

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUDITH BURNS,
Appellant,

vs.

PEBBLE CREEK HOMEOWNERS
ASSOCIATION, A NEVADA
CORPORATION; K.G.D.O. HOLDING
COMPANY, INC., A NEVADA
CORPORATION, D/B/A TERRA WEST
PROPERTY MANAGEMENT; AND
G.J.L., INC., A NEVADA
CORPORATION, D/B/A PRO FORMA
LIEN & FORECLOSURE SERVICES,
Respondents.

No. 42568

FILED

FEB 13 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting respondents' motions for summary judgment arising out of a foreclosure proceeding on appellant's home. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

Appellant Judith Burns lived in a common-interest community, which is subject to covenants, conditions, and restrictions (CC&R's). Respondent Pebble Creek Homeowners Association is charged with the responsibility of enforcing the CC&R's. Pebble Creek imposed fines on Burns for CC&R violations due to parking infractions. By way of protest, Burns refused to pay the fines and stopped paying her monthly assessment fees. As a result of her failure to pay monthly assessment fees, Pebble Creek placed a lien on her property. After notice and recordation, Pebble Creek commenced foreclosure on its assessment lien and sought to collect the unpaid CC&R fines through that foreclosure.

Burns sued respondents in district court, claiming that the foreclosure action violated NRS 116.31162(4), which prohibits foreclosure of a lien for CC&R fines. Burns also alleged that she was not properly served with notice of the foreclosure proceedings. The district court granted respondents' motions for summary judgment finding that Pebble Creek was permitted to collect the CC&R fines at the foreclosure proceedings arising from its assessment lien. Burns appeals.

This court reviews summary judgment orders de novo.¹ Further, statutory construction is a question of law, which this court reviews de novo.² Pebble Creek has a lien for unpaid assessments or fines from the time they become due.³ NRS 116.31162 allows Pebble Creek to foreclose on its assessment lien after notice is provided to the homeowner "which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116."⁴ NRS 116.3116 states that assessments may include reasonable fines for violations of CC&R's. However, NRS 116.31162(4) prohibits foreclosure on a lien based solely on CC&R fines.

NRS 116.31162(4) is inapplicable to this case because the foreclosure was based on appellant's failure to pay assessments, not fines.

¹Dermody v. City of Reno, 113 Nev. 207, 210, 931 P.2d 1354, 1357 (1997).

²California Commercial v. Amedeo Vegas I, 119 Nev. 143, 145, 67 P.3d 328, 330 (2003).

³NRS 116.3116(1).

⁴NRS 116.31162(1)(a) (emphasis added).

Thus, where foreclosure is based on owed assessments, the collection of fines at that foreclosure proceeding is permissible.⁵

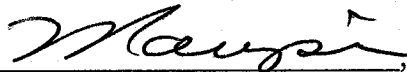
Burns also contends that respondents were required to provide her with more notice than service by mail and publication under NRS 116.31162, in order to afford her due process of law. We disagree. The record demonstrates that respondents complied with NRS 116.31162 by providing Burns with notice of delinquent assessments, as well as notice of default and election to sell. Thus, no issue of material fact exists regarding proper service.⁶ Therefore, as the collection of fines at the properly noticed foreclosure proceedings was permissible, the district court appropriately granted respondents' motions for summary judgment.


Accordingly, we

⁵Washington v. State, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001) (“Statutes within a scheme and provisions within a statute must be interpreted harmoniously with one another in accordance with the general purpose of those statutes and should not be read to produce unreasonable or absurd results.”).

⁶Burns additionally argues that the contents of the notices were deficient. This argument was not raised in district court. Absent a subject matter jurisdictional argument, arguments not presented to the trial court are waived on appeal. See Britz v. Consolidated Casinos Corp., 87 Nev. 441, 446-47, 488 P.2d 911, 915 (1971).

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Sally L. Loehrer, District Judge
Hal Taylor
Harrison Kemp & Jones, LLP
Parker Nelson & Arin, Chtd.
Rawlings Olson Cannon Gormley & Desruisseaux
Clark County Clerk