IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID DEZZANI; AND ROCHELLE DEZZANI, Appellants, vs. KERN & ASSOCIATES, LTD.; AND GAYLE A. KERN, Respondents.	No. 69410
DAVID DEZZANI; AND ROCHELLE DEZZANI, Appellants, vs. KERN & ASSOCIATES, LTD.; AND GAYLE A. KERN, Respondents.	No. 69896

FILED

NOV 16 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

These are consolidated appeals from district court orders dismissing a complaint in a torts action and awarding attorney fees and costs. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Appellants filed the underlying complaint against respondents, the attorney and law firm representing the condominium homeowners' association (HOA) to which appellants belong. In the complaint, appellants made retaliation claims based on NRS 116.31183, which allows a unit owner to sue for compensatory damages and attorney

fees and costs if an "executive board, a member of an executive board, a community manager or an officer, employee or agent of an association" takes retaliatory action against the owner. The district court dismissed the complaint based on respondents' argument that NRS 116.31183[1] did not permit an action directly against the attorney and law firm representing the HOA. Appellants' appeal from the order of dismissal was docketed in the Nevada Supreme Court as Docket No. 69410. The district court then awarded respondents attorney fees and costs, finding that appellants' claims were frivolous and intended to harass respondents. Appellants also appealed that decision, and that appeal was docketed in the supreme court as Docket No. 69896. The supreme court then transferred both appeals to this court where they were consolidated for resolution.

Having reviewed the briefs and the record on appeal, we conclude that the district court was required to dismiss appellants' complaint, albeit for a different reason than the one on which the district court's decision was based. *See Bongiovi v. Sullivan*, 122 Nev. 556, 575 n.44, 138 P.3d 433, 447 n.44 (2006) (explaining that a district court's decision will be affirmed "if it reaches the right result, even if for the

[1]While the district court cited NRS 116.3118 in its order, the surrounding discussion makes it clear that the court was actually referring to NRS 116.31183.

wrong reasons").[2] In particular, under NRS 38.310(1), a party may not commence a civil action asserting a claim related to interpreting, applying, or enforcing a common interest community's covenants, conditions, and restrictions (CC&Rs) "unless the action has been submitted to mediation or [a dispute resolution program]." If a party commences such an action without submitting it to mediation or a dispute resolution program, the district court must dismiss it. *See* NRS 38.310(2) (providing that a court "shall dismiss" a complaint involving the CC&Rs that does not first go to mediation or a dispute resolution program); *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 295, 183 P.3d 895, 900 (2008) (explaining that, when a party files an action against a homeowners' association without complying with NRS 38.310(1), the action must be dismissed).

Here, appellants' complaint alleged that respondents advised the HOA to take certain actions in retaliation for appellants' suggestion that the HOA replace its counsel. *See* NRS 116.31183(1)(b) (listing a unit owner's request to replace the HOA's attorney as an action that cannot be retaliated against). To decide whether respondent's advice may have been retaliatory, the court would have to interpret the CC&Rs to determine whether respondents' advice was supported by or made in contravention of the CC&Rs. Thus, appellant's claims were subject to NRS 38.310(1)(a).

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[2]As stated below, we do not hold that the district court's ultimate legal conclusion regarding NRS 116.31183 was incorrect, only that the district court should have dismissed the matter before reaching that issue.

See McKnight Family, LLP v. Adept Mgmt. Servs., Inc., 129 Nev. ___, ___, 310 P.3d 555, 558 (2013) (concluding that certain claims were required to be submitted to mediation under NRS 38.310 because they "required the district court to interpret regulations and statutes that contained conditions and restrictions applicable to residential property"). Because appellants' complaint fell under NRS 38.310 and was not first submitted to mediation or a dispute resolution program, the district court was required to dismiss the complaint. *See* NRS 38.310(2). Therefore, we affirm the district court's dismissal of appellants' complaint.[3]

In awarding attorney fees and costs under NRS 18.010(2)(b) (allowing awards of attorney fees when claims were brought without reasonable grounds or filed with an intent to harass), the district court relied on its determination that appellants knew respondents were not proper defendants to appellants' claims. But because the district court should have dismissed appellants' complaint under NRS 38.310 without reaching the issue of whether respondents were proper defendants, the court's reasoning for the fees and costs award does not support affirming

[3]Because the district court should have dismissed the complaint pursuant to NRS 38.310(2), it should not have even reached the issue of whether respondents were proper defendants under NRS 116.31183. Thus, we do not comment on the propriety of the district court's resolution of that issue.

that award on appeal. *See* NRS 38.310(2); *Hamm,* 124 Nev. at 301, 183 P.3d at 904. Thus, we reverse the award of fees and costs.[4]

It is so ORDERED.[5]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Elliott A. Sattler, District Judge
David Dezzani
Rochelle Dezzani
Kern & Associates, Ltd.
Washoe District Court Clerk

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[4]In light of this conclusion, we need not address the parties' remaining arguments regarding the attorney fees and costs award. This decision should not be read to preclude a later request for attorney fees and costs following the mediation or referral to a dispute resolution program and possible further litigation of the issues raised in this matter.

[5]We also deny appellants' September 7, 2016, motion requesting oral argument in this matter.