

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FT APACHE MOB, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellant,

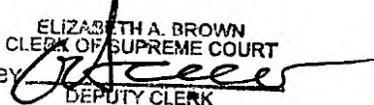
vs.

VENTURE PROFESSIONAL CENTER-
FORT APACHE OWNERS
ASSOCIATION, INC., A NEVADA NON-
PROFIT CORPORATION,
Respondent.

No. 85338-COA

FILED

OCT 19 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

Ft Apache MOB, LLC (Ft Apache MOB) appeals from a district court order granting a temporary restraining order (TRO) and injunctive relief. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

In December 2021, Borg Law Group (BLG)¹ experienced a plumbing issue inside its unit located within the Venture Professional Center-Fort Apache (the Center).² A plumber discovered that BLG's pipes were not connected to the Center's main sewer line. Respondent Venture Professional Center-Fort Apache Owner's Association, Inc. (VPC), the commercial owner's association for the Center, requested access to Ft Apache MOB's unit to rectify the pipeline issue because the sewer's main connection point is located below that unit. Ft Apache MOB responded that it would not grant access to its unit until VPC signed an agreement assuming liability for the proposed plumbing work. VPC refused to sign the agreement, arguing that such an agreement was unnecessary under the

¹BLG was not a party to the underlying litigation.

²We do not recount the facts except as necessary to our disposition.

association's covenants, conditions, and restrictions (CC&Rs). Accordingly, VPC filed a complaint for breach of contract and subsequently requested a TRO and preliminary injunction in order to access Ft Apache MOB's unit to make the necessary repairs. The district court granted the TRO and injunctive relief. Ft Apache MOB promptly requested a stay, which the district court denied. Ft Apache MOB timely appealed the district court's order and filed an emergency motion for stay before this court, pursuant to NRAP 27(e), requesting a stay of the TRO and injunctive relief. This court imposed a temporary stay to allow briefing on the emergency motion, but ultimately denied the emergency motion, concluding that a stay was not warranted. VPC then filed a motion to dismiss the appeal for lack of jurisdiction, arguing that the district court's order was for a TRO and therefore not substantively appealable. The Nevada Supreme Court denied the motion to dismiss, stating that the relief provided in the challenged order was in the nature of an injunction, without classifying it as either preliminary or permanent injunctive relief.

On appeal, Ft Apache MOB argues that the district court erred in granting injunctive relief without complying with NRCP 65. Specifically, Ft Apache MOB argues that the district court should have conducted an evidentiary hearing before imposing what it contends is a permanent injunction on the merits. However, as relevant here, Ft Apache MOB also acknowledges that the matter before the district court is now moot because VPC no longer requires access to Ft Apache MOB's unit to make the plumbing repairs. In response, VPC argues that the TRO has lapsed, and that Ft Apache MOB has incurred no damages requiring compensation. VPC also agrees with Ft Apache MOB that the underlying issue

necessitating the TRO and injunctive relief is now moot before both this court and the district court.

Nevertheless, for the first time in its reply brief, Ft Apache MOB contends that its appeal is not moot because “[n]othing prevents [VPC] subsequently from enforcing the order on appeal . . . or using the order for its preclusive effect if the appeal is dismissed when [Ft Apache MOB] answers the complaint and asserts its affirmative defenses, counterclaims, and third-party claims.” Factually, both parties concede that the pipeline repair for which injunctive relief was required has been completed during the pendency of this appeal, without requiring access to Ft Apache MOB’s unit.

Ft Apache MOB’s challenge to the order granting TRO and injunctive relief is now moot

Generally, appellate courts will not decide moot cases. *Duong v. Fielden Hanson Issacs Miyada Robison Yeh, Ltd.*, 136 Nev. 740, 742, 478 P.3d 380, 382 (2020). A case on appeal is moot when the court can no longer grant relief with respect to the challenged order. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (holding that an injunction was moot where an active controversy previously existed but was extinguished by subsequent events). A court may decline to consider a moot issue even where a district court abused its discretion so long as neither party’s rights would be affected. *Cashman Equip. Co. v. W. Edna Assocs., Ltd.*, 132 Nev. 689, 703, 380 P.3d 844, 853 (2016); *see also Stephens Media, LLC v. Eighth Judicial Dist. Court*, 125 Nev. 849, 858, 221 P.3d 1240, 1246-47 (2009) (noting that courts will not make legal determinations that cannot affect the outcome of a moot case).

Here, both parties have conceded in their opening and answering briefs that the issue on appeal is moot. Specifically, both Ft

Apache MOB and VPC acknowledge that VPC no longer requires access to Ft Apache MOB's unit, which was the basis of the injunctive relief, because the pipeline repair has been completed through other methods. The record supports that VPC did not access Ft Apache MOB's unit, and Ft Apache MOB does not allege any damage occurred during the pipeline repair. Therefore, this court need not consider whether the district court's order operates as a preliminary or permanent injunction, because the purpose of the underlying injunction has been extinguished, rendering this issue moot. *NCAA v. Univ. of Nev., Reno*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981) (recognizing that the court need not determine questions in moot cases).³

Ft Apache MOB argues, for the first time in its reply brief, that its appeal is not moot because VPC may assess the costs of the pipeline repair to Ft Apache MOB under the association's CC&Rs. However, we need not consider this argument as it is presented for the first time in Ft Apache MOB's reply. *See Weaver v. State, Dep't of Motor Vehicles*, 121 Nev. 494, 502, 117 P.3d 193, 198-99 (2005) (explaining that this court need not consider issues raised for the first time in an appellant's reply brief). Further, we decline to consider Ft Apache MOB's argument that its appeal

³To the extent that Ft Apache MOB is challenging an award for attorney fees and costs to VPC for succeeding in its motion for a TRO and preliminary injunction, this issue is not properly before us, and we are uncertain if any award has in fact been granted. We note that a review of the record suggests that the time for VPC to have filed a motion for attorney fees and costs has expired, and neither party raises this issue before us on appeal. Nevertheless, we note that a claim for attorney fees does not preserve a moot cause of action. *Dep't of Corr. v. Am. Civil Liberties Union of Nev. Found.*, No. 76739, 2019 WL 141040, at *1 (Nev. Jan. 8, 2019) (citing *Dahlem ex rel. Dahlem v. Bd. of Educ. Denver Pub. Sch.*, 901 F.2d 1508, 1511 (10th Cir. 1990) (noting that "a claim of entitlement to attorney's fees does not preserve a moot cause of action"))).

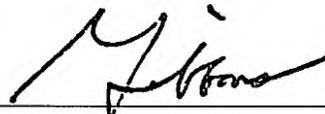
is not moot because VPC may impose future assessments for the costs of the pipeline repair. Ft Apache MOB's argument regarding the potential assessment is speculative and therefore not yet ripe for review.⁴ *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986) (concluding that an alleged harm that is speculative is insufficient for a justiciable controversy—an existing controversy must be present).

Finally, Ft Apache MOB does not cogently argue the mootness exception to support that its appeal is not moot, particularly in light of its earlier concession. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority); see also *Cashman*, 132 Nev. at 703, 380 P.3d at 853 (“The party seeking to overcome mootness must prove ‘that (1) the duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the future, and (3) the matter is important.’” (quoting *Bisch v. Las Vegas Metro. Police Dep't*, 129 Nev. 328, 334-35, 302 P.3d 1108, 1113 (2013))). Even if we consider the mootness exception here, all three prongs must be met for the exception to apply and, because Ft Apache MOB fails to demonstrate there is a likelihood that a similar issue necessitating injunctive relief will arise in the future, the exception fails. Specifically, the unconnected pipe was a construction error that has since been remedied, as all units governed by VPC are now

⁴As the issue is not yet ripe for review, this order will not preclude future litigation regarding the assessment of the pipeline repair costs. *Personhood*, 126 Nev. at 605, 245 P.3d at 576 (concluding that “when an appeal is dismissed as moot by no fault of the appellant, the lower court's determination of an issue in the matter will have no preclusive effect in future litigation”).

connected to the main pipeline, and neither party has provided any indication that VPC will need to enter Ft Apache MOB's unit for further plumbing repairs or for any reason related thereto.⁵ Accordingly, we

ORDER this appeal DISMISSED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 29
Patrick N. Chapin, Settlement Judge
Law Office of Mitchell Stipp
Davison Van Cleve, PC
Eighth District Court Clerk

⁵Insofar as the parties raise 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.