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Colorado Water Court's Exclusive Jurisdiction for the Adverse Possession of Water: Archuleta v. Gomez

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COLORADO WATER COURT'S EXCLUSIVE JURISDICTION FOR THE ADVERSE POSSESSION OF WATER: *ARCHULETA V. GOMEZ*

I. INTRODUCTION

Upon first glance, adverse possession of water rights in a system of prior appropriation seems somewhat counterintuitive. If one can simply usurp the "first in time, first in right" system, then a water right would become valueless.[1] Colorado grappled with this confusion as early as the turn of the last century, and the notion of adverse possession of water evolved with the doctrine of prior appropriation.[2] The Colorado Supreme Court provided clarification in *Meadow Ditch and Irrigation Company v. Park Ditch and Reservoir Company.*[3] A rival claimant can, in fact, establish adverse possession of water *diverted* from the stream as long as the adverse possessor satisfies the statutory provisions.[4] Such adverse possession is possible because it is hostile to the priority owner; not to the stream, junior appropriators, or the public.[5]

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1. The general theory behind the doctrine of prior appropriation is that the first one to place water to beneficial use has the first priority; in other words, first in time, first in right. Coffin v. Left Hand Ditch Co., 6 Colo. 443 (1882).

2. Lower Latham Ditch Company v. The Louden Irrigating Canal Company, 27 Colo. 267, 273-74 (1900).

3. Meadow Ditch and Irrigation Co. v. Park Ditch and Reservoir Co., 130 Colo. 537, 539 (1954).

4. *Id.* *See also* In re Water Rights of V-Heart Ranch, Inc., 690 P.2d 1271 (Colo. 1984) (affirming the adverse possession of water rights).

5. *Meadow Ditch v. Park Ditch*, 130 Colo. at 540.

Adverse possession of water involves many areas of law, obviously including property law and statutory limitation of actions. Nonetheless, the Colorado Court of Appeals determined in May 2006 that only the water court has competent jurisdiction to entertain claims of adverse possession of water.[6] According to statute, water courts have exclusive jurisdiction over "water matters."[7] To many, this decision came as a surprise. It merely demonstrates, however, that the concept of adverse possession of water rights is still evolving and requires further clarification from the Colorado Supreme Court to reconcile adverse possession and the doctrine of prior appropriation.

II. BACKGROUND

A. THE PARTIES

Ralph Archuleta and Ted Gomez are both record owners of portions of three irrigation ditches in south central Colorado. These ditches, the Manzanares Ditch No. 1, priority 26, the Archuleta Ditch, priority 30, and the Manzanares Ditch No. 2, priority 31, all draw water from the Huerfano River, which begins near Blanca Peak in the Sangre de Cristo Mountains and eventually flows into the Arkansas River downstream of Pueblo. Both parties have rights to the river dating back to the 1960s. Archuleta's father, Lupe Archuleta, deeded the interests to Ralph in 1991 by a personal representative's deed. Lupe Archuleta acquired the rights in 1967. Gomez obtained his rights in 1968.

B. THE FACTS

Beginning in 1968, Ted Gomez acquired water rights to portions of the three ditches at issue. Since such time, Gomez used the water for irrigation purposes, maintained the headgates, and contributed funds for cleaning and repairs to the ditches. The evidence sustained at the trial court indicates that neither Archuleta, nor his predecessors, used their water rights from 1968 until 2003 or 2004. Archuleta argued that he gave his uncle, Felipe Archuleta, who lives in the vicinity, permission to use his water rights, thereby maintaining his ownership right. Felipe Archuleta testified, however, that he only began using the water around 1999. Nonetheless, Archuleta argued that Gomez was interfering with his rights. Furthermore, Archuleta asserted that Gomez's interference caused damage to his personal property, including firewood, 40-year-old siding, and tools.

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6. Archuleta v. Gomez, 140 P.3d 281 (Colo. Ct. App. 2006).
7. C.R.S. 37-92-203(1).

C. THE PROCEDURE

On July 27, 2004, the dispute between Archuleta and Gomez came before the district court for Huerfano County in Walsenburg, Colorado. At the trial level, the court found that the statute of limitations barred all of Archuleta's claims. Through "actual, adverse, hostile, open, notorious, exclusive, and continuous use of the water for the prescribed statutory period," Gomez established ownership rights through adverse possession.[8] Furthermore, the trial court found that Archuleta failed to demonstrate any damages resulting from Gomez's alleged interference sufficient to sustain his burden of proof. The court found any damage that occurred to Archuleta's personal property was *de minimis.* Archuleta then appealed the district court's decision to the Colorado Court of Appeals.

III. *ARCHULETA V. GOMEZ*

A. QUESTIONS RAISED

The principal question raised *sua sponte* by the Colorado Court of Appeals concerned the trial court's jurisdiction to hear this matter. According to the Court of Appeals, the water court has exclusive jurisdiction over "water matters" and has authority to quantify "an existing beneficial use of water," establish a priority date for the water right, and confirm "pre-existing beneficial uses."[9] "Actions to determine the legal right to use water are water maters within the exclusive jurisdiction of the water courts," whereas actions to determine the *ownership* of a water right are matters for the district court.[10] Actions to determine ownership include, for example, "interpretation of deeds, chains of title, quiet title proceedings, real estate transfers, dissolution proceedings, and foreclosures."[11] The Court of Appeals applied these principles to the facts of the case to answer the jurisdictional question.

B. THE COLORADO COURT OF APPEALS HOLDING

The court of appeals ultimately determined that adverse possession primarily concerned the legal right to use water, not the ownership of a water right.[12] Because an adverse possession case necessarily involves "both the enforcement of a water right and an assertion that the right to use the water should be terminated and awarded to another based

8. Archuleta v. Gomez, No. 2003 CV 2 (Dist. Ct. Huerfano County, Colo. Sept. 15, 2004).

9. Archuleta v. Gomez, 140 P.3d at 284. *See* Humphrey v. Sw. Dev. Co., 734 P.2d 637 (Colo. 1987).

10. Archuleta v. Gomez, 140 P.3d at 284.

11. *Id.* at 285.

12. *Id.* at 286.

on beneficial use of the water," the water court is the only appropriate court to hear such a case.[13] The court found that only the water court can provide an adequate consideration of water law principles and a sufficient comparison with property law principles. Consequently, the district court lacked jurisdiction and the court of appeals vacated the decision regarding adverse possession.

The court of appeals affirmed, however, the district court's decision with regards to the damages to Archuleta's personal property. Finding that these damage claims were not ancillary issues directly affecting the water rights, the district court did have proper jurisdiction.[14] The court had no reason to find the trial court's findings clearly erroneous.

IV. CBA WATER LAW SECTION SEPTEMBER LUNCHEON

The Water Law Section of the Colorado Bar Association ("CBA") hosts a monthly luncheon that addresses current issues in the practice of water law. For the month of September, Moye White LLP, hosted the luncheon, which addressed *Archuleta v. Gomez.* Henry "Hank" Worley, the attorney for Gomez, presented his perspective on the court's decision and its implications to a relatively large audience of approximately thirty CBA members. Worley, a graduate from Colorado College and the University of Colorado School of Law, is a shareholder in the law firm of MacDougall, Woldridge, and Worley, P.C. in Colorado Springs. Worley presented for thirty minutes and then opened up the floor for questions from both the audience present and those listening from one of the Colorado Bar Association's nine regional locations across the state.

In a light-hearted effort to explain the "unfortunate" outcome in *Archuleta v. Gomez,* Worley started his presentation by proposing that the location of his practice and the "remote" locale of his cases must be disconnecting him from the mainstream water law practice and procedure. When the audience failed to respond with laughter, he concluded that the silence was implicit evidence that his proposal was, in fact, correct.

Turning to the case, Worley laid out the facts as he saw them. Gomez had come to his office, seeking representation in an action filed by Archuleta to enjoin Gomez from interfering with his water rights in ditches stemming from the Huerfano River. Worley filed an answer on behalf of Gomez, alleging limitation of actions as an affirmative defense. Worley explained that limitation of actions, by its nature, implicitly includes an adverse possession claim. The District Court for Huerfano County agreed, finding Archuleta's claim barred by the fact

13. *Id.* at 287.
14. *Id.* at 285.

that Gomez had adversely possessed the water rights in question. On appeal, much to Worley's dismay, the Court of Appeals vacated the district court's decision on jurisdictional grounds that adverse possession of water rights is a matter for the water court, not the district court. Neither Worley nor the opposing attorney raised this issue.

Worley proceeded to discuss his difficulties with this decision. First of all, he contested the court of appeals' determination that adverse possession constitutes a "water matter" pursuant to C.R.S. § 37-92-301(1). He cited C.R.S. § 37-92-101 and 37-92-301(2) as enumerating what constitutes water matters, and argued that the court's interpretation did not align with these statutory provisions. Secondly, Worley argued that this decision, which establishes that the water court is the *only* court with jurisdiction to determine title in an adverse possession case, contradicts the 1959 Colorado Supreme Court decision which declared that water court decrees of water rights do *not* establish title.[15] Worley also discussed his confusion over the language used in the opinion. He found the terms "grant" and "termination" to be inappropriate, or at least perplexing descriptions of the process of adverse possession. Lastly, Worley questioned why the court went into a discussion on abandonment and forfeiture of water rights, as neither attorney raised those issues.

During the question and answer period, members of the audience raised several interesting points. In particular, one attorney asked whether the limitation of actions affirmative defense used by Worley is sufficient for future cases, or whether a counter-claim for adverse possession is necessary. After consultation via conference call with the opposing attorney from the case, Worley explained that since the court of appeals did not reach this issue, it is still unclear. Worley concluded by suggesting that any attorneys who lost previous cases in district courts regarding adverse possession of water should seek "another bite at the apple," because the decisions necessarily are invalid since the district court apparently lacked jurisdiction. On a final note, Worley advised the attorneys to file adverse possession of water rights cases in water court in the meantime.

V. CONCLUSIONS

Many questions remain regarding the adverse possession of water rights in a system of prior appropriation. First and foremost, is the water court the proper venue for adverse possession disputes? Even though the Court of Appeals does not have jurisdiction over "water cases involving priorities or adjudications," it decided the appropriate venue for the adverse possession of water rights.[16] For purposes of de-

15. *See* Saunders v. Spina, 140 Colo. 317, 324 (Colo. 1959).
16. Archuleta v. Gomez, 140 P.3d at 284.

termining what "water matters" includes, clarification as to the distinction between the classifications of the "legal right to use water" and the "ownership of water" is necessary. Hopefully the Colorado Supreme Court will provide guidance.

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