

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT S. SELIG,  
Appellant,  
vs.  
CRISANTA SELIG, INDIVIDUALLY  
AND AS HEIR AND PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF ANTHONY SELIG,  
Respondent.

No. 83367-COA

FILED

JUN 28 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER REVERSING, VACATING, AND REMANDING*

Robert S. Selig appeals from a district court order dismissing his quiet title action. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

Robert Selig has been living in a home located in Las Vegas (the property) since 1999.<sup>1</sup> The property was originally purchased in 1999 by his now-deceased father, Anthony Selig, and titled in Anthony's name. Anthony apparently purchased the home for Robert's use as partial payment for Robert's work on Anthony's mining claims, yet title to the property remained in Anthony's name. Father and son eventually litigated over Robert's right to remain in possession of the property. That litigation was ultimately dismissed with no definitive resolution. Anthony died in 2014 and his wife, Crisanta Selig, was appointed the administrator of his estate. Anthony's will provided that Crisanta would receive one-half of his estate and Anthony's three children, including Robert, would equally share the

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<sup>1</sup>We recount facts only as necessary for our disposition. As this is an appeal from the district court's dismissal of Robert's complaint, there has not been any discovery in this case. Therefore, the factual assertions in this order are taken from the complaint, other pleadings and orders below, and the parties' briefs on appeal.

remaining half. Crisanta tried to sell the property for the estate, but Robert filed an objection to the sale.

In 2016, Robert was still living at the property when a letter from Clark County arrived, giving notice that no property tax payments had been made since Crisanta last remitted payment in December 2014. Robert began paying the property taxes and included extra money in his payments to cover the 2015-2016 arrearages. Robert fully paid the arrearages by 2018 and continued thereafter to make timely property tax payments.

Crisanta filed a "Petition to Remove Occupant, Transfer Property to the Estate, and for Other Related Relief" in the probate proceedings. A hearing was held on Crisanta's petition in June 2020. At the hearing, Robert represented himself and seemingly tried to argue that his father had given him oral permission to stay indefinitely in the home. The probate court issued an oral ruling, ordering Robert to vacate the property no later than August 31, 2020. The probate court's final written order provided only that it rejected Robert's claim for "ownership and possession" of the property. The order did not provide the reason for the rejection, or what issues Crisanta and Robert litigated to the probate court other than Robert's claim for continued possession and ownership.

On August 24, 2020, which was after the probate court hearing on Crisanta's petition but before the probate court's imposed "move out" date, Robert filed an action to quiet title to the property under a theory of adverse possession. Robert alleged in the complaint that he could satisfy either of Nevada's pathways to claim title via adverse possession. Both pathways require a claimant to prove payment of property taxes. NRS 40.090(1) allows a claimant to assert possession against all persons known or unknown, so long as the claimant can prove all the requisite elements of adverse possession and show that they "paid all taxes of every

kind levied or assessed and due against the property during the *period of 5 years next preceding the filing of the complaint.*” (Emphasis added.) Comparatively, NRS 11.150 allows a claimant to assert possession against a known person if the claimant has met the adverse possession elements and “paid all taxes . . . *which may have been levied and assessed against the land for the period [of 5 years].*” (Emphasis added.) At the time Robert filed the complaint, he had made tax payments on the property for four calendar years. Yet, in those four years, he had paid more than five years’ worth of the taxes levied and assessed against the property.<sup>2</sup>

Crisanta filed an untimely motion to dismiss in January 2021 and argued two bases for dismissal of Robert’s complaint; first, Crisanta argued that the issue of adverse possession was precluded due to litigation in the probate court,<sup>3</sup> and second, that Robert failed to properly state his claim for adverse possession. Crisanta failed to attach the probate court order to her motion to dismiss and she made factual allegations without attaching a supporting affidavit or unsworn declaration. She later filed an attachment to her motion with the probate court order and two declarations, but both declarations were deficient.

The district court dismissed Robert’s complaint by relying on the probate court order to find issue preclusion and that the calendar years of Robert’s tax payments did not meet either statute’s five-year requirement to pay taxes. However, the district court did not find any defects in Robert’s

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<sup>2</sup>When fiscal years are considered, Robert paid taxes that were assessed during seven fiscal years, 2014-2020. Fiscal years are 12-month periods that begin on the first day of July and end on the last day of June. NRS 354.526.

<sup>3</sup>Crisanta also argued claim preclusion, but the district court determined it did not apply.

complaint for failing to either give notice or to plead the necessary elements of adverse possession. As to Robert's tax payments, the district court did acknowledge in its order that NRS 40.090(1) and NRS 11.150 are distinct in their respective tax-payment requirements, but it did not provide how those distinctions affected its analysis, what exactly the distinctions meant under the law, or how the distinctions impacted Robert's claim.

Robert now appeals the district court's order granting Crisanta's motion to dismiss, raising the following issues: (1) the finding of issue preclusion was an abuse of discretion; and (2) he met the requirement to pay five years of taxes when considering his payment of the arrearages.<sup>4</sup> We address each in turn.

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<sup>4</sup>Robert also argues that the district court erred as a matter of law in denying or dismissing his claim for a declaratory judgment with prejudice. Declaratory relief is available to litigants as a "declaration of [their] pre-existing rights," including "in such cases as quiet title suits." *Kress v. Corey*, 65 Nev. 1, 25, 189 P.2d 352, 364 (1948). The district court denied and dismissed Robert's countermotion based on its finding of issue preclusion and Robert's failure to show adverse possession as discussed herein. As we reverse both of those findings, we necessarily vacate this portion of the district court's order. Yet, we reach no conclusion on the merits of Robert's countermotion.

Robert further argues that Crisanta's violation of procedural rules amounted to an implied waiver of her right to bring a motion to dismiss. Waiver can be implied from conduct that "is inconsistent with any other intention than to waive a right." *McKellar v. McKellar*, 110 Nev. 200, 202, 871 P.2d 296, 297 (1994) (concluding waiting 14 years before initiating an action to collect child support arrearages was not dispositive of whether an implied waiver occurred). While the "amount of time elapsed is certainly one factor in determining whether there exists an implied waiver, it is not the only factor." *Id.* Crisanta's motion to dismiss suffered from several procedural failures, including timeliness and factors beyond mere timeliness. However, as there are remaining errors of substantive law necessitating reversal, we reach no conclusion as to waiver.

Nevada is a notice pleading jurisdiction that liberally construes pleadings. *See* NRCP 8(a); *see also Chavez v. Robberson Steel Co.*, 94 Nev. 597, 599, 584 P.2d 159, 160 (1978); *Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 309, 468 P.3d 862, 878 (Ct. App. 2020). A complaint should be dismissed “only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

On review of a motion to dismiss, this court recognizes all factual allegations in the complaint as true, draws all inferences in the plaintiff’s favor, and reviews the district court’s legal conclusions de novo. *Id.* The standard of review for a dismissal under NRCP 12(b)(5) is rigorous as this court “must construe the pleading liberally and draw every fair intendment in favor of the [non-moving party].” *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993) (citation omitted).

*Crisanta did not show that the issues litigated in the probate action were identical to those underlying Robert’s claim for title via adverse possession*

Robert argues that Crisanta failed to establish that the issues litigated in the probate action were identical to the issues presented in this case, and therefore, issue preclusion does not apply. Whether issue preclusion “operates to bar this . . . . action presents a question of law that we review de novo.” *Cf. Boca Park Marketplace Syndications Grp., LLC v. Higco, Inc.*, 133 Nev. 923, 925, 407 P.3d 761, 763 (2017).

To claim title to land by adverse possession, a claimant must show that their occupation of the property is hostile, actual, peaceable, open, notorious, continuous, and uninterrupted for the statutory period outlined under NRS 40.090(1) or NRS 11.150. *See Triplett v. David Fulstone Co.*, 109 Nev. 216, 219, 849 P.2d 334, 336 (1993) (quotation omitted). Comparatively,

for a party to prove the existence of an oral contract, even one that normally would be reduced to writing, requires an offer, acceptance, and the exchange of consideration. *See generally Dolge v. Masek*, 70 Nev. 314, 318, 268 P.2d 919, 920-21 (1954); *Micheletti v. Fugitt*, 61 Nev. 478, 489, 134 P.2d 99, 104 (1943). An oral contract to transfer title to real property is subject to the statute of frauds. NRS 111.205(1); *see also Khan v. Bakhsh*, 129 Nev. 554, 557, 306 P.3d 411, 413 (2013). Therefore, a probate action over an alleged oral contract for title to property could be relatively truncated if the statute of frauds defense was invoked. The record, however, reveals very little about what occurred in the probate proceedings.

For the district court to find the issue of adverse possession was precluded by litigation in the probate action, Crisanta needed to prove each of the following:

- (1) the issue decided in the prior litigation must be identical to the issue presented in the current action;
- (2) the initial ruling must have been on the merits and have become final; . . .
- (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and
- (4) the issue was actually and necessarily litigated.

*Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), *holding modified by Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015). As the party raising issue preclusion, the burden of proof was on Crisanta. *Kahn v. Morse & Mowbray*, 121 Nev. 464, 474, 117 P.3d 227, 234-35 (2005); *see generally Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 255, 321 P.3d 912, 914 (2014).

Here, the district court relied on scant evidence to find the first *Five Star* element satisfied. There is nothing in the record to indicate that Crisanta provided the district court with any transcripts, pleadings or even

a description of what was actually litigated in the probate action. It appears from the record that Crisanta's sole offer of proof to the district court was the probate court's order filed after her motion to dismiss. But the only inkling from that order of what issue was litigated in probate court is the probate court's finding that Robert argued he and his father had come "to a verbal agreement" for Robert to "remain in the house" sometime in 2010. The probate court order does not give any details of what the "verbal agreement" was. There is also no finding in the probate court order as to the statute of frauds. The ultimate determination of the probate court was to summarily reject Robert's "alleged claim to the ownership and possession" of the property. Yet, its basis for the rejection cannot be discerned from its order alone and adverse possession is never mentioned.

The district court found the issues litigated in front of the probate court were identical to those underlying Robert's adverse possession claim—ownership, claim, and title to the property. But "title" was never included as a finding in the probate court's order as it is in the district court's order. Ownership and title are not synonymous in an action for quiet title by adverse possession, and the inclusion of "title" in the district court's final order is not supported by the record from the probate court.<sup>5</sup> Further, considering the defense of statute of frauds was available to Crisanta against Robert's alleged verbal agreement, the probate court may have never

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<sup>5</sup>"Title" is defined as "[t]he union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of the property; the legal link between a person who owns property and the property itself." *See Title, Black's Law Dictionary* (11th ed. 2019). The definition thus suggests that ownership is an *element* of title, indicating ownership and title are not universally synonymous. For example, in an action to quiet title under a theory of adverse possession, the claimant first seeks title without any claim of ownership.

heard a full litigation on any of the named issues concerning either the alleged oral agreement or adverse possession.

It is not at all clear how Robert's assertion that he had entered a verbal agreement with his father was litigated. Nor is the scope of that litigation clear, nor how it resulted in the probate court's ultimate determination to reject Robert's claim of "ownership and possession." Thus, both this court and the district court are left to speculate what was litigated in the probate action, so determining how closely that litigation mirrored the issues in this case is conjecture. Perhaps the statute of frauds barred Robert's claim, perhaps his pro se arguments were not supported by legal authority, or perhaps this is merely how the probate court characterized a finding that Robert failed to prove a verbal agreement existed. *Five Star* requires the litigated issues to be identical. Without knowing what was or was not litigated in the probate action, there is no way to know if the issues were identical to those that would be litigated on an adverse possession claim. Thus, we conclude the district court's decision that Crisanta established issue preclusion is not supported by substantial evidence and we reverse its finding.

*The plain language of NRS 11.150 allows a claimant to plead title via adverse possession by alleging payment of taxes levied and assessed against the property for a five-year period*

Robert argues that the plain language of both NRS 11.150 and NRS 40.090(1) were satisfied by his tax payment history when considering both the fiscal years the payments covered and the years the taxes were assessed. This court reviews issues of statutory construction de novo. *Zohar v. Zbiegien*, 130 Nev. 733, 737, 334 P.3d 402, 405 (2014).



Nevada law provides two ways a claimant can establish title through adverse possession.<sup>6</sup> First, NRS 40.090(1) allows a claim against all persons, so long as the claimant has been in adverse possession of the property “continuous[ly] for more than 15 years prior to the filing of the complaint” and the claimant has “paid all taxes of every kind levied or assessed and due against the property during the period of 5 years next preceding the filing of the complaint.” The second pathway is found under NRS 11.150, which allows a claim for adverse possession if the claimant has, among other things, “paid all taxes, state, county and municipal, which may have been levied and assessed against the land for [five years], or have tendered payment thereof.” The first pathway under NRS 40.090(1) ties the payment of taxes to the calendar years preceding the filing of the complaint, whereas the plain language of NRS 11.150 ties the claimant’s payment to the amount levied and assessed against the property over a five-year period.<sup>7</sup>

Nevada’s appellate courts have not directly interpreted either statute’s five-year requirement. But, in dicta, the supreme court has concluded that the statutes do not require that property taxes need to be paid on time every year. *See Zubieta v. Tarner*, 76 Nev. 243, 248, 351 P.2d 982, 984 (1960) (interpreting the statutory requirements when taxes are doubly paid by both the claimant and the title holder). The *Zubieta* court

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<sup>6</sup>To prevail under either pathway, in addition to payment of the taxes, a claimant must show that they have been in actual, exclusive, and adverse possession of the property continuously for the statutorily required time. *See* NRS 40.090(1), NRS 11.130. A party does not need to satisfy both statutes, only one. *See Crumbaker v. Kelly*, 95 Nev. 743, 745-46, 601 P.2d 1199, 1201 (1979).

<sup>7</sup>When interpreting a statute, this court begins with the plain language of the statute, and if it is clear, the inquiry ends there. *Valenti v. State, Dep’t of Motor Vehicles*, 131 Nev. 875, 879, 362 P.3d 83, 85 (2015).

favorably cited a California case, *Owsley v. Matson*, wherein the California Supreme Court concluded that a claim of adverse possession was proper when taxes were delinquent but eventually paid by a claimant who was in continuous possession of the land. 104 P. 983, 985 (Cal. 1909) (“But where, as in the present case, the tax has been allowed to become delinquent . . . while the party . . . was in undisturbed possession, . . . we think [good faith payment of delinquent taxes] is sufficient to bring the occupant within the terms of the statute which requires him to pay the taxes upon the property claimed.”). The *Zubieta* court stated “[w]e are in accord with the decision[ ] in the . . . Owsley case.” 76 Nev. at 248, 351 P.2d at 248.

The conclusion that NRS 11.150 requires a claimant to show only that he paid five years’ worth of taxes as levied and assessed instead of five years of consecutive payments is supported by the jurisprudence of other jurisdictions. See *Hinchman v. Whetstone*, 23 Ill. 185, \*3 (1859) (“And it can make no difference whether the taxes for the year 1845 were paid within that, or the succeeding year, as he was still in occupancy, and made the payment under his claim and color of title.”); *Rachels v. Stecher Cooperage Works*, 128 S.W. 348, 352 (Ark. 1910) (“If the taxes are paid, as prescribed by the statute, seven years in succession at any time when taxes are payable, the party paying acquires the title, whether he makes the payments within one year of each other or not.”).

Likewise, in *Murphy v. Redeker*, 94 N.W. 697, 697 (S.D. 1903), the Supreme Court of South Dakota interpreted a statute similar to NRS 11.150. That statute stated that

Every person in the actual possession of lands or tenements, under claim and color of title, made in good faith, and who shall have continued for ten successive years in such possession, and shall also during said time have paid all taxes legally assessed . . . .

*Id.* The *Murphy* court concluded “[b]eyond question, the payment of all legal taxes during 10 successive years, by persons clearly within the statute in every other respect, is substantial compliance therewith, although an annual assessment becomes delinquent, and is not paid until the following year.” *Id.*

In this case, the district court acknowledged that NRS 40.090(1) is “slightly different” because NRS 11.150 “does not expressly require payment of taxes for 5 years PRECEDING the filing of the complaint.” The court did not explain how the difference in the statutes affected either Robert’s claim or its analysis. Instead, the district court immediately followed its finding with: “However, . . . the payment of taxes is an absolute requirement for claiming land through adverse possession.”

But Robert did allege that he paid all taxes levied and assessed against the property from 2015 until the filing of his complaint in 2020. If so, Robert paid all property taxes for 2015, 2016, 2017, 2018, and 2019, with some payments made in 2020. This is payment of more than five calendar and fiscal years of taxes levied and assessed against the property, albeit remitted over a less than five-year period. However, NRS 11.150 does not require tax payments to be made over the calendar years preceding the complaint in the same manner as NRS 40.090(1). Thus, the district court correctly noted the distinction between NRS 40.090(1) and NRS 11.150 as to their five-year requirements, yet incorrectly found Robert needed to make five calendar years of payments to satisfy NRS 11.150.<sup>8</sup> Accordingly, when taking Robert’s alleged tax payments as true, it appears there may be a set

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<sup>8</sup>The district court’s noted distinction of the statutes is even more confusing given that it found “the Plaintiff cannot show that he paid 5 years’ *worth* of taxes between 2016 through 2021.” (Emphasis added.) But Robert can, he just cannot show that he remitted payments over a five-year period.

of facts under which he could be entitled to relief. Therefore, the district court erred by dismissing his adverse possession claim.<sup>9</sup>

Accordingly, we

REVERSE the district court's dismissal of Robert's quiet title action, VACATE the dismissal of the counterclaim for a declaratory judgment, and REMAND the case for proceedings consistent with this order.<sup>10</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

  
\_\_\_\_\_, Sr. J.  
Silver

cc: Hon. Veronica Barisich, District Judge  
Lansford W. Levitt, Settlement Judge  
Law Office of Kumen L. Taylor  
Kurth Law Office  
Eighth District Court Clerk

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<sup>9</sup>Insofar as the parties have raised any other arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

<sup>10</sup>The Honorable Abbi Silver, Senior Justice, participated in the decision of this matter under a general order of assignment.