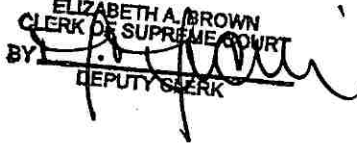


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DWIGHT PATENT 10945 MINING LLC,
A LIMITED LIABILITY COMPANY;
AND ANNIVERSARY MINING
CLAIMS, LLC, A LIMITED LIABILITY
COMPANY,
Appellants,
vs.
COUNTY OF CLARK, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,
Respondent.

No. 83729-COA

FILED
FEB 22 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Dwight Patent 10945 Mining LLC and Anniversary Mining Claims, LLC (collectively appellants) appeal from a district court order granting a motion for judgment on the pleadings. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.¹

The underlying action concerns undeveloped land located in Las Vegas, approximately one-half mile south of East Lake Mead Boulevard and east of North Los Feliz Street at or near the address 7310 Soaring Heights Avenue near Sunrise Mountain.² The appellants have owned the property since February 2017. Before purchasing the property, appellants allege that sometime between 2006 and 2008, respondent County of Clark (Clark County) allowed the prior owners to commence unpermitted work on the property that was never completed. Specifically, appellants allege that “the

¹Pursuant to Rule 2.11(C) of the Nevada Code of Judicial Conduct, all parties have waived any disqualification of the Honorable Deborah Westbrook, Judge, from taking part in the consideration of this appeal.

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

subject property in question was never completed with [paved] turnabouts as had been designed in the plan” and that the development plan showed that “a retention basin was required to be constructed within the subject property in order to provide drainage protection for the lower residential lots” but that the retention basin was never constructed. Appellants further allege that Clark County “allowed for the inappropriate nonwork to be accomplished.”

Based on the foregoing, in March 2021, appellants filed a civil complaint against Clark County for negligence, indemnification, estoppel, and declaratory relief. As relevant on appeal, appellants alleged that Clark County had a duty to appellants to ensure that proper construction on the property would occur prior to the sale of the property and that Clark County breached that duty.³

After filing an answer and counterclaim, Clark County moved for judgment on the pleadings, arguing that appellants failed to exhaust their administrative remedies. Specifically, Clark County asserted that appellants did not submit proper applications for the work they sought to complete on the property, and thus the complaint must be dismissed as nonjusticiable. Clark County further argued that the negligence claim

³While appellants raised arguments below regarding their indemnification, estoppel, and declaratory relief claims, appellants only challenge the district court’s decision and order on the basis that it erred in regard to the negligence claim. Accordingly, we only address that issue here. *See Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (noting that courts follow the “principle of party presentation” on appeal, which requires litigants to frame the issues); *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived).

should be dismissed because no duty was owed to the appellants and the statute of limitations had expired.⁴

After a hearing, the district court granted Clark County's motion, finding that appellants had not exhausted their administrative remedies as they had not applied for the necessary building permit or zoning approvals required to perform the work desired on the property. The court further found that, until appellants exhausted their administrative remedies, their claims were nonjusticiable as a matter of law. The court dismissed the claims "unless and until" appellants exhausted their administrative remedies. This appeal followed.

On appeal, appellants argue that the district court "misunderstood" their negligence claim as being related to Clark County's refusal to allow appellants to perform work on the property, when they actually alleged that Clark County was negligent in allowing "other entities to perform work without a permit and cause damage to Appellants' property." Accordingly, appellants assert that the negligence claim did not require administrative remedies to be exhausted before filing the complaint. In response, Clark County asserts that the only way for appellants to establish negligence is if appellants had first submitted applications to Clark County for proper permits, which they failed to allege in their complaint. Clark County further argues that the negligence claim should be dismissed as no duty was owed to the appellants and the statute of limitations had expired.

Under NRCP 12(c), the district court may enter judgment on the pleadings when the material facts of the case "are not in dispute and the movant is entitled to judgment as a matter of law." *Bonicamp v. Vazquez*,

⁴NRS 41.033 provides that political subdivisions are immune from liability for the failure to inspect or discover a hazardous condition unless they have express knowledge of the hazardous condition.

120 Nev. 377, 379, 91 P.3d 584, 585 (2004). This court reviews an order granting a motion for judgment on the pleadings de novo. *Sadler v. PacifiCare of Nev., Inc.*, 130 Nev. 990, 993, 340 P.3d 1264, 1266 (2014). This court also reviews a district court order dismissing an action for failing to exhaust administrative remedies de novo. *Benson v. State Eng'r*, 131 Nev. 772, 776, 358 P.3d 221, 224 (2015). Generally, a person “must exhaust all available administrative remedies before initiating a lawsuit, and failure to do so renders the controversy nonjusticiable.” *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 571, 170 P.3d 989, 993 (2007). “The exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and conserves judicial resources, so its purpose is valuable; requiring exhaustion of administrative remedies often resolves disputes without the need for judicial involvement.” *Id.* at 571-72, 170 P.3d at 993-94.

Clark County Code § 30.04.060 sets forth the requirements for the development and use of property in Clark County:

No structure, use of any structure or land, and lot of record shall be established, enlarged, extended, altered, moved, divided or maintained except as authorized by and in compliance with the provisions of this Title. Following approval of all appropriate applications and maps, all proper licenses and permits are required, as indicated in the Clark County Code, in order to establish the use or structure. Nothing in this Title, including the approval of a land use application or subdivision, shall be interpreted to replace such requirements.

In order for work to be completed on a property, Clark County Code § 22.02.165 sets forth permit requirements that must be completed first:

Any owner or authorized agent who intends to perform grading or construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building, structure, pool, spa, sign or ATS, or to

erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit(s).

Additionally, Clark County Code § 30.32.010(c) provides that it is “unlawful to commence any use, or any work for the erection, construction, reconstruction, moving, conversion, alteration, demolition, excavating, grading, right-of-way improvement, or addition upon any property, or within a right-of-way, until all applicable permits and licenses have been obtained.”

Here, appellants argue that their negligence claim did not require them to plead the exhaustion of administrative remedies, as the foundation of their claim was that Clark County was negligent in allowing other entities to perform work on the property without requisite permits, prior to their purchase of the property. However, this is belied by the complaint which alleged that Clark County was disallowing appellants to complete the necessary work on the property and requested that proper permits be issued. *See Nev. Power Co. v. 3 Kids, LLC*, 129 Nev. 436, 444, 302 P.3d 1155, 1160 (2013), *modified*, July 24, 2013 (explaining that a party on appeal cannot assume a position inconsistent with one taken below). Appellants do not point to any place in the record where they requested permits from Clark County to complete work on the property as required before seeking relief in district court. *See Benson*, 131 Nev. at 782, 358 P.3d at 228 (concluding that the permittee was required to exhaust all administrative remedies available pertaining to the decision on the cancellation of a water permit before seeking district court relief). Thus, appellants have failed to exhaust their administrative remedies and the district court did not err in entering judgment on the pleadings and dismissing the complaint.

We also determine that the dismissal of appellants' negligence claim can be affirmed on alternative grounds. *See Pack v. LaTourette*, 128 Nev. 264, 267, 277 P.3d 1246, 1248 (2012) (holding that appellate courts may affirm a district court order on different grounds than those used by the district court). First, appellants failed to demonstrate a duty of care that Clark County owed them for its purported failure in previously allowing nonpermitted parties to perform work on the property. "To prevail on a negligence theory, a plaintiff must generally show that: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the breach was the legal cause of the plaintiff's injury; and (4) the plaintiff suffered damages." *Scialabba v. Brandise Constr. Co.*, 112 Nev. 965, 968, 921 P.2d 928, 930 (1996). "The question of whether a 'duty' to act exists is a question of law" *Lee v. GNLV Corp.*, 117 Nev. 291, 295, 22 P.3d 209, 212 (2001). With regard to the duty element, under common-law principles, no duty is owed to control the dangerous conduct of another or to warn others of the dangerous conduct. *See Mangeris v. Gordon*, 94 Nev. 400, 402, 580 P.2d 481, 483 (1978).


Here, appellants failed to cogently argue what duty of care Clark County owed them based on the conduct of the prior property owners, or how Clark County would have a duty to ensure that the prior owners had undertaken construction on the property with the proper permits. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (recognizing that appellate courts need not consider arguments that are not cogently presented); *see also, e.g., Schroeder v. Ely City Mun. Water Dep't*, 112 Nev. 73, 76, 910 P.2d 260, 262 (1996) (concluding that the city and its water department had no affirmative duty to maintain a water line and were immune from any liability for the failure to inspect it). Thus, the district court could have also properly dismissed appellants'

negligence claim on the pleadings due to their failure to demonstrate an actionable duty of care.

Second, even if the district court erred in dismissing appellants' negligence claim based on a failure to exhaust administrative remedies and Clark County did owe a duty of care to the appellants, the court ultimately reached the right result, as the statute of limitations pertaining to any past negligence had expired. NRS 41.036 (outlining the two-year statute of limitations period for tort claims against the State or its agencies); *Pack*, 128 Nev. at 267, 277 P.3d at 1248. The appellants purchased the property in February 2017 and would have been aware of the condition of the property once they purchased it, but nevertheless failed to file their complaint until March 4, 2021. Thus, appellants' negligence claim is time-barred under NRS 41.036. To the extent that there is ongoing negligence, which may not be time-barred, because Clark County is preventing the appellants from fixing the property, appellants must first exhaust their administrative remedies by seeking proper permits and zoning approvals. As we see no basis for reversal of the district court's order granting Clark County's motion for judgment on the pleadings, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrock

⁵Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Timothy C. Williams, District Judge
John Walter Boyer, Settlement Judge
Law Offices of Mitchell S. Bisson
Clark County District Attorney/Civil Division
Eighth District Court Clerk