IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY ADAMS AND JEANNIE ADAMS; RYAN BOREN; MELISSA T. CLEMENT; JOSEPH DONOHUE AND ROSE MARIE DONOHUE; CASSANDRA GRIEVE; BOBBY HENDRICKS AND DINA HENDRICKS; DAVID MAHER AND JANAE MAHER; EUGENE TRABITZ AND KATHRYN TRABITZ; AND SPARKS NUGGET, INC., A NEVADA CORPORATION, Appellants, vs. CITY OF SPARKS, A MUNICIPAL CORPORATION OF THE STATE OF NEVADA, AND THE CITY COUNCIL THEREOF; AND RED HAWK LAND COMPANY, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondents.	No. 49504
ROY ADAMS AND JEANNIE ADAMS; RYAN BOREN; MELISSA T. CLEMENT; JOSEPH DONOHUE AND ROSE MARIE DONOHUE; CASSANDRA GRIEVE; BOBBY HENDRICKS AND DINA HENDRICKS; DAVID MAHER AND JANAE MAHER; EUGENE TRABITZ AND KATHRYN TRABITZ; AND SPARKS NUGGET, INC., A NEVADA CORPORATION, Appellants, vs. CITY OF SPARKS, A MUNICIPAL CORPORATION OF THE STATE OF NEVADA, AND THE CITY COUNCIL THEREOF; AND RED HAWK LAND COMPANY, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondents.	No. 49682

09-17865

ROY ADAMS AND JEANNIE ADAMS; RYAN BOREN; MELISSA T. CLEMENT; JOSEPH DONOHUE AND ROSE MARIE DONOHUE; CASSANDRA GRIEVE; DAVID MAHER AND JANAE MAHER; EUGENE TRABITZ AND KATHRYN TRABITZ; AND SPARKS NUGGET, INC., A NEVADA CORPORATION,
Appellants,
vs.
CITY OF SPARKS, A MUNICIPAL CORPORATION OF THE STATE OF NEVADA, AND THE CITY COUNCIL THEREOF; AND RED HAWK LAND COMPANY, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondents.

No. 50251

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court order denying petitions for certiorari, mandamus, and judicial review and a post-judgment order awarding costs. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Appellants include residents of the City of Sparks and Spanish Springs, as well as the Sparks Nugget, a Nevada corporation (collectively "Adams"). Respondents are the City of Sparks (the City) and Red Hawk Land Company, LLC (Red Hawk). Originally, the land use decision that is the subject of this appeal was a dispute between the City and Red Hawk.

In 1994, the City entered into a land development agreement (the Development Agreement) with Loeb Enterprises, now known as Red Hawk. In 2005, Red Hawk applied to have parts of its unused development entitlement transferred to another one of its properties,

Tierra del Sol. The Sparks Community Development Department recommended approval. In July 2006, the Sparks Planning Commission held two meetings concerning the application and voted to deny it. It further recommended to the City Council that it too deny Red Hawk's application.

In August 2006, the City Council denied Red Hawk's application, prompting Red Hawk to file a lawsuit against the City. On September 1, 2006, Red Hawk and the City reached a settlement agreement. The district court, Judge Adams, entered and approved the agreement in a signed stipulation, judgment, and order. On September 20, 2006, the City Council held a public meeting to discuss and vote on the settlement agreement. The City Council voted to approve the settlement agreement in a three-to-two vote.

On October 6, 2006, Adams filed a petition for judicial review, writ of certiorari, and writ of mandamus. In its petition, Adams sought judicial review of the September 20, 2006, vote and writ relief in the form of reinstatement of the City's August 2006 decision denying Red Hawk's application. The City and Red Hawk moved to dismiss Adams' petition on several grounds. The district court granted the City's and Red Hawk's motion to dismiss because it found that (1) the requests for extraordinary relief were not properly before the court pursuant to NRS 278.3195; (2) judicial review of the September 20, 2006, vote, which resulted in the ratification of a lawsuit, was inappropriate because it would constitute a collateral attack on a valid judgment in a sister district court; and (3) Adams failed to act in a timely fashion and intervene in Red Hawk's case against the City pursuant to NRCP 60. Further, the district court

awarded post-judgment costs to the City and Red Hawk. This appeal followed.

Adams assigns four errors on appeal. First, it argues that it was proper for it to seek writ relief in addition to judicial review. Next, Adams asserts that the district court erred in dismissing the petition for judicial review. Further, Adams contends that the district court erred in finding that the City did not abuse its discretion by voting to approve the settlement because it resulted in a land use decision unsupported by substantial evidence. And, finally, Adams argues that the district court erred in concluding that the City and Red Hawk could recover costs.

For the following reasons, we conclude that each of Adams' challenges fails on appeal.

Proper procedure to challenge land use decisions

Adams argues that the district court erred in granting the motion to dismiss because it misread this court's decision in Kay v. Nunez, 122 Nev. 1100, 146 P.3d 801 (2006). Adams assert that this court's holding in Kay—that challenges to a governing body's land use decision should be made through a petition for judicial review, not a petition for writ of mandamus—was only meant to apply to certain types of challenges. Adams contends that because it was making a substantive challenge as to the agency's decision, they had a right to seek writ relief nullifying the settlement agreement between the respondents and reinstating the City's initial decision denying Red Hawk's application. We disagree.

NRS 278.3195(4) states, in pertinent part, that any person aggrieved by the decision of a governing board's zoning and planning decision, "may appeal that decision to the district court of the proper

county by filing a petition for judicial review within 25 days after the date of filing of notice of the decision with the clerk or secretary of the governing body." In Kay, we had occasion to consider the statute's language and held that, pursuant to its plain meaning, "mandamus petitions are generally no longer appropriate to challenge the Board's final decision." 122 Nev. at 1104-05, 146 P.3d at 805. In so deciding, we reiterated this court's long-standing tenet that "a mandamus petition is only appropriate if no adequate and speedy legal remedy exists." Id. at 1104, 146 P.3d at 805. The right to petition for judicial review in the context of a land use decision is an adequate and speedy legal remedy. Id. We further reinforced the rule that even in the event that a district court exercises its discretion and considers a petition for mandamus relief, "it should grant such relief only to compel the performance of an act that the law requires, or to control an arbitrary or capricious exercise of discretion." Id. at 1105, 146 P.3d at 805. Finally, we concluded that a district court's order involving a mandamus action is reviewed for an abuse of discretion, whereas a district court's order involving a petition for judicial review is afforded no deference and this court will review the administrative record to determine whether substantial evidence supports the governing body's decision. Id.

We determine that Adams' contention that the facts here are distinguishable from Kay unpersuasive because each case involves a challenge to a land use decision. Contrary to Adams' reading, our holding in Kay as to NRS 278.3195(4), is not conditioned upon the nature of the challenge of the governing body's decision. Rather, Kay applies when there is a challenge to a land use decision, regardless of whether the challenge is regarding an agency's authority or its substantive decision.

Accordingly, because Adams ultimately had an adequate remedy at law—the right to petition for judicial review created by the Legislature pursuant to NRS 278.3195(4) in Judge Adams' courtroom—its mandamus petition was not appropriate.

We further conclude that the circumstances and facts of this case do not fall into the category of an arbitrary or capricious exercise of discretion warranting the district court's consideration of Adams' request for writ relief. Adams insists that the City's decision to settle the lawsuit with Red Hawk was an arbitrary and capricious land use decision and, therefore, warranted writ relief. In so arguing, appellants completely misconstrue the facts and the law. The City's decision to settle the lawsuit, as the district court correctly noted, was a discretionary act. See Young v. Board of County Comm'rs, 91 Nev. 52, 56, 530 P.2d 1203, 1206 (1975). There is no evidence on the record suggesting that the City acted arbitrarily or capriciously by choosing to settle a lawsuit that could have cost the City millions of dollars. Moreover, the decision did not result in a land use decision, but rather ended a potential lawsuit. As to the law, by its plain language, NRS 34.170 states that writs of mandamus shall issue only if there is no speedy and adequate remedy at law. Pursuant to NRS 278.3195(4) and Kay, there was a speedy and adequate remedy at law in this instance—judicial review. Accordingly, we conclude that the district court properly relied on Kay to find that Adams was not entitled to seek writ relief in a land use decision because it had the right to petition for judicial review in the appropriate district court.

Petition for judicial review

Adams asserts that the district court erred when it dismissed their petition for judicial review. As stated above, this court offers no

deference to a district court's ruling as to matters of judicial review. Kay, 122 Nev. at 1105, 146 P.3d at 805. When reviewing a dismissal of a petition for judicial review, we take on the same role as the district court and consider whether the administrative decision at issue is supported by substantial evidence. Id.

In this case, however, there is no administrative decision for us to consider. Rather, the facts before us fall into three categories: (1) a settlement agreement between the City and Red Hawk, (2) a subsequent settlement approval order entered by one district court, and (3) an order granting a motion to dismiss by another district court. As to the third category, the order granting the City's and Red Hawk's motion to dismiss, the district court correctly observed that it had no jurisdiction to review the decision of a sister district court—in this case, the sister court that approved the settlement agreement. We agree.

This court has long recognized that only a void judgment is subject to collateral attack. See State Engineer v. Sustacha, 108 Nev. 223, 226, 826 P.2d 959, 961 (1992). The district court that entered the settlement approval order had both personal and subject matter jurisdiction to do so. Therefore, the order is merely voidable, not void, and consequently not subject to collateral attack. Mainor v. Nault, 120 Nev. 750, 761, 101 P.3d 308, 315 (2004). Instead, it sought to have one district court nullify the order of a sister district court involving a settlement agreement to a lawsuit in which they were not a party. We conclude that this would have resulted in an impermissible collateral attack on a sister district court's order and was not the proper mechanism to attack the settlement agreement. Rohlfing v. District Court, 106 Nev. 902, 907, 803

P.2d 659, 663 (1990). Therefore, the district court properly dismissed Adams' petition for judicial review.

Accordingly, we further conclude that Adams' argument that the district court erred when it found that the City did not abuse its discretion by voting to approve the settlement agreement is without merit. This court will not consider an issue on appeal unless a lower court has considered it and rendered judgment on it. Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52-53, 623 P.2d 981, 983-84 (1981). In its order granting the City's and Red Hawks' motion to dismiss, the district court did not reach the merits of the substantive issues raised in Adams' petition, including the validity of the City's decision to approve the settlement agreement. Therefore, neither will this court.

Award of costs

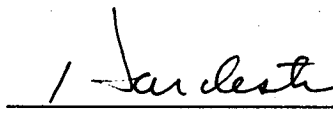
Finally, Adams argues that it was error for the district court to award the City and Red Hawk costs. "We review [a] district court's decision[ ] . . . to award costs for an abuse of discretion." Mayfield v. Koroghli, 124 Nev. ___, ___, 184 P.3d 362, 366 (2008).

NRS 18.005(17) defines costs as "[a]ny . . . reasonable and necessary expense incurred in connection with the action, including . . . computerized services for legal research." Here, the district court allowed the City to recover costs for eight copies ($2,599), computerized legal research ($1,118), and reporter's fees ($60), totaling $3,777. Further, the district court awarded Red Hawk approximately $9,550 for various costs, including computerized legal research. We conclude that it was within the district court's discretion to award the costs because it determined that the verified costs were both reasonable and necessary to defend the City

and Red Hawk in this petition for judicial review. NRS 18.005(17).

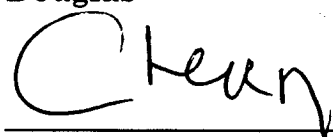
Based on the above, we

ORDER the judgment of the district court AFFIRMED.[1]



_____, C.J.
Hardesty

_____, J.
Douglas



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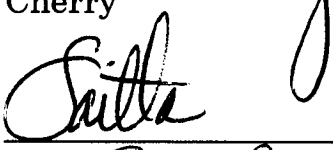
Cherry



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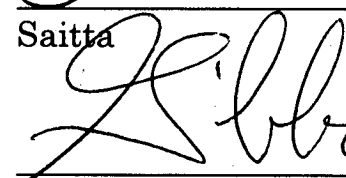

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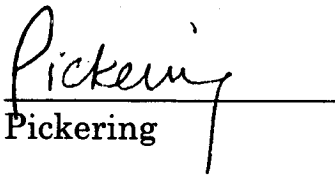
Gibbons



_____, J.
Pickering

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[1]The Honorable Ron Parraguirre, Justice, voluntarily recused himself from participation in the decision of this matter.

cc: Hon. Jerome Polaha, District Judge
Senior Justice Robert E. Rose, Settlement Judge
Holland & Hart LLP/Reno
Laxalt & Nomura, Ltd./Reno
Lewis & Roca, LLP/Reno
Prezant & Mollath
Sparks City Attorney
Washoe District Court Clerk