IN THE SUPREME COURT OF THE STATE OF NEVADA

WORLD BUDDHISM ASSOCIATION HEADQUARTERS, A CALIFORNIA NON-PROFIT CORPORATION,
Appellant,
vs.
LAS VEGAS CONVENTION AND VISITORS AUTHORITY,
Respondent.

No. 80858

WORLD BUDDHISM ASSOCIATION HEADQUARTERS, A CALIFORNIA NON-PROFIT RELIGIOUS CORPORATION,
Appellant,
vs.
LAS VEGAS CONVENTION & VISITORS AUTHORITY,
Respondent.

No. 81305

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court order granting a motion for summary judgment, certified as final under NRCP 54(b), and an order awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant, World Buddhism Association Headquarters (WBAH), purchased property located on Paradise Road (the Paradise Parcel). The Paradise Parcel and the parcel across Paradise Road, the Sahara Parcel, were both encumbered by easements relating to the overhead monorail and monorail station. These easements were created through various instruments entered into between the previous owner of the monorail and Gordon Gaming Corporation (GGC), who owned both Parcels and who had an airspace lease for a pedestrian bridge connecting

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the Parcels. One of the instruments, the .00200 Instrument, imposed certain maintenance obligations on GGC and its successors relating to the monorail infrastructure and a new pedestrian bridge, stating the obligations ran with the land. At the time, a resort was located on the Sahara Parcel and a parking facility was located on the Paradise Parcel.

At the time it executed the agreement to purchase the Paradise Parcel, WBAH was fully aware of the easements and covenants created in the instruments but sought declaratory relief asking the court to issue a decision holding that it was not required to fulfill any maintenance obligations contained in the instruments. Indeed, the record suggests that prior to its purchase of the Paradise Parcel, WBAH hotly contested the inclusion of the maintenance obligations, but nonetheless chose to execute the agreements with the easements and covenants remaining undisturbed. WBAH contended that changed circumstances thwarted the underlying purpose—to allow patrons easy access to resort facilities on the Sahara and Paradise Parcels—because resort facilities did not exist on the Paradise Parcel and because the Parcels were no longer jointly owned by a single entity. WBAH argued that it had no affiliation with the resort on the Sahara Parcel. Additionally, WBAH claimed there were ambiguities as to the identity of the obligated parties such that the obligations could not be enforced against WBAH.

Respondent Las Vegas Convention & Visitors Authority (LVCVA) is the current owner of the monorail. LVCVA's predecessor-in-interest filed a counterclaim for declaratory relief asking the court to issue a decision holding that the maintenance obligations were enforceable against WBAH as the current owner of the Paradise Parcel. The parties filed competing motions for summary judgment, and the district court

granted summary judgment in favor of LVCVA's predecessor-in-interest after finding there were valid covenants that ran with the land by which WBAH had to abide. Following summary judgment, the district court awarded LVCVA attorney fees and costs. WBAH now appeals both the district court order awarding attorney fees and costs and the order granting summary judgment in favor of LVCVA.

This court reviews the district court's legal conclusions and grant of summary judgment de novo. *See Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "Summary judgment is appropriate . . . when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law." *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (alteration in original) (internal quotation marks omitted).

WBAH argues that latent ambiguities in the .00200 Instrument as to the identity of the obligated parties prevent enforcement of the maintenance obligations. WBAH contends that those ambiguities arose when GGC failed to build a convention center on the Paradise Parcel as originally planned. WBAH further contends that this, coupled with the split ownership of the Parcels, renders the terms ambiguous and unenforceable.

We perceive no ambiguity in the instrument. Without reference to joint ownership of the Parcels or the resort, the .00200 Instrument clearly state that a successor to GGC's interest in the land, or any portion thereof, would be considered the owner and would be bound by the instrument. *See Tompkins v. Buttrum Const. Co. of Nev.*, 99 Nev. 142, 144, 659 P.2d 865, 866 (1983) (recognizing that the rules of construction for covenants are the

same as those applied to contracts and that "the words must be given their plain, ordinary, and popular meaning"). The result—that a successor be bound by the maintenance obligations agreed to by GGC—is not absurd or harsh such that it justifies another reading of the instrument. *See Dickson v. State, Dep't of Wildlife*, 110 Nev. 934, 937, 877 P.2d 1059, 1061 (1994) (holding that "[a]n interpretation which results in a fair and reasonable contract is preferable to one that results in a harsh and unreasonable contract"); *Reno Club, Inc. v. Young Inv. Co.*, 64 Nev. 312, 325, 182 P.2d 1011, 1017 (1947) (listing rules of construction for contracts, including the rule that "[a] contract should not be construed so as to lead to an absurd result").

WBAH also argues the .00200 Instrument does not clearly and unambiguously require WBAH, an entity separate and independent from the Saraha Parcel resort, to fulfill the maintenance obligations based on the use of the word "resort" in the instrument and "Sahara Hotel" in an exhibit. As the district court found, the .00200 Instrument defined the word "Resort" as a term encompassing both the Paradise and Sahara Parcels, and WBAH is the current owner of part of what was defined as the resort—the Paradise Parcel. *See Reno Club*, 64 Nev. at 323, 182 P.2d at 1016 (acknowledging a contract may include a definition of a term to express the parties' intention). Reading the instrument and exhibit together, reference to the Sahara Hotel in the exhibit did not alter the obligations expressly enumerated and assigned throughout the .00200 Instrument. *See Eversole v. Sunrise Villas VIII Homeowners Ass'n*, 112 Nev. 1255, 1260, 925 P.2d 505, 509 (1996) ("Contractual provisions should be harmonized whenever possible and construed to reach a reasonable solution." (internal citation omitted)). The .00200 Instrument clearly requires any successor to title of the Paradise

Parcel to be bound by the maintenance obligations without consideration for whether the successor was affiliated with the Sahara Parcel.

Lastly, WBAH maintains that enforcement of the obligations is no longer allowed due to changed circumstances. The party relying upon the changed circumstances doctrine has the burden of establishing changes that are "so fundamental as to thwart the original purpose" of the covenant to justify non-enforcement. *See Gladstone v. Gregory*, 95 Nev. 474, 478, 596 P.2d 491, 494 (1979). Although WBAH is correct that one express purpose of the maintenance obligations was to facilitate access between the Parcels for resort patrons, the instrument also expressly provides that the obligations exists to ensure access to and from the monorail station by monorail patrons. That purpose remains unaffected by the ownership of the Parcels, and WBAH has not shown fundamental changes to justify non-enforcement.

Based on the above, we conclude the district court did not err in granting summary judgment in favor of LVCVA.[1]

We next consider whether the district court erred in granting LVCVA attorney fees and costs based on language in the instruments

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[1]WBAH raises several additional arguments that were not presented to the district court. We do not consider these arguments for the first time on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). To the extent WBAH relies on argument raised in the district court by another party, WBAH's argument differs from that presented by the other party, and we do not consider it. *See Dermody v. City of Reno*, 113 Nev. 207, 210, 931 P.2d 1354, 1357 (1997) ("Parties may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below." (internal quotation marks omitted)).

creating the easements and covenants. *See Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012) (reviewing the award of attorney fees for an abuse of discretion unless a question of law, such as contract interpretation, is presented). One of the instruments cited and relied upon by the parties below, the .00199 Instrument, contains language that clearly provides for the award of attorney fees and costs to the prevailing party in a proceeding attempting to construe the terms and provisions of the instrument. *See id.* (holding that an award of attorney fees is only allowed where authorized by statute, rule, or contract and that the rules of contract interpretation are used). And in the proceeding below, the district court had to construe the terms and provisions of the instruments, including the .00199 Instrument, to determine their validity and enforceability. Therefore, the district court did not err in determining attorney fees and costs were authorized. Further, we agree with the district court's conclusion that LVCVA was the prevailing party, as its summary judgment motion was granted and WBAH's countermotion was denied. *See LVMPD v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) ("A party prevails if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." (internal quotation marks and emphasis omitted). None of the relief WBAH sought against LVCVA was granted.

As to WBAH's argument against the award of LVCVA's expert fees, we discern no abuse of discretion by the district court in awarding the fees after determining they were reasonable. *See* NRS 18.005(5)[2]; *Logan v.*

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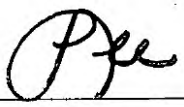
[2]At the time of the instant case, included within NRS 18.005(5)'s definition of allowable costs were "[r]easonable fees of not more than five expert witnesses in an amount of not more than $1,500 for each witness, unless the court allows a larger fee after determining that the

Abe, 131 Nev. 260, 267, 350 P.3d 1139, 1144 (2015); *see also Pub. Emps. Ret. Sys. of Nev. v. Gitter*, 133 Nev. 126, 134, 393 P.3d 673, 681 (2017) (concluding there was no abuse of discretion in awarding expert fees and holding an expert witness does not have to testify for a party to recover under NRS 18.005(5)). We also conclude there was no abuse of discretion by the district court in awarding printing costs and delivery fees where LVCVA provided a rationale for the necessity of the costs and detailed documentation itemizing the costs. *See Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120-21, 345 P.3d 1049, 1054 (2015) (recognizing the district court must receive evidence that "costs were reasonable, necessary, and actually incurred").

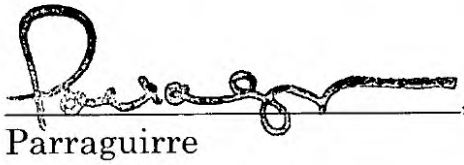
Having concluded the district court did not err in granting summary judgment in favor of LVCVA or in awarding attorney fees and costs, we therefore

ORDER the judgments of the district court AFFIRMED.

_____, J.
Herndon



_____, J.
Lee



_____, J.
Parraguirre

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circumstances surrounding the expert's testimony were of such necessity as to require the larger fee." We note that the legislature amended NRS 18.005(5) in 2023, increasing the expert witness fees to $15,000.

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 11
Dana Jonathon Nitz, Settlement Judge
Carbajal Law
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Eighth District Court Clerk