IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE NEIL R. PHELPS, JR. AND LEESA B. PHELPS FAMILY TRUST, A NEVADA TRUST,
Appellant,
vs.
WESTERN PROGRESSIVE-NEVADA, INC., A DELAWARE CORPORATION, AND WELLS FARGO BANK, N.A., SUCCESSOR BY MERGER TO WACHOVIA BANK, N.A., A NATIONAL BANKING ASSOCIATION,
Respondents.

No. 90333-COA

ORDER OF AFFIRMANCE

The Neil R. Phelps, Jr. and Leesa B. Phelps Family Trust (Phelps Family Trust) appeals from a district court final order in an action to quiet title. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

Phelps Family Trust was the owner of a residential property and initiated an action to quiet title. In the operative complaint, Phelps Family Trust raised several claims involving respondents Wells Fargo Bank, N.A., the beneficiary of a deed of trust encumbering the property, and Western Progressive-Nevada, Inc., the trustee of the deed of trust. As relevant to this matter, Phelps Family Trust alleged that the deed of trust had been extinguished as a matter of law under NRS 106.240, which it alleged was triggered after the recording of a notice of default after the borrowers defaulted on the loan. In addition, Phelps Family Trust argued that the borrowers' bankruptcy proceedings caused the debt to become wholly due in 2011. Phelps Family Trust also alleged that Wells Fargo

violated NRS 107.200-.300 by failing to timely respond to a request for information regarding the debt secured by the deed of trust.

Respondents filed a motion to dismiss, asserting the facts as alleged were insufficient to state a claim for which relief could be granted. Phelps Family Trust opposed the motion. The district court later issued a written order granting the motion to dismiss in part, explaining that Phelps Family Trust's NRS 106.240 claim failed. However, the district court denied the motion to dismiss in part, as it determined that Phelps Family Trust's allegations under NRS 107.200-.300 were sufficient to state a claim for which relief could be granted.

Phelps Family Trust thereafter filed a NRCP 59(e) motion to alter or amend the decision to dismiss its NRS 106.240 claim. Respondents opposed the motion. The district court subsequently issued a written order denying the motion to alter or amend, determining that Phelps Family Trust failed to demonstrate any law or fact justified altering or amending the decision to dismiss the NRS 106.240 claim.

Respondents also filed a motion for summary judgment concerning Phelps Family Trust's NRS 107.200-.300 claim and Phelps Family Trust opposed the motion. The district court ultimately granted the motion for summary judgment. This appeal followed.

On appeal, Phelps Family Trust argues the district court abused its discretion by denying its motion to alter or amend, contending the district court erred by determining that only the maturity date on the deed of trust can trigger NRS 106.240's ten-year period. We review a district court's decision to deny a NRCP 59(e) motion to alter or amend for an abuse of discretion. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). A court abuses its discretion if "no

reasonable judge could reach a similar conclusion under the same circumstances." *Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014). The "basic grounds for a Rule 59(e) motion are correcting manifest errors of law or fact, [presenting] newly discovered or previously unavailable evidence, the need to prevent manifest injustice, or a change in controlling law." *AA Primo*, 126 Nev. at 582, 245 P.3d at 1193 (internal quotation marks and alterations omitted).

Having considered the parties' arguments and the record before this court, we conclude Phelps Family Trust fails to demonstrate the district court abused its discretion by denying its motion to alter or amend. As previously explained, Phelps Family Trust alleged in its complaint that the recorded notice of default triggered NRS 106.240's ten-year period, but the supreme court has considered and rejected such an allegation. *See LV Debt Collect, LLC v. Bank of N.Y. Mellon*, 139 Nev. 232, 236-37, 534 P.3d 693, 698 (2023) (explaining that recording a notice of default to institute nonjudicial foreclosure proceedings does not trigger NRS 106.240's ten-year time frame in part because of the statutory cure period). Moreover, the supreme court has also determined that a borrower's bankruptcy discharge does not make an obligation wholly due for the purposes of NRS 106.240. *W. Coast Serv., Inc. v. Kassler*, No. 84122, 2023 WL 4057073, at *1 (Nev. June 16, 2023) (Order of Reversal and Remand).

As a result, we conclude that neither the 2010 recorded notice of default, which provided the borrowers with an opportunity to cure the default, nor the borrowers' bankruptcy proceedings triggered the ten-year period under NRS 106.240. As the plain language of NRS 106.240 precluded events such as the ones alleged by Phelps Family Trust from triggering the ten-year period under NRS 106.240, Phelps Family Trust

does not demonstrate it was entitled to relief. Therefore, Phelps Family Trust fails to demonstrate the district court abused its discretion by determining that there were no bases warranting alteration or amendment of its decision to dismiss the NRS 106.240 claim.[1] *See AA Primo Builders*, 126 Nev. at 589, 245 P.3d at 1197. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]

Bulla, C.J.

Gibbons, J.

Westbrook, J.

cc: Hon. Veronica Barisich, District Judge
Janet Trost, Settlement Judge
Hong & Hong
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk

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[1]To the extent Phelps Family Trust also argues the district court erred by granting respondents' motion to dismiss the NRS 106.240 claim, we conclude it does not demonstrate the court erroneously determined its allegations were insufficient to state a valid claim, as the allegations in the operative complaint were insufficient to trigger the ten-year period under NRS 106.240. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *see also LV Debt Collect*, 139 Nev. at 236-38, 534 P.3d at 698-99.

[2]Insofar as the parties raise arguments that are not specifically addressed in this order, we conclude that they either do not present a basis for relief or need not be addressed.