IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CANAIMA, LLC, D/B/A LA RUMBA NIGHT CLUB,
Appellant,
vs.
CLARK COUNTY,
Respondent.

No. 84326-COA

ORDER OF AFFIRMANCE

Canaima, LLC, d/b/a La Rumba Night Club (La Rumba), appeals from a district court order denying a petition for judicial review in a liquor license application matter. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

In October 2019, La Rumba applied for a liquor-tavern license through the Clark County Department of Business License (the County).[1] The County issued a temporary license in November 2019.

While operating under the temporary license, La Rumba was issued several Notices of Non-Compliance on four separate dates. The first was issued in March 2020, for Duties of Licensee violations related to security personnel. Two more were issued in August 2020, for a Duty of Licensee violation after a minor was admitted entry, and for work card violations. Three were issued on April 18, 2021, for failing to cooperate with law enforcement and for an additional Duties of Licensee violation.

On April 30, 2021, the County conducted a joint site inspection with law enforcement at La Rumba. The site inspection revealed violations of COVID-19 directives, and two additional Notices of Non-Compliance were

[1]We recount facts only as necessary for our disposition.

issued related to additional work card violations. Due to the violations, a 36-hour suspension was implemented.

On May 3, 2021, the County sent a notice to La Rumba that its temporary license would not be renewed.[2] On May 20, 2021, the County sent La Rumba a letter denying its application for the liquor-tavern license.[3]

La Rumba appealed both the non-renewal and denial of the liquor-tavern license, and a formal hearing was held. Both La Rumba and the County submitted exhibits to the hearing officer for consideration and called witnesses to testify at the hearing.

The hearing officer issued findings of fact, conclusions of law and a decision upholding the non-renewal and denial of La Rumba's liquor-tavern license, finding the grounds specified by the County in its notices to La Rumba were supported by substantial evidence. La Rumba sought judicial review of the hearing officer's decision, which was denied. This appeal followed.

On appeal, La Rumba raises four issues. First, it argues that the district court plainly erred in interpreting Clark County Code (CCC) Sections 8.08.080 and 8.08.100(C) when finding the testimony of the agency personnel who conducted the investigation was not required. Second, it argues testimony about an LVMPD Investigation Report (Metro Report)

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[2]The non-renewal notice listed, as areas of concern, each of the Notices of Non-Compliance, as well as the violations observed at the April 30, 2021 joint inspection.

[3]The denial letter listed the following reasons for the application denial: a suitability investigation by the Las Vegas Metropolitan Police Department revealed several areas of concern; 21 calls for service to La Rumba were placed between December 7, 2019, and April 25, 2021; multiple Notices of Non-Compliance being issued; and the April 30, 2021, site inspection revealed several violations, resulting in a 36-hour suspension.

that contained a summary compilation of law enforcement's activity at La Rumba was inadmissible as triple hearsay and not the type of evidence commonly relied upon in administrative hearings. Third, La Rumba argues that the hearing officer abused his discretion by making inappropriate comments and failing to give La Rumba a fair opportunity to defend itself at the administrative hearing. Finally, La Rumba argues that there was not substantial evidence to support the hearing officer's decision to uphold the non-renewal and denial of its liquor-tavern license application. We disagree and therefore affirm.

The district court's application of the Clark County Code was not plainly erroneous

La Rumba argues that the district court committed plain error by finding that the CCC anticipates that the person conducting the investigation might not be the person who testifies on behalf of the agency at the administrative hearing, and therefore the direct testimony of such agency personnel is not required. La Rumba further argues that the district court's interpretation is not supported by the listed presumptions in CCC Sections 8.08.080 and 8.08.100(C). The County responds that the district court was correct because the CCC directly provides for conclusive reliance upon the submitted records, reports, statements, or data compilations, without a separate requirement for supporting testimony.

When reviewing a decision of an administrative agency, this court's role "is identical to that of the district court: to review the evidence presented to the agency in order to determine whether the agency" abused its discretion. *United Exposition Serv. Co. v. SIIS,* 109 Nev. 421, 423, 851 P.2d 423, 424 (1993). This court's review is limited to the administrative record and whether the district court acted arbitrarily or capriciously. *Id.* Thus, this court will not substitute its judgment as to credibility or weight of evidence for that of the administrative agency. *Langman v. Nev. Admin's*

Inc., 144 Nev. 203, 209-10, 955 P.2d 188, 192 (1998). This court does "not give any deference to the district court decision when reviewing an order regarding a petition for judicial review." *City of Reno v. Bldg. & Constr. Trades Council of N. Nev.*, 127 Nev 114, 119, 251 P.3d 718, 721 (2011). However, "[w]e review questions of law, such as statutory interpretation, de novo." *Liberty Mut. v. Thomasson*, 130 Nev. 27, 30, 317 P.3d 831, 833 (2014). Additionally, a party waives any arguments raised for the first time on judicial review. *State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 621, 188 P.3d 1092, 1098 (2008).

Clark County Code § 8.08.100 governs the procedures that apply during disciplinary proceedings involving liquor licenses in Clark County. The parties to such hearings have the right to call and examine witnesses, to introduce relevant exhibits, to cross-examine opposing witnesses, to impeach any witness, and to offer rebuttal evidence. CCC § 8.08.100(A)(1)-(5). Although the procedures at such disciplinary hearings are similar to those that apply in civil actions, traditional rules of evidence do not apply. In that regard, the Code expressly provides that,

> *[t]he hearing need not be conducted according to technical rules relating to evidence and witnesses.* Any relevant evidence may be admitted and shall be sufficient to support a finding if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action.

CCC § 8.08.100(C) (emphasis added).

In addition, in all disciplinary proceedings, a number of rebuttable presumptions apply. CCC § 8.08.080. As relevant here, a hearing officer may presume that the "[r]ecords, reports, statements or data compilations, in any form, of public officials or agencies are accurate and

truthful reports of the information contained therein." CCC § 8.08.080(I). In addition, a hearing officer may presume "[t]hat an unlawful act or violation of the code was done with unlawful intent" and "[t]hat a proven act of code violation is an indication of the usual course of business operation." CCC § 8.08.080(A), (H).

La Rumba argues that the district court plainly erred when it interpreted these code sections as not requiring direct testimony of the agency personnel who conducted the investigation.[4] "An error is plain if the error is so unmistakable that it reveals itself by a casual inspection of the record." *Torres*, 106 Nev. at 345 n.2, 793 P.2d at 842 n.2. Here, La Rumba summarily argues plain error without identifying *any* language in the CCC that expressly requires direct testimony under these circumstances. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (claims that are neither cogently argued nor supported with relevant authority need not be considered).

Even on the merits, La Rumba cannot establish error, let alone plain error. The thrust of La Rumba's argument is as follows: because none of the rebuttable presumptions in the CCC expressly state that direct testimony is *not* required, then direct testimony *must be* required, and the district court necessarily erred. But, as the County correctly observes, the CCC provisions should be read harmoniously with one another. *See, e.g., State, Div. of Ins. v. State Farm Mut. Auto Ins. Co.*, 116 Nev. 290, 295, 995

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[4]Because La Rumba failed to argue interpretation of the CCC to the hearing officer and concedes that plain error standard of review applies to this issue, we review the district court's determination for plain error. *See Torres v. Farmers Ins. Exch.*, 106 Nev. 340, 345 n.2, 793 P.2d 839, 842 n.2 (1990) (stating that this court *may* consider waived arguments to prevent plain error); *Barta*, 124 Nev. at 621, 188 P.3d at 1098.

P.2d 482, 486 (2000) ("Whenever possible, this court will interpret a rule or statute in harmony with other rules or statutes.").

La Rumba's argument disregards CCC Section 8.08.080(I), which permits a hearing officer to rely on agency records that are presumed "accurate and truthful reports of the information contained therein." La Rumba's argument also disregards CCC Section 8.08.100(C), which provides that "technical rules" relating to witnesses and evidence do not apply at disciplinary hearings. As long as the evidence in question is the type of evidence that "responsible persons are accustomed to rely on in the conduct of serious affairs," then a hearing officer may properly rely on it. CCC § 8.08.100(C). In light of the foregoing, we reject La Rumba's argument that the district court plainly erred in interpreting the CCC's requirements.

La Rumba waived its challenge to the admissibility of the Metro Report and testimony relating to the Metro Report

La Rumba argues that the hearing officer's decision erroneously relied on testimony regarding the Metro Report, as such testimony was inadmissible triple hearsay and not the type of evidence commonly relied upon in administrative hearings. The County responds that La Rumba waived this argument when it submitted the Metro Report to the hearing officer as an exhibit and, during the hearing, agreed to its admission into the record when a witness was testifying as to its contents.

Both La Rumba and the County independently submitted the Metro Report in their respective exhibits to the hearing officer. Additionally, during the testimony of a county witness who was reading from the Metro Report, La Rumba argued that the witness did not need to merely recite the contents of the Metro Report because it was already admitted into the record. The hearing officer stated that he read the Metro Report in its entirety, and La Rumba did not object.

Because La Rumba submitted the Metro Report to the hearing officer and did not object to its admissibility or otherwise attempt to exclude it, this argument is waived, and La Rumba is precluded from raising it on appeal. *Old Aztec Mine, Inc. v. Brown,* 97 Nev. 49, 52, 623 P.2d 981, 983 (1981); *Barta*, 124 Nev. at 621, 188 P.3d at 1098; *see also* 75 Am. Jur. 2d Trial § 342 ("A party cannot complain of evidence which the party itself has introduced or brought in.").[5]

Although La Rumba objected to testimony *about* the Metro Report, La Rumba failed to provide any authority on appeal for why it was improper for the hearing officer to rely on testimony reciting the contents of an admissible document. La Rumba further did not address why such testimony would be unreliable, in light of the CCC's presumption that the Metro Report, as the subject of that testimony, is truthful and accurate. *See* CCC § 8.08.100(I). Finally, La Rumba has not identified any prejudice from the hearing officer's consideration of cumulative testimony about a report that was already admitted into evidence. Therefore, La Rumba is not entitled to relief on this claim.

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[5]To the extent La Rumba argues that the Metro Report, or testimony about the report, is not the type of evidence commonly relied upon in administrative hearings, it offers no cogent authority or argument on this issue and therefore we decline to consider it. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). The authorities cited by La Rumba involve civil hearings for summary judgment in federal district court applying the federal rules of evidence. However, in administrative proceedings, the same rules of evidence do not strictly apply, *see* CCC § 8.08.100(C) ("The hearing need not be conducted according to technical rules relating to evidence and witnesses."), and La Rumba failed to provide any authority relevant to administrative proceedings.

The hearing officer did not act inappropriately or fail to give La Rumba a fair opportunity to defend itself

Next, La Rumba argues that the hearing officer inappropriately expressed a desire to shorten the hearing and that the hearing officer interrupted and interfered with La Rumba's cross-examination. La Rumba relies on four excerpts from the hearing transcript in support of its argument. The County responds that when viewed in context, these excerpts are not inappropriate. Further, the County points out that La Rumba did not specify what questions, if any, it was precluded from asking.

We agree with the County that the excerpts cited by La Rumba, when viewed in context, are not inappropriate and do not indicate any improper motive or bias against La Rumba. In one instance, the hearing officer was discussing the weather after the hearing had adjourned for the day. Two of the remaining three quotes relied upon by La Rumba were taken out of context, and excluded portions where the hearing officer explicitly stated that he was not attempting to limit or cut off La Rumba's questioning. Lastly, the hearing officer's discussion of the hearing schedule for the day, noting a time difference because of his location during the virtual hearing, does not imply a bias against La Rumba. A judge is permitted to "control[ ] the flow" of trial without prejudicing the parties. *Robins v. State*, 106 Nev. 611, 624, 798 P.2d 558, 567 (1990). Upon our review of the record, none of the hearing officer's comments indicate an improper motive or bias, nor was La Rumba prevented from asking questions on cross-examination.[6]

[6]Although the hearing officer suggested that certain questions may be better posed to other witnesses, the hearing officer never stopped La Rumba's questioning, prevented La Rumba from asking particular questions of any witness, or imposed any time restrictions on La Rumba's presentation.

Additionally, La Rumba did not object to any of the hearing officer's comments, and in the absence of an objection, we can only review La Rumba's claim through the deferential lens of plain error. *See Torres v. Farmers Ins. Exch.*, 106 Nev. 340, 345 n.2, 793 P.2d 839, 842 n.2 (1990); *Cager v. State*, No. 50200, WL 6124836 (Nev. Dec. 16, 2008) (Order of Affirmance) (stating the court may review unpreserved allegations of judicial misconduct for plain error); *Barta*, 124 Nev. at 621, 188 P.3d at 1098. Under plain error review, it is La Rumba's burden to demonstrate "irreparable and fundamental error." *Lioce v. Cohen*, 124 Nev. 1, 19, 174 P.3d 970, 982 (2008). La Rumba has not met its burden to show that the quotes, taken in context, demonstrated bias or were plainly erroneous, particularly as La Rumba failed to identify any questions that it was precluded from asking.

The hearing officer's decision is supported by substantial evidence

La Rumba argues that the hearing officer's decision was not supported by substantial evidence because the hearing officer relied upon improperly noticed evidence in his decision, including body camera footage and photos showing COVID-19 protocol violations; because there was only one instance of non-compliance with law enforcement, rather than "some" instances; because there was no evidence that La Rumba had been given any verbal warnings; and because the hearing officer improperly found La Rumba had authority over a portion of the parking lot where a shooting occurred.[7]

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[7]La Rumba also reasserts its argument regarding the Metro Report's inadmissibility and related testimony as triple hearsay. As discussed above, La Rumba failed to cogently argue why such testimony is inadmissible or unreliable, particularly in light of the CCC's presumption that data compilations are presumed truthful and accurate, and therefore we decline

Although La Rumba challenges some of the hearing officer's factual findings, such as the Facebook photos and body camera footage — which it contends were improperly noticed — as well as the lack of verbal warnings and La Rumba's authority over the parking lot, La Rumba does not challenge all of the hearing officer's ultimate reasons for upholding the non-renewal and denial of La Rumba's liquor-tavern license. Specifically, as noted previously, the hearing officer concluded that the multiple grounds given by the County in the non-renewal and denial notices were supported by substantial evidence. La Rumba does not address all of the multiple independent grounds and conceded several of the violations.

In its argument to the hearing officer, La Rumba conceded the following violations: those observed at the joint site inspection on April 30, 2021, including one violation of COVID-19 protocols and two employee work card violations; one violation related to La Rumba's failure to cooperate with law enforcement; one violation for allowing an underage patron entry into La Rumba; and one key employee violation. After conceding these violations, La Rumba argued the violations warranted a six-month limited license, rather than outright denial.

As to the hearing officer's decision regarding the remaining grounds for the County's non-renewal and denial of its liquor-tavern license, La Rumba failed to establish prejudice or that any error is not harmless. Reversal may be appropriate when a moving party shows that an error is prejudicial and not harmless. *Wyeth v. Rowatt,* 126 Nev. 446, 465, 244 P.3d 765, 778 (2010). "To establish that an error is prejudicial, the movant must show that the error affects the party's substantial rights so that, but for the

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to consider this argument. *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38; CCC § 8.08.080(I).

alleged error, a different result might reasonably have been reached." *Id; see also Khoury v. Seastrand*, 132 Nev. 520, 539, 377 P.3d 81, 94 (2016). La Rumba failed to address the multiple independent grounds for the hearing officer's decision. While La Rumba challenges some of the grounds for non-renewal, including the hearing officer's finding of multiple COVID-19 violations and more than one instance of noncompliance with law enforcement, La Rumba does not challenge the remaining grounds or argue they are not supported by substantial evidence. Because La Rumba failed to challenge the remaining grounds for upholding the non-renewal, La Rumba cannot show that but for any errors, a different result might reasonably have been reached. *Wyeth*, 126 Nev. at 465, 244 P.3d at 778.

For the license denial, La Rumba argues that the hearing officer should not have relied on the Metro Report as it is inadmissible and unreliable. But La Rumba does not dispute that there were 21 calls for service or that multiple violations were found during the April 30, 2021, joint inspection.

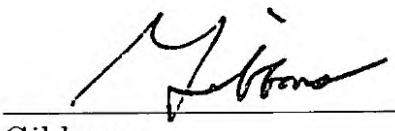
Notwithstanding La Rumba's failure to challenge multiple independent grounds, the hearing officer's decision to uphold the license denial is supported by substantial evidence. The weight and reliability of the Metro Report was within the purview of the hearing officer, and this court will not substitute its judgment of the evidence for that of the administrative agency. *State, Dep't of Motor Vehicles v. Becksted*, 107 Nev. 456, 458, 813 P.2d 995, 996 (1991).

Lastly, La Rumba challenges the hearing officer's finding that "some" of the Notices of Non-Compliance were for failure to cooperate with law enforcement and the duties of a licensee. Although La Rumba argues there was only one instance of non-compliance with law enforcement, the hearing officer concluded that there were multiple Notices of Non-

Compliance, "some of which were for failure to cooperate with law enforcement *and duties of a licensee*." La Rumba does not contest that it was issued Notices of Non-Compliance for Duties of Licensee violations in March 2020, August 2020, and April 2021. In light of these multiple Notices of Non-Compliance, the hearing officer's finding of "some" notices is supported by substantial evidence.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[8]



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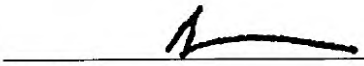
Gibbons



_____, J.
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Westbrook

cc: Hon. Gloria Sturman, District Judge
Saltzman Mugan Dushoff
Clark County District Attorney
Clark County District Attorney/Civil Division
Eighth District Court Clerk

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[8]Insofar as the parties have raised other arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.