



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BHARAT DESAI A/K/A BART DESAI,
Appellant,
vs.
CITY OF HENDERSON AND LAKE
MEAD ESTATES ASSOCIATION (LME
HOA) BOARD,
Respondents.

No. 91636-COA

BHARAT DESAI A/K/A BART DESAI,
Appellant,
vs.
CITY OF HENDERSON AND LAKE
MEAD ESTATES ASSOCIATION (LME
HOA) BOARD,
Respondents.

No. 91664-COA

ORDER OF AFFIRMANCE

Bharat Desai appeals from district court orders granting a motion to dismiss (No. 91664-COA) and a motion for summary judgment (No. 91636-COA). These cases were consolidated on appeal. *See* NRAP 3(b)(2). Eighth Judicial District Court, Clark County; Hon. Erika L. Mendoza, Judge.

In December 2024, Desai filed a complaint alleging respondents City of Henderson (City) and Lake Mead Estates Association (HOA), of which he was a member, were negligent and breached statutory duties. Desai alleged that a July 2022 flood damaged landscaping in a right-of-way belonging to the City that adjoined Desai's property. As to the City, he alleged that it ignored a drainage study and failed to install flood resistant landscaping in the right-

of-way to prevent flooding. He asserted that this failure on the part of the City exposed the HOA and its members to potential liability. He alleged that the HOA then paid to repair the flood damaged landscaping in violation of its own governing documents, and at the expense of its members as reserve funds were used for the repairs. Desai sought an injunction ordering the City to install necessary flood mitigation measures; an order directing the City to reimburse the HOA for landscaping, maintenance, and water bills from 2014 onwards; an order directing the HOA to comply with the relevant by-laws and statutes concerning the maintenance of the right-of-way; and monetary damages to Desai.

The City moved to dismiss, arguing that Desai could not assert claims on behalf of the HOA because he was not a board member or attorney representing the HOA. The City contended that the claims asserted negligence and stemmed from a flood over two years prior to filing and thus were barred by the statute of limitations. The City also argued that Desai's statutory duty or negligence per se claim should be dismissed because the statutes Desai asserted as the basis of this claim did not impose a duty on the City. Desai opposed the motion to dismiss.

The district court granted the City's motion to dismiss. The court characterized Desai's complaint as challenging HOA maintenance obligations regarding landscaping within the City's right-of-way. The court found that Desai lacked standing to sue on behalf of the HOA pursuant to NRS 116.3102(1)(d). The court noted the complaint also asserted a negligence claim arising from flood damage in the right-of-way. It also noted that Desai conceded that he sustained no damage to his own property because of the

flooding. Further, Desai's negligence per se theory of liability was not consistent with state law, which did not impose a duty on the City. Desai appealed the order dismissing the claims against the City in Docket No. 91644.

Subsequently, the HOA moved for summary judgment asserting that Desai did not allege any personal injury or damage to his property and he could not seek recovery in tort for purely economic loss. As to his breach of statutory duty claim, the HOA contended that the statutes and code section upon which Desai relied did not create a private cause of action.

Desai filed an opposition and countermotion for summary judgment wherein he largely reasserted the claims in his complaint. He acknowledged that he never claimed damage to his property as a result of the July 2022 flood and asserted that the HOA's reliance on this fact was misleading. Similarly, Desai acknowledged that he never claimed to be part of the HOA board but asserted that the HOA had been knowingly violating the CC&Rs and NRS Chapter 116 by using its reserve funds to repair flood damage on a non-eligible city-owned public right-of-way.

The HOA replied and opposed the countermotion for summary judgment, noting that Desai acknowledged that his home never flooded. The HOA asserted that NRS 116.31152, which required the HOA to conduct a reserve study of its finances, did not give rise to a private cause of action and NRS 116.3103, which recognized the HOA board members' fiduciary duty to the HOA, did not create a fiduciary duty to members of the HOA. It further contended that a claim based on Henderson Municipal Code (H.M.C.) 19.14.6 was rendered moot because the City was dismissed from the suit. The HOA further pointed out that Desai did not contest its assertions that NRS 278.0157

did not create a duty owed or that he could not recover for purely economic damages in tort.

The district court granted the HOA's motion for summary judgment. The court concluded that the claims stemmed from flood damage occurring in July 2022. The court interpreted the claims as ones sounding in negligence and breach of a statutory duty. The court found that Desai did not respond to the HOA's argument that his negligence claim was precluded by way of the economic loss doctrine or that the damages were too speculative to warrant relief. It also noted that he did not dispute the argument that the statutes upon which he relied did not create a private right of action. Thus, the district court found it was unopposed on this front and granted summary judgment pursuant to EDCR 2.20(e). Desai appealed the order granting summary judgment in favor of the HOA in Docket No. 91636. We address each appeal in turn.

Docket No. 91644

On appeal, Desai argues the merits of his claims against the City and asserts that the City did not dispute any records that were attached to his complaint. Desai also argues the district court did not read the complaint and exhibits thoroughly. He asserts that the claims were not barred by the statute of limitations. Desai contends that the district court did not cite authority showing that he had no standing as an HOA member and taxpayer to file suit against the City for recommending development that neglected public safety. He also asserts that the district court did not appreciate that the HOA had been improperly charged with maintaining and repairing the City's property.

A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *see also Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 308-09, 468 P.3d 862, 878-79 (Ct. App. 2020) (discussing Nevada’s liberal notice pleading standard). Dismissing a complaint is appropriate “only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief.” *Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672. We review legal conclusions de novo. *Id.*

“[T]o prevail on a negligence claim, a plaintiff must establish four elements: (1) the existence of a duty of care, (2) breach of that duty, (3) legal causation, and (4) damages.” *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 824, 221 P.3d 1276, 1280 (2009). Whether a defendant owes a plaintiff a duty of care is a question of law that this court reviews de novo. *Id.* at 823, 221 P.3d at 1280. A negligence per se theory arises when the alleged duty of care is created by statute and satisfies the duty and breach elements of a negligence claim. *Id.* at 828, 221 P.3d at 1283. However, to utilize a statute for negligence per se, the plaintiff must demonstrate (1) they are within the class of persons “whom the statute is intended to protect” and (2) “the injury is the type against which the statute is intended to protect.” *Id.* A plaintiff must nevertheless establish damages for a negligence per se claim. *Id.* at 824, 828, 221 P.3d at 1280, 1283.

As to both Desai’s negligence and negligence per se claims, we conclude that the district court did not err by dismissing them. Desai did not

allege any damage to his real property. To the extent that he alleged damage, it was on behalf of the HOA for money it spent to repair the landscaping. As Desai was not a member of the HOA board nor was he counsel, he could not bring a claim on the HOA's behalf against the City. *See* NRS 116.3102(1)(d) (authorizing an HOA to institute litigation on its behalf); NRS 116.3103(1) (authorizing HOA executive board to act on behalf of HOA); EDCR 5.301(b) ("A corporation or other entity may not appear in proper person."); *see Beazer Homes Holding Corp. v. Eighth Jud. Dist. Ct.*, 128 Nev. 723, 731, 291 P.3d 128, 133 (2012) ("[A] party generally has standing to assert only its own rights and cannot raise the claims of a third party not before the court."). Additionally, to the extent Desai alleged he had standing to pursue claims as a taxpayer against the City, he still had to "show a personal injury and not merely a general interest that is common to all members of the public." *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016).

The district court also did not err in denying the breach of statutory duty claim. The statutes or code upon which Desai's complaint relied do not impose a duty upon the City with respect to residents of the HOA: NRS 116.3103 sets forth the authority of an HOA executive board; NRS 116.3115(2)(b) charges an HOA to establish adequate reserve funds; NRS 278.0157 defines "infrastructure" and "public facilities"; and H.M.C. 19.14.6 directs property developers to assure drainage around developed property. Because Desai did not demonstrate the aforementioned statutes and code imposed a duty upon the City with respect to residents of the HOA, he, as a resident of the HOA, did not demonstrate that he was able to obtain relief under those statutes in that capacity. *See Schwartz*, 132 Nev. at 743, 382 P.3d

at 894; *cf. Stuckey v. Apex Materials, LLC*, 142 Nev., Adv. Op. 17, 584 P.3d 775, 779 (2026) (“Without legislative intent to create a private judicial remedy, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.” (internal quotation marks omitted)); *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 959, 194 P.3d 96, 101 (2008) (providing that the absence of a provision creating a private right of action strongly suggests that the legislature did not intend to create one). Accordingly, the district court did not err in dismissing the complaint to the extent it alleged claims against the City.

Docket No. 91636

Desai contends that the district court erred in granting the HOA’s motion for summary judgment. Desai argues that a number of the HOA’s representations in its motion below and district court’s observations in its order were inaccurate. He contends that the district court erred in concluding that the motion for summary judgment was unopposed because his opposition was contained in the countermotion for summary judgment. He also contends that the district court erred in ruling on his motion for summary judgment without a hearing.

This court typically reviews a district court’s order granting summary judgment 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.* When deciding a summary judgment motion, all evidence “must be viewed in a light most favorable to the nonmoving party.” *Id.* General allegations and

conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31.

However, we review a district court's decision to grant a motion for summary judgment based on the district court rules due to a failure to oppose for an abuse of discretion. *King v. Cartlidge*, 121 Nev. 926, 926-27, 124 P.3d 1161, 1162 (2005); *see also Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 278 & n.15, 182 P.3d 764, 768 & n.15 (2008) (reviewing a district court decision to grant a motion pursuant to EDCR 2.20(b) (now EDCR 2.20(e)) for an abuse of discretion). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Skender v. Brunsonbuilt Constr. & Dev. Co.*, 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006) (internal quotation marks omitted).

The record supports the district court's conclusion that Desai failed to oppose the motion for summary judgment to the extent the HOA asserted his claims were barred by the economic loss doctrine. *See* EDCR 2.20(e) ("Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same."). The HOA pointed out below that Desai's claims did not allege any actual damage to his property, instead suggesting that the failure to apply proper flood control measures resulted in loss of value or potentially increased insurance costs. Thus, because Desai pleaded purely economic losses, as opposed to personal injury or property damage, he could not recover in tort. *See Terracon Consultants W., Inc. v. Mandalay Resort Grp.*, 125 Nev. 66, 75, 206 P.3d 81, 87 (2009) ("The economic loss doctrine draws a legal line between contract and tort liability that forbids tort compensation for

‘certain types of foreseeable, negligently caused, financial injury.’” (quoting *Barber Lines A/S v. M/V Donau Maru*, 764 F.2d 50, 52 (1st Cir. 1985)). Desai’s response did not challenge the application of the economic loss doctrine. And on appeal, Desai has not demonstrated that the district court’s decision to grant the motion for summary judgment based on his failure to oppose that argument was arbitrary or capricious or exceeded the bounds of law or reason. Notably, his appellate briefing mentions, but does not cogently challenge the district court’s application of economic loss doctrine. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider issues that are not supported by cogent argument).

Additionally, with regard to the breach of statutory duty claim or negligence per se claim, the district court concluded that none of the statutes upon which Desai relied imposed a duty upon the HOA to him as a member of the HOA. As previously explained, NRS 116.3103, NRS 116.3115(2)(b), NRS 278.0157, and H.M.C. 19.14.6 do not apply to Desai as a member of the HOA. Desai does not cogently argue that he was within the class of persons these statutes were intended to protect, nor does he address whether his alleged injury is the type the statute intended to protect against. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Consequently, Desai fails to establish that the statutes created a duty of care applicable to the HOA or that the violation of those statutes constituted negligence per se. *See Sagebrush Ltd. v. Carson City*, 99 Nev. 204, 209, 660 P.2d 1013, 1016 (1983) (concluding that the plaintiffs failed to establish that a statute created a duty of care or that violation of the statute constituted negligence per se since the plaintiffs did not

show that they belonged to the class of persons the statute was intended to protect or that their injury was the type the statute was intended to prevent); *see also Builders Ass'n of N. Nev. v. City of Reno*, 105 Nev. 368, 370, 776 P.2d 1234, 1235 (1989) (“If a statute expressly provides a remedy, courts should be cautious in reading other remedies into the statute.”).

For the foregoing reasons, Desai fails to demonstrate that the district court abused its discretion in granting summary judgment on these claims without conducting oral argument. *See* EDCR 2.23(c) (“The judge may consider the motion on its merits at anytime with or without oral argument, and grant or deny it.”). Accordingly, we

ORDER the judgments of the district court AFFIRMED.¹


Bulla, C.J.


Gibbons, J.


Westbrook, J.

¹Desai also contends that the district court erred in granting the motion to dismiss and motion for summary judgment because the claims were barred by the statute of limitations. Because Desai fails to demonstrate that the district court erred in dismissing the complaint and granting summary judgment for the reasons discussed above, we need not reach this argument.

Moreover, insofar as Desai raises other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Erika L. Mendoza, District Judge
Boyack Orme & Murdy
Henderson City Attorney
Bharat Desai
Eighth District Court Clerk