IN THE COURT OF APPEALS OF THE STATE OF NEVADA

4620 EAKER STREET LLC, A DELAWARE LIMITED LIABILITY COMPANY,
Appellant,
vs.
R L JAEHN GROUP CONSTRUCTION LLC, A DOMESTIC LIMITED LIABILITY COMPANY,
Respondent.

No. 79987-COA

FILED

JAN 25 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

4620 Eaker Street LLC appeals from a district court order partially denying a motion to expunge mechanic's liens. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

Respondent R L Jaehn Group Construction LLC (Jaehn), a Las Vegas construction company, performed work as a general contractor providing various services and assisting in "Phase I" of the construction of a medical marijuana facility located at 4620 Eaker Street in North Las Vegas.[1] Jaehn contends that it performed this work under a $350,000 contract allegedly signed by, or on behalf of, Michael Wein, the managing member of appellant, 4620 Eaker Street, LLC (4620 Eaker).

After 4620 Eaker fell behind on payments due under this contract, Jaehn filed a notice of mechanic's lien for $241,761 on October 12, 2018, which included the amount due to Jaehn, as well as monies owed to Jaehn's subcontractors. However, Jaehn never served this notice of lien, and otherwise failed to take any action to enforce this lien.

[1]We do not recount the facts except as necessary to our disposition.

Jaehn contends that on or around December 12, 2018, Wein reached out to him on behalf of 4620 Eaker to begin designs and drawings for Phase II of the project. However, Wein argues that that "there was [ ] no Phase II of the project, which ended in December 2018," when the City issued a certificate of occupancy. Nonetheless, Jaehn asserts that construction on the Property was continuous, and that there was an overlap in the end of Phase I and beginning of Phase II.[2]

Jaehn filed a second notice of lien on May 5, 2019, for the amount of $197,194. This second lien covered the same work performed as the first lien, added additional claims for work performed under "Phase II" of the project, and deducted the amount of payments that 4620 Eaker had made to Jaehn's subcontractors. Jaehn also failed to serve this notice of lien.

Wein subsequently performed a title search on the property and discovered Jaehn's liens, along with two other unperfected liens not relevant to this appeal. Following this discovery, on July 12, 2019, 4620 Eaker filed an ex parte motion for an order to show cause why those four liens should not be expunged, arguing that Jaehn's liens were frivolous as 4620 Eaker did not have a contract with Jaehn, Jaehn's liens were not properly served under NRS 108.227, and Jaehn's initial notice of lien in October had expired under NRS 108.233. The district court issued an order to show cause, directing the lien claimants to appear for a hearing and present evidence as to why the liens should not be expunged.

In response, Jaehn submitted an opposition which included the affidavit of Rodney Jaehn, the owner/operator of respondent, Jaehn. Jaehn's

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[2]We note that Jaehn provided no documentary evidence or contract to support the work it allegedly performed under Phase II of the project below. However, this has no bearing on our resolution of this appeal.

opposition did not address 4620 Eaker's allegations regarding service. Instead, Jaehn asserted that it had a valid contract with Wein because Wein's "personal representative" signed the contract on Wein's behalf. Jaehn further contended that the six month time period had not expired because Jaehn had simultaneously began work on Phase II of the project.

The district court conducted the show cause hearing on September 17, 2019. During the hearing, Jaehn's counsel admitted that Jaehn never served either notice of lien through any method of service set forth in NRS 108.227, but indicated that Rodney Jaehn had sent the notices of liens through regular mail.[3] Thus, Jaehn alleges that 4620 Eaker had actual notice of the liens.

After the hearing, the district court issued a decision and order granting 4620 Eaker's motion to expunge the liens in part (as to the two lien claimants who failed to appear at the hearing in accordance with the court's show cause order), and denying 4620 Eaker's motion to expunge in part, on the grounds that (1) Michael Wein signed the contract, and therefore Jaehn contracted with Wein and 4620 Eaker for work on Phase I of the project; (2) NRS 108.2275, which allows the district court to expunge frivolous liens, does not require the district court to consider whether the liens were perfected, including whether service was properly made; and (3) Jaehn's second lien was an "amended notice of lien," and therefore the time to enforce the entire lien amount had not expired. Accordingly, the district court found that Jaehn's liens were not frivolous and directed 4620 Eaker to pay Jaehn's

[3]There is no indication in the record that this mailing was received by 4620 Eaker, and Wien's affidavit, stating that 4620 Eaker had never received the two lien notices, was not contradicted by sworn testimony.

reasonable attorney fees and costs under NRS 108.2275(6)(c). Following an unsuccessful motion for reconsideration, 4620 Eaker appealed.

On appeal, 4620 Eaker challenges the district court's determination that Jaehn's liens were not frivolous on three grounds. First, 4620 Eaker argues that the district court erred in determining that improper service was not a basis to expunge a lien under NRS 108.2275. Second, 4620 Eaker argues that the district court erred in determining that the May 5 lien was a valid amended notice of lien, since Jaehn failed to enforce the original October 12 lien within six months as required under NRS 108.233, and therefore, the October 12 lien had expired, and could not be amended. Finally, 4620 Eaker's third argument on appeal is that the district court erred in determining that Michael Wein signed Jaehn's contract, where both parties argued below that Wein did not sign the contract himself.

Because we conclude that 4620 Eaker's first claim regarding service is dispositive, we need not consider the other two arguments he raises on appeal. *See First Nat'l Bank of Nev. v. Ron Rudin Realty Co.*, 97 Nev. 20, 24, 623 P.2d 558, 560 (1981) (declining to reach a subsequent issue when a primary issue is dispositive).[4] Thus, we proceed with our analysis of whether the district court erred in failing to expunge Jaehn's liens against 4620 Eaker

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[4]Though not expressly raised by the parties on appeal, we also note, based on the record presented, that it is doubtful Jaehn met its burden to prove the amounts claimed in its mechanic's liens. *See J.D. Constr., Inc. v. IBEX Int'l Grp.*, 126 Nev. 366, 369, 240 P.3d 1033, 1036 (2010) ("[T]he burden is on the lien claimant to prove the lien and the amount claimed."). Even assuming that Jaehn had an enforceable contract with Wein and 4620 Eaker, Jaehn did not present any invoices, payment receipts or other documentation to show that the company performed the work that it claimed it performed on behalf of 4620 Eaker for either Phase I or Phase II of the project. However, we need not reach this issue given our resolution of the service issue. *See First Nat'l Bank of Nev.*, 97 Nev. at 24, 623 P.2d at 560.

pursuant to NRS 108.2275 based on its failure to properly serve the notices under NRS 108.227.

The district court erred when it failed to consider whether Jaehn's liens were perfected

4620 Eaker argues that Jaehn was required to perfect its lien by complying with NRS 108.227, which includes timely serving its notices of lien. 4620 Eaker further argues that Jaehn's failure to perfect its lien is a material defect that renders Jaehn's liens invalid and thus frivolous. In response, Jaehn contends that the district court correctly determined that the "issue of perfection" was not before the court in the order to show cause. Jaehn further argues that because NRS 180.2275 allows a party to challenge a notice of lien, but "makes no mention of challenges to lien claims, such as perfection," that this court should presume that the Legislature intentionally left the inquiry into perfection of mechanic's liens out of the statute. We agree with 4620 Eaker.

"This court reviews questions of statutory construction and the district court's legal conclusions de novo." *I. Cox Constr. Co., LLC v. CH2 Investments, LLC*, 129 Nev. 139, 149, 296 P.3d 1202, 1203 (2013) (citations omitted). In interpreting a statute, this court will look to the plain language of its text and construe the statute according to its fair meaning, so as to not produce unreasonable results. *Id.* "[I]f the statutory language . . . fails to address the issue, this court construes the statute according to that which reason and public policy would indicate the legislature intended." *Hardy Cos., Inc. v. SNMARK*, 126 Nev. 528, 533, 245 P.3d 1149, 1153 (2010) (alteration in original) (internal quotations omitted).

NRS 108.2275 "allows a property owner to challenge a lien as frivolous or excessive and requires the district court," after considering the material facts of the case, "to make a finding of whether the lien is frivolous,

excessive or neither." *J.D. Constr., Inc. v. IBEX Int'l Grp.*, 126 Nev. 366, 375, 240 P.3d 1033, 1040 (2010) (internal citation omitted). "[T]he burden is on the lien claimant to prove the lien and the amount claimed." *Id.* at 369, 240 P.3d at 1036. Although NRS 108.2275 does not expressly instruct the district court to determine whether a lien has been perfected, both this court and the Nevada Supreme Court have recognized that a mechanic's lien is invalid, as a matter of law, when a lien claimant fails to perfect its lien by fully or substantially complying with the mechanic's lien statutes. *See Hardy,* 126 Nev. at 536, 245 P.3d at 1155; *see also Petra Drilling & Blasting, Inc. v. U S Mine Corp.*, Docket No. 78709-COA (Order of Affirmance, August 11, 2020) (affirming a district court order releasing a lien under NRS 108.2275 for failing to comply with the mechanic's lien statutes).

Under Nevada's mechanic lien statutes, in order to perfect a mechanic's lien, a claimant must (1) serve a Notice of Right to Lien on the property owner, *see* NRS 108.245; (2) record a Notice of Lien with the office of the county recorder, following the provisions of NRS 108.226; and (3) serve a copy of the Notice of Lien, the purpose of which is to notify the property owner that the claimant has recorded a lien against the property, *see* NRS 108.227(1). If any one of these three procedural requirements are not satisfied, a mechanic's lien fails as a matter of law. *Hardy*, 126 Nev. at 536, 245 P.3d at 1155 (holding that a lien is invalid as a matter of law when it fails to comply with Nevada's mechanic's lien statutes).

Thus, a court may expunge a lien on two grounds: either because it was frivolously asserted with no legal basis whether or not it was perfected, or because it was not perfected in accordance with the statutory requirements whether or not there existed a legal right to assert the lien. A court need not find that both are true; rather, if either alternative is true,

then the lien is invalid and must be expunged. Here, the district court considered whether or not Jaehn's possessed a legal right to assert the lien, but it failed to address whether, even if such a legal right existed, the lien was perfected according to statute."

Jaehn failed to fully or substantially comply with NRS 108.227(1)'s service requirements; therefore, its liens are invalid as a matter of law

Relevant to this disposition, 4620 Eaker contends that Jaehn's liens remained unperfected as Jaehn failed to serve copies of its lien notices under NRS 108.227, suggesting that Jaehn failed to fully or substantially comply with the statutory requirements for its liens to be valid. We agree.

NRS 108.227(1) provides multiple mechanisms for valid service of a notice of lien, including (1) "personally delivering a copy of the notice of lien to the owner or registered agent of the owner;" (2) "mailing a copy of the notice of lien by certified mail, return receipt requested, to the owner at the owner's place of residence or the owner's usual place of business or to the registered agent of the owner at the address of the registered agent;" or (3) if the owner cannot be located, service may be made by posting the notice of lien on the subject property, and following the other requirements set forth in NRS 108.227(1)(c)(3). *See* NRS 108.227(1)(a)-(c). "The purpose of NRS 108.227(1) is to notify the property owner of the lien; therefore, substantial compliance with the requirements of the statute will suffice if the owner receives actual notice and is not prejudiced." *Las Vegas Plywood & Lumber, Inc. v. D & D Enter.*, 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982). Thus, for a lien to be valid it must either be served on the property owner in full compliance with the requirements of NRS 108.227, or the lien claimant must substantially comply with the statute such that the property owner receives *actual notice* of the lien and is not prejudiced.

Here, the record supports 4620 Eaker's assertion that the liens remain unperfected; even though Jaehn recorded both of its notices of lien, it failed to serve those notices on 4620 Eaker in accordance with the statute. Indeed, Jaehn freely admits that it failed to comply with the requirements of NRS 108.227. And although Jaehn's attorney argued in district court that Jaehn mailed its notices of lien through regular mail, suggesting that it had substantially complied with the service requirements, this was not substantiated by evidence that was sufficient to support a finding of substantial compliance—for example, by affidavit, sworn testimony, or documentary evidence. *J.D. Constr.*, 126 Nev. at 380, 240 P.3d at 1043 (defining substantial evidence as that "which a reasonable mind might accept as adequate to support a conclusion" (internal quotation marks omitted)); *see also Rudin v. State*, 120 Nev. 121, 138, 86 P.3d 572, 583 (2004) ("The statement of an attorney is not evidence . . . .").

Further, even assuming that Jaehn mailed a copy of each notice of lien, there is no evidence that Wein or 4620 Eaker received actual notice of the mailed liens, or indeed the notices of the right to lien.[5] The record reflects that 4620 Eaker only received notice of the liens after performing a title search on the property. Moreover, in its moving papers below, Jaehn presented no argument to contradict Wein's affidavit, which stated that "4620 Eaker Street LLC was never served with the subject notices of liens as required by NRS 108.227 nor is there any proof of service submitted by R. L.

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[5]The record on appeal does not indicate whether Jaehn initially complied with NRS 108.245 by serving the notice of the right to lien. Nonetheless, as the notice of right to lien mandated by NRS 108.245 does not "constitute a lien or give actual or constructive notice of a lien for any purpose," NRS 108.245(2), it does not modify our analysis here.

Jaehn Construction Group LLC." Additionally, the district court did not find that 4620 Eaker received actual notice of the liens. Thus, the record demonstrates that the liens were not properly served in order to be perfected, and therefore, Jaehn failed to fully or substantially comply with the mechanic's lien statutes.[6]

In light of the foregoing, we conclude that Jaehn did not perfect its liens because it failed to serve 4620 Eaker with notices of the same, rendering its liens invalid as a matter of law. *Hardy*, 126 Nev. at 536, 245 P.3d at 1155. Moreover, because the liens are invalid as a matter of law, they must necessarily be considered frivolous under NRS 108.2275.[7] To conclude otherwise would negate the purpose and effect of many of the provisions in NRS 108.221- 246, the mechanic's lien statutes.[8] Thus, we conclude that the

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[6]We also note that even if we consider Jaehn's May 5, 2019, notice of lien to be an amended notice of lien, the time for service of the amended notice of lien expired prior to the time 4620 Eaker filed its motion for an order to show cause on July 12, 2019. *See* NRS 108.229(1) ("The lien claimant shall serve the owner of the property with an amended notice of lien in the same manner as required for serving a notice of lien pursuant to NRS 108.227 and within 30 days after recording the amended notice of lien."). Thus, even if the May 5 notice of lien was an amended notice of lien, we conclude that it is invalid as a matter of law as Jaehn failed to comply with the service provisions of NRS 108.227, as well as correcting or amending the October lien in accordance with NRS 108.229.

[7]*See, e.g., Reed v. Soligent Distribution, LLC*, Docket No. 75819 (Order of Reversal and Remand, December 12, 2019) (concluding that because the respondent failed to perfect its lien by complying with NRS 108.245(1), the district court erred in finding that the lien was not frivolous under NRS 108.2275).

[8]*See S. Nev. Homebuilders Ass'n v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) ("[I]t is the duty of this court, when possible, to interpret provisions within a common statutory scheme 'harmoniously with one

district court erred when it failed to consider whether Jaehn's liens were perfected in determining whether the liens were frivolous, excessive, or valid pursuant to NRS 108.2275(6)(a)-(c). Additionally, because Jaehn's liens were invalid as matter of law, based on its lack of substantial compliance with the statutory regime, we conclude that the district court should have expunged the liens.[9]

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter for the district court to award the appellant its costs and reasonable attorney fees under NRS 108.2275(6)(a).[10]

_____, C.J.
Gibbons

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Tao

_____, J.
Bulla

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another in accordance with the general purpose of those statutes' and to avoid unreasonable or absurd results, thereby giving effect to the Legislature's intent.").

[9]This conclusion does not preclude Jaehn from pursuing any other rights and remedies afforded to it by law. *See* NRS 108.2275(7) ("Proceedings conducted pursuant to this section do not affect any other rights and remedies otherwise available to the parties.").

[10]*See* NRS 108.2275(6)(a) (stating that if a lien is found frivolous and without reasonable cause, the district court *shall* award "costs and reasonable attorney's fees to the applicant for bringing the motion" (emphasis added)).

cc: Hon. Linda Marie Bell, Chief Judge
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Eighth District Court Clerk