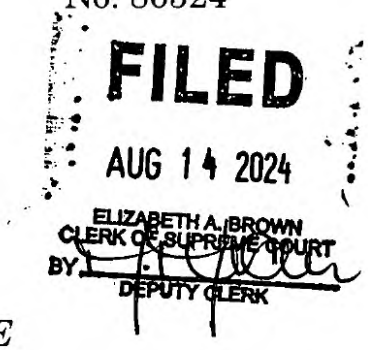
IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT ELLIS LINCICOME, JR.; AND VICENTA LINCICOME,
Appellants,
vs.
BRECKENRIDGE PROPERTY FUND 2016, LLC,
Respondent.

No. 86324



ORDER OF AFFIRMANCE

This is an appeal from a district court order granting judgment on the pleadings in a real property matter. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

Appellants Albert and Vicenta Lincicome (the Lincicomes) primarily challenge two district court orders: (1) a June 2021 order granting summary judgment for respondent Breckenridge Property Fund 2016, LLC (Breckenridge) on the Lincicomes' quiet title claim; and (2) a January 2022 order awarding attorney fees.[1] We address the challenges to each order in turn.

In the June 2021 order, the district court granted summary judgment for Breckenridge because it contemporaneously entered an order in favor of various other defendants determining that those defendants had substantially complied with NRS 107.080's foreclosure process, such that

[1]The Lincicomes also challenge a November 2021 order granting Breckenridge a writ of restitution, as well as a February 2023 final judgment resolving most of Breckenridge's claims against the Lincicomes in favor of Breckenridge. But the Lincicomes do not make any arguments specifically directed to those orders. We therefore do not address those orders.

the Lincicomes' wrongful foreclosure claim against those defendants failed. Because the foreclosure sale was properly conducted, the district court reasoned that the Lincicomes no longer had title to the subject property and their quiet title claim against Breckenridge necessarily failed. We affirmed the district court order in favor of the other defendants. *See Lincicome v. Sables, LLC*, No. 83261, 2022 WL 18540608, at *4-5 (Nev. Dec. 29, 2022) (Order of Affirmance). In doing so, we did not expressly address whether the foreclosure sale was properly conducted but instead concluded that the Lincicomes' wrongful foreclosure claim necessarily failed because the Lincicomes signed a mediation agreement wherein they agreed to surrender the property via deed-in-lieu of foreclosure, and then breached that agreement, which allowed the foreclosure sale to proceed. *Id.* at *4-5.

We conclude that the Lincicomes are barred by the law-of-the case doctrine from arguing otherwise in this appeal. *See Recontrust Co. v. Zhang*, 130 Nev. 1, 8, 317 P.3d 814, 818 (2014) ("Normally, for the law-of-the-case doctrine to apply, the appellate court must actually address and decide the issue explicitly or by necessary implication." (internal quotation marks omitted)). Although we did not expressly address the Lincicomes' arguments regarding the Homeowner's Bill of Rights (HBOR) in the previous appeal, we resolved it by necessary implication when we determined that the Lincicomes contractually agreed to surrender the property, or else risk foreclosure in the event of a breach, pursuant to the mediation agreement.[2] *Id.*; *see Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975) ("The doctrine of the law of the case cannot be avoided by a more

[2]We further note that Breckenridge, as the purchaser of the property, could not be subject to the Lincicomes' HBOR claim and that the Lincicomes' arguments as to this claim vis-à-vis Breckenridge appear irrelevant.

detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.").

In any event, to the extent that the Lincicomes continue to press their arguments regarding the HBOR, those arguments do not entitle them to relief. To sustain a viable HBOR claim, NRS 107.560(2) requires the plaintiff to show a "material" violation of the HBOR. Given that the Lincicomes essentially agreed to allow the foreclosure to proceed via their breach of the mediation agreement, and that they do not dispute the district court's finding in the January 2022 order that they "never had the ability or desire to make payments on the loan obligation," the alleged HBOR violations can in no sense be considered "material." *Cf. Billesbach v. Specialized Loan Servicing LLC*, 278 Cal. Rptr. 3d 213, 215-16 (Ct. App. 2021) (observing that under California's HBOR, "[a] material violation is one that affected the borrower's loan obligations, disrupted the borrower's loan-modification process, or otherwise harmed the borrower").

In the January 2022 order awarding attorney fees, the district court found that the Lincicomes maintained their claims against Breckenridge without reasonable grounds for purposes of NRS 18.010(2). The Lincicomes challenge that decision based primarily on a November 14, 2018, order granting an injunction where the district court found that the Lincicomes were "likely to succeed on the merits of their claim for injunctive relief under NRS 107.560 for material violations of the Homeowner's Bill of Rights." But as the district court found in its January 2022 order, "[t]he evidence brought at the preliminary injunction hearing was in stark contrast to what was brought out in discovery," and the "[f]acts raised in discovery clearly presented a picture that was wholly different than what had been presented to the Court during the preliminary injunction

hearing." And, as indicated above, the district court further found that "[t]he [Lincicomes] never had the ability or desire to make payments on the loan obligation" and that "[t]he maintenance of the action appears to the Court as done to prolong the [Lincicomes'] ability to live rent free."

The Lincicomes fail to meaningfully address these findings, which are otherwise amply supported by the record. *See Kahn v. Morse & Mowbray*, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005) (observing that an award of attorney fees under NRS 18.010(2) must be supported by evidence). We therefore conclude that the district court was within its discretion in awarding fees. *See id.* ("The decision to award attorney fees is within the sound discretion of the district court and will not be overturned absent a manifest abuse of discretion." (internal quotation marks omitted)). Consistent with the foregoing, we

ORDER the judgment of the district court AFFIRMED.[3]

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Leon Aberasturi, District Judge
Clouser Hempen Wasick Law Group, Ltd.
Millward Law, Ltd.
Wedgewood, LLC
Hutchison & Steffen, LLC/Las Vegas
Third District Court Clerk

[3]To the extent that the Lincicomes have raised arguments on appeal that we did not specifically address, we are not persuaded that those arguments warrant reversal.