IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT N. OWENS AND BRENDA B. HARDING,
Appellants,
vs.
JAVIER S. PRECIADO,
Respondent.

No. 87799-COA

ORDER OF REVERSAL AND REMAND

Robert N. Owens and Brenda B. Harding appeal from a district court order dismissing their complaint in a real property action. Sixth Judicial District Court, Humboldt County; Steven R. Kosach, Senior Judge.

Gold Country Estates is a residential subdivision located in Humboldt County and, at the time it was created in the early 1980's, the subdividers recorded declarations and restrictions (D&Rs) that govern the parcels within the subdivision. Central to this appeal, section N of the D&Rs provides as follows:

> Lot 21 of Block C of Gold Country Estates[ ] Unit I is hereby designated as an open space-recreational area and is hereby dedicated for public purposes and use, which dedication is irrevocable and may be accepted at any time by Humboldt County. Until acceptance of any such area by Humboldt County, it shall be the duty of the owners of Lots in Gold Country Estates and any subsequent unit thereof to maintain any such area in a safe, neat and clean manner at all times. In so doing the owners of the

> Lots shall act as a homeowners association, with the owners entitled to one vote for each lot. In the event that a majority of the owners decide to construct improvements thereon, the association may do so after approval of the plans by Humboldt County. Each lot owner's proportionate share of the costs of any such improvements, development and maintenance, payable upon such assessment as shall be determined by the owners of a majority of the lots.

Section O further states that the covenants therein run with the land, were binding on the parties thereto and those who claim under them for 20 years following recordation, and would renew for successive 10-year periods unless the majority of the subdivision's parcel owners execute and record an instrument amending them. Lastly, section P provides that "[e]nforcement shall be [by] proceedings at law or in equity" and the D&R's concluding language clarifies that "all successive future owners shall have the same right to invoke and enforce its provisions as the original [subdividers]" (collectively referred to as the enforcement provisions).

At some point, the subdividers formed a business, B, C, & D Enterprises (BC&D), which held the parcel referenced in section N (the parcel) until 1999, when it transferred the parcel to Humboldt County by way of a deed with possibility of reverter, which set forth a procedure by which the parcel would revert to BC&D if Humboldt County failed to construct a park on the parcel. Humboldt County ultimately failed to construct a park on the parcel and, as a result, the subdividers, who were the successors in interest to BC&D following its dissolution, elected to exercise their right of reversion, prompting Humboldt County to record a

deed transferring the parcel to them. Following a subsequent series of conveyances, one of the subdividers acquired 100 percent ownership of the parcel and, in 2017, the subdivider deeded the parcel to respondent Javier S. Preciado, who erected a fence around the parcel and posted "No Trespassing" signs.

Owens and Harding, who own a home in the subdivision, then commenced the underlying proceeding for declaratory relief against Preciado. In their operative complaint, Owens and Harding presented allegations detailing the terms of the D&Rs and the history of the subdivision and parcel, and they sought a declaration that (1) the parcel had been irrevocably dedicated as an open-space recreation area, (2) the dedication could only be overturned by a majority of the subdivision's current homeowners, and (3) Preciado must make the parcel open and available for recreational use by the subdivision's residents.

Preciado moved to dismiss the complaint, asserting that Owens and Harding lacked standing to bring this action because they did not have an ownership interest in the parcel. Owens and Harding opposed that motion, arguing they had standing to seek declaratory relief because they owned property in the subdivision that abutted the parcel, were granted enforcement rights under the D&Rs enforcement provisions, and were therefore entitled to ensure that other parcel owners within the subdivision, such as Preciado, complied with the D&Rs. In his reply, Preciado contended that section N of the D&Rs contemplated the creation of a homeowners' association to manage the parcel through a majority voting system based on one vote per lot and that Owens and Harding therefore lacked standing

to pursue a claim for declaratory relief unless a majority of the subdivision's parcel owners approved such action.

Following a hearing, the district court entered an order dismissing Owens and Harding's complaint, finding that they lacked standing to bring this action because a majority of the subdivision's parcel owners had not voted to seek declaratory relief. This appeal followed.

On appeal, Owens and Harding contend that the district court erroneously determined they lacked standing to enforce section N absent a majority vote of the subdivision's property owners, emphasizing that the D&Rs impose no such requirement, but instead, provide for enforcement by "all successive future owners." Preciado disagrees.

This court reviews the dismissal of a complaint for lack of standing under the same rigorous, de novo standard as dismissal for failure to state a claim. *See Citizens for Cold Springs v. City of Reno*, 125 Nev. 625, 629, 218 P.3d 847, 850 (2009); *see also Shoen v. SAC Holding Corp.*, 122 Nev. 621, 634, 137 P.3d 1171, 1180 (2006) (observing that when a plaintiff lacks standing, it is appropriate to dismiss the complaint for failure to state a claim upon which relief may be granted). We deem all factual allegations in the complaint as true and draw all inferences in the plaintiff's favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Dismissal is only appropriate "if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* When reviewing an order dismissing a complaint for lack of standing, we "may take into account . . . items present in the record of the case[ ] and any exhibits attached to the complaint," such as the

D&Rs at issue here. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

We use the rules governing contract interpretation to interpret restrictive covenants. *Diaz v. Ferne*, 120 Nev. 70, 73, 84 P.3d 664, 665-66 (2004). When the facts are not disputed, contract interpretation is subject to de novo review as a question of law. *Id.* at 73, 84 P.3d at 666. Although the supreme court has held that "[r]estrictive covenants are strictly construed[,]" the court has also explained that "[w]ords in a restrictive covenant, like those in a contract, are construed according to their plain and popular meaning." *Id.* at 73, 84 P.3d at 666 (alterations in original). Restrictive covenants should be harmonized whenever possible and construed to reach a reasonable solution. *See Eversole v. Sunrise Villas Homeowners' Ass'n*, 112 Nev. 1255, 1260, 925 P.2d 505, 509 (1996). And no provision should be rendered meaningless. *See Musser v. Bank of Am.*, 114 Nev. 945, 949, 964 P.2d 51, 54 (1998).

Here, as discussed above, the D&Rs only contain two general provisions pertinent to their enforcement. In particular, the concluding language of the D&Rs states that "all successive future owners shall have the same right to invoke and enforce its provisions as the original owners" and section P of the D&Rs provides that "[e]nforcement shall be by proceedings at law or in equity." Taken together these enforcement provisions, by their plain meaning, generally bestow upon each owner of a parcel in the subdivision the right to individually enforce the D&Rs through court proceedings. *See Anderson v. Bommer*, 926 P.2d 959, 962 (Wyo. 1996) (concluding that the restrictive covenants governing a subdivision "clearly

and unambiguously grant[ed] the power to enforce the covenant in each and every record property owner" based in part on language stating that "[t]he power to enforce the following restrictions and covenants reside in the [original owners] and all future owners of record").

Separately, the D&Rs include provisions that require a majority vote by the subdivision's parcel owners before certain actions may be taken. For example, section N contemplates that the subdivision's parcel owners would create a homeowners' association to maintain the parcel and decide by a majority vote whether to "construct improvements [on the parcel]" and if so, how much in assessments to collect from individual parcel owners for the "improvement[ ], development and maintenance" of the parcel. Section O of the D&Rs further provides for the provisions therein to run with the land unless a majority of the subdivision's parcel owners record an instrument agreeing to modify the D&Rs in whole or in part.

While the district court seemingly determined that one or both of these majority-vote requirements were specific terms that took precedence over the D&Rs enforcement provisions, the majority-vote requirements do not deal with enforcement of the D&Rs as written and thus do not qualify or otherwise limit the enforcement provisions. *See Shelton v. Shelton*, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003) (stating that specific terms in a contract "will qualify the meaning of a general provision"). To the contrary, the majority vote requirements in section N and O apply only when specific affirmative actions are to be taken that will alter the status quo by improving the parcel, imposing assessments on parcel owners in connection with the parcel, or amending the D&Rs.

Consequently, for a harmonious reading of the D&Rs, the enforcement provisions and majority vote requirements must be treated as separate and distinct. *See Eversole*, 112 Nev. at 1260, 925 P.2d at 509. To conclude otherwise and require a majority vote before section N's irrevocable dedication may be enforced would negate the D&Rs enforcement provisions, which as discussed above, authorize individual enforcement. *See Musser*, 114 Nev. at 949, 964 P.2d at 54 (1998). Likewise, such a construction could negate section O's requirement that the D&Rs be amended through a recorded agreement by the subdivision's parcel owners since a de facto amendment would be affected if the majority of the subdivision's parcel owners declined to enforce the irrevocable dedication. *Id.* Thus, for the foregoing reasons, we conclude that the district court erred by dismissing Owens and Harding's complaint on the basis that they lacked standing to pursue their claim for declaratory relief absent a vote to pursue such relief by the majority of the subdivision's parcel owners. *See Citizens for Cold Springs*, 125 Nev. at 629, 218 P.3d at 850; *Shoen*, 122 Nev. at 634, 137 P.3d at 1180; *Diaz*, 120 Nev. at 73, 84 P.3d at 665-66.

Nevertheless, Preciado contends that we may affirm the dismissal of Owens and Harding's complaint because the allegations therein were insufficient to establish standing since they did not show a justiciable controversy, a legally protectable interest, an issue ripe for adjudication, or a personal injury. *See Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016) (stating that standing to pursue declaratory relief requires "a personal injury and not merely a general interest that is common to all members of the public"); *Knittle v. Progressive Cas. Ins. Co.*,

112 Nev. 8, 10, 908 P.2d 724, 725 (1996) (holding that a party may seek declaratory relief only if there is a justiciable controversy, a legally protectible interest, and an issue ripe for adjudication). However, we agree with Owens and Harding that the allegations in their complaint were sufficient to pursue a claim for declaratory relief.

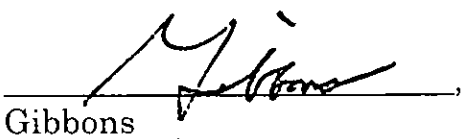
In particular, the complaint established a justiciable controversy by alleging there was a dispute between the parties concerning the character of the parcel in light of section N's irrevocable dedication of the parcel as an open-space recreation area and Preciado's enclosure of the parcel and posting of "No Trespassing" signs. *Knittle*, 112 Nev. at 10, 908 P.2d at 725 (providing that a justiciable controversy is "a controversy in which a claim of right is asserted against one who has an interest in contesting it"). Further, the complaint demonstrates that Owens and Harding have a legally protectible interest to the extent it alleges they own property in the subdivision and that the subdivision is governed by the D&Rs, which as discussed above, provide for the individual right of enforcement. The complaint also demonstrates that the controversy is ripe for adjudication insofar as it alleged that Preciado enclosed the parcel in violation of the D&R's irrevocable dedication. *See Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224, 1231 (2006) (stating that a claim is ripe for adjudication when the alleged harm is "sufficiently concrete, rather than remote or hypothetical, to yield a justiciable controversy"). And the complaint shows that Owens and Harding have suffered a personal injury in connection with Preciado's enclosure of the parcel by alleging that they relied on the D&Rs when they purchased their parcel and would not

have made the purchase if they knew the D&Rs could be violated. *See Schwartz*, 132 Nev. at 743, 382 P.3d at 894.

Thus, because the allegations in Owens and Harding's complaint were sufficient to establish their standing to pursue a claim for declaratory relief and since the district court erred by determining that they could not assert such a claim without a majority of the parcel owners in the subdivision first voting to authorize the action, we

ORDER the judgment of the district court REVERSED AND REMAND for further proceedings consistent with this order.[1]


, C.J.
Bulla


, J.
Gibbons


, J.
Westbrook

[1]Although the parties dispute whether section N's irrevocable dedication is valid in connection with Preciado's efforts to establish that Owens and Harding lacked standing to pursue declaratory relief, we decline to resolve that issue in the first instance so that the factual and legal issues may be fully developed below, giving Nevada's appellate courts an adequate record to review. *See Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) (recognizing that an appellate court is not the appropriate forum to resolve questions of fact in the first instance).

cc: Chief Judge, Sixth Judicial District Court
Hon. Steven R. Kosach, Senior Judge
Laurie A. Yott, Settlement Judge
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