

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WESLEY RUSCH,
Appellant,
vs.
THE MARTIN CONDOMINIUM UNIT
OWNERS' ASSOCIATION,
Respondent.

No. 85821-COA

FILED

APR 29 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

Wesley Rusch appeals from a district court order granting summary judgment in a contract and real estate dispute. Eighth Judicial District Court, Clark County; Nancy L. Alf, Judge.

Rusch and non-party Oliver Longboy are the former owners of a condominium located at The Martin (f/k/a Panorama Towers). Respondent The Martin Condominium Unit Owners' Association (Martin CUOA) was the unit owners' association for the property. Rusch and Longboy's unit sustained water damage from a burst pipe in a common area, so they discontinued paying CUOA assessments, rationalizing that the cost incurred from the water damage exceeded the cost of their monthly assessments. After they became delinquent on assessments and fines, the Martin CUOA, through Red Rock Financial Services, LLC (RRFS), initiated foreclosure proceedings. In the midst of those proceedings, both Rusch and Longboy filed for bankruptcy and the foreclosure proceedings were stayed. Following resolution of the bankruptcy proceedings, the foreclosure proceedings resumed. In August 2017, RRFS conducted a non-judicial foreclosure sale, and the unit was sold to Hollyvale Rental Holdings, LLC.

The Martin CUOA provided the excess proceeds from the sale to the former counsel for Rusch and Longboy.

Shortly thereafter, Hollyvale commenced a quiet title action, and in May 2018, the district court entered a default judgment quieting title in favor of Hollyvale's successor-in-interest, Champery Rental REO, LLC. Rusch and Longboy subsequently objected and attempted to obtain NRCP 60(b) relief from the default judgment, which the court denied. The district court also ordered that Rusch and Longboy were required to seek leave of the court prior to filing further pleadings or papers in that case. Rusch and Longboy filed two lawsuits against the Martin CUOA, which were dismissed for their failure to mediate and failure to effectuate proper service, respectively.

In September 2021, Rusch and Longboy filed a complaint for compensation against Martin CUOA alleging the sale of the unit was illegal and should be reversed. Specifically, they alleged claims for breach of contract of the CUOA's covenants, conditions, and restrictions (CCRs) for (1) failing to maintain common areas and address the flooding issue which resulted in damages, (2) breach of the duty of good faith and fair dealing for failing to handle the flooding issues and for initiating the foreclosure resulting in damages, and (3) breach of contract and violations of NRS 116 and the CCRs based on the Martin CUOA's withholding of some proceeds from the sale of the unit and its purported failure to give proper notice prior to foreclosure as required by NRS 116.31162.

The Martin CUOA filed two motions: a motion for a pre-filing order pursuant to Nevada's vexatious litigant standard and for attorney fees and a motion to dismiss, or alternatively, a motion for summary judgment. In its motion to dismiss, the Martin CUOA argued that the

gravamen of the complaint was a challenge to the notice of the foreclosure proceedings and, therefore, Rusch's and Longboy's causes of action were barred by the applicable statutes of limitations and could not be relitigated. The Martin CUOA further argued that the claims were barred by collateral estoppel based on the 2018 quiet title action, and, in any event, they had accepted the excess proceeds from the foreclosure sale without protest, which waived their right to seek recovery or repossession of the unit. Rusch and Longboy opposed both motions and requested summary judgment in their favor.

Following a hearing, the district court entered a pre-filing order requiring Rusch and Longboy to seek leave of the court prior to filing additional pleadings relating to the foreclosure and denying the Martin CUOA's request for attorney fees as sanctions.

Stemming from the same hearing, the district court also entered a written order denying Rusch's and Longboy's motion for summary judgment and granting the Martin CUOA's motion for summary judgment. The court agreed with the Martin CUOA that the gravamen of the complaint was a challenge to the notice of the foreclosure proceedings. It concluded that (1) the challenge to the validity of the foreclosure and title to the unit were adjudicated in the quiet title action and further challenges were barred by collateral estoppel; (2) the claims were barred by the applicable statutes of limitations (specifically, the court analyzed NRS 116.31166(3), which allows 60 days for the right of redemption; NRS 107.080(6), which allows a challenge to a foreclosure sale within 90 days of sale; and NRS 11.190(3)(a), which provides a three-year statute of limitations for wrongful foreclosure); (3) Rusch and Longboy waived their right to challenge the validity of the foreclosure sale or to seek damages

from the Martin CUOA because they accepted the excess proceeds without any condition of protest; (4) the foreclosure for delinquent homeowners' assessments was permitted to proceed against the property once the bankruptcy proceedings were resolved; and (5) because Rusch and Longboy filed for bankruptcy to extinguish their debt owed to the Martin CUOA, they could not sustain a wrongful foreclosure claim, which would require them to show that they did not breach their obligations to pay monthly assessments. Rusch and Longboy subsequently filed two motions for reconsideration, which were denied. This appeal followed.

On appeal, Rusch summarily argues that he was entitled to summary judgment and asserts that the foreclosure and subsequent sale were void based on allegedly deficient notice without addressing the district court's finding that that issue had been previously litigated in the quiet title action. Under these circumstances, Rusch has waived any challenge to the district court's determination that summary judgment was warranted because these issues had been previously litigated. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Moreover, by confining his challenge to the summary judgment order to just these points, Rusch fails to challenge any of the other bases that the district court relied on to grant summary judgment in favor of the Martin CUOA. We therefore conclude that he has both waived any such challenge and has failed to present a basis for relief on these issues. Thus, he has likewise waived any challenge to the district court's determination regarding the alternative grounds from summary judgment. *See Hung v. Genting Berhad*, 138 Nev., Adv. Op. 50, 513 P.3d 1285, 1288 (Ct. App. 2022) (“[T]he failure to properly challenge each of the district court's independent alternative


grounds leaves them unchallenged and therefore intact, which results in a waiver of any assignment of error as to any of the independent alternative grounds.”).¹

Next, to the extent that Rusch has challenged the district court’s pre-filing order requiring him to seek leave of the court before filing additional pleadings, motions, or other papers in cases relating to the foreclosure proceedings, he has failed to offer any cogent argument challenging that order and merely asserts, without more, that his lawsuits have had merit. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued). Regardless, based on our review of the record and the district court’s pre-filing order, we conclude that the court did not abuse its discretion in determining that Rusch was a vexatious litigant. *See Jordan v. State, Dep’t of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 62, 110 P.3d 30, 44 (2005), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008) (providing that restrictive orders limiting vexatious litigants from accessing the courts are reviewed for an abuse of discretion). In particular, the district court provided Rusch with notice and an opportunity to be heard; provided a record explaining the reason the restrictive order was needed, which included Rusch’s repeated attempts to relitigate the foreclosure proceedings; made numerous factual findings as


¹To the extent Rusch argues that his action was not time-barred because he asserted a breach of contract claim with a six-year statute of limitations, he raised that argument for the first time in his reply brief and has therefore waived it. *See Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (concluding that an issue raised for the first time in an appellant’s reply brief was waived).

to the frivolous and harassing nature of the filings; and narrowly tailored the restrictive order to address the specific concern regarding Rusch's filings against the Martin CUOA. *See id.* at 60-62, 110 P.3d at 42-44 (explaining the factors the district court's order must include when limiting a litigant's access to the courts). Accordingly, we cannot conclude that the district court abused its discretion in finding Rusch's filings were made without reasonable grounds and requiring Rusch to seek leave of the court before filing further pleadings or lawsuits pertaining to the foreclosure proceedings against the Martin CUOA. *See id.* at 62, 110 P.3d at 44. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

²Insofar as Rusch raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

Additionally, having reviewed Rusch's December 11, 2023, December 20, 2023, and April 15, 2024, motions, we conclude that relief is not warranted and deny all relief requested therein.

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 27
Wesley Rusch
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk