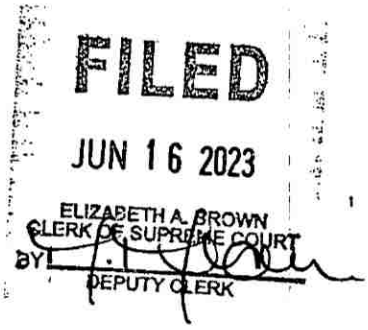
IN THE SUPREME COURT OF THE STATE OF NEVADA

WEST COAST SERVICING, INC., A CORPORATION,
Appellant,
vs.
BARBARA GENE KASSLER, AN INDIVIDUAL,
Respondent.

No. 84122



ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a preliminary injunction in a wrongful foreclosure action. Eighth Judicial District Court, Clark County; David M. Jones, Judge.[1]

Appellant West Coast Servicing (WCS) is the beneficiary of a deed of trust securing a loan taken out by respondent Barbara Kassler. When WCS instituted nonjudicial foreclosure proceedings, Kassler filed the underlying action in 2021, alleging that the deed of trust was not enforceable under NRS 106.240, which provides that a lien on real property is conclusively presumed to be discharged 10 years after the debt secured by the lien becomes "wholly due." Kassler moved for a preliminary injunction, arguing that when she received a discharge from her bankruptcy case in 2010, the loan secured by WCS's deed of trust became "wholly due" under NRS 106.240, such that the deed of trust was no longer enforceable. The district court agreed with Kassler and granted a preliminary injunction.

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

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We conclude that the district court erred in granting the preliminary injunction. Our review in this instance is de novo because this appeal presents a question of law.[2] *See Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 108, 294 P.3d 427, 433 (2013) ("Purely legal questions surrounding the issuance of an injunction . . . are reviewed de novo."); *see also Williams v. United Parcel Servs.*, 129 Nev. 386, 391, 302 P.3d 1144, 1147 (2013) (recognizing that statutory construction is an issue that this court reviews de novo). In its entirety, NRS 106.240 provides:

> The lien heretofore or hereafter created of any mortgage or deed of trust upon any real property, appearing of record, and not otherwise satisfied and discharged of record, *shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust according to the terms thereof or any recorded written extension thereof become wholly due*, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged.

(Emphases added.) The statute's plain language lists only two documents that determine when a loan becomes "wholly due" for purposes of triggering the 10-year time frame: (1) the "terms thereof [i.e., of the mortgage or deed of trust]" or (2) "any recorded written extension thereof." *See Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007) ("[W]hen a statute's language is plain and its meaning clear, the courts will apply that plain language."). There is no recorded extension of the wholly-due date in this case, and Kassler has not identified any language in the terms of the deed of trust—

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[2]Although courts typically evaluate whether the party seeking a preliminary injunction will suffer irreparable harm if an injunction is not granted, *see Excellence Cmty. Mgmt., LLC v. Gilmore*, 131 Nev. 347, 350-51, 351 P.3d 720, 722 (2015), the district court made no findings in this respect. Thus, this appeal presents a purely legal issue.

nor have we identified any—suggesting that a bankruptcy discharge made her secured loan "wholly due" for purposes of NRS 106.240.

Moreover, Kassler's bankruptcy discharge *excused* Kassler's personal obligation on the loan secured by the deed of trust, which is the opposite of rendering her obligation "wholly due." *See* 11 U.S.C. § 524(a) (providing generally that a bankruptcy discharge absolves the debtor of personal liability); *see also In re Mirchou*, 588 B.R. 555, 571 (D. Nev. Bankr. 2018) ("[A] discharge relieve[s] the Debtor of his personal liability for his prebankruptcy debts, but [does] not affect the [corresponding] liens."). Relatedly, and as the Colorado Supreme Court recently observed while rejecting an argument similar to Kassler's, a homeowner who has received a bankruptcy discharge can continue making monthly mortgage payments to prevent a lender from instituting foreclosure proceedings. *See US Bank Nat'l Ass'n v. Silvernagel*, 528 P.3d 163, 168 (Colo. 2023) ("[B]y discharging unsecured debt, bankruptcy leaves borrowers with more available income for mortgage payments and decreases the risk that their homes will be encumbered by judgment liens. So, while the lender's lien survives bankruptcy, the borrower also benefits because the discharge enables them to prioritize making mortgage payments to avoid default." (internal quotation marks and citations omitted)). It stands to reason that if a homeowner does not need to pay the entire loan balance to avoid the institution of foreclosure proceedings, the loan is not "wholly due" for purposes of NRS 106.240. Accordingly, we conclude that the district court erred in determining that Kassler's bankruptcy discharge triggered NRS 106.240's 10-year time frame so as to render WCS's deed of trust unenforceable.

We further note that Kassler's relied-upon authority—*Jarvis v. Federal National Mortgage Ass'n*, 726 Fed. App'x 666 (9th Cir. 2018)—has been widely criticized by courts addressing arguments similar to Kassler's. In addition to the Colorado Supreme Court's decision in *Silvernagel*, the Washington Court of Appeals has held that *Jarvis* was based on a misinterpretation of Washington law. *See Copper Creek (Marysville) Homeowners Ass'n v. Kurtz*, 508 P.3d 179, 190 (Wash. Ct. App. 2022) ("*Jarvis*'s explanation of the rule is totally at odds with our rejection of the notion that the maturity of the loan was accelerated by the lender or by bankruptcy discharge.").[3] Similarly, the Arizona Court of Appeals declined to follow *Jarvis* in rejecting an argument similar to Kassler's. *See Diaz v. BBVA USA*, 504 P.3d 945, 951 (Ariz. Ct. App. 2022) ("Although certainly, as a practical matter, the bankruptcy discharge bars BBVA from accelerating that debt by deeming it 'immediately due and owing' and obtaining a money judgment, that remedy was lost only by the Diazes' unilateral action of seeking bankruptcy protection. We see no statutory command that the practical loss of the remedy of acceleration by operation of the bankruptcy laws should also affect the other remedies available to [a lender] under the deed of trust, namely judicial and non-judicial foreclosure."). More significantly, decisions from the Nevada Federal District Court have rejected Kassler's identical argument based on our above plain-language analysis or a similar derivation thereof. *See, e.g.*, *Twinrock Holdings, LLC v. CitiMortgage, Inc.*, No. 2:22-cv-00143-JAD-VCF, 2023 WL 1071794, at *2 (D. Nev. Jan. 26, 2023) (observing that "nothing in

[3]We recognize that the Washington Supreme Court has granted a petition for review in relation to the Washington Court of Appeals' *Copper Creek* decision. *See* 516 P.3d 377.

the deed of trust suggests that a bankruptcy discharge could automatically accelerate this debt" for purposes of triggering NRS 106.240 and that reaching a contrary conclusion would contradict "the Supreme Court of Nevada's recognition in *Clayton v. Gardner*[, 107 Nev. 468, 470, 813 P.2d 997, 999 (1991),] that courts usually require that an acceleration be exercised in a manner so clear and unequivocal that it leaves no doubt as to the lender's intention" (internal quotation marks omitted)); *7321 Wandering St. Tr. v. New Residential Mortg. Loan Tr. 2020-NPL2*, No. 2:21-cv-01193-JAD-EJY, 2022 WL 717577, at *4 (D. Nev. Mar. 10, 2022) ("Nothing in the deed of trust suggests that a bankruptcy discharge could automatically accelerate this debt . . . .").

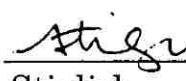
In sum, we conclude that Kassler's bankruptcy discharge did not render her loan "wholly due" for purposes of triggering NRS 106.240's 10-year time frame. Thus, the district court's basis for granting Kassler's request for a preliminary injunction was legally incorrect, and we therefore reverse the challenged order.

Finally, Kassler appears to suggest for the first time on appeal that the filing of her bankruptcy *petition* (as opposed to her bankruptcy *discharge*) was the event that rendered her loan "wholly due" for purposes of NRS 106.240. We decline to address this argument because it was not raised below. *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."). Similarly, Kassler contends that the unpaid balance listed on WCS's Notice of Sale includes amounts that WCS is not entitled to collect. We likewise decline to address that issue because Kassler

did not raise it in district court and it did not otherwise form a basis for the district court's decision to grant the preliminary injunction.

Consistent with the foregoing, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



_____, C.J.
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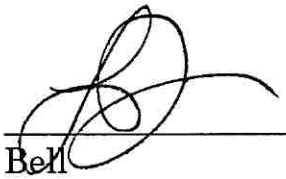

_____, J.
Bell

cc: Hon. David M. Jones, District Judge
Patrick N. Chapin, Settlement Judge
ZBS Law, LLP
The Wright Law Group, P.C.
Arnold & Porter Kaye Scholer LLP/Washington DC
Fennemore Craig P.C./Reno
Eighth District Court Clerk