IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAXWELL STEINBERG; AND VALTUS REAL ESTATE, LLC, AS JOINT TENANTS IN COMMON,
Appellants,
vs.
THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR REGISTERED HOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-23,
Respondent.

No. 79250-COA

FILED

NOV 20 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Maxwell Steinberg and Valtus Real Estate, LLC (Steinberg), appeal from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

The original owners of the subject property failed to make periodic payments to their homeowners' association (HOA). The HOA—through its foreclosure agent—recorded a notice of delinquent assessment lien (the 2008 notice) and later a notice of default and election to sell to collect on the past due assessments and other fees pursuant to NRS Chapter 116. Counsel for a predecessor to respondent The Bank of New York Mellon (BNYM)—the beneficiary of the first deed of trust on the property—tendered payment to the foreclosure agent for nine months of past due

assessments, but the agent rejected the tender. Later, without rescinding the 2008 notice, the HOA's new foreclosure agent recorded a second notice of delinquent assessment lien (the 2014 notice) identifying all of the delinquencies addressed in the 2008 notice, in addition to those that had continued to accrue. The HOA ultimately foreclosed on the property and sold it to Steinberg, who initiated the underlying action seeking to quiet title against BNYM.[1] Both parties later moved for summary judgment, and the district court ruled in BNYM's favor, concluding that the tender satisfied the superpriority portion of the HOA's lien such that Steinberg took title to the property subject to BNYM's deed of trust.

Steinberg then filed a motion for reconsideration in which he agreed that the tender had satisfied the superpriority lien created by the 2008 notice, but argued for the first time that—under our supreme court's opinion in *Property Plus Investments, LLC v. Mortgage Electronic Registration Systems, Inc.*, 133 Nev. 462, 401 P.3d 728 (2017)—the 2014 notice created a new superpriority lien that remained unsatisfied at the time of the foreclosure sale. The district court denied the motion for reconsideration in a written order, concluding that the motion relied on facts and evidence that were previously available to Steinberg and that

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[1]BNYM's predecessor later substituted into the action in BNYM's place, but after the predecessor assigned the deed of trust to BNYM—and while this appeal was pending—the parties stipulated to substitute BNYM back into the action. For clarity, we refer to BNYM herein as having been a party to this case at all relevant times.

there had not been a change in existing law warranting reconsideration.[2] The district court also stated that, having considered the 2008 notice, it did not believe that it legally erred or abused its discretion. This appeal followed.

On appeal, Steinberg first contends that this court should reach the merits of the argument presented in his motion for reconsideration—even though he failed to raise the issue on summary judgment—because the district court decided the motion on its merits. For support, he cites *Arnold v. Kip*, in which our supreme court held that, "if the reconsideration order and motion are properly part of the record on appeal from the final judgment, and if the district court elected to entertain the motion on its merits, then we may consider the arguments [from] the reconsideration motion in deciding an appeal from the final judgment." 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007). Steinberg contends that the district court's statement that it did not believe that it erred or abused its discretion shows that it considered the merits of Steinberg's argument. But the district court qualified its statement by referring specifically to the 2008 notice, and nothing in the order indicates that the district court entertained Steinberg's argument with respect to the 2014 notice. We therefore reject Steinberg's argument on this point.

Alternatively, Steinberg contends that the district court abused its discretion when it denied his motion for reconsideration because its prior

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[2]We note that the supreme court issued the *Property Plus* opinion in 2017, long before the district court resolved the parties' summary judgment motions in 2019.

decision was clearly erroneous in light of the *Property Plus* opinion. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 589, 245 P.3d 1190, 1195, 1197 (2010) (construing a timely motion for reconsideration as a motion to alter or amend the judgment under NRCP 59(e) and, in an appeal from the final judgment, reviewing the denial of the motion for an abuse of discretion). But, regardless of whether the 2014 notice did in fact create a second superpriority lien, we discern no abuse of discretion in the district court's denial of Steinberg's motion, as the record supports the district court's findings that no new evidence or changes in law warranted reconsideration of its prior order.[3] *See id.* at 582, 245 P.3d at 1193 (identifying "newly discovered or previously unavailable evidence" and "change[s] in controlling law" as "[a]mong the basic grounds for a Rule 59(e) motion" (internal quotation marks omitted)); *Arnold*, 123 Nev. at 417, 168 P.3d at 1054 (indicating that a district court has discretion in determining

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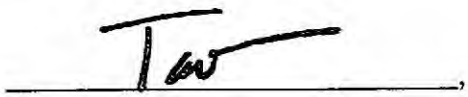
[3]Steinberg cites *AA Primo Builders* in support of the notion that, even when reviewing an order denying a motion for reconsideration for an abuse of discretion, "deference is not owed to legal error." 126 Nev. at 589, 245 P.3d at 1197. Accordingly, Steinberg contends that this court should evaluate the merits of his argument and reverse the underlying judgment. But *AA Primo Builders* is distinguishable from this case, as the supreme court there concluded that the district court committed legal error by failing to recognize the legal significance of previously unavailable evidence appellant had provided in support of its motion for reconsideration. *Id.* at 580, 589, 245 P.3d at 1191-92, 1197. Steinberg did not present any previously unavailable evidence pertaining to the 2014 notice below, and we otherwise discern no legal error in the district court's application of the standards governing reconsideration.

whether to consider issues presented for the first time in a motion for reconsideration); *see also Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 892 n.6 (9th Cir. 1994) ("Evidence is not newly discovered if it was in the party's possession at the time of summary judgment or could have been discovered with reasonable diligence."). Thus, because the district court appropriately denied Steinberg's motion for reconsideration, we affirm the underlying order granting BNYM's motion for summary judgment.

It is so ORDERED.[4]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Richard Scotti, District Judge
The Law Office of Vernon Nelson
Fidelity National Law Group/Las Vegas
Eighth District Court Clerk

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[4]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.