

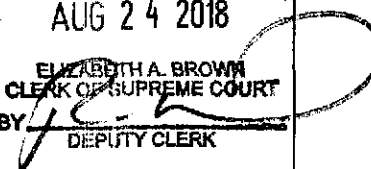
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIE PETITTI; AND PAUL PAWLIK,
INDIVIDUALS,
Appellants,
vs.
RULIAN WU, ALSO REFERRED TO AS,
WU RULIAN; AND CITY OF LAS
VEGAS, CLARK COUNTY,
Respondents.

No. 73231

FILED

AUG 24 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Marie Petitti and Paul Pawlik appeal from an order granting summary judgment in an action to quiet title to real property. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Rulian Wu owned a residential property subject to special assessments levied by the City of Las Vegas under NRS Chapter 271 (“Local Improvements”).¹ After Wu defaulted on those assessments, Petitti and Pawlik purchased the property at a duly authorized public sale by tendering to the City the amount of assessments due. The City issued Petitti and Pawlik a certificate of sale, which triggered a two-year redemption period during which Wu could pay the City the full amount for which the property was sold, plus interest, to retain ownership of the property.

After the two years passed, Petitti and Pawlik sought to serve Wu—as required under NRS 271.595—with a notice of intent to demand a deed to the property from the City. They could not locate Wu within the state, so they attempted to serve her by publication. After they provided

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

proof of service to the City and demanded a deed, an employee of the city treasury sent Petitti and Pawlik a letter denying the application and requiring them to take specific steps to try to effectuate service upon Wu. Petitti and Pawlik then filed this lawsuit against Wu and the City seeking to quiet title to the property, an affirmative injunction requiring the City to execute a deed, and declaratory relief.

Wu filed a motion to dismiss or in the alternative for summary judgment, joined by the City, arguing in part that the City did not abuse its discretion in refusing to execute a deed. Petitti and Pawlik opposed the motion and requested that the district court allow them more time to conduct discovery under NRCP 56(f). The district court ultimately granted summary judgment in favor of Wu. It concluded that the City's actions in refusing to execute the deed and requiring further service efforts should be reviewed for an abuse of discretion, and also that Petitti and Pawlik failed to present any genuine issue of material fact or demonstrate what further discovery could be done to show that the City abused its discretion.

On appeal, Petitti and Pawlik argue that: 1) they were entitled to a deed from the City under NRS Chapter 271, 2) the City did not have discretion to reject their application for a deed and impose additional service requirements in the manner that it did, and 3) the district court abused its discretion in denying their NRCP 56(f) request to conduct further discovery.²

²In the jurisdictional statement of her answering brief, Wu contends that this court lacks jurisdiction over this matter because Petitti and Pawlik failed to notify, join, or serve third-party defendant Golden River Investments, LLC, with respect to this appeal. However, Wu asserted this argument in a motion to dismiss before the supreme court, which denied the

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We first address Petitti and Pawlik's contention that they were entitled to a deed under NRS Chapter 271. We note that they did not file a motion for summary judgment urging this point below; they merely opposed Wu's motion by arguing that it was untimely and that further discovery would be necessary to determine whether they properly served Wu with the notice of intent to demand a deed. Accordingly, we decline to consider and we take no position with respect to this argument on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). However, we conclude that Petitti and Pawlik nevertheless demonstrated below that genuine issues of material fact remain such that summary judgment was inappropriate.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence and reasonable

... continued

motion. *Petitti v. Wu*, Docket No. 73231 (Order Reinstating Briefing and Denying Motion to Dismiss, January 25, 2018). Accordingly, we will not consider Wu's argument on this point. *See Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010) ("The law-of-the-case doctrine provides that when an appellate court decides a principle or rule of law, that decision governs the same issues in subsequent proceedings in that case.").

inferences drawn from it must be viewed in a light most favorable to the nonmoving party. *Id.* To withstand summary judgment, the nonmoving party cannot rely solely on general allegations and conclusions set forth in the pleadings, but must instead present specific facts demonstrating the existence of a genuine factual issue supporting his or her claims. NRCP 56(e); *see also Wood*, 121 Nev. at 731, 121 P.3d at 1030-31.

In granting summary judgment against Petitti and Pawlik, the district court concluded that the City reasonably exercised its discretion in denying their application for a deed and requiring that they take further steps to effectuate service upon Wu. However, genuine issues of material fact remain regarding whether Petitti and Pawlik actually complied with the statutory prerequisites in order to receive a deed from the City. Specifically, certificate holders must notify the owners of the property that they hold the certificate of sale and intend to demand a deed from the City. NRS 271.595(3). The statute further requires that the notice "be given by personal service upon the owner," or "if an owner is not a resident of the State or cannot be found within the State after diligent search," notice may be given by publication. *Id.* Accordingly, genuine issues of material fact remain as to whether Petitti and Pawlik properly served the notice, including whether Wu was or was not a resident of Nevada at the time of publication, and if she was, whether Petitti and Pawlik's efforts to locate her were sufficiently diligent under these specific facts.

We also agree with Petitti and Pawlik that NRS 271.595 does not convey the level of discretion to the City that it exercised in rejecting the application for deed and requiring further specific efforts to serve the notice, and thus the district court erred as a matter of law when it evaluated the City's actions for an abuse of discretion. NRS 271.595 states that the

municipal treasurer shall execute a deed in favor of a certificate holder after the expiration of a two-year redemption period and once certain other requirements are satisfied, including serving the notice of intent to demand a deed. NRS 271.595(3), (4). We see nothing in the text of the statute endowing municipal treasurers with discretion to evaluate a certificate holder's particular service efforts and thereupon decline to execute a deed in his or her favor unless further specific steps are taken to effectuate service. The only choice on the part of the treasurer identified in the statute is 1) to find that notice occurred and issue the deed, or 2) to find that notice did not occur and decline to issue the deed.

Based on our reading of the plain language of NRS 271.595, we conclude that the question in this lawsuit is not whether the City abused its discretion in denying Petitti and Pawlik's application for a deed, but rather whether Petitti and Pawlik's efforts to serve Wu with the notice complied with the relevant statutes such that they were entitled to a deed at the time the City declined to execute one in their favor.³ Consequently, we hold that the district court erred as a matter of law by misinterpreting NRS 271.595


³We note that in a similar case where Pawlik filed a lawsuit seeking to force the City to execute a deed under NRS 271.595, the district court granted the original property owner's motion to dismiss after interpreting the statute's notice and redemption requirements and concluding that Pawlik did not comply with them. *Pawlik v. Shyang-Fenn Deng*, 134 Nev. ___, ___, 412 P.3d 68, 70, 74 (2018). Ultimately, the supreme court affirmed the district court's order. *Id.* at ___, 412 P.3d at 75. On remand, we direct the district court in this case to do what the district court in *Pawlik* did: evaluate whether Petitti and Pawlik complied with the relevant statutes.

and granting summary judgment, thereby precluding consideration of the dispositive issues in this case.⁴

Based on the foregoing, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁵


_____, C.J.
Silver


_____, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Nathaniel J. Reed, Settlement Judge
Noggle Law PLLC
Las Vegas City Attorney
Brennan Legal Counsel Group, PLLC
Eighth District Court Clerk

⁴We need not address Petitti and Pawlik's NRCP 56(f) argument. See *Tom v. Innovative Home Sys., LLC*, 132 Nev. 161, 177 n.12, 368 P.3d 1219, 1230 n.12 (Ct. App. 2016) ("Because we conclude that genuine issues of material fact remain pending below such that summary judgment was inappropriate, we need not address [appellant's] additional argument that the district court abused its discretion in denying his NRCP 56(f) motion for a continuance to obtain discovery in order to oppose the motion.").

⁵The Honorable Jerome T. Tao voluntarily recused himself from participation in the decision of this matter.