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Rand Props., LLC v. Filippini, No. 66933, 2016 WL 1619306 (Nev. Apr. 21, 2016)

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Rand Props., LLC v. Filippini, No. 66933, 2016 WL 1619306 (Nev. Apr. 21, 2016)

Under the Nebraska Constitution, substantive due process inquiries require a determination of “whether a right in which the plaintiff has a legitimate property interest” was unconstitutionally taken from the plaintiff. A property interest is unconstitutionally taken if the government acted in a way that has no substantial relation to the general welfare. Lingenfelter argued that using water to irrigate the Dunaway Farm was a legitimate property interest and that Rule 14 arbitrarily and capriciously took that interest away. The Court rejected this argument, finding that Rule 14 was reasonably related to ensuring adequate groundwater supplies in Nebraska.

Lingenfelter’s next constitutional argument stated that violated his right to equal protection because it “divides landowners ‘into winners and losers based upon an arbitrary calendar date.’” Nebraska’s equal protection provision is identical to the United States Constitution’s provision. The Court approached this claim under a rational basis test because no suspect class was involved. The Court found Rule 14 was rational because it was driven by a policy that established a baseline of acres historically irrigated in order to conserve groundwater. Accordingly, the Court rejected both of Lingenfelter’s constitutional arguments.

Finally, the Court rejected Lingenfelter’s last three arguments that the District’s authority to make rules was “fundamentally unfair,” that there was insufficient evidence to determine whether Rule 14 was rationally related to the availability of groundwater, and that the district court misunderstood his arguments against the District’s adoption of Rule 14. The Court rejected the first argument because NRDs are statutorily authorized to make such rules. It rejected the second argument because it Act specifically refers to preventing droughts and because the Court properly reviewed the question *de novo*. The Court rejected the third argument because Lingenfelter did not explain how this error prejudiced the result.

Accordingly, the Court affirmed the district court’s decision and allowed the District to issue its cease-and-desist order without resistance.

Travis Parker

NEVADA

Rand Props., LLC v. Filippini, No. 66933, 2016 WL 1619306 (Nev. Apr. 21, 2016) (holding that: (i) a person who has acquired a right to a quantity of water from a stream may take it at any point of the stream and may change the character of use as long as it does not affect the rights of others; (ii) stock water rights on public lands pass by chain of title in Nevada; and (iii) a private party may convey a stock water appropriation certificate).

On June 7, 2011, Daniel and Eddyann Filippini (“Filippini”) filed a complaint to adjudicate stock and irrigation water rights on Trout Creek against Julian Tomera Ranches, Inc. (“Tomera”), and Rand Properties, LLC. (“Rand”). The Sixth Judicial District Court, Lander County adjudicated the case on April 8, 2013, and established priority dates for each party’s stock and irrigation water rights. Rand appealed to the Supreme Court of Nevada on grounds that the district court erred in its finding of priority dates, stock water rights title passage, and conveyance of a stock appropriation certificate.

First, Rand asserted that its priority date began in 1869, and that the district court erred by finding that Rand’s priority date began in 1901. The district

court found that a change in the place of use on Trout Creek by Rand's predecessors in interest created a new appropriation instead of a continuation of the chain of title because it occurred before statutory enactment of a law allowing for one to change the place of use. By setting a later priority date, the district court did not rule on whether Rand had proper title to its claim dating to 1869.

The Court overturned the district court, finding it relied on an erroneous conclusion of law. The Court looked to Nevada common law and held that a person who has acquired a right to a quantity of water from a stream may take it at any point of the stream, and he may change the character of its use at will as long as it does not affect the rights of others. The Court then vacated and remanded the issue for further proceedings as to Rand's connection to the chain of title.

Second, Rand argued that the district court did not sufficiently explain its decree that Filippini's priority date began in 1871 through a connection by title to a predecessor in interest named James Hughes and lacked the evidentiary support of a conveyance. The petitioner claimed that Filippini did not offer evidence that established a connection of title between 1891 and 1897. The Court concluded the district court's ruling relied upon was insufficient. Under the district court's ruling, it did not need to rule on the connection of title because it held that Rand's priority date did not predate 1897. Accordingly, the Court vacated and remanded for further proceedings on the issue.

The Court then turned to the district court's finding that a predecessor in interest named J.R. Bradley established the domestic stock water priority date held by Filippini in 1862 because Bradley's outfit drank and diverted water from Trout Creek. The district court found that federal grazing permits acted as a proxy for establishing stock water rights and that proof of a chain of title is unnecessary for stock water rights on public lands owned by the United States and that each party held federal grazing permits. The Court disagreed, finding that stock water rights on public domains pass by chain of title in Nevada and that federal grazing rights and water rights are separate issues. Subsequently, the Court vacated and remanded to the district court to find on the issue of the party's current rights to the disputed stock water that had passed by a chain of title.

Finally, the Court overturned the district court's decision to prohibit the conveyance of a grazing certificate to Rand. Leroy Horn originally secured the certificate, certificate 12160, by building the Trout Creek pipeline to water his 600 cattle on a federal grazing allotment in 1979. In 1989, Horn agreed to sell his grazing preferences to Tomera and to sell Badger Ranch to Filippini in a three-way contract. The contract included the federal grazing privileges and all water rights, including stockwatering rights used in connection with the land. However, when Rand purchased Trout Creek Ranch from Broughton in 2009, the deed purported to convey certificate 12160 to it. On appeal, Rand argued that, because a Nevada statute requires conveyance of water rights by deed, Tomera cannot be the proper owner, and Rand was a bona fide purchaser nonetheless.

The district court relied on a Nevada statute prohibiting conveyance of stock water appropriation certificates to conclude that Rand could not own certificate 12160. The district court found that Rand could not put the water to beneficial use under the statute since it did not possess a grazing preference for

600 cattle at the place of use. The Court concluded that the district court erred in determining that the statute prohibited the conveyance to Rand; although the statute prevents issuance of a certificate from the State Engineer, it does not prohibit conveyance of certificates by a private party. Nevertheless, the Court found that Tomera could be the proper owner, since the conveyance occurred prior to the enactment of the statute requiring a person to obtain title to a certificate by deed. The Court then vacated and remanded to the district court to properly review Rand's bona fide purchaser defense.

Accordingly, the Court reversed the judgment of the district court and remanded for further proceedings.

Dalton Kelley

NEW MEXICO

State Eng'r of New Mexico v. Diamond K Bar Ranch, LLC, 385 P.3d 626 (N.M. 2016) (holding: (i) waters diverted from an out-of-state river into New Mexico by ditch remained unappropriated waters of New Mexico subject to the regulatory authority of the New Mexico State Engineer; and (ii) the landowners' use of water in excess of existing permitted water rights was an illegal use of surface water).

The Animas River flows south from Colorado into New Mexico. The Ralston Ditch, located in southern Colorado, diverts water from the Animas River into New Mexico. The Echo Ditch Decree ("Decree") established the rights of Petitioner, Diamond K Bar Ranch, LLC ("Diamond") to water diverted by the Ralston Ditch. The State Engineer of New Mexico ("State Engineer") brought suit against Diamond for using river waters in excess of the permitted quantity under the Decree.

Diamond claimed it was entitled to appropriate more water than provided in the Decree and filed a motion to dismiss alleging (1) that the State Engineer lacked the regulatory and constitutional authority to enjoin them from the use of river waters when the water was transported by a ditch from Colorado into New Mexico and (2) that the Ralston Ditch was exempt from permitting requirements because it was a "community ditch." A district court denied Diamond's motion to dismiss but certified its ruling for interlocutory appeal. The appellate court quashed Diamond's interlocutory appeal and the New Mexico Supreme Court granted Diamond's petition for writ of certiorari.

The Court first considered Diamond's argument that the Ralston Ditch was not a "natural watercourse" that flowed into New Mexico and thus not subject to the State Engineer's authority because the water became private at the point of diversion. The Constitution of the State of New Mexico broadly granted the State Engineer the authority to regulate the unpermitted appropriation of water of "every natural stream" within the state of New Mexico. Diamond primarily relied on *Turley v. Furman*, in which the court found that the New Mexico State Engineer did not have the jurisdictional authority to grant a permit for the construction of a new diversion in Colorado. Distinguishing *Turley v. Furman*, the Court noted that the State Engineer made no attempt to exercise authority over the appropriation of out of state waters or the construction of a new out of state ditch, but instead regulated the appropriation of New Mexico surface waters for use on lands in New Mexico.