

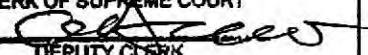
IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,
Appellant,
vs.
180 LAND CO., LLC, A NEVADA
LIMITED LIABILITY COMPANY; AND
FORE STARS, LTD.,
Respondents.

No. 84345

FILED

MAY 09 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER GRANTING STAY

This appeal arises out of district court decisions that found appellant City of Las Vegas liable for a regulatory taking of an approximate 35-acre portion of land and awarded respondents 180 Land Co. and Fore Stars, Ltd. (Landowners) more than \$34 million as just compensation, plus more than \$14 million in fees, costs, property tax reimbursements, and pre-judgment interest. The City has sought a stay of the monetary judgments pending appeal. Landowners oppose the motion, and the City has filed a reply.¹

Prior to seeking a stay in this court, the City moved to stay the monetary judgments in the district court based on NRCP 62, NRAP 8, and EDCR 2.26. Landowners opposed the motion. Relying on the provisions of NRS 37.140 and NRS 37.170 and this court's holding in *State ex rel.*

¹The City's motion for leave to file a reply in excess of 5 pages is granted. NRAP 27(d)(2). The City's reply in support of its stay motion was filed on March 24, 2022.

Department of Highways v. Second Judicial District Court that “[t]he deposit provided by NRS 37.170 is a condition to the condemnor’s right to maintain an appeal while remaining in possession,” 75 Nev. 200, 205, 337 P.2d 274, 277 (1959), the district court denied the motion for stay and conditioned the right to appeal upon the City depositing the sum of the money assessed in the judgments. The district court based its decision “on a determination that the more specific eminent domain statutes, such as NRS 37.140 and NRS 37.170, which grant the Landowners substantive rights, take precedence in this special proceeding over the general rules of procedure relied upon by the City.”

The City argues the district court erred by relying on the provisions in NRS Chapter 37 to deny its motion for stay and condition its right to appeal on full payment of the assessed judgment. The City asserts that under NRCP 62(d) and (e), upon filing a motion for a stay, it was entitled to a stay as a matter of right without posting a supersedeas bond. City also argues that even if a stay is not automatic, a stay is warranted under NRAP 8.

Landowners contend that NRS 37.140 and NRS 37.170 require payment of the judgment prior to appeal and supersede court rules providing for a stay. Landowners further argue that, even if this court were to analyze the NRAP 8 stay factors, those factors do not militate in favor of a stay.

Discussion

NRS 37.140 and NRS 37.170 ensure that a condemnee in eminent domain proceedings receives prompt compensation. *See Dep’t of Highways*, 75 Nev. at 205, 337 P.2d at 276 (recognizing that, per the

eminent domain statutes, “payment should not be unduly delayed in those cases where the condemnee has already lost the possession and use of his property”). Thus, where a governmental entity that has sought and been allowed to condemn property for public use desires to possess the condemned property despite a pending appeal, NRS 37.170 allows the governmental entity to pay the amounts due into court, and the court may, upon demand, pay those amounts to the condemnee. Further, when the condemnee has not already been paid the full amount due, NRS 37.140 requires the governmental entity to pay the sum assessed within 30 days of final judgment entered after any appeal has been resolved. *Gold Ridge Partners v. Sierra Pac. Power Co.*, 128 Nev. 495, 500 & n.2, 285 P.3d 1059, 1062 & n.2 (2012); see NRS 37.009(2) (“Final judgment” means “a judgment which cannot be directly attacked by appeal, motion for new trial or motion to vacate the judgment.”).


Nothing in these prompt-pay statutes directly precludes the defendant governmental entity in an inverse condemnation case—where the governmental entity has not sought through condemnation proceedings to possess property—from obtaining a stay of a monetary judgment’s enforcement pending appeal, however. And here, the City disputes that it has taken and is in possession of the property. Thus, while we generally apply eminent domain “rules and principles” to inverse condemnation cases, *Clark County v. Alper*, 100 Nev. 382, 391, 685 P.2d 943, 949 (1984), NRS 37.170 is inapposite to the circumstances here, see *Pima County v. McCarville ex rel. County of Pinal*, 231 P.3d 370, 372 (Ariz. Ct. App. 2010) (declining to apply an Arizona statute substantially similar to NRS 37.170 in an inverse condemnation case); *Luce v. Clear Lake Water Co.*, 71 Cal.

Rptr. 665, 666-67 (Ct. App. 1968) (recognizing that an eminent domain statute requiring that “the condemnor must put up a deposit in order to gain possession of the property pending appeal” did not directly apply to inverse condemnation suits, although finding such a deposit requirement appropriate under the court’s inherent power when the condemnor did not dispute that it was in possession), and NRS 37.140, to the extent it applies, requires payment only after the appeal has been resolved. Accordingly, we conclude the district court erred by relying on the provisions of NRS 37.140 and NRS 37.170 and *Department of Highways* as a basis for denying the motion for stay.

Instead, NRCP 62(d) provides that a party may obtain a stay of a money judgment by supersedeas bond or other security. NRCP 62(e) provides that when a city appeals and the judgment is stayed, no bond, obligation, or other security is required. This court has held that “NRCP 62(d) must be read in conjunction with NRCP 62(e), such that, upon motion, state and local government appellants are generally entitled to a stay of a money judgment pending appeal, without needing to post a supersedeas bond or other security.” *Clark Cty. Office of Coroner/Med. Exam’r v. Las Vegas Review-Journal*, 134 Nev. 174, 177-78, 415 P.3d 16, 19 (2018). Because the City filed a motion in the district court seeking a stay of the monetary judgments pursuant to NRCP 62, the City was entitled to a stay without posting a supersedeas bond. *See generally City of W. Palm Beach v. Roberts*, 72 So. 3d 294, 299 (Fla. Dist. Ct. App. 2011) (recognizing, in an inverse condemnation case, that a court rule automatically staying adverse judgments appealed by a governmental agency applies). Accordingly, we conclude the district court erred by denying the motion for stay, and we

grant City's motion and stay enforcement of the judgments pending resolution of this appeal and further order of this court.²

It is so ORDERED.


_____, C.J.
Parraguirre


_____, J.
Silver


_____, J.
Cadish

cc: Hon. Timothy C. Williams, District Judge
Lansford W. Levitt, Settlement Judge
McDonald Carano LLP/Las Vegas
Shute, Mihaly & Weinberger, LLP
Las Vegas City Attorney
Leonard Law, PC
Law Offices of Kermitt L. Waters
EHB Companies, LLC
Eighth District Court Clerk

²In light of this decision, we need not address whether a stay is warranted under the provisions of NRAP 8.