

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENO DISPOSAL COMPANY, INC.,
D/B/A SPARKS SANITATION; WASTE
MANAGEMENT, INC., A FOREIGN
CORPORATION; REFUSE, INC., A
NEVADA CORPORATION; AND THE
CITY OF SPARKS, A NEVADA
INCORPORATED MUNICIPALITY
AND POLITICAL SUBDIVISION OF
THE STATE OF NEVADA,

Appellants,

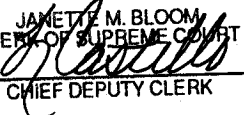
vs.

CASTAWAY TRASH HAULING, INC., A
NEVADA CORPORATION,
Respondent.

No. 44997

FILED

NOV 08 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a permanent injunction in a local government franchise agreement dispute. Second Judicial District Court, Washoe County; Robert H. Perry, Judge. We affirm.

Pursuant to Sparks Municipal Code Section 7.12.010, Appellants Reno Disposal Company, Inc. and the City of Sparks entered into a franchise agreement granting Reno Disposal an exclusive franchise to remove and dispose of residential rubbish and solid waste within the City of Sparks.¹ The agreement, in pertinent part, provides:

¹The Code provides in pertinent part:

Section 7.12.010 Contract--Grant.

An exclusive contract for the collection,
hauling and disposal of all garbage may be

continued on next page . . .

SECTION 1. GRANT OF EXCLUSIVE FRANCHISE.

The City hereby grants to Franchisee [Reno Disposal] the exclusive franchise for the operation of garbage, rubbish and waste matter collection and disposal services within the corporate limits of the City

When the City of Sparks granted the exclusive franchise, the city also enacted a mandate, requiring its residents to utilize the garbage collection, hauling, and disposal service provided by the franchisee.² However, Section 2D of the agreement provided for private hauling by city residents under certain circumstances described below:

Citizens and residents of the City shall be entitled to haul to and dump on, any and all City dump sites made available by Franchisee, that part of their own rubbish and waste matter which exceeds the one (1) cubic yard per week of collection service furnished by Franchisee.

Respondent Castaway Trash Hauling, Inc. is a rental business that provides equipment and operators to Sparks residents for removing,

. . . continued

granted to any person whom the city council may designate.

²Sparks Municipal Code Section 7.12.030 provides in pertinent part:

Mandatory use of garbage service within the city.

All persons residing in the city in a single-family dwelling, all owners or managers of multiple-family dwellings, all business establishments, and all public buildings shall subscribe to the collection, hauling and disposal of garbage, rubbish and waste matter pursuant to the provisions of this chapter.

hauling and dumping their own rubbish. Reno Disposal claims that the district court erred in refusing to grant injunctive relief in its favor because it had an exclusive franchise to remove all rubbish and all solid waste.³ We disagree and conclude that the franchise agreement allows Sparks citizens and residents to dispose of their excess rubbish by using rented equipment and hired equipment operators. Accordingly, the district court properly refused Reno Disposal's request for an injunction.

This court reviews district court orders denying injunctive relief for abuse of discretion.⁴ This court's review is limited to the record generated by the lower court.⁵ "A district court's determinations of fact will not be set aside unless they are clearly erroneous."⁶ With regard to contractual disputes, we "review[] the construction of a contract de novo."⁷ In this, we interpret an unambiguous contract according to the usual and

³Reno Disposal additionally argues, for the first time on appeal, that the district court erred by ignoring the City Council's findings concerning Castaway's operation, and that Castaway's operation violates the Nevada Department of Health regulations on ownership of solid waste. We decline to reach these claims. See Powers v. Powers, 105 Nev. 514, 516, 779 P.2d 91, 92 (1989).

⁴Number One Rent-A-Car v. Ramada Inns, 94 Nev. 779, 780, 587 P.2d 1329, 1330 (1978).

⁵S.O.C., Inc. v. The Mirage Casino-Hotel, 117 Nev. 403, 407, 23 P.3d 243, 246 (2001).

⁶Id.

⁷NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 661 (2004).

ordinary meaning of its terms, and we construe the contract against the drafter.⁸

Here, the district court determined that neither the franchise agreement nor the Sparks Municipal Code placed restrictions on the method, manner or equipment, rented or otherwise, to be used by citizens to haul their excess rubbish and waste matter.

Upon our de novo review, we conclude that the district court properly construed the exclusive franchise agreement. While the agreement generally grants to Reno Disposal the exclusive right to haul a certain quantity of rubbish from individual residences, businesses and public buildings within the Sparks city limits, Section 2D of the agreement clearly permits Sparks residents to haul and dispose of excess rubbish. ~~Reading these provisions together and in conjunction with Sparks Municipal Code Section 7.12.030, which allows City residents to opt out of the mandatory use of Reno Disposal's services,⁹ we conclude that the franchise agreement does not prohibit residents from using rented~~

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⁸See Dickenson v. State, Dep't of Wildlife, 110 Nev. 934, 937, 877 P.2d 1959, 1061 (1994).


⁹Sparks Municipal Code section 7.12.030 states in pertinent part:

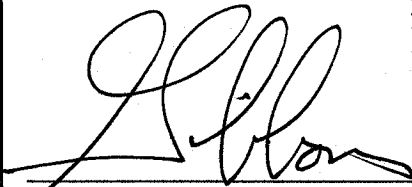
~~Any owner or occupant of dwelling units or business establishments desiring to be exempt from garbage service or claiming that garbage is not being accumulated upon the premises, must have the written approval of the district health officer, which approval shall not be granted except upon the showing that garbage, as defined by Section 7.08.010, is not being accumulated upon the premises and that no attempt is being made to haul, bury or otherwise dispose of garbage in violation of Chapter 7.08.~~

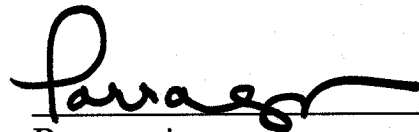
~~equipment with operators provided.~~ Thus, Castaway has not violated Reno Disposal's primary exclusive right to collect and haul garbage within the City of Sparks.¹⁰

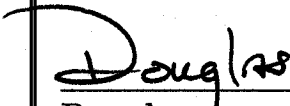
Substantial evidence supports the district court's finding that the franchise agreement allows the citizens of Sparks to haul their own rubbish using Castaway's equipment, and thus, Castaway did not violate Reno Disposal's exclusive right to collect and haul garbage in Sparks. Accordingly, since the district court properly denied Reno Disposal's petition seeking injunctive and declaratory relief we

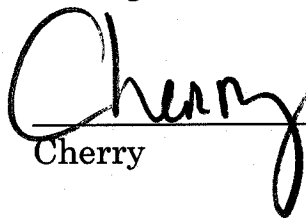
ORDER the judgment of the district court AFFIRMED.¹¹



_____, C.J.
Maupin


_____, J.
Gibbons


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta

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~~¹⁰We also note that businesses operating within the City of Sparks are allowed by ordinance to rent trash-hauling equipment. This further supports the district court's conclusion that the agreement fails to preclude residential trash customers from doing the same thing with regard to excess waste material.~~

¹¹The Honorable James W. Hardesty, Justice, voluntarily recused himself from participation in the decision of this matter.

cc: Hon. Robert H. Perry, District Judge
Carolyn Worrell, Settlement Judge
Stanley H. Brown Jr.
Parsons Behle & Latimer
Sparks City Attorney
Michael B. Springer
Hager & Hearne
Washoe District Court Clerk