DISTRICT COURT SAGUACHE COUNTY STATE OF COLORADO 501 Christy Avenue, P.O. Box 197 Saguache, CO 81149	DATE FILED: July 25, 2022 10:43 AM
County Court, Saguache County, Colorado Case Number 20C30008	
Plaintiff-Appellee: THE BACA GRANDE PROPERTY OWNERS ASSOCIATION, a Colorado nonprofit corporation v. **Defendant-Appellant**: BAYARDO R. SANDY	District Court Case No.: 22CV1

JUDGMENT ON APPEAL REGARDING THE RULING OF THE SAGUACHE COUNTY COURT

THIS MATTER comes before the Court on appeal from a ruling of the Saguache County Court ("County Court") in case number 20C30008. While the orders appealed and subject matter are different, this is considered a companion case to Saguache case 22CV2 because a number of the concerns are similar.

INTRODUCTION

17th century poet Alexander Pope is credited with the line "a little learning is a dangerous thing". While it is likely he meant it as a critique of his detractors, very respectfully it has been used rather loosely for suggesting that a little knowledge may make one believe one knows more than others. Appellant Mr. Sandy is clearly a very intelligent man and has clearly done a great deal of research. He also

clearly strongly feels that "the system"---Appellee, the courts, and others, have stepped on him and he is choosing to fight back. Despite his best efforts, in this forum, respectfully he cannot prevail. This Order determines that.

Initially, the Court notes that it is using, in large part, a proposed order filed by the Appellee on July 15, 2022. Mr. Sandy suggests that this Court should not consider it, and questions the communication before it was filed. On July 14, 2022, an email was sent by the undersigned to the civil clerk for the 12th judicial district, stating: "Would you please communicate with the Association's counsel and verify whether they are or are not going to file proposed orders." This was done because, at that point, the Court was preparing to determine the issues and having proposed orders from both sides was now going to be more important than when the Court initially authorized, but did not require, proposed orders. Mr. Sandy had filed his proposed order, which not one this Court would ultimately approve. The email was not concerning anything substantive but rather an administrative matter to simply ask the question: are you filing a proposed order or not. The "deadline" quoted by Mr. Sandy in his filings of July 22, 2022 was not jurisdictional and the Court was not going to reject either party's submissions if filed anytime up to the Court issuing its order. While the Appellant's proposed order was after the Court's deadline it was not due to any improper *ex parte* communication concerning any substantive issues.

BACKGROUND

This appeal stems from an action to enforce restrictive covenants on residential property. Mr. Sandy owns 609 Heatherbrae Rd., Crestone, CO 81131 ("Property"). *County Court Record – Part 1* at p. 13. The Association and Mr. Sandy agree that the Property is subject to the governing documents of the Association, including the Amended and Restated Declaration of Covenants ("Declaration"). Relevant to this matter, the Declaration and Design Guidelines require owners to submit an application to and receive approval from the Association's Environmental and Architectural Committee ("Committee") before commencing construction, including construction of "dwellings, garages, carports, and accessory buildings." *County Court Record – Part 1* at p. 2 at ¶ 7; at p. 3 at ¶¶ 15 - 17.

On January 30, 2020, the Association filed its Verified Complaint For Injunctive Relief For Breach Of Restrictive Covenants. *County Court Record – Part 1* at pp. 1 – 53. After many motions filed by Mr. Sandy (see below), a one-day bench trial was held on October 30, 2020. *TR 9/25/20*, p. 26:14-15; *TR 10/30/20*. None of the exhibits presented by the Association and Mr. Sandy at trial are in the record on appeal. Furthermore, the transcript of the trial is only partial, consisting only of three witnesses for Mr. Sandy. *TR 10/30/20*.

On January 12, 2022, the Count Court issued the Judgment. The County Court found that Mr. Sandy is subject to the Association's governing documents, the governing documents require owners to submit an application to and receive approval from the Association's Committee before commencing construction projects; Mr. Sandy did not receive approval for the Garage Structure; Mr. Sandy constructed the Garage Structure without approval; the Association's claim is not barred by the statute of limitations; and that the Association is the prevailing party. *Judgment* at pp. 1 – 8, ¶¶ 1-21.[1] Further, the Court entered judgment in favor of the Association and ordered Mr. Sandy to remove the Garage Structure, within sixty (60) days from the date of the Judgment. *Judgment* at p. 6, ¶ B.

On January 21, 2022, Mr. Sandy filed his Notice of Appeal. On May 2, 2022, Mr. Sandy filed his Opening Brief requesting that requests that the Court reverse the Judgment. The Opening Brief sets forth ten arguments in support of this request. On June 21, 2022, the Association filed its Answering Brief.

ANALYSIS

The Court concludes that the County Court's Judgment must be affirmed. The Opening Brief's arguments fail because they either are raised for the first time on appeal, there is an inadequate record on appeal to support the

1 Though not part of the record on appeal, this Court takes judicial notice of the Judgment, and the existing County Court file per CRE 201.

assertions in the argument, there is no legal authority to support the argument, or some combination of all three.

1. Standard of Review

Appeals from final judgments of county courts shall be taken to the district court for the judicial district in which the county court entering such judgment is located, and the appeal "shall be based upon the record made in the county court." C.R.S. § 13-6-310(1). "The district court shall review the case on the record on appeal and affirm, reverse, remand, or modify the judgment . . ." *Id.* at (2). When the district court exercises its authority to decide the case based on the record developed by the county court, "it [is] bound to accept the facts as found by the county court and its review [is] limited to the sufficiency of the evidence." *Water, Waste & Land, Inc. v. Lanham*, 955 P.2d 997, 1002 (Colo. 1998).

2. Arguments Not Considered Because They Are Raised For The First Time On Appeal

Arguments not made in, or ruled on by, the trial court will not ordinarily be considered for the first time on appeal. *Adams Reload Co., Inc. v. Int'l Profit Assocs., Inc.*, 143 P.3d 1056, 1060 (Colo. App. 2005). Though not required under the simplified appeals procedure from county court, the Opening Brief does not identify which arguments if any have been preserved for appellate

review. The Answering Brief identifies the following arguments as being raised for the first time on appeal:

- Argument #1 The Judge has resigned her position as judge. *Answer Brief* at p. 20.
- Argument #2 The Appellee Bribed the Lower Court with a free gift. *Answer Brief* at p. 21.
- Argument #3 The Appellee used his Attorney's Fees Cost to commit fraud. *Answer Brief* at p. 22.
- Argument #4 The Order was impossible to perform. *Answer Brief* at p. 23.
- Argument #5 The Order is also impossible for Appellee to perform. *Answer Brief* at p. 23.
- Argument #6 The Appellee is already guilty of sullying the 01/12/2022 Order. *Answer Brief* at pp. 23-24.

Upon review of the record on appeal, it appears that these arguments are raised for the first time on appeal. Therefore, this Court will not consider Arguments #1 through #6, as they are being raised for the first time on appeal.

3. There Is An Inadequate Record On Appeal To Support The Assertions In The Arguments

This Court presumes that the Saguache County Court's findings and conclusions in the Judgment are correct because Mr. Sandy has failed to provide this Court with an adequate record on appeal. When bringing an appeal, "[i]t is

the appellant's job to ensure that the reviewing court has an adequate record." *Knoll v. Allstate Fire & Cas. Ins.*, 216 P.3d 615, 617 (Colo. App. 2009). When the appellant fails to ensure the appellate court has an adequate record, the appellate court presumes "the trial court's findings and conclusions are correct." *People v. Gravina*, 2013 COA 22. ¶ 13 (quoting *People v. Clendenin*, 232 P.3d 210, 216 (Colo. App. 2009)).

Here, Mr. Sandy has not provided this Court with an adequate record on appeal. While it is unclear, it does not appear that the Opening Brief contains any citations to the record on appeal. Furthermore, Mr. Sandy has not provided a complete transcript of the trial or even a partial transcript of the trial of relevant portions. While Mr. Sandy has alternative means of providing an adequate record on appeal, Mr. Sandy has failed to do so. *See, e.g.* C.A.R. 10.

Furthermore, the Answer Brief specifically identifies the following argument raised in the Opening Brief as lacking an adequate record on appeal: Argument #10 The 2020C30008 is in violation of the 1-Year Grandfather's Clause. *Answer Brief* at p. 34. The Judgment includes findings that the Association's claim is not barred by the statute of limitations. *Judgment* at pp. 5-6, ¶¶ 19-21. The County Court found that Mr. Sandy first constructed the Garage Structure in October 2019, that the Association filed its Complaint on January 30, 2020, and thus the Complaint was filed within the one year prescribed by C.R.S. § 38-33.3-123(2). Further, the County Court found that the Association, in 2015, had denied Mr.

Sandy's earlier application for the Garage Structure and, in 2017, credited Mr. Sandy for the amount he paid as part of said application. *Judgment* at pp. 3-4, ¶¶ 11-14.

However, Mr. Sandy neither provided a full transcript of the trial or suitable alternative allowed by Colorado's rules regarding the record on appeal. As such, this Court should presume that the trial court's findings and conclusions are correct.

4. There Is No Legal Authority To Support The Arguments

Though the Opening Brief sets forth ten arguments in support of a request for reversal of the Judgment, none of these arguments are sufficient for reversal.

Argument #1 ("The Judge has resigned her position as judge") does not set forth sufficient grounds for reversal because it fails to set forth any legal for its argument or citation to the record on appeal. An appellate court may decline to consider "contentions that are only perfunctorily asserted and for which no legal authority is cited." *In re Estate of Hope*, 223 P.3d 119, 121 (Colo. App. 2007). Here, the Opening Brief cites no legal authority or articulates a legal standard that requires reversal when a judge resigns. Furthermore, if a judge's resignation were sufficient grounds for reversal, every order issued by a judge nearing retirement would be uncertain.

Argument #2 ("The Appellee Bribed the Lower Court with a free gift") does not set forth sufficient grounds for reversal because a party's filing of a proposed

order with a court cannot be considered a gift to a judge, as understood by the Colorado Code of Judicial Conduct. Proposed orders are expressly allowed in County Court. C.R.C.P. Rule 305.5(q)(3). The argument that a judge accepts a gift when considering and using some or all of a proposed order is not supported by Colorado law, let alone grounds for reversal of a final judgment. This Court does appreciate the time and energy each party used in preparing the proposed orders for this ruling, but would hardly call it a "gift"

Argument #3 ("The Appellee used his Attorney's Fees Cost to commit fraud") does not set forth sufficient grounds for reversal because the Opening Brief does not provide any legal authority that supports reversal of a final judgment based upon post-judgment requests and awards of attorney fees. Assuming that the allegations of fraud arising from a post-judgment request for attorney fees are true, it is unclear how this serves as grounds for a reversal of the Judgment. This Court declines to consider this argument, as it is perfunctorily asserted and for which no legal authority is cited.

Argument #4 ("The Order was impossible to perform") does not set forth sufficient grounds for reversal because no legal authority is presented to support the argument. As such, this Court declines to consider this argument, as it is perfunctorily asserted and for which no legal authority is cited.

Argument #5 ("The Order is also impossible for Appellee to perform") does not set forth sufficient grounds for reversal because no legal authority is

presented to support the argument. As such, this Court declines to consider this argument, as it is perfunctorily asserted and for which no legal authority is cited.

Argument #6 ("The Appellee is already guilty of sullying the 01/12/2022 Order") does not set forth sufficient grounds for reversal because no legal authority is presented, and the argument misinterprets the meaning of the relevant clause. Mr. Sandy argues that paragraph D of the Judgment provides him with an opportunity to be heard regarding any award of attorney fees. This is not what paragraph D states. Rather, paragraph D allows the Association to reimbursement for costs incurred by the Association to remove the Garage Structure if Mr. Sandy fails to remove the Garage Structure and the Association elects to remove the Garage Structure. Paragraph D of the Judgment is silent regarding attorney fees. Given this and the lack of legal authority, this Court declines to consider this argument, as it is perfunctorily asserted and for which no legal authority is cited.

Argument #7 ("Lower Court was Discriminatory against Appellant on record") does not set forth sufficient grounds for reversal because the County Court's order imposing restrictions on Mr. Sandy's motions practice is within the County Court's inherent powers. An appellant seeking reversal of a trial court's rulings based on the argument of bias by the trial judge must show that the trial judge was actually biased. *People ex rel. A.P.*, 2022 CO 24, ¶ 29. To show actual bias, the "record must clearly demonstrate the alleged bias." *Id.* Moreover, "bare

assertions and speculative statements are insufficient to satisfy the burden of proof." *Id.*

Courts have "certain inherent powers to carry out their duties." *Laleh v. Johnson*, 2017 CO 93, ¶¶ 20-21. Among those powers, a court has "all powers reasonably required to enable a court to perform efficiently its judicial functions." *Id.* More narrowly, a court has the inherent power to regulate its docket, which can be exercised by imposing restrictions on parties' motions practice. *Derringer v. Chapel*, 98 F. App'x 728, 738 (10th Cir. 2004). Relevant to this case, county courts were created to "to secure the just, speedy and inexpensive determination" of lawsuits. C.R.C.P. Rule 301.

Based on the record on appeal, it appears that Mr. Sandy is a very litigious individual. The County Court validly and justifiably exercised its inherent powers by imposing restrictions on Mr. Sandy's motions practice. The record does not "clearly demonstrate the alleged bias," as is required. Rather, the record shows that the County Court imposed a restriction on Mr. Sandy for valid purposes and within the County Court's inherent powers.

Argument #8 ("The Lower Court never had discretion on monetary jurisdiction") does not set forth sufficient grounds for reversal because the Association's Complaint sought the issuance of an injunction "to enforce restrictive covenants on residential property," over which the County Court has jurisdiction, pursuant to C.R.S. § 13-6-105(1)(f)(II). The Opening Brief confuses

and conflates county courts' jurisdiction over civil actions "in which the debt, damage, or value of the personal property claimed does not exceed twenty-five thousand dollars" (C.R.S. § 13-6-104(1)) and jurisdiction over "[o]riginal proceedings for the issuance of injunctions...[a]s required to enforce restrictive covenants on residential property." (C.R.S. § 13-6-105(1)(f)(II)). The two are not related. Additionally, jurisdiction is determined when the complaint is filed. *Ferrell v. Glenwood Brokers, Ltd.*, 848 P.2d 936, 940 (Colo. 1993). Even if attorney fees incurred and awarded exceed the jurisdictional limit, the county court does not lose jurisdiction. *Id.*

County court is a court of limited jurisdiction: "The county court has no civil jurisdiction except that specifically conferred upon it by law." C.R.S. § 13-6-105(1). For all times relevant to this action, county court has jurisdiction to hear cases seeking an injunction on residential property, which is an exception to the general prohibition related to injunctions in county court. C.R.S. § 13-6-105(1)(f).[2] The first rule of statutory construction is that a court's "primary duty in construing statutes is to give effect to the intent of the General Assembly, looking first to the statute's plain language." *Vigil v. Franklin*, 103 P.3d 322, 327 (Colo. 2004). Here, based on the plain language of C.R.S. § 13-6-105(1)(f), there are no conditions on the county court's jurisdiction over injunctions required to enforce restrictive

2 Amendments of this section in 2019 did not materially change the scope of count court's jurisdiction related to injunctions required to enforce restrictive covenants on residential property. 2019 Colo. ALS 229, 2019 Colo. Ch. 229, 2019 Colo. HB. 1170.

covenants on residential property. Conceivably, the General Assembly could have limited the county court's jurisdiction over such injunctions. Such limitations could include the estimated value of the personal or real property subject to the requested injunction. However, the plain language of C.R.S. § 13-6-105(1)(f)(II) imposes no conditions.

In this action, the Association brought a single claim for injunctive relief arising from alleged breach of restrictive covenants on residential property, with a request for attorney fees and costs if it prevailed. *County Court Record – Part 1* at pp. 1 – 53. The Association did not bring a claim for "debt, damage, or value of the personal property claimed," as contemplated by C.R.S. § 13-6-104(1). Thus, the County Court had jurisdiction to hear this action.

Argument #9 ("The Case·2020C30008 is the third litigation of the same structure") does not set forth sufficient grounds for reversal because the elements of issue preclusion cannot be satisfied. Issue preclusion, also known as collateral estoppel, "bars relitigation of an issue that is identical to an issue that has been actually litigated and necessarily adjudicated in a prior proceeding." *Bristol Bay Productions, LLC v. Lampack*, 312 P.3d 1155, 1159 (Colo. 2013). Issue preclusion, also known as collateral estoppel, "bars relitigation of an issue that is identical to an issue that has been actually litigated and necessarily adjudicated in a prior proceeding." *Bristol Bay Productions, LLC v. Lampack*, 312 P.3d 1155, 1159 (Colo. 2013).

The Opening Brief fails to show that the issues in Mr. Sandy's federal case related to the Garage Structure were identical to the issues in Case No. 20C30008 related to the Garage Structure. By his own admission, the issues in the federal suit are "[i]ssues of discrimination, fraud and fiduciary duty pertaining this very property and its garage." *County Court Record – Part 2* at p. 18. By the plain language of the Complaint, the issue in Case No. 20C30008 was whether a garage structure was built without prior approval. Furthermore, the issues set forth in the Complaint in this action arise from facts occurring in 2019, one year after Mr. Sandy's federal lawsuit was initiated. The issues in Case No. 20C30008 and the federal lawsuit are not identical. Therefore, the County Court properly denied Mr. Sandy's Motion to Dismiss on grounds of issue preclusion and there is no reversible error.

Argument #10 ("The 2020C30008 is in violation of the 1-Year Grandfather's Clause") was addressed above.

ORDER

IT IS THEREFORE ORDERED THAT the Order for Judgment For Injunctive Relief For Breach Of Restrictive Covenants, issued on January 12, 2022, of the Saguache County Court in case number 20C30008 is AFFIRMED.

IT IS FURTHER ORDERED THAT this matter is remanded to the Saguache County Court for an award of attorney fees and costs incurred by the

Appendix-G

Association on appeal, should the Association make a motion for such an award, pursuant to C.R.S. § 38-33.3-123.

DONE AND SIGNED this 25th day of July, 2022.

BY THE COURT:

SCOTT B. EPSTEIN[3]
Senior District Court Judge

3 Sitting by assignment from the Colorado State Court Administrator's Office and under authority from the Chief Justice of the Colorado Supreme Court.

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: February 21, 2023
Certiorari to the District Court, Saguache County, 2022CV1 County Court, Saguache County, 20C30008	
Petitioner: Bayardo R. Sandy. v. **Respondent:** The Baca Grande Property Owners Association, a Colorado nonprofit corporation.	Supreme Court Case No: 2022SC650
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the District Court of District Court Saguache County and after review of the record, briefs, and the judgment of said District Court,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, FEBRUARY 21, 2023.

Appendix-B

Additional material from this filing is available in the Clerk's Office.