

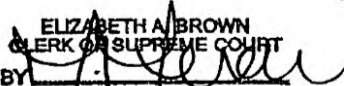
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHARED OWNERSHIP LV LLC,
Appellant,
vs.
CLARK COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,
Respondent.

No. 84568-COA

FILED

FEB 15 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Shared Ownership LV LLC appeals from a district court order denying a petition for a writ of mandamus or prohibition. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

Shared Ownership owns real property in Clark County that was subject to an assessment and recorded lien for \$98,000 held by the Clark County Public Response Office (the County).¹ The penalties were assessed on the property because of Shared Ownership's alleged use of its residential property for advertising and engaging in short term rental (STR) activities. After discovering that Shared Ownership engaged in STRs, the County issued a rehabilitation notice notifying Shared Ownership that it was in violation of Clark County Code (CCC) sections 11.14 and 30.44.010(b)(7)(c) for renting its property for less than 31 days at a time. The rehabilitation notice required Shared Ownership to cease: (1) the daily and weekly rental of its property and (2) advertising its property for daily and weekly vacation rental. It also required Shared Ownership to submit an acceptable rehabilitation plan or a written appeal request.

Shared Ownership submitted a rehabilitation plan, claiming that the property was only rented to members of the LLC. The County

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

rejected the plan because Shared Ownership did not indicate that the property would not be rented to members for less than 31 days at a time; also, Shared Ownership presented no factual evidence to rebut the County's claim that Shared Ownership was engaging in short term rental activities to the public. Because various provisions of CCC Chapter 11.14 were amended and approved shortly thereafter, Shared Ownership was served with a new rehabilitation notice (the Notice) informing it of the recent amendments. The new amendments to Chapter 11 provided that rehabilitation plans were no longer accepted, and any unpaid civil penalties would be levied as a special assessment on the current tax roll.

Shared Ownership appealed the Notice but presented no factual evidence rebutting the County's allegations during the appeal hearing. Instead, Shared Ownership's arguments focused on the constitutionality of the County ordinances prohibiting STRs in residential neighborhoods, the levying of civil penalties for code violations, and the legality of short term occupancy of its property under a shared ownership agreement. The hearing officer denied the appeal. Shared Ownership did not file a petition for judicial review in the district court even though the order stated it "is final and amenable to judicial review." Pursuant to CCC 11.14.030, the County assessed civil penalties and liens in the amount of \$98,000 for Shared Ownership's violations of CCC section 30.44.010(b)(7)(c). A notice of lien was sent to Shared Ownership via certified mail, placed on its property, and recorded. Shared Ownership initiated no legal action following service of the notice of lien.

More than one year after the hearing officer's order, and more than three months after the lien was recorded, Shared Ownership filed a petition for judicial review to the district court, challenging all administrative fines and liens placed on its property. The County filed a motion to dismiss Shared Ownership's petition. The district court granted

the motion, finding Shared Ownership's petition was untimely filed and improperly served. The district court's order stated that Shared Ownership filed its petition "over a year after the final order from the administrative hearing . . . was filed," in violation of NRS 278.0235. Shared Ownership did not appeal.

Approximately six weeks later Shared Ownership filed a petition for writ of mandamus or in the alternative petition for writ of prohibition with the district court. By the time Shared Ownership filed the petition, over two years had elapsed since the County first issued a rehabilitation notice for Shared Ownership's alleged transient lodging violations. Shared Ownership argued in the writ petition that, among other things, the County acted outside the bounds of its statutory powers when it assessed liens against its property. The petition asked the court to overturn the County's administrative civil penalties and liens. The district court declined to issue the writ, concluding that Shared Ownership "had an adequate remedy to challenge the civil penalties and liens in the ordinary course of law, by filing an administrative appeal and judicial review." The district court also found that Shared Ownership's failure to file a timely petition for judicial review did not make a difference as to the fact that it had an adequate legal remedy. Lastly, the district court concluded that Shared Ownership had "not established that [it] ha[d] a legal right to use [its] residential property for 'transient lodging' as required by NRS 34.160," and it would not exercise its discretion to override the County and State's legislative decisions by issuing the writ.

Shared Ownership now argues that the district court erred in finding that a writ of mandamus or, in the alternative, a writ of prohibition was improper because the district court had authority to grant the writ petition regardless of the availability of other remedies. Shared Ownership argues that a writ was the proper vehicle for relief because: (1) the County's

actions were arbitrary and capricious governmental enforcement, thus it was not required to pursue judicial review of the Notice or the recorded lien notice; (2) the district court erred in concluding that it had not established an entitlement to a legal right because the applicable CCC sections are silent regarding the use of residential property as a STR; and (3) the district court abused its discretion in deciding not to issue a writ on the basis that issuing the writ would override legislative decision. We disagree and decline to address Shared Ownership's arguments on their merits because Shared Ownership indisputably failed to pursue an available and adequate legal remedy.

Shared Ownership argues that it was not required to pursue an alternative legal remedy by filing an administrative appeal and seeking judicial review because its writ petition presents a purely legal question challenging the County's authority to regulate and enforce STR violations. Shared Ownership further argues that it is not challenging any determination made at a hearing but instead challenges the County's arbitrary and capricious regulation of STRs in the absence of a clear legislative mandate. The County responds that Shared Ownership failed to follow the statutory requirements to seek a writ because it did not file for an administrative appeal of either the Notice or the recorded notice of lien, and further waited over a year to file its petition for judicial review. We agree with the County and conclude the district court acted within its discretion and decline to reverse for the issuance of a writ based on Shared Ownership's failure to pursue timely judicial review.

A district court's denial of a writ petition is reviewed for an arbitrary or capricious abuse of discretion. *Burgess v. Storey Cty. Bd. of Comm'rs*, 116 Nev. 121, 992 P.2d 856 (2000). A writ may be issued by a district court "to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station." NRS 34.160. Writ

relief is appropriate “only when there is no plain, adequate and speedy legal remedy” in the ordinary course of law. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004) (citing NRS 34.170). Generally, writ relief will be precluded when a party filing a writ petition has the right to an appeal because an appeal is normally an adequate legal remedy. *Willick v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 19, 506 P.3d 1059, 1061 (2022) (citing *Pan*, 120 Nev. at 225, 88 P.3d at 841).

The district court’s decision to deny the petition for writ of mandamus or prohibition was not an abuse of discretion because Shared Ownership failed to pursue an available and adequate legal remedy—by failing to file a timely petition for judicial review in district court as provided by CCC 11.14.070 and NRS 278.0235. Though Shared Ownership argues that its challenge presents only pure legal issues that are outside the scope of judicial review and are better suited for writ relief, the hearing officer’s order upholding the County’s rehabilitation notice correctly stated that “challenges to constitutionality of existing laws (i.e. ordinances enacted and approved by the board of Clark County Commissioners) entails judicial review by the Eighth Judicial District Court or beyond.” Therefore, the importance of pursuing judicial review before the district court was readily apparent and underscored in the hearing officer’s order.

Shared Ownership, for reasons unclear to this court, did not timely pursue judicial review of its challenges to the County’s ordinances and enforcement action. Shared Ownership provides no cogent argument or authority regarding why judicial review by the district court could not have granted it the relief it sought in its petition for writ relief. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant’s argument that is not cogently argued or lacks the support of relevant authority). We thus decline to reverse the district court’s order denying the petition for writ


of mandamus or prohibition because Shared Ownership failed to pursue an available legal remedy through judicial review.²

Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Christy L. Craig, District Judge
Settlement Judge, Stephen E. Haberfeld
Wooldridge Law, Ltd.
Clark County District Attorney
Clark County District Attorney/Civil Division
Eighth District Court Clerk

²Shared Ownership additionally argues that the district court overlooked Nevada courts' well-established plenary authority to grant writ petitions based on the uniqueness and importance of the issues involved, regardless of whether the party petitioning for writ relief had an adequate legal remedy available. We discern Shared Ownership's argument to mean that it sought the district court to grant advisory mandamus. *See Walker v. Second Judicial Dist. Court*, 136 Nev. 678, 683-84, 476 P.3d 1194, 1198-99 (2020) (stating that the Nevada Supreme Court's authority to issue advisory mandamus is strictly limited to "serious issues of substantial public policy or important precedential questions of statewide interest"). However, for the reasons previously stated, and because Shared Ownership does not establish that a district court holds authority to grant advisory mandamus, we decline to reverse the district court's decision based on Shared Ownership's argument that the district court failed to consider the novelty and importance of the issues in its petition for writ relief.

³Insofar as the parties have raised 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.