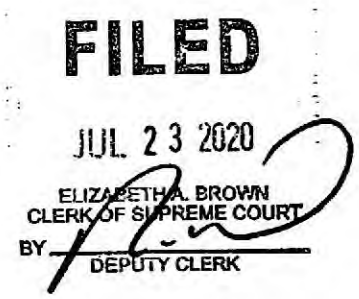
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DWIGHT PATENT 10945 MINING, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
BARO CANYON OWNERS ASSOCIATION, A DOMESTIC NON-PROFIT COOP CORPORATION,
Respondent.

No. 78431-COA



ORDER OF AFFIRMANCE

Dwight Patent 10945 Mining, LLC appeals from a district court order dismissing its complaint. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

In 1995, Baro Canyon Owners Association (the Association) was established as a common-interest community.[1] The Association adopted various bylaws governing land use within its boundaries. Two of the parcels within the Association's boundary, APN 140-23-802-013 and APN 140-23-802-014, remained undeveloped. On February 4, 2004, the Association annexed those parcels into the Association by means of an annexation amendment, describing both parcels as "Lot One (1)."

On February 24, 2017, Dwight Patent 10945 Mining, LLC (Dwight) purchased Lot One (1) (the Property) via a deed subject to "Permitted Exceptions." Among those exceptions were the Association's original bylaws as adopted in 1995 and the annexation amendment from

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

2004. On January 5, 2018, Clark County consolidated the two parcels making up the Property into one, known as APN 140-23-802-015.

Following disputes about the use and development of the property, Dwight filed a complaint seeking declaratory relief. As part of its complaint, Dwight alleged that on August 6, 2016, the Association provided a written confirmation that the Property was not a part of the Association. The Association filed a motion to dismiss pursuant to NRCP 12(b)(5), arguing that Dwight could not prove a set of facts sufficient to support a right to relief. Specifically, the Association argued that Dwight's own complaint stated the Property was within the boundaries of its governance and that Dwight's deed was subject to the Association's CC&Rs. In response, Dwight argued that a 2009 map recorded by the Association removed the Property from the Association's governance. Following a hearing on the parties' arguments, the district court granted the Association's motion to dismiss.

The district court found that Dwight's deed was subject to the Association's 1995 restrictions and the 2004 annexation amendment. Further, the district court concluded that the right to add or remove a property from a common-interest community must be reserved by a declarant, that the Association's declaration contained no provision for withdrawal, and that the handwritten note Dwight relied on was insufficient to withdraw property added by the annexation amendment. Consequently, the district court dismissed Dwight's complaint with prejudice. Dwight now appeals.

On appeal, Dwight argues the district court erred by granting the Association's motion to dismiss because Dwight properly alleged facts

that necessitated declaratory relief. Dwight further argues that the Association is estopped from asserting control over the property.[2]

First, we consider Dwight's arguments regarding the district court's order granting the Association's motion to dismiss. An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Id.* Dismissing a complaint is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672. All legal conclusions are reviewed de novo. *Id.* For purposes of NRCP 12(b)(5), the analysis of a complaint goes beyond the four corners of the complaint itself and includes analysis of any and all exhibits or attachments filed with the complaint or clearly referred to in it. *See Baxter v. Dignity Health,* 131 Nev. 759, 764, 357 P.3d 927, 930 (2015). Further, a court may consider documents beyond the pleadings in reviewing a motion to dismiss if (1) the complaint refers to

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[2]Dwight also argues that it should be allowed to amend its initial complaint to include a 2009 reversionary map. However, Dwight never requested leave in district court to amend its complaint, and therefore it has waived this issue and we need not consider it. *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."). Further, Dwight fails to explain how any reference to the 2009 reversionary map would overcome any defects in the complaint, and this court need not consider claims that are not cogently argued or supported by relevant authority. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

the document, (2) the document is central to the plaintiff's claim, and (3) no party questions the authenticity of the document. *See id.*

Here, Dwight fails to allege a set of facts that would entitle it to relief. The documents that Dwight submitted with its complaint, and the deed that was not attached to the complaint but whose authenticity is not disputed by either party, show that Dwight acquired the deed subject to explicit permitted exceptions, and included among these exceptions were the Association's original 1995 by-laws and the 2004 annexation amendment. These demonstrate unequivocally that the Property was within the boundaries of the Association when it organized in 1995 and was officially annexed in 2004. The Association never de-annexed the property. Thus, Dwight cannot prove it was entitled to declaratory relief.

Next, we address Dwight's argument that its complaint properly alleged equitable estoppel below. The Association argues that Dwight failed to raise this argument below. "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." *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (citing *Britz v. Consol. Casinos Corp.*, 87 Nev. 441, 447, 488 P.2d 911, 915 (1971)); *see also Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167, 172, 252 P.3d 676, 679 (2011). A de novo standard of review does not trump the general rule that a point not made to the trial court, unless jurisdictional, is deemed to have been waived and will not be considered on appeal. *Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 436, 245 P.3d 542, 544 (2010). Here, the record shows that Dwight failed to properly allege the elements of equitable estoppel. Specifically, Dwight failed to allege that it was ignorant of the true facts relating to the property or that the Association

intended Dwight to act upon its conduct. *See Torres v. Direct Ins. Co.*, 131 Nev. 531, 539, 353 P.3d 1203, 1209 (2015). Thus, Dwight's appeal of the issue will not be considered.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Susan Johnson, District Judge
Law Offices of Byron Thomas
Leach Kern Gruchow Anderson Song/Las Vegas
Eighth District Court Clerk