

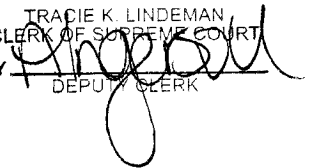
IN THE SUPREME COURT OF THE STATE OF NEVADA

LAUGHLIN TOWNSHIP CONSTABLE
JORDAN ROSS, AN INDIVIDUAL; AND
HENDERSON TOWNSHIP
CONSTABLE EARL MITCHELL, AN
INDIVIDUAL,
Appellants,
vs.
CONSTABLE JOHN BONAVENTURA,
AN INDIVIDUAL,
Respondent.

No. 61430

FILED

NOV 20 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting a preliminary injunction. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

The appellants, Constables Jordan Ross and Earl Mitchell, argue that this court does not have jurisdiction to hear this appeal because NRS 258.070 does not provide the respondent, Constable John Bonaventura, with a private right of action. Bonaventura does not address the merits of Ross's and Mitchell's argument, but contends that because Ross and Mitchell raise this argument for the first time on appeal, the issue is waived.

Whether a party has a private right of action goes to the jurisdictional issue of standing, and questions of jurisdiction are never waived. *See Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 968-69, 194 P.3d 96, 107 (2008) (holding that a party lacks standing to pursue declaratory relief under a statute that does not provide a private right of

13-34962

action); *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 276, 44 P.3d 506, 515-16 (2002) (questions of subject matter jurisdiction can be raised for the first time on appeal); *Applera Corp. v. MP Biomedicals, LLC*, 93 Cal. Rptr. 3d 178, 192 (Ct. App. 2009) (standing is jurisdictional, thus lack of standing may be raised for the first time on appeal). Accordingly, we address whether Bonaventura has a private right of action.

We have held that where the Legislature does not expressly provide civil remedies within a statutory framework, we should not allow civil remedies within that framework unless the Legislature impliedly provided for such remedies. *Baldonado*, 124 Nev. at 958, 194 P.3d at 100-01 (citing *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 571, 170 P.3d 989, 993 (2007)). Absent an explicit provision by the Legislature, this court determines whether a statute provides an implied private right of action by evaluating “(1) whether the plaintiffs are ‘of the class for whose []special benefit the statute was enacted;’ (2) whether the legislative history indicates any intention to create or to deny a private remedy; and (3) whether implying such a remedy is ‘consistent with the underlying purposes of the legislative [sch]eme.” *Id.* at 958-59, 194 P.3d at 101 (second alteration in original) (quoting *Sports Form v. Leroy’s Horse & Sports Place*, 108 Nev. 37, 39, 823 P.2d 901, 902 (1992)).

Regarding the first factor, individual constables are not of the class for whom the statute was created. “Statutes that focus on the person regulated rather than the individuals protected create no implication of an intent to confer rights on a particular class of persons.” *Id.* at 960 n.12, 194 P.3d at 101 n.12 (quoting *Alexander v. Sandoval*, 532 U.S. 275, 289 (2001)). NRS 258.070(1) provides:

1. Each constable shall:
 - (a) Be a peace officer in his or her township.

(b) Serve all mesne and final process issued by a court of competent jurisdiction.

(c) Execute the process, writs or warrants that the constable is authorized to receive pursuant to NRS 248.100.

(d) Discharge such other duties as are or may be prescribed by law.

This provision does not appear to confer any particular rights on constables, but only regulates the scope of services performed by constables.

The second factor does not militate in Bonaventura's favor, as neither party cites to any legislative history of NRS 258.070 indicating that the Legislature intended to create a private right of action for constables.¹


The third factor, whether a private remedy is consistent with the legislative scheme, also does not work in Bonaventura's favor. By granting the Board of County Commissioners oversight powers to enforce NRS 258.070, it appears that the Legislature did not intend to extend the responsibility of enforcing NRS 258.070 to the individual constables. Thus, there is no indication in the legislative scheme that the Legislature intended to create a parallel means of enforcement. *Baldonado*, 124 Nev.

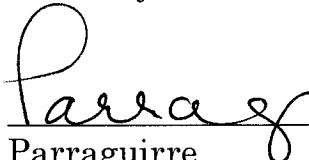
¹Bonaventura has requested that this court take judicial notice of unenacted amendments to NRS 258.070, which he asserts support his argument that the Legislature intended NRS 258.070 to restrict the jurisdiction of constables. Although this court may take judicial notice of legislative histories, *Fierle v. Perez*, 125 Nev. 728, 737 n.6, 219 P.3d 906, 912 n.6 (2009), *overruled on other grounds by Egan v. Chambers*, 129 Nev. ___, ___, 299 P.3d 364, 367 (2013), we deny his request in this instance because the proffered legislative history does not assist us in determining whether the Legislature intended NRS 258.070 to provide Bonaventura with a private right of action.

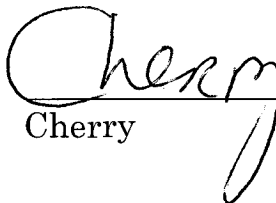
at 961, 194 P.3d at 102-03 (rejecting the implication of a private right of action under NRS Chapter 608 where there was an adequate administrative remedy for violations of the statutes within that chapter).

In light of our analysis of these factors and Bonaventura's failure to demonstrate otherwise, we conclude that Bonaventura does not have a private right of action under NRS 258.070. Accordingly, we

ORDER the judgment of the district court REVERSED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Cherry

cc: Hon. Ronald J. Israel, District Judge
Goodman Law Group
Robert B. Pool
Scott B. Steinhoff
Eighth District Court Clerk