IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL KOSOR, JR., A NEVADA RESIDENT,
Appellant,
vs.
NEVADA REAL ESTATE DIVISION,
Respondent.

No. 79831-COA

FILED

MAY 28 2021

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

ORDER OF AFFIRMANCE

Michael Kosor, Jr., appeals from a district court order granting a motion to dismiss in a declaratory relief action. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

The Southern Highlands is a master-planned community regulated by the Southern Highlands Community Association (SHCA).[1] Southern Highlands Development Corporation (Declarant), which has controlled the SHCA since its inception, initially recorded a Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements (master declaration) that limited the maximum number of approved-for-development units to 9,000. Both Nevada common-interest ownership law and the master declaration required that the Declarant's control over the SHCA would terminate after conveying 75% of the units within the SHCA.

In 2005, Declarant's vice president recorded an amendment to the master declaration that increased the maximum number of approved-for-development units to 10,400, thereby increasing the time it would have control over the SHCA. In 2012, Kosor became a homeowner in the

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

Southern Highlands. Kosor alleged that sometime around late August of 2015, he reviewed the SHCA's 2015 budget—ratified in 2014—and realized that 75% of 9,000 units within the community were conveyed. He notified the SHCA and argued that the 2005 master declaration amendment was invalid and the Declarant should terminate its control. After little response from the SHCA, Kosor filed a complaint in 2016 to the Nevada Real Estate Division (NRED), an administrative agency authorized to hold hearings over issues concerning NRS Chapter 116, but it dismissed the complaint for lack of jurisdiction. He filed a second complaint to NRED, but NRED dismissed the second complaint because an opinion from the Attorney General's office suggested that NRS 116.760(1) and NRS 116.2117(2) time-barred Kosor's complaint. *See* Nev. Att'y Gen., Opinion Letter on NRS 116.2117(2) to NRED (Jan. 5, 2018).

Kosor then filed a complaint in district court. In the complaint, Kosor requested declaratory relief to invalidate the 2005 master declaration amendment, terminate Declarant's control over the SHCA, require NRED to reopen the case it dismissed, and announce that the Attorney General's opinion was in error. NRED filed a motion to dismiss, which Kosor opposed. The district court granted NRED's motion to dismiss, finding that NRS 116.2117(2) time-barred Kosor's complaint because he could not challenge the amendment's validity more than a year after its recorded date. In addition, the district court found that NRS 116.760(1) time-barred Kosor's complaint because he reasonably should have discovered potential violations when the SHCA ratified the budget in 2014.

On appeal, Kosor argues the district court's order erred for two reasons. First, Kosor claims the district court incorrectly interpreted NRS 116.2117(2) and thus improperly applied it to the instant case. Second,

Kosor claims the district court made clearly erroneous factual findings in determining that NRS 116.760(1) began to run when the SHCA ratified its budget. Because we agree that NRS 116.2117(2) is a statute of repose, which bars Kosor's claims, we affirm the district court's order and decline to address the other issues Kosor raises on appeal. Specifically, we do not consider whether the district court's factual findings were clearly erroneous when it determined NRS 116.760(1) time-barred Kosor's complaint.

Kosor avers that the district court erred in adopting the Attorney General's interpretation of NRS 116.2117(2) for two reasons. First, Kosor argues that the district court's interpretation of NRS 116.2117(2) ignores the issues as to whether the SHCA *validly* adopted the 2005 master declaration amendment. He claims that NRS 116.2117(2) cannot apply because the statute not only requires that the amendment be recorded, but also that an amendment must be "adopted by the association." In his complaint and below, Kosor alleged that the SHCA did not adopt the amendment because the Declarant's vice president (who may not have been an SHCA officer) executed the amendment and recorded it, not the SHCA. Second, Kosor avers that the amendment was void ab initio,[2] as it violated NRS 116.2122, which prohibits a declarant from increasing the number of units beyond the number stated in the original declaration. Thus, according to Kosor, it was impossible for the SHCA to adopt the amendment because it was immediately unlawful or void ab initio.

We review statutory construction issues de novo. *Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 64, 412 P.3d 56, 59 (2018). However, in

[2]When a document or law is void ab initio, it has no force or effect, does not legally exist, and cannot be amended. *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006).

administrative cases, we defer to an agency's interpretation of statutes that it has authority to execute "unless it conflicts with the constitution or other statutes, exceeds the agency's powers, or is otherwise arbitrary and capricious." *Nuleaf CLV Dispensary, LLC v. State, Dep't of Health & Human Servs., Div. of Pub. & Behavioral Health*, 134 Nev. 129, 133, 414 P.3d 305, 308 (2018) (quoting *Cable v. State ex rel. Emp'rs Ins. Co. of Nev.*, 122 Nev. 120, 126, 127 P.3d 528, 532 (2006)). The agency's interpretation must be within the statute's language. *Taylor v. State, Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013). "We give effect to a statute's or a regulation's plain, unambiguous language and only look beyond the plain language where there is ambiguity." *State, Local Gov't Emp.-Mgmt. Rels. Bd. v. Educ. Support Emps. Ass'n*, 134 Nev. 716, 718, 429 P.3d 658, 661 (2018).

NRS 116.2117(2) provides, "[n]o action to challenge the *validity* of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded." NRS 116.2117(2) (emphasis added). Black's Law Dictionary defines "validity" as "[l]egally sufficient; binding." *Valid, Black's Law Dictionary* (11th ed. 2019).

As pertinent here, the Nevada Supreme Court has distinguished between a statute of limitations and a statute of repose by reasoning that "[a] statute of limitations prohibits a suit after a period of time that follows the accrual of the cause of action." *FDIC v. Rhodes*, 130 Nev. 893, 899, 336 P.3d 961, 965 (2014). Alternatively, a statute of repose "bars a cause of action after a specified period of time regardless of when the cause of action was discovered." *Id.* A statute of repose "defines the right involved in terms of the time allowed to bring suit." *Id.* (quoting *P.*

Stolz Family P'ship L.P. v. Daum, 355 F.3d 92, 102 (2d Cir. 2004)). The stricter timeline under a statute of repose brings defendants a peace of mind by barring delayed litigation, and it prevents unfair surprises that result "from the revival of claims that have remained dormant for a period during which the evidence vanished and memories faded." *Id.*

We agree with NRED and the Attorney General's interpretation that the 2005 amendment to the master declaration is presumptively valid after one year of its recording date for two reasons. First, NRED's interpretation is within the statute's plain language. NRS 116.2117(2) is unambiguous; it sweepingly prohibits any challenge to an amendment's "validity" after one year of its recording date. Both of Kosor's arguments seek to challenge the amendment's validity, either by arguing the SHCA did not validly adopt it or that the amendment itself was invalid. Because NRS 116.2117(2) is a statute of repose, Kosor, who was not a homeowner during the one-year period available to challenge the amendment, would of course never have been able to do so. However, when he purchased the property in 2012, he should have been provided with the master declaration and the 2005 amendment thereto. At this time, Kosor could have decided whether or not to purchase property within the master planned community in light of the amendment.

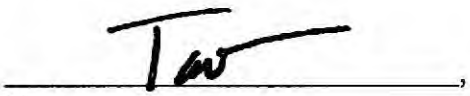
Second, we agree that NRED's decision to dismiss both of Kosor's complaints related to the 2005 amendment is consistent with the policy rationale underlying the statute of repose, which is to limit the time to challenge an amendment. Allowing Kosor to challenge the 2005 amendment, after the one-year statute of repose expired, would nullify the statute's purpose to prevent ongoing challenges to the amendment years into the future with no definitive end in sight and thereby delaying an

amendment's effective date. We decline to carve out an exception to the statute to permit this. Accordingly, we affirm the district court's order granting the motion to dismiss Kosor's declaratory relief claim as being untimely pursuant to NRS 116.2117(2).[3]

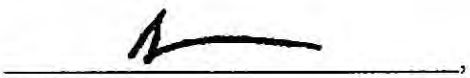
Therefore, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao



_____, J.
Bulla

cc: Hon. David M. Jones, District Judge
Barron & Pruitt, LLP
Attorney General/Carson City
Eighth District Court Clerk

[3]Nothing in our decision precludes Kosor from filing a timely complaint with NRED in the future should the Declarant fail to relinquish control over SHCA once the terms and conditions of the 2005 amendment have been satisfied.