

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARMEN BRIGGS, TRUSTEE, BRIGGS
FAMILY TRUST; JOHN V. BRIGGS,
KIRBY RANDALL AND MURIEL
RANDALL, COMPANY-TRUSTEES
RANDALL FAMILY TRUST; AND
THOMAS GERKEN AND ANNE
GERKEN, HUSBAND AND WIFE,
Appellants,

vs.

ELK POINT COUNTRY CLUB, INC., A
NEVADA NON-PROFIT
CORPORATION, AND ELK POINT
YACHT CLUB, A NEVADA
CORPORATION,
Respondents.

No. 41765

FILED

MAR 03 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment after a bench trial denying declaratory relief. Ninth Judicial District Court, Douglas County; David R. Gamble, Judge. For the reasons given below, we affirm.

FACTS AND PROCEDURAL HISTORY

Appellants (hereinafter "Briggs") are six members of the homeowners association of Elk Point Country Club, Inc. Briggs sought an action for declaratory relief in the district court to determine the applicability of a 1962 bylaw amendment, the validity of a 1963 lease of common property executed between respondent Elk Point Country Club and a sub-association, respondent Elk Point Yacht Club, Inc. (hereinafter "clubs"), and the validity of subsequent lease renewals.

In the early 1960's, some of the Country Club members became interested in building a harbor and marina on club beach property at Lake Tahoe in Douglas County. At an annual membership meeting, members approved a plan to construct the harbor and marina on the condition that necessary funds would be obtained from interested members only. Interested members then formed a sub-association, the Yacht Club, to organize the project. In 1962, members voted on a bylaw amendment that would grant the Country Club's Board of Directors authority to enter into a lease with the Yacht Club. The meeting minutes reflect that members unanimously approved the bylaw amendment. Due to an oversight, the Board failed to record the bylaw.

In 1963, the Board and the Yacht Club entered into a fifteen-year lease to construct the marina. While only Yacht Club members had berths at the marina, all members had access to the marina. The Board renewed the lease for another fifteen years in 1977, and again in 1993. In 1999, a question arose concerning the validity of the lease. After the Board presented evidence of the bylaw amendment at the 2000 annual meeting, members voted to recognize the current Yacht Club lease. Briggs filed an action for declaratory relief in the district court to determine the applicability of the 1962 bylaw amendment and the validity of the Yacht Club lease and subsequent lease renewals. After a bench trial, the district court found in favor of the Country Club and the Yacht Club. Briggs appealed, essentially arguing that the 1962 bylaw amendment was not binding on members and that the leases were invalid.

DISCUSSION

Contentions of the Parties

Briggs contends that the district court committed error in its factual findings that: (1) the Board approved the 1962 Bylaw amendment; (2) the Bylaw amendment was properly recorded; and (3) that the Board had authority to do so. In this, Briggs contends that the district court's findings in support of the judgment awarding declaratory relief are not supported by substantial evidence.

As the trier of fact, the district judge evaluates the credibility of witnesses and determines the weight to give witnesses' testimony.¹ We will not set aside a "district court's findings of fact unless they are clearly erroneous or not supported by substantial evidence."² "Substantial evidence is that which 'a reasonable mind might accept as adequate to support a conclusion.'"³

Approval of the 1962 bylaw amendment

Briggs contends that substantial evidence does not support the district court's finding that club members unanimously approved the 1962 bylaw amendment, which permitted the Board to lease club beach property to the Yacht Club for the marina project. More particularly, Briggs contends that the district judge ignored objective and substantial evidence that, despite the unanimous vote of members present at the

¹Carlson v. McCall, 70 Nev. 437, 442, 271 P.2d 1002, 1004 (1954).

²Sandy Valley Assocs. v. Sky Ranch Estates, 117 Nev. 948, 954, 35 P.3d 964, 968 (2001).

³Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)) (citations and quoted material omitted).

meeting, not all members were present so that the amendment could receive the mandatory unanimous approval.

Article V, Section 4, of the Bylaws proscribes the Board from selling, conveying or encumbering club property "without the unanimous consent of the Membership." The 1962 meeting minutes reflect a unanimous vote by members to amend the Bylaws. However, testimony was presented that only sixty-three members were present to vote by attendance or proxy, and the minutes did not set forth the number of votes, the number of absent members, or the number of members. From this, Briggs argues that this number represented only a quorum of the membership, there having actually been 68 to 73 members at the time of the meeting.

Briggs presented evidence at trial concerning the number of members both before and after 1962, and introduced testimony reflecting the number of charges on homes at Elk Point. While this evidence generated an inference that only a quorum approved the bylaws, the district court could, within its discretion, reasonably conclude to the contrary. First, some members owned more than one home, but were entitled to only one vote. Second, suspended members were denied voting privileges, and members in the initial probationary stage were required to wait ninety days before they were entitled to vote. Finally, witnesses in attendance at the meeting testified that the membership unanimously approved the bylaw amendment, the fact of which was confirmed by the meeting minutes.

Going further, current Board member, Julie Armstrong, testified that there were restrictions on voting, including whether members were in good standing, had paid their dues, and whether they

were new members in the waiting period. Although some of Ms. Armstrong's evidence was controverted, Briggs failed to provide any evidence that any eligible voter failed to vote in 1962, or any evidence that eligible members objected to the 1962 vote. Finally, the district court's finding that the 1962 amendment was ratified unanimously was supported by the fact that no objections were lodged against the amended by-laws for almost thirty years after the vote.

We are "not at liberty to weigh the evidence anew, and where conflicting evidence exists, all favorable inferences must be drawn towards the prevailing party."⁴ In light of the above, the district court's conclusion that members unanimously approved the 1962 bylaw amendment is supported by substantial evidence.

Recordation of Bylaws

Briggs contests the district court's finding that the failure to record the 1962 bylaw amendment was an oversight rather than an intentional act, as well as the district court's conclusion that recordation of a bylaw amendment was not necessary to bind members, so long as the bylaw was duly made. These contentions are without merit.

First, there is no evidence that the bylaw amendment was hidden from members or that the lack of recordation was anything other than an oversight. The record reveals that the harbor committee diligently kept members informed about the marina project. As noted, substantial evidence supports the finding that the members unanimously approved the 1962 bylaw amendment permitting the Board to execute the

⁴Yamaha Motor, 114 Nev. at 238, 955 P.2d at 664.

lease, and that the members received a copy of the meeting minutes which reflects the approval of the amendment. Additionally, in the 1990s when the oversight was discovered, the Boards of the Yacht Club and the Country Club, through a mediator, determined that the parties should acknowledge the 1962 bylaw amendment.

Second, Briggs provides no legal authority contravening the district court's conclusion that recordation of the bylaw amendment was not a condition of its validity in this instance.

Board's authority

The bylaw amendment that passed read:

“Nothing herein, however, shall preclude the Board of Directors from leasing Club beach property to the Elk Point Yacht Club Incorporated a non-profit corporation composed of and restricted solely to Elkpoint Club members for the construction of a boating facility only.”

(emphasis added).

Briggs argues that the execution of leases to the Yacht Club exceeded the Board's authority under the bylaw amendment because the bylaw only provided for construction of the marina, not the leasing of boat slips to yacht club members.

Where a document is clear on its face, it “will be construed from the written language and enforced as written.”⁵ Contracts should also be interpreted to avoid absurd results.⁶ We conclude that construction of the

⁵Ellison v. C.S.A.A., 106 Nev. 601, 603, 797 P.2d 975, 977 (1990).

⁶Royal Indem. Co. v. Special Serv., 82 Nev. 148, 152, 413 P.2d 500, 503 (1966).

1962 bylaw amendment so as to provide only that the Yacht Club could construct a marina, and not have some rights to its use over and above the general membership that did not invest in the project, produces an absurd result.

Documentation leading up to the 1962 vote demonstrated that both the Board and the Yacht Club intended to enter into a lease to provide recreational incentives to club members, as well as financial rewards arising from the increase in property value at Elk Point. Members of the Yacht Club would receive the additional benefit of having their own berths at the marina. Thus, to suggest that the Yacht Club would agree to construction of a marina only to completely turn it over to the general membership defies all logic.

Briggs further argues that the lease improperly conveys common property to an exclusive and limited group of members. As mentioned, members approved construction of the marina with the full knowledge that only interested members would pay for the project and would therefore have special privileges at the marina. Moreover, the harbor committee invited members numerous times to take part in the project. Members also approved the bylaw amendment giving the Board power to execute leases with the Yacht Club for purposes of the harbor and marina. Accordingly, the Board acted with members' approval and acquiescence, as no one objected to the bylaw amendment for over thirty years after its approval. Briggs presented no evidence demonstrating that the Board or members intended the amendment to restrict the Yacht Club to mere constructing of the marina.

The record also reflects that the lease did not restrict Country Club members' use of the marina. Testimony at trial revealed that the

marina was generally only half full and that berths were always available for rent. Testimony was presented by members who stated that they never really paid rent to use the berths and enjoyed access to the marina at any time. Finally, the Clubs note that Briggs and his fellow appellants each likewise enjoyed lake access from their respective properties.

Briggs next contends that the articles limit the Board to executing only one-year leases. He relies on Article V, Section 3 of the Bylaws, which provides:

The Board of Directors shall not enter into any contract, the performance of which would require over twelve (12) months, nor any contract for personal services for a period exceeding twelve (12) months.

Initially, in order to execute a lease in favor of the Yacht Club, the Board believed it needed authority because of Bylaws restrictions. The harbor committee informed members that only Section 4 prevented the Board from leasing club property without unanimous consent. The membership thereafter approved Section 4-b, which provided the Board with limited authority to enter into a lease with the Yacht Club for the purpose of the marina project. All members were aware of the harbor and marina project and the fact that it was a long-term project. Meeting minutes reflect several discussions concerning the lease and its terms. There is no evidence of a discussion concerning Section 3. After members unanimously approved Section 4-b, Board meeting minutes distributed to members stated that the proposed lease would be for a term of fifteen years. The record does not reveal any evidence that any member objected to the lease or its terms for over thirty years following the initial lease.

The Board entered into the lease with the Yacht Club in May 1963 for a term of fifteen years with an option for five years. Relying on the lease, Yacht Club members expended their own funds to invest in the project and to maintain the boat facilities. In May 1977, Board members determined that the option to extend the lease for five years was too short and, therefore, entered into a second lease with the Yacht Club for another fifteen years with an option to renew for fifteen years. In 1993, the Yacht Club entered into a third lease for fifteen years. Again, there were no objections to any of leases or their terms.

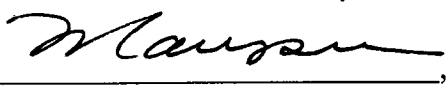
Briggs asserts that Section 3 unambiguously limits the Board's authority to enter into a contract for more than a year. The issue is whether Section 4-b, which grants the Board authority to execute leases in favor of the Yacht Club, is subject to the limitation in Section 3. From the language of Section 4-b, it appears that members wanted to give the Board freedom to execute leases with the Yacht Club for the harbor and marina project, presumably because it was in the Country Club's best interest. Section 4-b does not limit the terms of the lease. While there is some uncertainty as to whether Section 3 limits Section 4-b, considering the extrinsic evidence, members were fully aware that the harbor and marina were long-term projects and long-term investments for Yacht Club members. Having this information, members unanimously voted to approve Section 4-b. Accordingly, substantial evidence supports the district court's finding that the Board acted within its authority when it executed the lease with the Yacht Club.

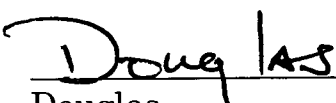
We have considered Briggs' other assignments of error and conclude that they are without merit. We also need not reach the question of whether Briggs' claims below were barred under the doctrine of laches

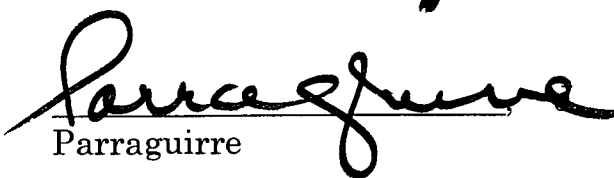
or whether the subsequent conduct of the homeowners over the years ratified the board's actions.⁷

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas



Parraguirre

cc: Hon. David R. Gamble, District Judge
Carmen Briggs
John V. Briggs
Anne Gerken
Thomas Gerken
Kirby Randall
Muriel Randall
Alverson Taylor Mortensen Nelson & Sanders
Laxalt & Nomura, Ltd./Reno
Douglas County Clerk

⁷We note parenthetically that substantial evidence supported the district court's ratification findings.