IN THE SUPREME COURT OF THE STATE OF NEVADA

SUMMIT VILLAGE, INC., A NEVADA NON-PROFIT CORPORATION,
Appellant,
vs.
HILLTOP DUPLEXES HOMEOWNERS ASSOCIATION, INC., A NEVADA NON-PROFIT CORPORATION; SHERIE RICH; AND MAXINE YIP,
Respondents.

No. 53895

FILED

APR 27 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a real property action. Ninth Judicial District Court, Douglas County; Michael P. Gibbons, Judge.

This appeal arose from an action for injunctive relief and damages against appellant Summit Village, Inc., involving the maintenance of a parking area within Summit Village's development. Respondent Hilltop Duplexes Homeowners Association is a sub-association within Appellant Summit Village, Inc. Hilltop requested that Summit Village repair a parking area near its development. Summit Village refused because it believes that maintenance of the parking area was Hilltop's responsibility. Summit Village sought an injunction and damages for diminution in value of their property. A bench trial was conducted and the district court found that NRS Chapter 116 applied and because the parking area was not a limited common element, Summit Village could not allocate the expenses of maintaining the parking area to Hilltop alone.

FACTS AND RELEVANT PROCEDURAL HISTORY

Facts

Summit Village is a planned unit development formed in 1968 with 311 units. Formed in 1981, Hilltop is a sub-association that consists of 22 units within Summit Village. Due to the mountainous terrain of Summit Village, elevated staircases, walkways, paths, driveways and wooden parking decks are necessary for some residents to access their units. The units within the Hilltop development sit below grade, and staircases and elevated walkways are necessary to access the units within it. During Hilltop's development, a parking area was also constructed. The parking area consists of a wooden structure overlaid with asphalt off the side of the road. Fourteen units are accessed by a wooden staircase that leads from the road/parking structure and eight units are accessed by a separate staircase that leads from another parking area.

In 1990, Summit Village amended its Declaration of Conditions, Covenants & Restrictions (CC&Rs). The amended CC&Rs contain an expanded definition of walkway to include wooden parking decks. In 2005, the railing to the parking area was damaged.[1] After consulting with structural engineers and determining that the parking area is unsound, Hilltop closed the parking area with fencing. Hilltop later transferred the fencing contract to Summit Village and demanded that Summit Village assume the responsibility of repairing the area

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[1]The parties disagree on how the railing was damaged. Hilltop alleged that the railing was damaged by Summit Village's snow removal operation. Summit Village, however, alleged that the damage was caused by Hilltop residents.

because it was located on Summit Village common area and was owned by Summit Village. Summit Village refused the demand by Hilltop.

After a bench trial, the district court concluded that NRS 116.3115(4)(a) and NRS 116.3115(4)(b) did not apply because the parking area was neither for the exclusive use of Hilltop, nor did it confer an exclusive benefit to Hilltop. The district court found that the maintenance of the parking area was Summit Village's responsibility and entered an injunction against Summit Village from further breaches of NRS Chapter 116 in regard to the parking area.

This appeal follows.

DISCUSSION

On appeal, Summit Village argues (1) that NRS 116.3115(2)(a) permits allocation of common expenses to fewer than all units and that its declaration allocates the cost to Hilltop, (2) that the parking area constituted a limited common element and that its declaration allocates the expense to Hilltop, (3) that the parking area only benefits Hilltop and the cost may be allocated to Hilltop under NRS 116.3115(4)(b), and (4) that the district court's interpretation of NRS Chapter 116 violates the Contract Clause of the United States Constitution.

We disagree and affirm the district court's judgment. We address the issues of (1) whether the parking area constituted a limited common element, and (2) whether the parking area benefits fewer than all units such that NRS 116.3115(4)(b) requires the expenses to be assessed

exclusively to Hilltop. Furthermore, we have considered Summit Village's remaining contentions and find them to be without merit.[2]

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[2]NRS 116.3115(2)(a) is plain and unambiguous, and permits common expenses to be assessed following some system of allocation. However, contrary to Summit Village's contention, the statute does not give the declarant a carte blanche to set forth the system. Rather, the statute clearly indicates that all common expenses must be assessed against all the units. NRS 116.3115(2)(a). The phrase "in accordance with the allocations set forth in the declaration" explains how all the units must be assessed. See id. Therefore, while Summit Village's CC&Rs could have divided the expenses in any rational manner, the expenses must nevertheless be divided among all of its 311 units.

We also reject Summit Village's Contract Clause argument. The United States Supreme Court has established a two step test to determine whether a state statute violates the Contract Clause. In re LaFortune, 652 F.2d 842 (9th Cir. 1981). The court must first determine whether the state law in question "substantially impairs the contractual relationship." Id. at 846. This inquiry contains three components: "whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial." Gen. Motors Corp. v. Romein, 503 U.S. 181, 186 (1992). Where there is substantial impairment, the state "must have a significant and legitimate public purpose behind the regulation," such as "remedying of a broad and general social or economic problem." Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411-12 (1983); see also U.S. Trust Co. of N.Y. v. New Jersey, 431 U.S. 1, 25 (1977). The burden is upon the challenger of the statute to show that no legitimate governmental interest justifies the impairment. Northwestern Nat'l Life Ins. Co. v. Tahoe Regional Planning Agency, 632 F.2d 104, 106 (9th Cir. 1980).

The Legislature changed NRS Chapter 116 from only applying to new common-interest communities to existing common-interest communities because many of the existing common-interest communities had been "mismanaged with loosely written codes covenants and restrictions." Hearing on S.B. 451 Before the Assembly Comm. on Judiciary, 70th Leg. (Nev. May 14, 1999). The legislative history reveals

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Standard of review

A district court's findings of fact and conclusions of law, supported by substantial evidence, will not be set aside unless clearly erroneous. See, e.g., Edwards Indus. V. DTE/BTE, Inc., 112 Nev. 1025, 1031, 923 P.2d 569, 573 (1996). However, questions of law are reviewed de novo. Phillips v. Parker, 106 Nev. 415, 417, 794 P.2d 716, 718 (1990). "Substantial evidence is that [evidence] which 'a reasonable mind might accept as adequate to support a conclusion.'" Radaker v. Scott, 109 Nev. 153, 657, 855 P.2d 1037, 1040 (1993) (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

"The construction of a statute is a question of law subject to de novo review." California Commercial v. Amedeo Vegas I, 119 Nev. 143, 145, 67 P.3d 328, 330 (2003). When interpreting a statute, "[t]he 'court first looks to the plain language of the statute.'" Crestline Inv. Group v. Lewis, 119 Nev. 365, 368, 75 P.3d 363, 365 (2003) (quoting A.F. Constr. Co. v. Virgin River Casino, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002)). "Where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and

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that the adoption of NRS Chapter 116 was not intended to confer a benefit to special interests but rather an exercise of the state's police power to remedy management problems of existing common-interest communities. Furthermore, Summit Village made no showing that the state did not have a significant and legitimate purpose in adopting NRS Chapter 116 or that the modification of its rights and obligations was not reasonable in light of the purpose of Chapter 116.

the courts are not permitted to search for its meaning beyond the statute itself." Madera v. SIIS, 114 Nev. 253, 257, 956 P.2d 117, 120 (1998) (quoting Erwin v. State of Nevada, 111 Nev. 1535, 1538-39, 908 P.2d 1367, 1369 (1995)).

A statute is ambiguous if it is "susceptible to more than one natural or honest interpretation." Banegas v. SIIS, 117 Nev. 222, 225, 19 P.3d 245, 247 (2001). When a statute is ambiguous, the statutory interpretation inquiry must focus on the intent of the drafters. Harvey v. Dist. Ct., 117 Nev. 754, 770, 32 P.3d 1263, 1274 (2001). The court's interpretation of the statute must "construe it 'in line with what reason and public policy would indicate the legislature intended.'" Id. (quoting McKay v. Bd. of Supervisors, 102 Nev. 644, 649, 730 P.2d 438, 442 (1986)).

At issue is whether Summit Village may allocate to Hilltop the expense of the parking area based on either NRS 116.3115(4)(a) or NRS 116.3115(4)(b). NRS 116.3115 creates limited instances where a common interest community[3] may allocate common expenses to less than all units. See also NRS 116.2107.

Whether the parking area constituted a limited common element under NRS 116.3115(4)(a)

NRS 116.3115(4)(a) provides that ". . . [a]ny common expense associated with the maintenance, repair, restoration or replacement of a

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[3]Common interest community is defined as "real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration." NRS 116.021.

limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration[4] provides." A limited common element is defined as "a portion of the common elements allocated by the declaration or by operation of subsection 2 or 4 of NRS 116.2102 for the exclusive use of one or more but fewer than all of the units."[5] NRS 116.059. The plain language of NRS 116.059 imposes two requirements for limited common element: (1) allocation by act or by law, and (2) exclusive use.

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[4]NRS 116.037 defines declaration as "means any instruments, however denominated, that create a common-interest community, including any amendments to those instruments."

[5]NRS 116.2102 states in relevant parts

> 2. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.
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> 4. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, pads and mounts for heating and air-conditioning systems, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

In this case, the district court found that the parking area was not for the exclusive use of the Hilltop residences, and Summit Village has failed to articulate any reasoning as to why this finding is clearly erroneous. Summit Village merely maintains that it disagrees with the district court's findings and in essence asks us to reweigh the evidence presented by the parties, which is beyond the scope of review. See Trident Construction v. West Electric, 105 Nev. 423, 776 P.2d 1239 (1989). We conclude that the district court's finding that Hilltop did not have exclusive use of the parking area is supported by substantial evidence. The district court reached this conclusion based on testimony that visitors of Trend West used this parking area, and other witnesses testified about seeing non-Hilltop vehicles using the area. The district court also found that Summit Village "admit[ed] that it ha[d] never removed a non-Hilltop car from the deck so long as it had a Summit Village parking sticker."

While Summit Village is correct that Trend West's use of the parking area is not relevant to whether Hilltop has exclusive use because that use was not sanctioned by Summit Village, the witnesses' testimonies alone constitute substantial evidence. Reasonable minds could conclude that the witnesses' testimonies were credible, reliable and support the conclusion that non-Hilltop members of Summit Village used the area. Finally, NRS 116.059 requires exclusive use for it to be a limited common element. A quintessential element of the right to exclusive use is the ability to exclude others from using it. See Black's Law Dictionary 1681-82 (9th ed. 2009). The parties agree that Hilltop did not have a right to exclude others from the area. Therefore, Hilltop did not have exclusive use of the parking area, and Summit Village may not allocate the expenses to Hilltop alone based on NRS 116.3115(4)(a).

Whether the parking area benefits fewer than all units such that NRS 116.3115(4)(b) requires the expenses to be assessed exclusively to Hilltop

NRS 116.3115(4)(b) provides that "[a]ny common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited." In this case, the district court concluded that the entire Summit Village development benefits from the parking spaces throughout the development.

Summit Village argues that NRS 116.3115(4)(b) requires the court to examine whether the declaration identifies common expenses benefiting fewer than all the units, those expenses must be assessed exclusively against the benefited units. It also claims that the district court interpreted the word "benefit" in NRS 116.3115(4)(b) too broadly. Summit Village argues that it was error for the district court to conclude that the parking area benefited Summit Village because greater pressure would be placed on other parking areas if it was not available.

NRS 116.3115(4)(b) is plain and unambiguous, and we will not search for a meaning beyond the face of the statute. Madera, 114 Nev. at 257, 956 P.2d at 120. It permits a declaration, in this case the CC&Rs, to assess common expenses exclusively against benefited units where the expense benefits fewer than all units. Contrary to Summit Village's assertion, NRS 116.3115(4)(b) does not require the district court to defer to the declaration in considering whether a common expense benefits fewer than all units. The phrase "to the extent required by the declaration"[6]

[6]The 2009 amendment to NRS 116.3115(4) replaced the phrase "to the extent required by the declaration" with "except as otherwise provided in the governing documents." The amendment, however, does not change

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only allows the declaration to determine whether common expenses that benefit fewer than all units in a common interest community will be assessed against all units or just the benefited units. NRS 116.3115(4). Even where the declaration requires certain expenses be assessed exclusively against particular units in the community, whether the common expenses benefit fewer than all units is an issue of fact for the trier of fact to decide.

We also conclude that Summit Village's contention regarding the scope of the term "benefit" is without merit. A benefit is an advantage. Black's Law Dictionary 166 (8th ed. 2004). NRS 116.3115(4)(b) does not require that the benefit be significant. Rather, any benefit is sufficient for NRS 116.3115(4)(b) purposes.

The district court found that the entire Summit Village development benefits from the parking spaces throughout the development. It concluded from the evidence produced at trial that other members of Summit Village benefited from the parking area because they were able to use the area if desired and it relieved stress and congestion on other parking areas. The district court also had evidence that since anyone with a valid Summit Village parking permit may park at the parking area in dispute, it benefited the entire Summit Village community. This conclusion is supported by substantial evidence

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our analysis of the issue in this case. 2009 Nev. Stat., ch. 362, § 12, at 1734-35.

presented to the district court and Summit Village has not shown otherwise.

Accordingly, we conclude that the district court's finding that the parking area does not exclusively benefit Hilltop and its conclusion that Summit Village may not assess the cost of the parking area exclusively to Hilltop under NRS 116.3115(4)(b) are supported by substantial evidence. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[7]

Douglas, C.J.

Cherry, J.

Pickering, J.

cc: Hon. Michael P. Gibbons, District Judge
Lester H. Berkson, Settlement Judge
Gayle A. Kern
Georgeson Angaran, Chtd.
Brooke Shaw Zumpft
Douglas County Clerk

[7]We have considered appellant's other arguments on appeal and found them to be without merit and decline to address them in this order.