



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY SCHMIDT,
Appellant,
vs.
WASHOE COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,
Respondent.

No. 90336-COA

ORDER OF AFFIRMANCE

Gary Schmidt appeals from a district court order denying a petition for a writ of mandamus in an administrative matter. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Washoe County Code Enforcement issued an administrative penalty against Schmidt based on his unlawful storage of a recreational vehicle (RV) on his property. Schmidt was unsuccessful in appealing that decision to a hearing officer and then to the Washoe County Board of Adjustment (BOA). From there, Schmidt attempted to appeal the BOA's decision to the Washoe County Board of County Commissioners (BCC) but was informed that he could only challenge the decision by filing a petition for judicial review in the Second Judicial District Court.

Instead, Schmidt filed an ex parte petition for a writ of mandamus against respondent Washoe County in the Second Judicial District Court seeking an order directing Washoe County to permit him to proceed with his appeal to the BCC, which he argued was authorized by

NRS 278.3195(1), NRS 278.310(3), and Washoe County Code (WCC) 110.910.15(i)(5)-(6). In its answer, Washoe County argued that, when read together, NRS 278.3195(1) and NRS 278.310(3) required the BCC to adopt either an ordinance allowing for appeals of BOA decisions to the BCC or an ordinance providing for judicial review of the same. And Washoe County maintained that, in accordance with those statutes, the BCC promulgated WCC 110.910.15(i)(5)-(6), which unequivocally provided for judicial review of BOA decisions, rather than appeals to the BCC.

Following a hearing, the district court entered a written order denying Schmidt's petition for a writ of mandamus. In doing so, the court determined that Schmidt was required to file a petition for judicial review to challenge the BOA's decision concerning his administrative penalty for the reasons stated in Washoe County's answer.¹ And given that Schmidt could file a petition for judicial review to challenge the BOA's decision, the district court concluded that he had a plain, speedy, and adequate legal remedy that precluded writ relief. This appeal followed.

On appeal, Schmidt challenges the denial of his petition for a writ of mandamus. A writ of mandamus is available to compel the

¹The district court also addressed the parties' arguments concerning whether WCC 110.910.15(i)(5)-(6) conflicted with two other ordinances—specifically, WCC 110.912.10(j)(9) and WCC 110.912.20(a)(1). The court determined that WCC 110.910.15(i)(5)-(6) took precedence based on the general/specific canon of statutory construction. Because Schmidt does not address that determination on appeal, he forfeited any challenge thereto, *Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (2015) (stating that issues not raised on appeal are deemed forfeited), and we therefore do not address the issue in this order.

performance of an act that the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion, *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of mandamus will not issue, however, if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of the law. NRS 34.170; *Int'l Game Tech., Inc.*, 124 Nev. at 197, 179 P.3d at 558. The petitioner bears the burden of demonstrating that extraordinary relief is warranted, *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004), and we review a district court's order denying a petition for a writ of mandamus for an abuse of discretion, *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 877, 266 P.3d 623, 626 (2011).

In challenging the denial of his petition for a writ of mandamus, Schmidt maintains that he had a right to appeal the BOA's decision to the BCC under NRS 278.3195(1) and NRS 278.310(3) and that the district court misconstrued those statutes in concluding that they authorized the BCC to enact WCC 110.910.15(i)(5)-(6) and thereby require him to pursue judicial review in the Second Judicial District Court rather than an appeal. We review questions of statutory interpretation de novo. *Martinez v. Maruszczak*, 123 Nev. 433, 438, 168 P.3d 720, 724 (2007). To interpret a statute, this court first looks to the statute's plain language and construes the statute "according to its fair meaning and so as not to produce unreasonable results." *Dolores v. State, Emp. Sec. Div.*, 134 Nev. 258, 259, 416 P.3d 259, 261 (2018) (internal quotation marks omitted). "When a statute is clear and unambiguous, we give 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).

NRS 278.3195 applies to the governing body of a city or county, which in the present case is the BCC. *See* NRS 278.015 (providing that “[g]overning body’ means the city council or other legislative body of the city or the board of county commissioners or, in the case of Carson City, the Board of Supervisors”). As relevant here, the statute states that “[e]xcept as otherwise provided in NRS 278.310, each governing body shall adopt an ordinance providing that any person who is aggrieved by a decision of . . . the [BOA] . . . may appeal the decision to the governing body.” NRS 278.3195(1). Thus, by its plain terms, the statute generally requires the BCC to adopt an ordinance allowing for appeals of BOA decisions to the BCC. However, the statute includes the phrase “except as otherwise provided in NRS 278.310,” which is an express exception to the general rule, signaling that NRS 278.310 governs the specific ordinance that the BCC is required to adopt. *See Dep’t of Corr. v. Eighth Jud. Dist. Ct.*, 141 Nev., Adv. Op. 54, 579 P.3d 1018, 1021 (Nev. 2025) (construing NRS 41.031(1)’s use of the phrase “except as otherwise provided in NRS 41.032 to 41.038” as creating express exceptions to Nevada’s waiver of sovereign immunity).

The provision of NRS 278.310 that is relevant to this appeal is subsection 3. It provides as follows:

Each governing body . . . shall adopt an ordinance providing that any person who is aggrieved by a decision of the [BOA] regarding an appeal of an administrative decision may appeal the decision of the [BOA]. An ordinance that a governing body is required to adopt pursuant to this subsection must

either: (a) [c]omply with subsection 2 of NRS 278.3195,^[2] thereby requiring the aggrieved person first to appeal the decision of the board of adjustment to the governing body; or (b) [s]et forth a separate procedure which allows the aggrieved person to appeal the decision of the board of adjustment directly to the district court of the proper county by filing a petition for judicial review

NRS 278.310(3).

Despite Schmidt’s arguments to the contrary, NRS 278.310(3) does not require the BCC to adopt an ordinance that provides for the right to appeal a BOA decision to the BCC while also permitting the ordinance to include an additional option to pursue judicial review instead. Indeed, NRS 278.310(3) employs an “either . . . or” construction in setting forth the required content of the ordinance the BCC must adopt—in particular, the ordinance must provide for either an appeal to the BCC or judicial review. And “[c]ourts presume that ‘or’ is used in a statute disjunctively unless there is *clear* legislative intent to the contrary.” *Dezzani v. Kern & Assocs.*, 134 Nev. 61, 66, 412 P.3d 56, 60 (2018) (internal quotation marks omitted). Here, Schmidt has not demonstrated that the Nevada Legislature *clearly* intended the “or” in NRS 278.310(3) to be conjunctive or that any other circumstances otherwise existed to overcome the presumption of disjunctivity. *See id.*; *see also Fredricks v. City of Las Vegas*, 76 Nev. 418,

²NRS 278.3195(2) governs the procedural requirements that must be set forth in an ordinance authorizing appeals of BOA decisions to a governing body.

421, 356 P.2d 639, 641 (1960) (explaining that “the word ‘or’ may be used, interpreted, or construed in a conjunctive rather than a disjunctive sense to prevent an absurd or unreasonable result, or where the context requires such construction, or such construction is necessitated by some impelling reason in the context”).

As a result, Schmidt fails to demonstrate that the district court erred by concluding that, when read together, NRS 278.3195(1) and NRS 278.310(3) only required the BCC to adopt an ordinance that authorized a person aggrieved by a BOA decision to challenge the decision through one of the procedural pathways set forth in NRS 278.310(3).³ *See Martinez*, 123 Nev. at 438, 168 P.3d at 724. And because Schmidt does not otherwise dispute the district court’s determination that the BCC selected the judicial review pathway when it promulgated WCC 110.910.15(i)(5)-(6), *see Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (2015) (concerning forfeiture of issues not raised on appeal), we conclude that he had a plain, speedy, and adequate legal remedy in that he could petition for judicial review of the subject BOA decision. *See Kay v. Nunez*, 122 Nev. 1100, 1104-05, 146 P.3d 801, 805 (2006) (explaining that writ relief is not available when the petitioner has a plain, speedy, and adequate legal remedy in the form of a statutorily authorized petition for judicial review);

³We express no opinion as to whether NRS 278.310(3) uses “or” in an inclusive sense, such that the BCC could, in its discretion, elect to adopt an ordinance authorizing both procedural pathways. *See Rush v. Kijakazi*, 65 F.4th 114, 120 (4th Cir. 2023) (“[T]he word ‘or’ has an inclusive sense (A or B, or both) as well as an exclusive one (A or B, not both), and is generally used in the inclusive sense.” (internal quotation marks omitted)).

cf. Pan, 120 Nev. at 224-25, 88 P.3d at 841 (providing that writ relief is not available to correct an untimely notice of appeal). Thus, the district court did not abuse its discretion by denying Schmidt's petition for a writ of mandamus. *See Reno Newspapers, Inc.*, 127 Nev. at 877, 266 P.3d at 626. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Egan K. Walker, Chief Judge
Second Judicial District Court, Department 4
Laurie A. Yott, Settlement Judge
Luke A. Busby
Washoe County District Attorney
Washoe District Court Clerk

⁴Insofar 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 or need not be addressed in light of our disposition of this appeal.