IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATES OF THELMA AILENE SARGE AND EDWIN JOHN SARGE.

No. 82623-COA

ESTATE OF THELMA AILENE SARGE; ESTATE OF EDWIN JOHN SARGE; AND JILL SARGE,
Appellants,
vs.
ZACHARY PEDERSON; MICHELLE PEDERSON; AND ROSEHILL, LLC,
Respondents.

FILED

MAR 11 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

The Estate of Thelma Ailene Sarge, the Estate of Edwin John Sarge, and Jill Sarge (collectively the Sarges) appeal from a district court order granting summary judgment, certified as final pursuant to NRCP 54(b), in an action to void a foreclosure sale. First Judicial District Court, Carson City; James Todd Russell, Judge.

Respondent Rosehill, LLC, purchased the subject property at a foreclosure sale in October 2016 and shortly thereafter contracted to sell the property to respondents Zachary and Michelle Pederson. Later that month, the Sarges filed the underlying action[1] against Quality Loan Service Corporation—the trustee under the foreclosed-upon deed of trust—and fictitious Doe defendants, seeking to void the foreclosure sale for alleged

[1]The Estates initiated the action through appellant Jill Sarge as proposed executor, and Jill later intervened in her individual capacity.

violations of NRS 107.080,[2] and they recorded both the complaint and a notice of lis pendens with the county recorder. Rosehill—which, like the Pedersons, had not yet specifically been named as a defendant in the action—filed a motion to expunge the notice of lis pendens, which the district court granted in a written order, a certified copy of which was promptly recorded. Rosehill thereafter conveyed legal title to the property to the Pedersons by way of a grant, bargain, and sale deed.

The district court later dismissed the action, and the Sarges appealed. The supreme court ultimately reversed and remanded for further proceedings, concluding the district court had misapplied NRS 107.080 in light of recent precedent interpreting the statute.[3] *In re Estate of Sarge*, No. 73286, 2020 WL 969730, at *2-*3 (Nev. Feb. 27, 2020) (Order of Reversal and Remand). As a result of its ruling, the supreme court concluded the district court "likewise erred by canceling the notice[ ] of lis pendens." *Id.* at *2 n.3 (citing *Hardy Cos. v. SNMARK, LLC*, 126 Nev. 528, 533, 543, 245 P.3d 1149, 1153, 1159 (2010)).

On remand, the Pedersons moved for summary judgment and Rosehill moved to dismiss, both arguing that the Pedersons are bona fide purchasers (BFPs) who took the property free and clear of any prior interest. The Sarges opposed and also moved for summary judgment, and they filed an amended complaint in response to Rosehill's motion to dismiss that—for

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[2]Although NRS 107.080 has been amended multiple times since the foreclosure sale, none of the amendments are relevant to our disposition, and we therefore cite the current version of the statute herein.

[3]That appeal and the dismissal challenged therein concerned different aspects of NRS 107.080 that are not at issue in this appeal.

the first time—asserted violations of NRS 107.550 as an alternative ground to void the foreclosure sale. The district court ultimately ruled in favor of the Pedersons, concluding that they are BFPs under NRS 14.017. The district court also concluded that, to the extent the Sarges based the underlying action in part on alleged violations of NRS 107.550, the Pedersons are protected as BFPs under NRS 107.560(4), and the Sarges' remedies under that statute, if any, are limited to damages against parties other than the Pedersons and Rosehill. Accordingly, the district court granted summary judgment in favor of the Pedersons and denied Rosehill's motion to dismiss, concluding it was moot in light of the favorable ruling for the Pedersons. This appeal followed.

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 all other evidence on file demonstrate that no genuine dispute 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 must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31.

On appeal, the Sarges contend the district court erred in applying NRS 14.017 to conclude that the Pedersons took the property free and clear as BFPs. Specifically, they argue that NRS 111.180—not NRS 14.017—is the applicable statute to determine whether the Pedersons were BFPs, and they contend that the Pedersons are precluded from claiming BFP status under that statute as set forth in NRS 107.080(7). The Sarges

further argue that even if NRS 14.017 applies, the Pedersons likewise fail to demonstrate that relief is warranted under that statute.

With respect to NRS 107.080, the Sarges argue that, because they timely filed the underlying action under NRS 107.080(6) (providing that "[a] person who did not receive . . . proper notice [of the foreclosure sale] may commence an action [to void the sale] within 90 days after the date of the sale"), the Pedersons are not entitled to protection as BFPs under NRS 107.080(7), which provides that, "[u]pon expiration of the time for commencing an action [a]s set forth in subsection[ ] . . . 6, any failure to comply with . . . this section or any other provision of this chapter does not affect the rights of a bona fide purchaser as described in NRS 111.180." NRS 111.180(1) in turn defines a BFP as anyone "who purchases an estate or interest in any real property in good faith and for valuable consideration and who does not have actual knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property." In essence, the Sarges contend that, because they timely filed the underlying action, the Pedersons are forever precluded from claiming BFP status, and the only question for the district court to resolve is whether or not the underlying sale was void under NRS 107.080.

Respondents counter that NRS 14.017 is a more specific statute that applies to the circumstances of this case such that it prevails over the more general NRS 111.180. *See State, Tax Comm'n v. Am. Home Shield of Nev., Inc.*, 127 Nev. 382, 388, 254 P.3d 601, 605 (2011) ("A specific statute controls over a general statute."). Under NRS 14.017(1), when a certified copy of a court order canceling a notice of lis pendens is recorded,

> each person who thereafter acquires an interest in the property as a purchaser, transferee, mortgagee or other encumbrancer for a valuable consideration, except a party to the action who is not designated by a fictitious name at the time of the . . . order of cancellation, shall be deemed to be without knowledge of the action or of any matter, claim or allegation contained therein, irrespective of whether the person has or at any time had actual knowledge of the action or of any matter, claim or allegation contained therein.

"The purpose of this section is to provide for the absolute and complete transferability of real property after the withdrawal or cancellation of a notice of the pendency of an action affecting the property." NRS 14.017(2). Respondents argue that, under this statute, because Rosehill deeded the subject property to the Pedersons after a certified copy of the district court's order canceling the notice of lis pendens was recorded, and because they were not named as parties in the underlying action at the time of the cancellation, they are conclusively presumed to take the property as BFPs regardless of their actual notice of the underlying dispute.[4]

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[4]In light of our disposition—except as referenced below—we need not address the Sarges' counterargument that, in light of the fact that the Pedersons were under contract to purchase the property before the underlying action was even filed, they were its equitable owners *before* the notice of lis pendens was cancelled such that they had already acquired an interest precluding the application of NRS 14.017. Likewise, we need not consider the Sarges' contention that the order canceling the notice of lis pendens never went into effect because a notice of entry of that order was never served, as they failed to raise the issue before the district court. *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 . . . is deemed to have been waived and will not be considered on appeal.").

Reviewing this issue of statutory interpretation de novo, *see In re Guardianship of B.A.A.R.*, 136 Nev. 494, 496, 474 P.3d 838, 841 (Ct. App. 2020), we agree with the Sarges. Although we see no reason why NRS 14.017 would not generally apply to the factual circumstances at issue here, even if we assume that the Pedersons satisfy the requirements of that statute, it merely provides that they are conclusively presumed to have purchased the property without knowledge of the underlying action or any claim asserted therein. *See* NRS 14.017(1). Indeed, the application of NRS 14.017 essentially requires a court to conclusively presume that a purchaser is a BFP as set forth in NRS 111.180 with respect to the subject matter of the action in which a notice of lis pendens was cancelled, in spite of the purchaser's actual knowledge of the action. But as set forth in NRS 107.080(7), a purchaser's BFP status may only overcome a failure to comply with NRS Chapter 107 that would render a foreclosure sale void under NRS 107.080 if the time for filing an action based on the violation has expired.[5] And here, it is undisputed that the Sarges timely filed the action.

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[5]If this were not true—i.e., if in fact a purchaser's BFP status could always defeat an action brought under NRS 107.080—the language in NRS 107.080(7) providing that a BFP's rights are not affected by a violation of NRS Chapter 107 "[u]pon expiration of the time for commencing an action [under NRS 107.080]" would be superfluous. *See Knickmeyer v. State*, 133 Nev. 675, 679, 408 P.3d 161, 166 (Ct. App. 2017) ("[We] consider the statute as a whole, awarding meaning to each word, phrase, and provision, while striving to avoid interpretations that render any words superfluous or meaningless."). Moreover, we note that our reading of these statutes is consistent with our supreme court's holding in *U.S. Bank, National Ass'n ND v. Resources Group, LLC*, that when a district court declares a sale void under NRS 107.080—rather than merely setting the sale aside in equity—a party's BFP status is irrelevant. 135 Nev. 199, 205, 444 P.3d 442, 448

We recognize the extent to which NRS 14.017(2) purportedly provides for the immediate and absolute transferability of property following the recordation of an order canceling a notice of lis pendens. *See Mix v. Superior Court*, 21 Cal. Rptr. 3d 826, 831 (Ct. App. 2004) (applying California's materially similar provisions concerning the cancellation of a notice of lis pendens, the effect thereof, and the legislative intent therefor, and concluding that such a cancellation in the trial court will generally take effect and free up a property for sale immediately, even if that decision may ultimately be challenged and potentially reversed on appeal). Nevertheless, despite this clear expression of purpose in subsection 2, we are bound by the clear and unambiguous text of NRS 14.017(1) and NRS 107.080(7), which, when read together, establish that even a purchaser deemed to be without knowledge of an action brought under NRS 107.080 remains bound by the judgment resolving it, so long as the action was timely filed. *See In re Execution of Search Warrants*, 134 Nev. 799, 801, 435 P.3d 672, 675 (Ct. App. 2018) ("[T]he proper place to begin is with the plain text of the relevant statute[s], and if those words are unambiguous, that is where our analysis ends as well."); *see also Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993, 860 P.2d 720, 723 (1993) ("Whenever possible, this court will interpret a rule or statute in harmony with other rules and statutes."). We therefore conclude that the Pedersons' putative status as BFPs is irrelevant to the primary question at issue in this case, which is whether the underlying foreclosure

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(2019) ("A void sale, in contrast to a voidable sale, defeats the competing title of even a bona fide purchaser for value.").

sale was void under NRS 107.080. *See U.S. Bank, Nat'l Ass'n ND*, 135 Nev. at 205, 444 P.3d at 448.

Finally, the Sarges argue that the district court erred in determining that, to the extent the Sarges based the underlying action in part on alleged violations of NRS 107.550, the Pedersons are protected as BFPs pursuant to NRS 107.560(4), and the Sarges' remedies, if any, are limited to damages against parties other than the Pedersons and Rosehill. Inexplicably, respondents fail to set forth any argument whatsoever in their answering brief in response to these arguments or otherwise in defense of the district court's decision on these points. Although we could treat their silence on these matters as a confession of error, *see In re Parental Rights as to A.L.*, 130 Nev. 914, 919, 337 P.3d 758, 761-62 (2014) (citing NRAP 31(d) and *Bates v. Chronister*, 100 Nev. 675, 681-82, 691 P.2d 865, 870 (1984), in support of the notion that a respondent's failure to respond to an appellant's argument may amount to a confession of error), in light of our analysis above, our de novo review, and the contradictory nature of the Sarges' arguments on these points, we nevertheless proceed to evaluate this portion of the district court's decision on its merits.

Unlike NRS 107.080(7), which provides that a timely action brought under that statute may affect the rights of a BFP, NRS 107.560(4) contains no such carve-out; it simply provides that "[a] violation of NRS 107.400 to 107.560, inclusive, does not affect the validity of a sale to a bona fide purchaser for value and any of its encumbrancers for value without notice." The Sarges contend that, because Rosehill deeded the property to the Pedersons after the notice of lis pendens was recorded, the Pedersons took the property with notice of the action and thus are not BFPs. *See*

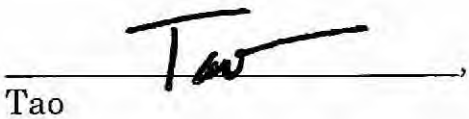
Weddell v. H2O, Inc., 128 Nev. 94, 106, 271 P.3d 743, 751 (2012) ("The doctrine of lis pendens provides constructive notice to the world that a dispute involving real property is ongoing." (citing NRS 14.010(3)). But this argument is problematic for two reasons. For one, it is inconsistent with the Sarges' contention that the Pedersons first acquired their interest in the property not when they obtained the deed from Rosehill, but when they supposedly became equitable owners by virtue of contracting with Rosehill to purchase the property before the underlying action was filed and the notice of lis pendens was recorded. Assuming the Sarges are correct on that point, the Pedersons acquired their interest without the constructive notice imparted by the recorded notice of lis pendens, which is the only thing the Sarges point to in support of their contention that the Pedersons were on notice. Conversely, if the Sarges' contradictory position that the Pedersons acquired their interest by virtue of the deed is correct, as set forth above, NRS 14.017(1) requires the court to conclusively presume that the Pedersons took the property without notice of the action in light of the previously recorded cancellation of the notice of lis pendens. Consequently, under either of the Sarges' inconsistent theories, the Pedersons are protected as BFPs from any violation of NRS 107.400-.560, and the district court appropriately ruled in their favor on this point.

In light of the foregoing, we affirm the district court's order insofar as it determined that the Pedersons are protected as BFPs to the extent the underlying action is based on alleged violations of NRS 107.550. However, we reverse the district court's order insofar as it determined that the Pedersons are protected as BFPs from the Sarges' efforts to have the

foreclosure sale declared void under NRS 107.080, and we remand for further proceedings consistent with our disposition.[6]

It is so ORDERED.

_____, C.J.
Gibbons



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[6]The Sarges also argue that this court should reverse the district court's decision to strike various notices they filed purporting to set forth the district court's ruling on the parties' competing dispositive motions, which they contend the district court had communicated to the parties via email before entering its written order. But the Sarges fail to explain how they were in any way harmed or otherwise aggrieved by the striking of these notices, and we therefore reject their argument on this point. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument); *see also Khoury v. Seastrand*, 132 Nev. 520, 539, 377 P.3d 81, 94 (2016) ("To be reversible, an error must be prejudicial and not harmless."); *cf. Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (providing that the appellate courts have jurisdiction to entertain an appeal only insofar as the appellant is aggrieved).

cc: Hon. James Todd Russell, District Judge
Tory M. Pankopf, Ltd.
Wallace & Millsap LLC
Walsh & Rosevear
Carson City Clerk