

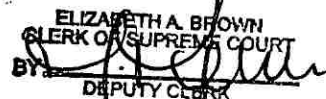
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DOLORES A. KEENAN,  
Appellant,  
vs.  
ACE LEGAL CORP., A NEVADA  
CORPORATION,  
Respondent.

No. 83880-COA

**FILED**

APR 20 2023

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

*ORDER OF REVERSAL AND REMAND*

Dolores A. Keenan appeals from a post-judgment order regarding her claim of exemption from a writ of execution. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

In October 2020, respondent Ace Legal Corp. obtained a default judgment for over \$1 million against Brian Padgett, the defendant in the underlying case.<sup>1</sup> In an effort to satisfy the judgment, Ace had a writ of execution served on Padgett on August 24, 2021, and various pieces of artwork were levied as a result. Padgett filed a timely claim of exemption for the artwork pursuant to NRS 21.112, asserting that he was not the owner because he previously sold it to a “buyer,” who was later revealed to be his mother, Keenan. He subsequently supplemented his claim and asserted that Keenan had given him power of attorney, dated October 18, 2021, to assert her interests in the artwork. The district court denied the

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<sup>1</sup>Padgett is not a party to this appeal.

claim of exemption, finding that Padgett lacked standing to make a claim on behalf of a third party.

Following the district court's ruling, Keenan purportedly filed a claim of exemption on October 23, 2021. Ace then filed a timely objection to this claim of exemption, arguing that it appeared to be signed by Padgett, and Keenan was required to sign her own claim. Further, Ace argued that if Padgett was permitted to sign on Keenan's behalf, his knowledge of the writ of execution was imputed to her and, consequently, her claims were untimely because they were not filed within 10 days after notice of the writ was served, as required by NRS 21.112(1).

Keenan thereafter filed a second claim of exemption on November 13, 2021, which was substantively identical to the first but that she had personally signed. She attached, in relevant part, affidavits to her claims of exemption, averring she had been the owner of the artwork since March 2020, when Padgett "sold" it to her in order to satisfy a debt he owed her.

The district court subsequently held a hearing on Keenan's claims of exemption. At the hearing, Keenan's husband gave testimony in which he acknowledged that they were "aware" of the writ of execution but were "not aware of the Nevada proceedings and rules regarding the time limits." The district court subsequently granted Ace's objection to Keenan's claim of exemption.

In its written order, the district court found that the plain language of the claim of exemption statute, NRS 21.112(10), provided that a third party may "follow the procedures set forth in this section for claiming an exemption to have the property released." And because the statute

required a judgment debtor to file a claim of exemption within 10 days after the notice of a writ of execution is served on the debtor, the court found that Keenan was required to file her claim of exemption within ten days after Padgett was served with notice of the writ on August 24, 2021. This was the case even though Keenan was a third-party claimant, rather than the judgment debtor. Thus, because Keenan did not file her claim of exemption within the requisite time frame, the court found that she waived her right to file a claim of exemption. Additionally, the district court found that Padgett's knowledge of the writ was imputed to Keenan, as he was acting as her agent with respect to the artwork, and her husband had acknowledged in court that she knew about the issuance of the writ. This appeal followed.

On appeal, Keenan contends that (1) the district court's order granting Ace's objection to her claim of exemption should be "set aside" because she was not served with notice of the writ of execution, (2) the artwork should be released to her because Ace failed to obtain an undertaking pursuant to NRS 31.070, and (3) she proved ownership of the artwork in the district court. We turn first to Keenan's claim that she was not served with notice of the writ.

NRS 21.112 sets forth the procedure for judgment debtors to file claims of exemption once property is levied on pursuant to a writ of execution. On appeal, the parties disagree about whether the plain language of NRS 21.112 requires a third-party claimant to be served with notice of the writ of execution, or whether the third party is on notice at the time the judgment debtor is served with notice of the writ.

We review questions of statutory interpretation de novo. *Pankopf v. Peterson*, 124 Nev. 43, 46, 175 P.3d 910, 912 (2008). If a statute's language is unambiguous, we generally do not look beyond the statute itself to determine its meaning. *Id.* But "when the Legislature has addressed a matter with imperfect clarity, it becomes this court's responsibility to discern the law," and we "resolve any doubt as to the Legislature's intent in favor of what is reasonable." *Id.*

As relevant here, NRS 21.112(1) specifies that, in order to claim an exemption on levied property,

the judgment debtor must, within 10 days after the notice of a writ of execution . . . is served on the judgment debtor by mail pursuant to NRS 21.076 . . . , serve on the sheriff . . . and the judgment creditor and file with the clerk of the court issuing the writ of execution the judgment debtor's claim of exemption.

The judgment creditor then has eight judicial days to file an objection and notice for a hearing with the court. NRS 21.112(3). This exemption procedure may also be used by a non-debtor to have property released. NRS 21.112(10) ("In addition to any other procedure or remedy authorized by law, a person other than the judgment debtor whose property is the subject of a writ of execution . . . may follow the procedures set forth in this section for claiming an exemption to have the property released.").

The notice provisions of Chapter 21 provide that "[t]he notice required by NRS 21.075 must be served by the sheriff on the judgment debtor." NRS 21.076. Under NRS 21.075, levying property pursuant to a writ of execution "may occur only if the sheriff serves the judgment debtor with a notice of the writ," which "must describe the types of property exempt

from execution and explain the procedure for claiming those exemptions in the manner required in subsection 2.” NRS 21.075(1). Subsection 2 sets forth the “form” of the notice, which includes a list of statutory exemptions and the “procedure for claiming exempt property.” NRS 21.075(2). The procedure section informs the person receiving notice of the ten-day timeline and states that failure to file the claim of exemption may result in the property being sold with the proceeds given to the judgment creditor.

Here, the district court found that Keenan’s claim of exemption was untimely because it was filed outside the ten-day time frame set forth in NRS 21.112(1). While the statute allows a third party to follow the same procedure as the judgment debtor to file a claim of exemption, it does not expressly state to whom notice must be given in that scenario. Nevertheless, the district court found that the plain language of the statute meant that Keenan, even as the third party, was required to file her claim of exemption within ten days after notice of the writ of execution was served on Padgett, the judgment debtor. We disagree.

The appellate courts have “a duty to construe statutes as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized.” *Orion Portfolio Servs. 2, LLC v. County of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010). We “will not render any part of [a] statute meaningless, and will not read [a] statute’s language so as to produce absurd or unreasonable results.” *Id.* Under the district court’s interpretation of the statute, Keenan, as a third-party claimant, was bound by the notice given to the judgment debtor and, therefore, not entitled to notice of her own in order to file a claim of exemption. But this

interpretation conflicts with other provisions in NRS Chapter 21, which demonstrate that the statutory scheme contemplates that individuals other than the judgment debtor are also entitled to notice. *See, e.g.*, NRS 21.130(4) (“The sheriff shall not conduct a sale of the property on execution or deliver the judgment debtor’s property to the judgment creditor if the judgment debtor *or any other person entitled to notice* has not been properly notified as required in this section and NRS 21.075 and 21.076.” (emphasis added)). Thus, construing the statute as the district court did renders NRS 21.112(1) inharmonious with other provisions of Chapter 21.

Moreover, because NRS 21.075 requires notice before property is levied upon, and the notice must explain the exemption procedures, it is unreasonable to conclude that a third-party claimant is required to file a claim of exemption within ten days of the judgment debtor being served without actually informing the third party of that time frame, or the requirements for claiming an exemption, potentially resulting in the loss of exempt property without the ability to present an objection before the court. Stated differently, to hold a third party to a time frame of which they are not apprised leads to an unreasonable result. Indeed, doing so would violate the third party’s due process rights. *See Flangas v. Perfekt Mktg., LLC*, 128 Nev., Adv. Op. 26, 507 P.3d 574, 579-80 (2022) (noting that due process requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections before a party is deprived of a protected property or liberty interest” (internal quotation marks omitted)).

We therefore conclude that NRS 21.112 requires a judgment creditor to give proper notice of the writ of execution to third parties before

the ten-day time period for the third party to file a claim of exemption begins to run. Thus, the district court erred in finding that Keenan's claims of exemption were untimely based on the date that Padgett was served with notice of the writ, as Keenan was entitled to notice of the writ of execution so she could have the opportunity to present her objection. Accordingly, we reverse the district court's order and remand this matter for further proceedings consistent with this order.<sup>2</sup>

Next, although we reverse the district court's order on the basis that Keenan was not served with notice of the writ of execution, we briefly address her remaining contentions that the artwork should be released to her based on Ace's failure to follow the procedures set forth in NRS 31.070(1) by obtaining an undertaking and because she proved her ownership in the district court. With respect to her argument regarding

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<sup>2</sup>Although the district court acknowledged that Keenan was not served with notice of the writ, it imputed knowledge of the writ to her based on the limited power of attorney naming Padgett as her agent and her husband's acknowledgment that they were aware of the writ. Generally, an agent's knowledge is imputed to the principal. *See In re Amerco Derivative Litig.*, 127 Nev. 196, 215, 252 P.3d 681, 695-96 (2011); *see also* 3 Am. Jur. 2d *Agency* § 255 (2023 update) ("Generally, the principal is chargeable with, and bound by, the knowledge of or notice to an agent. . ."). However, Padgett was not given Keenan's power of attorney until October 18, 2021, almost two months after he was served and, therefore, his knowledge could not have been imputed to her at the time of service.

Moreover, given our determination that Keenan was entitled to notice under the statute, to the extent that the district court relied on her husband's statement that they were aware of the writ, this does not obviate the requirement that she be provided proper notice of the writ in accordance with NRS 21.112.

Ace's failure to obtain an undertaking, Ace responds that she waived this argument by failing to raise it in the district court. *See Nev. Power Co. v. Haggerty*, 115 Nev. 353, 365 n.9, 989 P.2d 870, 877 n.9 (1999) ("Normally an issue not raised below cannot be raised for the first time on appeal.").

The parties proceeded in the district court pursuant to the procedure set forth for claims of exemption under NRS 21.112. While that provision allows third parties to make a claim to have property released using the procedures set forth in NRS Chapter 21, "[i]n addition to any other procedure or remedy authorized by law," *see* NRS 21.112(10), NRS 21.120 directs that third-party claims to property levied on by writ of execution be resolved through the process set forth in NRS 31.070, *see* NRS 21.120(2) (providing that, where property levied upon by writ of execution is claimed by a third person as her property, "the same rules prevail as to the contents and making of the claim, as to the holding of the property and as to a hearing to determine title thereto, as in the case of a claim after levy under writ of attachment, as provided for by law");<sup>3</sup> *see also Brooksby v. Nev. State Bank*, 129 Nev. 771, 773, 312 P.3d 501, 502 (2013) (recognizing that

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<sup>3</sup>In addressing this statute, our supreme court held in *Clark NMSD, LLC v. Goldstein*, 138 Nev., Adv. Op. 75, 520 P.3d 356, 357-58 (2022), that NRS 21.120(2) "directs that third-party claims to property levied under [writs of execution] shall . . . be resolved through the process envisioned by NRS 31.070." *Clark*, however, did not address how this directive to resolve such claims using the processes outlined in Chapter 31 coordinates with the language used in NRS 21.112(10), which provides that third-party claimants "may" follow the claim of exemption procedures set forth in NRS Chapter 21 "in addition to any other procedure or remedy authorized by law." Nevertheless, because the parties do not address this inconsistency, we need not consider it here.



“questions regarding title to . . . property as between the judgment creditor and a third party are properly determined by the court having jurisdiction under NRS 31.070”).

Under NRS 31.070(1), a third-party claimant may challenge a writ of attachment by making a written, verified claim. When a third party makes a verified claim, the party in whose favor the writ runs must, within seven days, obtain an undertaking to insure the levied property. *Id.* If an undertaking is obtained, the sheriff shall hold the property. *Id.* On the other hand, where an undertaking is not obtained, the sheriff must release the property. *Id.* NRS 31.070(5) provides for the right of a hearing to determine title to the property in question.

As previously noted, the parties proceeded in the district court under NRS 21.112 and did not raise any issues under Chapter 31. Because Keenan did not proceed under Chapter 31 in the district court or otherwise raise this issue below, we decline her invitation to direct the district court to release the artwork to her. Nonetheless, nothing in this order prohibits her from pursuing that relief in the district court during the proceedings on remand.<sup>4</sup>

Finally, we decline to address Keenan’s claim that she proved her ownership of the artwork, as the district court did not address it below

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<sup>4</sup>In light of our disposition of this matter, the stay of the sale of the artwork imposed by our January 22, 2022, order shall be automatically vacated upon the issuance of the remittitur for this case. However, as we reverse this matter and remand for further proceedings, we direct the district court to stay any sale of the artwork pending its resolution of the proceedings on remand.

because it resolved the underlying case based on its conclusion that Keenan's exemption claims were untimely. Instead, this issue should be resolved by the district court in the first instance. *See Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance.").

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Mary Kay Holthus, District Judge  
Dolores A. Keenan  
Brownstein Hyatt Farber Schreck, LLP/Las Vegas  
Eighth District Court Clerk