

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACOB MOLER, INDIVIDUALLY; AND  
J. J. MOLER, AS EXECUTOR OF THE  
ESTATE OF ALLAN JAMES MOLER,  
Appellants,

vs.

SILVER QUEEN MOTEL, A NEVADA  
CORPORATION,  
Respondent.

No. 49661

**FILED**

SEP 18 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court judgment in a wrongful death action. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

In this appeal, appellants challenge the district court's order denying their motion for partial summary judgment based on its finding that NRS 447.185 did not require that the construction of the Silver Queen Motel in Nye County, in particular the height of its railings, comport with the Uniform Building Code (UBC).<sup>1</sup> Appellants contend that

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<sup>1</sup>We reject respondent's assertion that we lack jurisdiction to review the order denying appellants' motion for partial summary judgment and that appellants should have sought review through a petition for a writ of mandamus. The order denying appellants' motion for partial summary judgment is an interlocutory order. That order became reviewable when the final judgment was entered in this case, which occurred after the parties entered into a stipulation for dismissal. See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (providing that this court on appeal from the final judgment may properly consider interlocutory orders).

the plain language of NRS 447.185 mandates that construction of new motels must comply with the latest edition of the UBC.

Respondent counters that although NRS 447.185 essentially gives the State Board of Health the discretion to enforce some provisions of the UBC when dealing with health and sanitation issues, that provision never mandated that motels must be constructed in a manner that comports with the “latest edition” of the UBC. Respondent asserts that building codes are adopted by the local government, and the UBC was not adopted in Nye County until 1975, well after construction on the Silver Queen began.

“Statutory interpretation is a question of law, and we review the district court’s interpretation of [a statute] de novo.”<sup>2</sup> Furthermore, “[w]hen interpreting a statute, we first determine whether its language is ambiguous. If the language is clear and unambiguous, we do not look beyond its plain meaning, and we give effect to its apparent intent from the words used, unless that meaning was clearly not intended.”<sup>3</sup> NRS 447.185, entitled “Regulation of construction or reconstruction of hotel or other establishment for transient lodging,” provides

The reconstruction of existing hotels, including all types of transient lodging establishments, and the construction of new hotels, including all types of transient lodging establishments, shall be in accord with pertinent state laws, rules and regulations of the State Board of Health or local board of health, and the latest editions of the Uniform Building Code and

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<sup>2</sup>Stockmeier v. Psychological Review Panel, 122 Nev. 534, 539, 135 P.3d 807, 810 (2006).

<sup>3</sup>Id.

the Uniform Plumbing Code and such other codes as the State Board of Health may designate.<sup>4</sup>

The language of the statute is unambiguous in its requirement that the construction of motels “shall” be in accord with the latest edition of the UBC.<sup>5</sup> Additionally, the title of NRS 447.185 indicates that it was intended to regulate the construction of motels.<sup>6</sup> If the Legislature had intended to exclude language regarding mandatory use of the “latest editions of the [UBC]” when constructing new motels, it would have done so. Nothing under NRS 447.185 indicates that its application is discretionary.<sup>7</sup>

Respondent correctly notes that the adoption of building codes and regulation is within the purview of the particular county.<sup>8</sup> Indeed, it is undisputed that Nye County did not adopt any edition of the UBC until 1975, well after the Silver Queen was constructed. We conclude, however, that irrespective of a county’s decisions regarding the adoption of building

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<sup>4</sup>Emphasis added.

<sup>5</sup>This court has stated that the use of “shall” is mandatory “unless the statute demands a different construction to carry out the clear intent of the legislature.” S.N.E.A. v. Daines, 108 Nev. 15, 19, 824 P.2d 276, 278 (1992) (citing Givens v. State, 99 Nev. 50, 54, 657 P.2d 97, 100 (1983)).

<sup>6</sup>See NRS 447.185; see also Coast Hotels v. State, Labor Comm’n, 117 Nev. 835, 841-42, 34 P.3d 546, 551 (2001) (“The title of a statute may be considered in determining legislative intent.”).

<sup>7</sup>NRS 447.185 is located under Title 40 of the Nevada Revised Statute, which deals with Public Health and Safety. It is evident, that one way the Legislature sought to provide safety to Nevada motel patrons was to mandate the statewide use of the “latest editions of the [UBC]” when constructing new motels.

<sup>8</sup>See NRS 244.3675 (discussing county’s adoption of building codes).

codes, Nevada law unambiguously requires that when constructing motels, the latest editions of the UBC must be applied.<sup>9</sup>

Additionally, we have considered respondent's argument that mandating the use of the latest edition of the UBC to motel construction would create "chaos" in the construction industry. Because, however, the Legislature enacted NRS 447.185 and its language regarding mandatory use of the "latest editions of the [UBC]" is unambiguous, this argument is more properly directed to the Legislature. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>10</sup>

Parraguirre, J.  
Parraguirre

Douglas, J.  
Douglas

Cherry, J.  
Cherry

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<sup>9</sup>See NRS 447.185.

<sup>10</sup>It is undisputed that either the 1967 or the 1970 edition of the UBC applies to the instant case and that each edition contains a different height specification for hotel railings—the 1967 edition calls for a minimum height of 36 inches, whereas the 1970 edition raised that minimum height to 42 inches. See U.B.C. § 1714 (1967); U.B.C. § 1714 (1970). Because the district court did not decide which edition applies, and the current record is not sufficient to assist us in that decision, we do not decide which edition of the UBC applies to the instant case.

Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

cc: Hon. John P. Davis, District Judge  
Carolyn Worrell, Settlement Judge  
Flangas Law Office  
Parnell & Associates  
Nye County Clerk