IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARINA FRANCO MENDEZ, Appellant, vs. PRIME EQUITY SOLUTIONS, LLC, A NEVADA CORPORATION, Respondent.	No. 90110-COA

ORDER OF REVERSAL AND REMAND

Marina Franco Mendez appeals from a district court order granting a motion for partial summary judgment, certified as final under NRCP 54(b), in a quiet title action and post-judgment orders denying a motion to alter or amend judgment and granting a writ of restitution. [1] Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

In 2023, Dámaso Ortiz Batalla signed a deed that purported to convey real property located in North Las Vegas, to respondent Prime Equity Solutions, LLC (Prime). Ortiz Batalla had originally contracted to sell the property to RJR Homes, LLC, who then assigned its right to buy the property to Prime. Promptly after the sale to Prime, Mendez filed the present action seeking, among other things, to void the deed and quiet title to the property in her name.

Mendez alleged in her complaint that she had been married to Ortiz Batalla since 1994, that she contributed funds towards purchasing the

[1]RJR Homes, LLC, is also listed as a respondent, but is not involved in the orders at issue here, nor has it participated in this appeal. The clerk of this court shall therefore conform the caption for this matter to the one on this order by removing RJR Homes, LLC, as a respondent.

subject property in 2000, and that she had continued to contribute towards the maintenance of the subject property, thereby making the property community property. Under NRS 123.230(3), a deed purporting to convey community property is void if it is not signed by both spouses. Therefore, Mendez argued that the deed from Ortiz Batalla to Prime was void and title should properly be quieted in her favor.

Prime answered the complaint and filed a counterclaim seeking, among other things, to quiet title in its favor. Prime alleged that public records showed that Ortiz Batalla was an unmarried man when he purchased the property in 2000, and Ortiz Batalla stated that he was an unmarried man in the 2023 deed to Prime. Under NRS 47.240(2), Prime argued that there is a conclusive presumption of "[t]he truth of the fact recited, from the recital in a written instrument between the parties thereto." Therefore, Prime argued that it was entitled to the conclusive presumption that Ortiz Batalla was unmarried and thus the 2023 deed Prime received was valid.

Thereafter, Prime filed a motion for partial summary judgment regarding the competing quiet title actions, arguing that it was entitled to the conclusive presumption that Ortiz Batalla was an unmarried man and therefore could unilaterally transfer the property. Prime also argued that family court, and not district court, had exclusive jurisdiction over Mendez's community property claims and that Mendez's community property claims were both time barred and waived. In support of its motion for partial summary judgment, Prime attached an affidavit from Kyle Fujimoto, the manager of Prime, attesting to the basic facts of Prime's transaction with Ortiz Batalla and noting that "Prime Equity was never aware of the existence of [Mendez] or that she claimed to be Batalla's wife until after closing." Prime also attached the 2000 deed to Ortiz Batalla, listing him as

an unmarried man, as well as four deeds of trust or refinancing documents for the property in which Ortiz Batalla is listed as an unmarried man. Further, Prime attached Mendez's answers to interrogatories, in which she admitted to discovering that her name was not on the title around December 2012, although the exact date was unknown.

Mendez opposed Prime's motion for partial summary judgment and filed a countermotion seeking partial summary judgment quieting title in her favor. In opposing Prime's motion, Mendez argued that there were still significant disputes of material fact—particularly "regarding the course of dealings between the parties." In support of her opposition and countermotion, Mendez attached her signed affidavit noting that "since April 1994, [she] and ORTIZ [Batalla] have remained married," that "on or about November 6th, 2000, [she] and ORTIZ [Batalla] jointly purchased [the subject property]," and that "the Subject Property was jointly purchased with community funds and the Subject Property has been treated as community property . . . since November 2000." She further attested that she contributed to the down payment on the subject property and had paid "taxes and expenses for the Subject Property," as well as "expended substantial sums for paying the ongoing financing and maintenance of the Subject Property." Mendez also attached documents which purported to be civil and religious marriage certificates between Dámaso Ortiz Batalla and Marina (or María)[2] Franco Mendez in 1994.

In addition, Mendez attached text message records from a group chat between the managers of Prime, Kyle Fujimoto and Rafael Juarez; a member of RJR Homes, LLC; and a contractor with RJR Homes,

[2]The religious marriage certificate lists her name as María, while the civil marriage certificate lists it as Marina. The spelling of Mendez's first name on these documents is not being challenged.

LLC. The text messages showed that Prime knew before purchasing the subject property that the house was lived in, that the sales price was abnormally low, and that the seller (Ortiz Batalla) would not grant access to the property until after it was sold.

In its reply, Prime challenged Mendez's evidence regarding her marriage to Ortiz Batalla, arguing that she had only provided a self-serving affidavit and uncertified, untranslated marriage certificates. Prime also submitted Ortiz Batalla's affidavit, signed on the date of closing in 2023, which claimed that he was "not married and [had] not been married since acquiring [the subject] property on November 6, 2000. No other person can claim interest on this property." Prime also attached a "Property Account Inquiry" which noted that, according to county tax records, Ortiz Batalla was the owner of the property.

The district court granted Prime's motion for partial summary judgment and denied Mendez's countermotion, thereby quieting title in Prime's favor. The court refused to entertain Mendez's arguments that NRS Chapter 123 community property presumptions overcome the conclusive presumptions of NRS 47.240(2) because NRS 3.223(1)(a) vests exclusive jurisdiction "over all matters relating to NRS [Chapter] 123 in the family court." And because the district court "is not a designated family court," it concluded that it "lack[ed] jurisdiction to even consider [Mendez's] arguments." Yet, the court found that, because NRS 47.240(2) establishes a "conclusive presumption" of "[t]he truth of the fact recited, from the recital in a written instrument between the parties thereto," and the 2000 and 2023 deeds both recited that Ortiz Batalla was an unmarried man, Prime was entitled to a conclusive presumption that Ortiz Batalla was, in fact, an unmarried man. Accordingly, the court concluded that the subject property was separate property that Ortiz Batalla could dispose of unilaterally.

Further, the district court found that Mendez's arguments that she had an interest in the property were "precluded under the applicable statute of limitations as well as the doctrines of waiver and/or estoppel." Lastly, the court found that Mendez had "only provided conclusory allegations and statements that she was married to [Ortiz] Batalla, that she jointly purchased the [Subject] Property with community funds, that she has 'undertaken all indicia, rights and obligations of ownership,' and that she had paid all the taxes and expenses on the [Subject] Property, with no admissible evidence support[ing] such conclusory statements." Based on these findings, the district court found that Mendez could not demonstrate that any genuine disputes of material fact remained as to her purported interest in the property and that Prime was entitled to partial summary judgment on its quiet title claim. The court further denied Mendez's competing motion for partial summary judgment.

Mendez thereafter filed a motion to alter or amend the district court's judgment and sought to certify the court's order granting partial summary judgment as final for the purpose of appeal. The district court denied Mendez's motion except for granting final certification under NRCP 54(b).

In addition, Prime sought a permanent writ of restitution, claiming that Mendez had possessed the subject property during the pendency of the litigation and had not vacated following the issuance of the district court order quieting title in Prime's favor. The district court granted this motion over Mendez's opposition. This appeal, which challenges the order granting partial summary judgment to Prime, the denial of Mendez's motion to alter or amend judgment, and the order granting a permanent writ of restitution, followed.

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 proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* The party seeking summary judgment must initially demonstrate the absence of a genuine issue of material fact. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). To withstand summary judgment, the nonmoving party cannot rely solely on general allegations and conclusions set forth in the pleadings, but "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine [dispute] for trial or have summary judgment entered against him." *Wood*, 121 Nev. at 731-32, 121 P.3d at 1031 (quoting *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992)); NCRP 56(c)(1)(a). "[T]he evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Wood*, 121 Nev. at 729, 121 P.3d at 1029.

On appeal, Mendez argues that the district court erred in granting partial summary judgment in favor of Prime because she demonstrated that a genuine dispute of material fact remained as to her claimed marriage to Ortiz Batalla and her resulting community property interest in the subject property. In so doing, she also challenges the district court's determinations regarding its jurisdiction to consider her community property-based arguments; the application of NRS 47.240(2) 's conclusive presumption; and the conclusion that her community property claim was barred by the statute of limitations, waiver, or estoppel. We begin our examination of these issues by considering whether Mendez demonstrated

the existence of a genuine dispute of fact regarding her claimed marriage to Ortiz Batalla.

There was a genuine dispute regarding whether Mendez was married to Ortiz Batalla

Here, Prime moved for partial summary judgment and averred that there were no genuine disputes of material fact. Therefore, the burden fell to Mendez to show that there were genuine disputes of material fact. *Cuzze*, 123 Nev. at 602, 172 P.3d at 134 . Mendez replied that Oritz Batalla's marital status was disputed and presented her own affidavit attesting that she had been married to Ortiz Batalla since 1994, along with documents purporting to be certificates of marriage. Prime countered with, among other things, Ortiz Batalla's affidavit, executed at the time of the sale, attesting that he was not married at any point between 2000 and 2023.

While ordinarily these competing affidavits would create a genuine dispute of material fact, the district court found that Mendez's affidavit was ineffective because it "only provided conclusory allegations and statements that she was married to [Ortiz] Batalla." We conclude that the district court erred in making this determination.

In the context of surviving a summary judgment motion, an affidavit "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." NRCP 56(c)(4). However, the supreme court has distinguished between conclusory statements, which are ineffective, and specific facts, which must be taken as true at the summary judgment stage. For example, the supreme court has held that a physician's affidavit in a medical malpractice case did not create a genuine dispute of material fact when it "state[d] little apart from the doctor's name which is admissible into evidence" and did not deny the facts of the plaintiff's case, instead summarily asserting that the physician's "performance conformed

to the applicable standard of care." *Clauson v. Lloyd*, 103 Nev. 432, 435, 743 P.2d 631, 633 (1987). In contrast, specific facts in an affidavit, for which the nonmoving affiant has firsthand knowledge, may establish a genuine dispute of fact. *See Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1226, 925 P.2d 1175, 1181 (1996) (concluding that conflicting affidavits regarding the scope of employment precluded summary judgment in a respondeat superior action); *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 835-37, 897 P.2d 1093, 1095-96 (1995) (holding that, although a nonmoving affiant's allegations must be accepted as true, they were still insufficient to overcome a conflicting presumption); *Posadas v. City of Reno*, 109 Nev. 448, 456, 851 P.2d 438, 444 (1993) (holding that a plaintiff's affidavit alleging he suffered harm created a genuine dispute of fact regarding that harm in an intentional infliction of emotional distress case).

Here, Mendez's affidavit alleged specific facts pertaining to Ortiz Batalla's marital status, purchasing the subject property in 2000, and the ongoing maintenance of the subject property. Specifically, she claimed that she and Ortiz Batalla "were married in Mexico as a certified civil marriage on April 7th, 1994," and that they were married "as a certified religious and church marriage on July 31st, 1994." Further, she swore that "since April 1994, [she] and ORTIZ [Batalla] have remained married as husband and wife." Mendez would naturally have firsthand knowledge of her own marriage and the purchase and maintenance of the property that she claimed has been her residence for 23 years. Therefore, Mendez would be able to testify to the facts therein. Accordingly, Mendez's affidavit was sufficient for the purposes of surviving an adverse motion for summary judgment. Conversely, Prime presented Ortiz Batalla's affidavit, in which he declared that, on the date of the sale, he was "currently not married and [had] not been married since acquiring this property on November 6, 2000."

Ortiz Batalla would analogously be able to testify to such, and this assertion directly contradicted Mendez's affidavit regarding whether the two had been married for over 20 years. Thus, based on the affidavits alone, the district court erred in finding that there was no genuine dispute regarding Ortiz Batalla's marital status. *See Rockwell*, 112 Nev. at 1226, 925 P.2d at 1181.

To survive summary judgment, however, Mendez also had to show that the issue of Ortiz Batalla's marital status when buying the subject property was material. The district court found that Ortiz Batalla's actual marital status was not material because: (1) the court lacked jurisdiction to consider whether Ortiz Batalla was married and her associated community property arguments; (2) Prime was entitled to a conclusive presumption that Ortiz Batalla was unmarried under NRS 47.240(2); and (3) Mendez was precluded from arguing that she had an interest in the subject property because of the statute of limitations, waiver, and estoppel. We disagree and address the district court's reasoning below.

The district court had jurisdiction to consider Mendez's NRS Chapter 123-based community property arguments

Mendez contends that the district court erred in finding that it could not consider the effect of NRS Chapter 123, which addresses the rights of married people, in assessing her claim to the title of the subject property. Prime disagrees, arguing that the district court correctly found that it lacked jurisdiction to consider Mendez's NRS Chapter 123-based community property arguments because designated family courts have exclusive jurisdiction over all matters pertaining to NRS Chapter 123. Whether the district court had jurisdiction to consider Mendez's community property arguments turns on the construction of NRS 3.223(1)(a), which sets forth the jurisdiction of the family courts.

"Subject matter jurisdiction is a question of law subject to de novo review." *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009). This court likewise reviews questions of statutory interpretation de novo. *N. Nev. Homes, LLC v. GL Constr., Inc.*, 134 Nev. 498, 500, 422 P.3d 1234,1236 (2018). "When a statute is clear and unambiguous, [this court] give[s] effect to the plain and ordinary meaning of the words, and the primary consideration is the Legislature's intent." *LVMPD v. Holland*, 139 Nev. 96, 99, 527 P.3d 958, 962 (2023) (citation modified).

As relevant here, NRS 3.223(1)(a) states that "family court has original, exclusive jurisdiction in any proceeding [b]rought pursuant to . . . chapter . . . 123." Contrary to Prime's argument—and the district court's conclusion below—an examination of Mendez's complaint makes clear that her claims were not brought pursuant to NRS Chapter 123. Notably, Mendez's complaint sought to quiet title to the subject property and to void the deed from Ortiz Batalla to Prime. More specifically, her claims were grounded in NRS 40.010, which provides that "[a]n action may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim." And claims like Mendez's—which seek to quiet title to real property—are properly within the subject matter jurisdiction of the district courts. *Low v. Staples*, 2 Nev. 209, 211-13 (1866); *see, e.g.*, *Shadow Wood HOA v. N.Y. Cmty. Bancorp*, 132 Nev. 49, 58, 366 P.3d 1105, 1111 (2016) ("[A] person who brings a quiet title action may, . . . invoke the court's inherent equitable powers to resolve the competing claims to such title.").

Despite the fact that Mendez's claims sound in quiet title, Prime nonetheless insists that the district court lacked jurisdiction over her complaint because she advanced arguments in support of her claims—and

in opposition to Prime's—which implicated NRS Chapter 123 by asserting that she was married to Ortiz Batalla and that the subject property was therefore community property which he could not unilaterally sell. But this argument ignores the plain language of NRS 3.223 , which provides the family courts with exclusive jurisdiction over claims "brought pursuant to" NRS Chapter 123, not where, as here, the claims are brought pursuant to a statute outside the family court's exclusive jurisdiction but that require consideration of related arguments and issues based on NRS Chapter 123.

Indeed, although not couched in jurisdictional terms, our supreme court implicitly recognized as much in *In re Colman Family Revocable Living Trust*, *Dated June 23*, *2011* , 136 Nev. 112, 114, 460 P.3d 452, 454 (2020), where the court upheld a district court's finding regarding whether certain property was transmuted into community property in a case where determining the status of a trust necessarily required determining whether one spouse's property was transmuted into community property before their divorce. Thus, for the reasons set forth above, we conclude the district court erred in determining that it lacked jurisdiction to consider Mendez's NRS Chapter 123-based arguments when determining ownership of the property.

NRS 47.240(2) does not preclude third-party challenges

NRS 47.240(2) states that there is a conclusive presumption of "[t]he truth of the fact recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title." The district court found that both the initial 2000 deed transferring the subject property to Ortiz Batalla and the 2023 deed transferring the property to Prime recited that Ortiz Batalla was an unmarried man. As a result, the court determined that Prime was entitled to the conclusive presumption that Ortiz Batalla was, in fact, an unmarried man and the

subject property was therefore held as separate property, which he could then sell to Prime.

On appeal, Mendez contends that the district court erred in finding that NRS 47.240(2) created a conclusive presumption that Ortiz Batalla was an unmarried man, arguing that because she was married to Ortiz Batalla at all relevant times, under NRS 123.220 the subject property was presumed to be community property. We agree with Mendez.

When conducting our de novo review of the interpretation of a "a statutory provision, this court looks first to the plain language of the statute. This court avoids statutory interpretation that renders language meaningless or superfluous." *Clay v. Eighth Jud. Dist. Ct.* , 129 Nev. 445, 451, 305 P.3d 898, 902 (2013) (citation modified).

NRS 47.240(2) expressly provides—as relevant here—that there is a conclusive presumption of the truth of facts recited in a written instrument "between the parties thereto." But in applying NRS 47.240(2) to conclude Prime was entitled to a conclusive presumption that Ortiz Batalla was unmarried, the district court failed to account for the fact that Mendez was not a party to either the 2000 deed through which Ortiz Batalla purchased the subject property or the 2023 deed transferring the property to Prime. Thus, the district court essentially interpreted the statutory presumption as applying to all people, regardless of whether they were parties to the instrument. However, this treatment of NRS 47.240(2) runs afoul of the canons of statutory construction as it renders the "between the parties thereto" language in the statute superfluous. *See Clay*, 129 Nev. at 451, 305 P.3d at 902. Instead, to give full effect to the words of the legislature, the phrase "between the parties thereto" must be treated as a condition limiting the concept introduced before it. *See Flangas v. State* , 104 Nev. 379, 380-81, 760 P.2d 112, 113 (1988) (suggesting, but not

expressly stating, that the "between the parties thereto" language in NRS 47.240(2) limits who is entitled to the conclusive presumption in permitting a challenge to the truth of a recital in a written instrument because, among other things, the dispute was between a signatory and a non-signatory to the instrument); *see also* *Nationstar Mortg., LLC v. Eldorado Neighborhood Second Homeowners Ass'n*, 2019 WL 4120797, *5 (D. Nev. 2019) (Order Granting Summary Judgment in Favor of Plaintiffs Based on Federal Foreclosure Bar) (interpreting *Flangas* as supporting the proposition that the presumption set forth in NRS 47.240(2) only applies "in a dispute 'as between the parties' to a written document").

Based on the foregoing, and as relevant to the issues before us, by its plain language, NRS 47.240(2) 's conclusive presumption of the truth of the facts recited in a written instrument only applies "between the parties" to the instrument. And because Mendez was not a party to either the 2000 or 2023 deed, the district court erred in determining that Prime was entitled to a conclusive presumption that Ortiz Batalla was an unmarried man.

Mendez was not barred or estopped from asserting a community property interest

Mendez next argues that the district court erred in finding that she was precluded from arguing that she had a community property interest in the subject property under "the applicable statute of limitations as well as [by] the doctrines of waiver and/or estoppel." Prime disagrees.

Beginning with the statute of limitations, the parties agree that this action is governed by NRS 11.220, [3] which provides that "[a]n action for

[3]While NRS 11.070 establishes a five-year limitations period for quiet title actions, we apply the limitations period from NRS 11.220 because the parties agree that statute controls. The difference between these statutes does not impact our resolution of this matter.

relief . . . must be commenced within 4 years after the cause of action shall have accrued." Further, "[t]he general rule concerning statutes of limitation is that a cause of action accrues when the wrong occurs and a party sustains

injuries for which relief could be sought." *Siragusa v. Brown*, 114 Nev. 1384, 1392, 971 P.2d 801, 806 (1998).

NRS 40.010 permits a person to bring an action "against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim." Accordingly, such a claim must be premised on there being another who claims an adverse estate or interest in the subject property. Mendez claims that she was not injured until the 2023 deed transferred the subject property from Ortiz Batalla to Prime, and therefore she predicated her underlying quiet title action on the date of the transfer. Prime claims that Ortiz Batalla's claim was always adverse to Mendez's because he held the property as an unmarried man, and therefore her quiet title cause of action accrued when Ortiz Batalla took title to the property in 2000. But Prime fails to cite any authority supporting its contention that failing to name a spouse on a deed impairs that spouse's community property interest. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks support of relevant authority). Moreover, Prime's position is inconsistent with Nevada community property law.

Under NRS 123.220,

> [a]ll property, other than that stated in NRS 123.130, acquired after marriage *by either spouse or both spouses*, is community property unless otherwise provided by: (1) An agreement in writing between the spouses; (2) A decree of separate maintenance issued by a court of competent jurisdiction; (3) NRS 123.190 (describing gifts recorded in writing); (4) A decree issued or agreement in writing entered pursuant to NRS 123.259.

(Emphasis added.)

Notably, the statute explicitly recognizes the creation of community property interests upon the acquisition of property by a single spouse. Further, a deed to real property is not one of the enumerated documents that prevents the creation of community property in NRS 123.220. Indeed, as our supreme court has recognized, the designation of community property does not depend on the language of the deed conveying the property. *See Breliant v. Preferred Equities Corp.* , 112 Nev. 663, 670, 918 P.2d 314, 318-19 (1996) (acknowledging that under the circumstances presented a deed to two people "each married men as their sole and separate property" did not overcome the presumption that the deed created a community property interest in their wives), *abrogated on other grounds by Delgado v. Am. Fam. Ins. Grp.* , 125 Nev. 564, 570, 217 P.3d 563, 567 (2009). Accordingly, a deed that does not recognize the creation of a community property interest does not, by itself, undermine the spouse's community property interest.

Here, although the 2000 deed to Ortiz Batalla does not name Mendez and instead listed him as an unmarried man, the language of the deed itself was not adverse to Mendez's community property claim. Consequently, the 2000 deed to Ortiz Batalla did not harm Mendez and therefore a quiet title action did not accrue. It was not until the 2023 deed, which transferred the property from Ortiz Batalla to Prime that Mendez's potential interest was adversely affected. Accordingly, the 2023 deed harmed Mendez by negating any community property interest, and therefore a quiet title action accrued to remedy that harm. Thus, the statute of limitations on such action began to run in 2023. Because Mendez filed the present suit promptly after the 2023 deed was recorded, the district court erred in determining her claims were barred by the statute of limitations.

The district court further erred to the extent it found —without explanation—that Mendez's claims were barred by the waiver doctrine. "Waiver requires the intentional relinquishment of a known right ." *Nev. Yellow Cab Corp. v. Eighth Jud. Dist. Ct.* , 123 Nev. 44, 49, 152 P.3d 737, 740 (2007). "Thus, the waiver of a right may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that the right has been relinquished. " *Id*.

As detailed above, if Mendez was married to Ortiz Batalla at the time the subject property was purchased, she automatically had a community property interest by virtue of her marriage to Ortiz Batalla, and her interest was preserved even though only Ortiz Batalla's name was on the title. Accordingly, any inaction on Mendez's part in seeking to correct the names on the 2000 deed would not indicate an intention to relinquish her right to one half of the property as that property remained part of the community.

Turning to the district court's finding that equitable estoppel barred Mendez's claims, the court also erred in making this determination. "Equitable estoppel operates to prevent a party from asserting legal rights that, in equity and good conscience, they should not be allowed to assert because of their conduct." *Nev. State Bank v. Jamison Fam. P'ship*, 106 Nev. 792, 799, 801 P.2d 1377, 1382 (1990). Generally, the proponent of equitable estoppel must establish that

> (1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; [and] (4) he must have relied to his detriment on the conduct of the party to be estopped.

NGA #2 Ltd. Liab. Co. v. Rains , 113 Nev. 1151, 1160, 946 P.2d 163, 169 (1997). Notably, "silence can raise an estoppel quite as effectively as can words." *Cheqer, Inc. v. Painters & Decorators Joint Comm.* , 98 Nev. 609, 614, 655 P.2d 996, 998-99 (1982).

On appeal, Mendez argues that estoppel does not apply because she had "undertaken all indicia, rights and obligations of ownership," and she took no steps to induce Prime to purchase the property. In responding to this argument, Prime asserts that "under the facts of this case," Mendez should be estopped from challenging the 2023 deed because she did not correct the title. But Prime does not meaningfully explain how the doctrine of estoppel applies to the facts of this case. Notably, Prime fails to argue how Mendez intended for Prime's reliance at all or how Mendez's failure to correct the title gave Prime the right to believe that Mendez intended for Prime to purchase the subject property. In the absence of any cogent argument on these points, we need not consider Prime's responsive arguments and thus, we conclude the district court erred in determining that Mendez's claims were barred by estoppel. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Whether Mendez and Ortiz Batalla were married is a material fact

As outlined above, the district court erred in determining it lacked jurisdiction to consider Mendez's NRS Chapter 123-based arguments; that Prime was entitled to a conclusive presumption that Ortiz Batalla was unmarried under NRS 47.240(2); and that Mendez's claims were barred by the statute of limitations, waiver, and estoppel. The court likewise erred in concluding that Mendez failed to demonstrate that genuine disputes of fact remained as to whether she was married to Ortiz

Batalla at all times relevant to this matter. [4]

As Mendez emphasizes on appeal, whether she was—and is—married to Ortiz Batalla is a material fact because if they were married when he purchased the subject property, then there is a presumption that the subject property is community property which cannot be conveyed without the consent of both members of the community. [5] *See* NRS 123.220 (providing that there is a rebuttable presumption that property acquired by a spouse is community property); NRS 123.230 (providing that "[n]either spouse may sell, convey or encumber the community real property unless both join in the execution of the deed or other instrument by which the real property is sold, conveyed or encumbered, and the deed or other instrument must be acknowledged by both "). Thus, given that a material dispute of fact remains as to this issue, we conclude that the district court erred in granting Prime partial summary judgment on its quiet title claim. *See Wood*, 121 Nev. at 731, 121 P.3d at 1030-31. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with

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[4]While Mendez argues that the district court erred in denying her partial summary judgment on her quiet title claim, this argument does not provide a basis for relief. As outlined above, competing affidavits were presented from Mendez and Ortiz Batalla regarding Ortiz Batalla's marital status. Thus, there was a genuine dispute as to whether Ortiz Batalla was married to Mendez such that she was not entitled to summary judgment on her quiet title claim. *See Wood*, 121 Nev. at 731, 121 P.3d at 1030-31.

[5]On appeal, Prime does not dispute that, if this court determined a genuine dispute of fact existed as to Ortiz Batalla's marital status, that fact would be material to the parties' competing quiet title claims. And neither party contests that Mendez did not join in the execution of the 2023 deed from Ortiz Batalla to Prime.

this order.[6]

Bulla, C.J.

Gibbons, J.

Westbrook, J.

cc: Hon. Ronald J. Israel, District Judge
Cory Reade Dows & Shafer
Smith & Shapiro, PLLC
Knight & Ryan, PLLC
Eighth District Court Clerk

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[6]Because we reverse the district court's grant of partial summary judgment on Prime's quiet title claim, we need not address the denial of Mendez's motion to alter or amend that decision. With regard to the post-judgment writ of restitution, the parties acknowledge that, following entry of the challenged order, Mendez vacated the subject property. Thus, any challenge to the writ of restitution, which sought to remove her from the property, has been rendered moot. *Nat'l Coll. Athletic Ass'n v. Univ. of Nev., Reno*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981) ("[T]he duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it.").

Finally, insofar as the parties raise 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.