. 127, 129, 532 P.2d 269, 270-71 (1975). The court held that because appellants conceded “that they consciously elected not to name” a party as a defendant when they filed the action, that party was an added and not substituted party so the statute of limitations barred appellants’ claim. *Id.* at 129-30, 532 P.2d at 271.

Appellants did not name any “Doe” defendants in its original filing so the first required element of NRCPC 10(a)’s relation-back analysis is not satisfied. As to the second element, appellants knew NV Energy’s identity before they filed their original pleading as evidenced by reference to the entity in appellants’ original writ petition. Also, appellants attached as an exhibit to their original petition the letter from the county to NV Energy informing the entity that the permit was approved, which demonstrates that appellants obtained the letter sometime before their original filing. Thus, appellants cannot claim they did not know of NV Energy’s identity. As the first two elements are not met, and appellants must satisfy all elements, we decline to

address the third element. Moreover, appellants directly stated in their opposition to Lyon County's motion to dismiss that they purposefully did not name NV Energy as a defendant because they did not have a cause of action against the entity. This statement is an additional basis to bar relation back under NRCP 10(a). Accordingly, the district court properly concluded that appellants could not add NV Energy under NRCP 10(a).

Appellants failed to satisfy the NRCP 15(c) relation-back requirements

NRCP 15(c) states that “[w]henver the claim or defense asserted in the amended pleadings arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.” The supreme court clarified in *Costello* that NRCP 15(c) applies “to the addition or substitution of parties.” *Costello*, 127 Nev. at 440 n.4, 254 P.3d at 634 n.4. Based on *Costello*, the district court erred when it concluded that appellants could not relate back to the original filing under NRCP 15(c) because they were trying to add a party.

Regardless of this error, the district court's conclusion that appellants cannot relate back under NRCP 15(c) is still correct, so we are constrained to affirm it. See *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (“This court will affirm a district court's order if the district court reached the correct result, even if for the wrong reason.”). Under NRCP 15(c), an amended pleading filed after the statute of limitations will relate back as long as “the proper defendant (1) receives actual notice of the action; (2) knows that it is the proper party; and (3) has not been misled to its prejudice by the amendment.” *Costello*, 127 Nev. at 440-41, 254 P.3d at 634 (internal quotation marks omitted). “NRCP 15(c) is to be liberally construed to allow relation back of the amended pleading where the opposing party will be put to no disadvantage.” *Id.* at 441, 254 P.3d at 634.

Even if NV Energy may have received actual notice of the claim and may have been a proper party, the third element of prejudice is in dispute. Lyon County argued that NV Energy would be prejudiced because there was evidence the entity had already started work based on the approved permit. In fact, appellants included in their ex parte motion for injunction to suspend the permit an affidavit from Deborah Hayes stating that it appeared work had started. The county also argued prejudice by making a public policy argument. Conversely, appellants claimed below that NV Energy would not be prejudiced by joinder. Evidence supporting that claim, however, was not included in the record on appeal so we are constrained to defer to the district court's findings and conclusions. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision."). Accordingly, we

AFFIRM the order of the district court granting the motion to dismiss.⁵


_____, C.J.
Silver


_____, J.
Gibbons

cc: Hon. Leon Aberasturi, District Judge
Paul F. Hamilton, Settlement Judge
Carl M. Hebert
Lyon County District Attorney
Third District Court Clerk

⁵The Honorable Jerome T. Tao voluntarily recused himself from participation in the decision of this matter.