IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW KVANCZ, AN INDIVIDUAL,
Appellant,
vs.
LAKERIDGE GENERAL IMPROVEMENT DISTRICT, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA; AND DOUGLAS COUNTY, NEVADA, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,
Respondents.

No. 89713-COA

ORDER OF REVERSAL AND REMAND

Matthew Kvancz appeals from orders granting summary judgment. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Facts and procedural history

In September 2018, Kvancz purchased property from the Werbin Family Trust (the Trust) in Lakeridge Estates (Lakeridge), a subdivision at Lake Tahoe. Kvancz planned to lease his property as a short-term or vacation rental. At the time he purchased the property, Kvancz was aware that there was pending litigation against respondent Lakeridge General Improvement District (LGID), challenging an amendment to the 1984 Amended Declaration of Protective Restrictions for Lakeridge (the 1984 Declaration) to prohibit short-term or vacation rentals of less than 60 days (generally referred to as the 2016 Amendments).

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LGID is the governing body of Lakeridge instead of a homeowners' association. LGID derives its authority to govern Lakeridge from NRS Chapter 318 and respondent Douglas County's ordinances. Traditionally, LGID's authority has included the ability to maintain streets and implement necessary infrastructure for the community. In 2016, the LGID Board drafted proposed short-term or vacation rental restrictions and then distributed the proposed restrictions to Lakeridge homeowners for review and approval. At LGID's direction, the homeowners voted on the 2016 Amendments, and a majority approved the amendment banning short-term rentals of less than 60 days.[1]

Dale B. and Lila J. Truett (collectively, Truett) were homeowners in the Lakeridge subdivision in 2016 when the proposed 2016

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[1]The 2016 Amendments, which were filed in Douglas County, restricted short-term or vacation rentals in the Lakeridge subdivision as follows:

> N. A PROPERTY OWNER may rent, lease, provide a time share/exchange, or similar arrangement of the dwelling unit on their LOT to a single family, provided that the dwelling is rented, leased, provided under a timeshare/exchange, or other arrangement pursuant to a lease or rental agreement which is: (a) in writing; (b) for a term of at least sixty (60) days (i.e. no short term rentals of a term less than sixty (60) days are permitted); (c) has filed with the County for any necessary permit, defining the maximum number of people and vehicle occupancy, and which complies with other relevant governmental regulations; and, (d) is subject to all of the provisions of these RESTRICTIONS, and any further Rules and Regulations adopted by LGID.

Amendments were voted on by the homeowners. Truett voted "no" on the 2016 Amendments implementing the short-term rental restriction. Another property owner, Joey Max Laub, like Truett, also voted "no" on the amendments, including the short-term rental restriction. Laub sold his property to the Trust, which later sold it to Kvancz in 2018.

Even though a majority of the Lakeridge homeowners passed the 2016 Amendments imposing the short-term rental restriction of less than 60 days, Truett continued to rent his property as a short-term or vacation home rental in violation of the restriction. After receiving multiple violation notices and fines for doing so, Truett filed a complaint against LGID on December 7, 2016 (the *Truett* action)[2], seeking declaratory and injunctive relief, and challenging the 2016 short-term rental restriction on the grounds that the 1984 Declaration only authorized the Lakeridge homeowners to amend then-existing restrictive covenants and did not authorize the addition of *new* restrictions, including the ban on short-term rentals of less than 60 days. Subsequently, at the district court's direction, Truett filed an amended complaint for declaratory and injunctive relief, naming all the Lakeridge homeowners, including the Trust, as necessary parties.[3] In the operative complaint, Truett also requested declaratory relief because the "amendment to the 1984 Declaration creating a new ban on vacation home rentals is invalid and unenforceable and has no legal

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[2]*See generally Truett v. Lakeridge Gen. Improvement Dist.*, No. 16-CV-0315 (Nev. Ninth Jud. Dist. Ct., 2018).

[3]We note that a copy of the district court's order regarding joinder of necessary parties is not included in the record on appeal, but the parties do not dispute its existence or substance.

effect" with respect to the Truett property, and "will cause irreparable injury to Plaintiffs and to their use and enjoyment of their Property."

After nearly two years of litigation, the parties submitted competing motions for summary judgment. Before the district court resolved the motions, Truett and the Trust stipulated to dismiss the Trust from the case. The stipulation included language that the Trust's property would be bound by the court's decision, and the court granted the dismissal. After the Trust was dismissed, but before the court entered its order on the pending summary judgment motions, the Trust sold its property to Kvancz. Kvancz was never joined as a party to the *Truett* action, nor did he intervene. Respondent Douglas County was also not a party in *Truett*.

The district court's summary judgment order in the *Truett* action is pivotal to resolving this appeal under the principles of claim and issue preclusion. In determining whether to grant Truett's claims for relief, the court found that Lakeridge residents engaging in short-term rentals constituted a residential use of their property instead of a commercial one. As a result, the 2016 ban on short-term rentals was unrelated to the prohibition in the 1984 Declaration that banned commercial activities on Lakeridge properties. Therefore, the court concluded that "Lakeridge's 2016 short-term rental ban constitutes a new restriction on the residential use of Truett's Lakeridge lot" which Truett was unaware could be enacted when he purchased his property. The district court specifically rejected LGID's argument that the 2016 Amendments restricting short-term rentals were related to the preexisting 1984 restrictions banning commercial properties and instead treated the short-term rental restriction as a "new" ban.

Based on the foregoing, the district court granted summary judgment on Truett's first claim for declaratory relief. The court's order stated, "The Court finds and declares as a matter of law that to the extent the 2016 Amendments prohibit Truett and other non-consenting Lakeridge owners from renting out their lots, the 2016 Amendments are *invalid* and unenforceable." (Emphasis added.) Truett's second cause of action for injunctive relief was also summarily granted. The court permanently enjoined LGID from enforcing the short-term rental ban against Truett and other nonconsenting property owners. The court's order stated, "Because the harm involves an improper restraint on property rights, the relative interests of the parties weigh[ ] in favor of Truett, the legal remedy of damages will not be sufficient and Truett will be irreparably harmed if LGID is not enjoined." The district court also included in its order footnote 6 which unequivocally stated: "The Court does not consider whether LGID would have authority to enforce the short-term rental ban and collect the associated fines if the ban were otherwise valid. As a general improvement district, LGID is a political subdivision of the State having only those powers conferred by NRS Chapter 318 and Douglas County ordinances." The district court's order was not appealed.[4]

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[4]In a post-judgment motion, Truett's attorneys, purportedly on behalf of Truett, unsuccessfully attempted to seek clarification of the district court's order to define who was a nonconsenting homeowner for the purpose of prohibiting LGID from enforcing the short-term rental ban against other Lakeridge homeowners, such as Kvancz, for whose benefit the relief was requested. The district court denied Truett's request for post-judgment relief on the grounds that NRCP 54(b) was not the proper vehicle under which to seek it. Interestingly, LGID opposed the post-judgment motion in part based on Kvancz being a *nonparty* to the *Truett* action, which is contrary to its position in this appeal that Kvancz was a party or in privity

Following the district court's order in *Truett*, LGID took the position that all homeowners who owned property in Lakeridge when the vote on the 2016 Amendments was taken would be treated as "non-consenting" homeowners and would not be prohibited from engaging in short-term rentals and homeowners who purchased their properties after the 2016 Amendments went into effect would be treated as "consenting" homeowners and prohibited from engaging in short-term rentals. Kvancz, who had begun engaging in short-term rentals, was subsequently advised by LGID that the short-term rental restriction applied to his property, and he was eventually issued monetary assessments for his noncompliance with the restriction. Kvancz's efforts to resolve his ongoing dispute with LGID over his ability to engage in short-term rentals were unsuccessful.

In October 2021, Kvancz applied for a renewal of his Vacation Home Rental (VHR) permit in Douglas County. He stated in the application that his property was not subject to CC&Rs or bylaws that prohibited or limited the existence of short-term or vacation rentals. By way of background, Douglas County had issued VHR permits to Lakeridge homeowners for many years and continued to do so for several years after the 2016 Amendments were passed. In June 2021, the Douglas County Board of Commissioners adopted Ordinance 2021-1582, which prohibited the issuance of VHR permits in areas "subject to covenants, conditions, and restrictions ('CC&Rs') or bylaws that prohibit or limit the existence of VHRs." In December 2021, Douglas County apparently became aware of the 2016 Amendments prohibiting short-term rentals of less than 60 days in Lakeridge. Thereafter, the County denied the renewal of Kvancz's VHR

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with a party in the *Truett* case because it purchased property from the Trust.

permit and took the position that Kvancz was not truthful in completing his application and therefore imposed fines for his conduct and threatened him with criminal prosecution.

In March 2022, Kvancz filed his complaint for declaratory and injunctive relief against LGID and Douglas County. In his complaint, Kvancz alleged that LGID as a general improvement district only has the authority conferred to it by NRS Chapter 318 and the Douglas County Ordinances, and neither source of power gave LGID the authority to promulgate a ban of short-term rentals, or to impose or collect fines to enforce the ban. Kvancz also alleged that Douglas County lacked the authority to deny his VHR permit and penalize him for using his property as a short-term rental because the restriction in the 2016 Amendments relied on by Douglas County was invalid and unenforceable.

Ultimately, the parties submitted competing motions for summary judgment. In considering Douglas County's motion first, the district court found that at the time Kvancz purchased his property he was aware of the 2016 Amendments and the ban on short-term rentals that "could eliminate" his ability to utilize his home as a vacation rental. The court also stated that the *Truett* court found the 2016 Amendments were valid because the Lakeridge homeowners passed them, and logically, the *Truett* court had to find the restriction on short-term rentals valid *before* deciding whether they could be applied to Truett as a nonconsenting homeowner.

In reaching its decision in favor of Douglas County, the district court applied the principles of claim and issue preclusion set forth in *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054-55, 194 P.3d 709, 713-14 (2008), and concluded that Kvancz's claims should be summarily dismissed.

The court found that *claim preclusion* "bars this matter since (1) Plaintiff's predecessor at interest was a party to *Truett*, (2) the decision of Judge Gregory was final, and (3) the claims examined in Truett and those against Douglas County in this case are identical, i.e., whether the 2016 Amendments are valid."

The district court also found that *issue preclusion* "bars Plaintiff's claims against Douglas County in this case given that: (1) the issue decided in *Truett* is identical to the issue here, i.e., whether the 2016 Amendments are valid; (2) the ruling was on the merits and it was final; (3) Plaintiff's predecessor at interest was a party to *Truett* and Plaintiff could have moved to intervene but chose not to, and (4) the issue was fully and fairly litigated." Although the district court acknowledged that LGID's authority to fine Kvancz for operating a short-term rental was not examined by the *Truett* court, citing to footnote 6 in the order, the court determined that the power of LGID to issue fines had "nothing to do" with whether the 2016 Amendments were valid and therefore the short-term rental restriction could be enforced against Kvancz.

The district court also granted summary judgment in favor of LGID on Kvancz's claims, adopting most of the same factual and legal analysis contained in the order granting summary judgment to Douglas County. Interestingly, in granting LGID's motion, the court also indicated that the *Truett* court examined LGID's role in proposing the changes, assisting with the vote and recordation, and determined that LGID could engage in both these activities. The district court specifically stated: "In Truett . . . [the court] examined the history of the Lakeridge CC&R's, the role of the [LGID] in proposing the changes, assisting with the vote and recordation . . . [and] . . . determined that LGID could assist with proposing

changes to the CC&R's and also assist with conducting the vote and recordation."[5] Notwithstanding the court's findings, the *Truett* order did not define nonconsenting homeowners, and the *Truett* court denied the post-judgment relief requested to amend the judgment to clarify the scope of the court's order.

On appeal, Kvancz argues that the district court erred in granting Douglas County's and LGID's respective motions for summary judgment based on claim and issue preclusion, as the *Truett* order has no preclusive effect on his claims against either LGID or the County because LGID lacked the requisite statutory authority to facilitate the short-term rental ban in Lakeridge. Respondents counter that the validity of the 2016 Amendments has already been upheld and Kvancz, who purchased his property in 2018, is bound by the short-term rental restriction. We agree with Kvancz.

The district court erred in granting respondents' motions for summary judgment based on claim and issue preclusion principles

A district court's decision to grant summary judgment is reviewed de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "Summary judgment is appropriate . . . when the pleadings and other evidence on file demonstrate that no genuine [dispute] of material fact [remains] and that the moving party is entitled to judgment as a matter of law." *Id.* (citation modified); NRCP 56(a). All evidence must be viewed in a light most favorable to the nonmoving party. *Wood*, 121 Nev. at 729,

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[5]It should be clarified that the *Truett* court simply set forth the history of the events in its order but did not specifically determine whether LGID could have undertaken the activities it did in conjunction with the 2016 Amendments under NRS Chapter 318.

121 P.3d at 1029. To withstand summary judgment, the nonmoving party cannot rely solely on general allegations and conclusions set forth in the pleadings but must instead present specific facts demonstrating the existence of a genuine factual dispute supporting their claims. *Id.* at 731, 121 P.3d at 1030-31; NRCP 56(e).

Further, this court reviews a district court's order resolving an action on the grounds of claim preclusion or issue preclusion de novo. *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014) (recognizing that appellate courts review a district court's decision to apply claim and issue preclusion de novo).

Claim preclusion does not bar Kvancz's claims

Claim preclusion applies when the following three prongs are satisfied: "(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is based on the claims or any part of them that were or could have been brought in the first case." *Holland v. Anthony L. Barney, Ltd.*, 139 Nev. 476, 486, 540 P.3d 1074, 1984 (Ct. App. 2023) (quoting *Five Star*, 124 Nev. at 1054, 194 P.3d at 712, *holding modified by Weddell v. Sharp*, 131 Nev. 233, 241, 350 P.3d 80, 85 (2015)) (modifying the three-factor test to require that "the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, *or* the defendant can demonstrate that he or she should have been included as a defendant in the earlier suit and the plaintiff fails to provide a 'good reason' for not having done so").

In this appeal, we elect to resolve the issue of claim preclusion before us under the third prong of *Five Star*—that Kvancz's claims were not litigated in the *Truett* case, nor could they have necessarily been brought. Specifically, Kvancz contends his claims are based on LGID exceeding its

authority under NRS Chapter 318 thereby rendering the short-term rental restriction contained in the 2016 Amendments invalid and unenforceable against him. Respondents in turn argue that the *Truett* court found that the 2016 Amendments were valid and Kvancz should have intervened in the *Truett* case to challenge the short-term rental restrictions and litigate his own claims, which could have been brought, and since he failed to do so, he is bound by the *Truett* order. Kvancz counters that he was not required to intervene in *Truett* to later pursue his claims against LGID and Douglas County, brought under a different theory of liability, which was not litigated in *Truett*. We agree that Kvancz's claims are not barred under claim preclusion for the following reasons.

The district court in *Truett* specifically declined to consider whether LGID had the statutory authority under NRS Chapter 318 to facilitate the enactment of the short-term rental restriction in Lakeridge. The *Truett* order does not specifically find that LGID's actions in bringing the short-term rental restriction to a vote of the Lakeridge homeowners was authorized by the powers granted to it under NRS Chapter 318, nor that the short-term rental restriction contained in the 2016 Amendments was valid against all property owners based on LGID's alleged authority to have facilitated its implementation. In footnote 6 of the *Truett* order, as previously noted, the court stated, "The Court does not consider whether LGID would have authority to enforce the short-term rental ban . . . if the ban were otherwise valid." Critically, nowhere in the district court's order does the court address the validity of the "new" 2016 restriction on short-term rentals as pertaining to homeowners such as Kvancz, who obtained property after the 2016 Amendments were approved, nor did the court's order determine whether LGID had the authority under NRS Chapter 318

to have facilitated the implementation of the short-term rental restriction in the first place.

Respondents attempt to sidestep the issue of whether LGID had the statutory authority to facilitate the short-term rental ban by characterizing the district court's order in *Truett* as having broadly decided that the 2016 Amendments were found to be valid; therefore, Kvancz was bound by them, and the short-term rental restriction applied to his property. We acknowledge that respondents' position on appeal is in line with the district court's observation in this case that the *Truett* court had to first determine that the 2016 Amendments were valid *before* determining that they could not be applied retroactively to Truett, and therefore, presumedly by extension, the *Truett* court must have found the 2016 Amendments were valid and enforceable against Kvancz.

But the *Truett* court did not reach this conclusion. Instead, with regard to Truett's claims, the *Truett* court specifically found as a matter of law that "to the extent the 2016 Amendments prohibit Truett and other non-consenting Lakeridge owners from renting out their lots, the 2016 Amendments are *invalid* and unenforceable." (Emphasis added.) The *Truett* court did not address the validity of the 2016 Amendments related to LGID's statutory authority or their application to future property owners like Kvancz. Indeed, a plain reading of the *Truett* court's order supports that the court did not broadly determine that the 2016 amendments were otherwise valid. Thus, the *Truett* court's determination that the short-term rental restriction was *invalid* as to Truett, as a nonconsenting homeowner, does not parlay into a finding that the 2016 Amendments are valid to ban Kvancz from engaging in short-term rentals. Further, the district court in *Truett* did not specifically define who constituted a "nonconsenting" versus

a "consenting homeowner."[6] And the *Truett* court declined to amend its post-judgment order to define "nonconsenting homeowners" or to further clarify the scope of its order. Thus, the third prong of *Five Star* necessary to find claim preclusion to bar Kvancz's claims has not been satisfied. This is because the district court in *Truett* did not address whether the short-term rental restriction was valid based on LGID's statutory authority to have facilitated its enactment in the first place, and if so, under what circumstances buyers in Lakeridge *after* the amendments were enacted in 2016 would be bound by this restriction.[7]

As an aside, Douglas County only began enforcing short-term rental restrictions in 2021, well after the *Truett* case concluded. Therefore, even if Kvancz had been joined as a party in *Truett*, neither he, nor any

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[6]We again note that after the *Truett* order was final, it was LGID and not the *Truett* court that made the decision to treat all homeowners who owned property in the subdivision in 2016, when the vote was taken, as "nonconsenting homeowners" and buyers who purchased properties after 2016 as "consenting homeowners" because they were on actual or constructive notice of the short-term rental restriction, which could therefore be enforced against them.

[7]It should be noted Kvancz's claims are factually distinct from Truett's claims based on the date he purchased his property. Therefore, the *Truett* court's decision resolving Truett's claims would not necessarily have resolved Kvancz's claims. Further, there is no authority offered to support that, under the facts and circumstances of *Truett*, the district court would have permitted Kvancz to pursue his claims in the *Truett* case, particularly due to the timing of Kvancz's purchase of the property, the fact the *Truett* litigation had been ongoing for years, and the briefing for the competing summary judgment motions had been completed. And finally, Truett had no reason to join Kvancz as a necessary party because Truett could procure complete relief against LGID without Kvancz or his claims being involved. *See Rose, LLC v. Treasure Island, LLC*, 135 Nev. 145, 158-59, 445 P.3d 860, 870-71 (Ct. App. 2019).

other party in that case, would have been able to bring claims for relief against Douglas County because its ordinance governing the enforcement of short-term rental restrictions did not go into effect until 2021.

Issue preclusion does not bar Kvancz's claims

As the Nevada Supreme Court explained in *Five Star*, the following factors are required for issue preclusion to apply: "(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and become final; (3) the party against whom the judgment is asserted must have been a party or in privity with a party in the prior litigation; and (4) the issue was actually and necessarily litigated." 124 Nev. at 1055, 194 P.3d at 713 (citation modified) (internal quotation marks omitted). With respect to the fourth factor—actually and necessarily litigated—the Nevada Supreme Court explained this requirement in *Alcantara*, 130 Nev. 252, 321 P.3d 912. The supreme court stated: "When an issue is properly raised and submitted for determination, the issue is actually litigated. Whether the issue was necessarily litigated turns on whether the common issue was *necessary to the judgment in the earlier suit*." 130 Nev. at 262, 321 P.3d at 918 (citation modified).

For many of the same reasons analyzed under claim preclusion above, issue preclusion likewise does not apply to bar Kvancz's claims under the first and fourth prongs of *Five Star*. This is because the validity of the 2016 Amendments based on LGID's authority under NRS Chapter 318 to facilitate the restriction of short-term rentals in Lakeridge was not litigated in the *Truett* matter. Specifically, the issue of whether LGID was statutorily authorized to assist in crafting a restriction to ban short-term or vacation home rentals and bringing that restriction to a vote of the

Lakeridge homeowners, which would limit the use of their individual properties, was *not* actually and necessarily litigated in the *Truett* case. Thus, the *Truett* decision should not have been given preclusive effect by the district court in this case.

The Nevada Supreme Court specifically rejected the preclusive effect of undecided issues in *Paulos v. FCH1, LLC*, 136 Nev. 18, 456 P.3d 589 (2020). In *Paulos*, the supreme court decided the issue-preclusive effect of a federal decision in subsequent state court proceedings. As the supreme court explained: Issue preclusion bars the "successive litigation of an issue or fact or law actually litigated and resolved in a valid court determination essential to the prior judgement, even if the issue reoccurs in the context of a different claim. Thus, issue preclusion will apply to prevent the relitigation of matters that parties have had a full and fair opportunity to litigate." *Id.* at 23, 456 P.3d at 593-594 (citation modified).

Applying the principles of issue preclusion, the supreme court explained in *Paulos* that the Ninth Circuit had only affirmed the federal court's dismissal of the case[8] based on qualified immunity under the second prong of qualified immunity, as both prongs of the two-prong test must be satisfied but did not address the first prong. *Id.* at 24-25, 456 P.3d at 594-95. The first prong of the qualified-immunity test, whether the officer acted reasonably under the Fourth Amendment, was not determined in affirming the dismissal. *Id.* And because the Ninth Circuit was silent on whether the officer acted reasonably (based on the first prong) this issue was "not necessarily decided in the final judgement" and issue preclusion did not apply to bar Paulos' state law claims based on use of excessive force. *Id.*

[8]*Paulos v. FCH1, LLC*, 685 F. App'x 581 (9th Cir. 2017).

The supreme court, applying the Restatement (Second) of Judgments section 27, comment o (1982), citing to a federal case, concluded that "[t]he federal decisions agree that once an appellate court has affirmed on one ground and passed over another, preclusion does not attach to the ground omitted from its decision." *Id.* (quoting *Dow Chem. v. EPA*, 832 F.2d 319, 323 (5th Cir. 1987)).

Here, the district court's reliance on the *Truett* court's order to generally decide that the 2016 Amendments were valid and enforceable against Kvancz was misplaced. The issue of whether LGID had the statutory authority under NRS Chapter 318 to facilitate the enactment of a short-term rental restriction in Lakeridge was not decided by the *Truett* court, nor was it necessary for the court to decide this issue in order to grant Truett relief on his claims as a nonconsenting homeowner. Likewise, the *Truett* court did not decide whether the 2016 Amendments were valid and enforceable against subsequent purchasers like Kvancz, nor was it necessary for the court to reach this issue.

Applying the supreme court's reasoning in *Paulos* to the appeal before us, the issues of whether NRS Chapter 318 gave LGID the authority to facilitate the passage of the short-term rental restriction for Lakeridge and whether Kvancz is bound by this restriction, have not been actually and necessarily litigated as required for issue preclusion to apply as a bar. On remand, the district court must determine whether LGID, under its authority set forth in NRS Chapter 318, had the statutory authority to facilitate the short-term rental restriction in Lakeridge. If so, the district court will then need to determine whether the 2016 Amendments restricting short-term rentals are enforceable against Kvancz. Therefore, 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.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Nathan Tod Young, District Judge
David Wasick, Settlement Judge
Anderson Keuscher, PLLC
Woodburn & Wedge
Douglas County District Attorney/Minden
Alling & Jillson, Ltd.
Douglas County Clerk