IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY W. BRESHEARS; AND CATHERINE J. BRESHEARS,
Appellants,
vs.
RODNEY W. TURNER AND ANNEMARIE TURNER, TRUSTEES OF THE TURNER FAMILY TRUST,
Respondents.

No. 68773

FILED

SEP 13 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court permanent injunction in a real property action. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

This case arises out of a recreational vehicle garage ("RV garage") that appellants Gary and Catherine Breshears have built on property located in a residential subdivision in Washoe County.[1] Respondents Rodney and Annemarie Turner are neighbors who live on an adjacent property who initiated an action for declaratory and injunctive relief, asserting that the RV garage violates certain Covenants, Conditions, and Restrictions ("CC&Rs," "restrictions," or "restrictive covenants") that govern the parties' residential subdivision. After conducting a bench trial, the district court found that appellants' RV garage violated a height restriction, permanently enjoined appellants from maintaining their RV garage at its location, and ordered the garage to be

[1]We do not recount the facts except as necessary to our disposition.



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relocated such that it does not block respondents' view of the Sierra Nevada Mountains.

On appeal, we consider whether: (1) the district court erred in holding that the CC&R was enforceable despite the dissolution of the Building Committee, (2) the district court abused its discretion by finding that the RV garage blocks a "prominent portion" of respondents' view of the Sierra Nevada Mountains, and (3) the district court erred by concluding the dissolution of the Building Committee did not constitute "changed conditions or "abandonment."[2] We conclude that the dissolution of the Building Committee did not render the CC&R unenforceable. We further conclude the district court's remaining findings are supported by substantial evidence. We therefore affirm the district court's order.[3]

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[2]Appellants also argue that the district court should have denied injunctive relief on the basis of unclean hands because respondents' shed supposedly violates the CC&Rs' setback requirements, and because they allegedly built the shed and an enclosed office without first securing approval from the Building Committee or Washoe County. Although the district court did not explicitly discuss the unclean hands defense in its final order, we uphold the district court's implicit rejection of this defense because appellants have failed to show that "(1) the egregiousness of the misconduct at issue, and (2) the seriousness of the harm caused by the misconduct . . . weigh against granting the requested equitable relief[.]" *See Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 276, 182 P.2d 764, 767 (2008) (footnotes omitted).

Furthermore, appellants challenge the district court's order requiring them to *relocate*—rather than simply *remove*—the RV garage. However, we need not address this argument because appellants have failed to cogently argue this point and support it with relevant authority. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider claims that are not cogently argued or supported by relevant authority).

[3]We have carefully considered appellants' other arguments and find they are without merit.

*The CC&R is enforceable even though the Building Committee is defunct*

The interpretation of CC&Rs is a legal question that is subject to de novo review. *Diaz v. Ferne*, 120 Nev. 70, 73, 84 P.3d 664, 665–66 (2004). Although the supreme court has held that "[r]estrictive covenants are strictly construed[,]" the court has also explained that "[w]ords in a restrictive covenant, like those in a contract, are construed according to their plain and popular meaning." *See id.* at 73, 84 P.3d at 666 (footnotes omitted) (quoting *Dickstein v. Williams*, 93 Nev. 605, 608, 571 P.2d 1169, 1171 (1977)) (internal quotation marks omitted).

In *Leonard v. Stoebling*, the supreme court applied an arbitrariness standard of review to an architectural committee's decision to issue a variance even though the language in the restrictive covenants suggested that the committee had the *exclusive* discretion to do so. 102 Nev. 543, 545, 548–49, 728 P.2d 1358, 1359, 1362 (1986). Thus, *Leonard* stands for the proposition that while CC&Rs may purport to confer exclusive enforcement authority to a particular entity, landowners may still resort to court intervention to enforce restrictive covenants. *See id.*

Here, the CC&R at issue states that the Building Committee has the exclusive authority to determine whether a structure restricts a neighbor's view. Appellants contend that the height restriction is no longer enforceable because the Building Committee has ceased to exist. In light of the *Leonard* decision, we find this argument unpersuasive.[4]

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[4]We note that where the enforcement entity abdicates its responsibility to enforce restrictions, public policy requires judicial enforcement "in order to protect the interests of those who hold rights in property nearby the parcel." *See Cohen v. Kite Hill Cmty. Ass'n*, 191 Cal. Rptr. 209, 214–15 (Ct. App. 1983) (quoting *Topanga Ass'n for a Scenic Cmty. v. L.A. Cnty.*, 522 P.2d 12, 19 (Cal. 1974)), *cited in Leonard*, 102 Nev. at 548–49, 728 P.2d at 1362. We also note that other jurisdictions

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*The district court's finding that the RV garage "block[s] a prominent portion of the [respondents'] view" is not clearly erroneous, and is supported by substantial evidence*

This court will not set aside a district court's factual findings unless they are clearly erroneous or not supported by substantial evidence. *Sowers v. Forest Hills Subdivision*, 129 Nev. 102, 105, 294 P.3d 427, 432 (2013). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Mason-McDuffie Real Estate, Inc. v. Villa Fiore Dev., LLC*, 130 Nev. ___, ___, 335 P.3d 211, 214 (2014). Upon reviewing the trial transcript and photographs that were offered at trial, we hold that the district court's factual finding that the RV garage "block[s] a prominent portion of the [respondents'] view" is neither clearly erroneous nor unsupported by substantial evidence.[5]

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have enforced CC&Rs despite the nonexistence of such committees. *See, e.g., Myers v. Armstrong*, 324 P.3d 388, 391 (N.M. Ct. App. 2014) ("The fact that the [Architectural Control Committee] fell into disuse does not excuse compliance with the remainder of the covenants."); *Pietrowski v. Dufrane*, 634 N.W.2d 109, 115 (Wis. Ct. App. 2001) ("[T]he architectural control committee's dissolution does not demonstrate an intent to abandon the restrictions.").

Appellants also argue that because they are unable to submit their development proposals to the Building Committee for approval, they are left vulnerable to civil suits filed by disgruntled neighbors. This harm is easily avoided by either requesting the written consent of their neighbors, or by filing suit for declaratory relief. *See, e.g.*, NRS 30.040(1) ("Any person interested under a deed, written contract or other writings constituting a contract ... may have determined any question of construction or validity arising under the instrument ... and obtain a declaration of rights, status or other legal relations thereunder.").

[5]Appellants point out that the district court erroneously found that the RV garage blocked the view from respondents' "bedroom patio[,]" given

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*The district court's finding that the dissolution of the Building Committee did not constitute "changed circumstances" or "abandonment" is neither clearly erroneous nor unsupported by substantial evidence*

This court will not set aside the district court's factual findings unless they are clearly erroneous or not supported by substantial evidence. *Sowers*, 129 Nev. at 105, 294 P.3d at 432. To establish that a restriction is unenforceable due to changed conditions, the party challenging the restriction must show that the changed conditions "have so thwarted the purpose of the . . . limitation that it is of no appreciable value to other property owners and it would be inequitable or oppressive to enforce the restriction." *See Gladstone v. Gregory*, 95 Nev. 474, 478, 596 P.2d 491, 494 (1979). Similarly, "in order for community violations to constitute an abandonment of a restrictive covenant they must be so general and substantial as to frustrate the original purpose." *Id.* at 479, 596 P.2d at 494.

Here, the district court found that the purpose of the CC&Rs was to "maintain[] the residential character and quality of the neighborhood."[6] We find substantial evidence supports the district court's determination that the dissolution of the committee did not constitute

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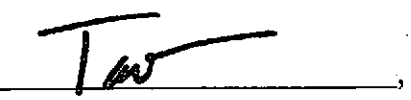
that respondents do not have a patio outside their bedroom. This error, however, is immaterial because we conclude that the record contains substantial evidence supporting the district court's finding that the RV garage "block[s] a prominent portion of the [respondents'] view." *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 598–99, 245 P.3d 1198, 1202 (2010) (affirming the district court's decision, even though it "reached the proper conclusion for the wrong reason").

[6]Appellants have waived any challenge to this finding by failing to address it in their briefs. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

changed conditions. Although the "generalized" and "unspecified" nature of the height restriction may complicate the district court's enforcement, the standard is not so unworkable that "it is of no appreciable value to other property owners."[7] Moreover, even assuming that respondents' shed and enclosed office violate the Building Committee review requirement and the setback restriction, respectively, those violations have no bearing on whether the height restriction has been abandoned.[8] Accordingly we,

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. Jerome M. Polaha, District Judge
J. Douglas Clark, Settlement Judge
Law Offices of Thomas J. Hall
Johnston Law Offices, P.C.
Washoe District Court Clerk

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[7]*See Gladstone*, 95 Nev. at 478, 596 P.2d at 494; *cf. Leonard*, 102 Nev. at 549, 728 P.2d at 1362 (finding that a CC&R prohibiting any new construction from blocking the view of other residents in the subdivision provided sufficient guidance to an architectural committee).

[8]*See Gladstone*, 95 Nev. at 479–80 & n.3, 595 P.2d at 494–95 & n.3 (finding that violations of other restrictions not related to the height restriction at issue did not amount to an abandonment of that restriction).