IN THE SUPREME COURT OF THE STATE OF NEVADA

AIRPARK ESTATES HOMEOWNERS ASSOCIATION, A NEVADA NONPROFIT CORPORATION,
Appellant/Cross-Respondent,
vs.
JAMES MARK JENNINGS, INDIVIDUALLY AND AS TRUSTEE OF THE ARMSTRONG TRUST U/D/T MAY 7, 2018; AND MARION SUE JENNINGS, INDIVIDUALLY,
Respondents/Cross-Appellants.

No. 85670

FILED
MAR 19 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DISMISSING APPEAL, REVERSING CROSS-APPEAL, AND REMANDING

This is an appeal and cross-appeal from a district court order granting summary judgment, certified as final under NRCP 54(b), in a discrimination and breach-of-contract matter. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

In 2018, respondents/cross-appellants James Mark Jennings and Marion Sue Jennings purchased a home governed by appellant/cross-respondent Airpark Estates Homeowners Association (Airpark). In 2020, Airpark adopted the "Dayton Valley Airport Rules and Regulations Revision 2" (the Airport Rules). As relevant here, Rule 4.5 imposed a 12,500-pound weight limit on airplanes and vehicles permitted to drive over Airpark's runway and taxiways, including the taxiway connecting to Lakeview Drive.[1] This adversely affected the Jennings, who park various recreational and commercial vehicles exceeding 12,500 pounds in the

[1]Airpark also adopted Rules 3.6 and 4.3, which imposed restrictions on access to various portions of Airpark.

airplane hangar adjoining their home. Contemporaneously, a dispute arose between the Jennings and Airpark regarding the chain-and-bollard security barrier separating one of Airpark's taxiways from Lakeview Drive. The record reflects that the Jennings allegedly offered to install an electronic gate at their own expense but that Airpark refused.

As a result of Airpark's adoption of Rules 3.6, 4.3, and 4.5, as well as the dispute over the barrier, the Jennings filed the underlying action seeking (1) declaratory relief and damages on the ground that Rule 3.6 conflicted with Airpark's CC&Rs in violation of Nevada law; (2) declaratory relief and damages on the ground that Rule 4.3 conflicted with Airpark's CC&Rs in violation of Nevada law; (3) damages under the Americans with Disabilities Act (ADA) on the ground that Airpark's refusal to install an electronic gate violated the ADA; (4) damages under the Federal Fair Housing Act (FFHA), again based on Airpark's refusal to install the gate; and (5) declaratory relief and damages on the ground that Rule 4.5 conflicted with Airpark's CC&Rs in violation of Nevada law. After the parties filed competing motions for summary judgment, the district court ruled in favor of the Jennings on their first four claims and in favor of Airpark on the fifth claim.

Airpark appealed, and the Jennings cross-appealed. On January 16, 2024, we issued an order to show cause why the appeal and cross-appeal should not be dismissed for lack of jurisdiction. Our concern was that, although the district court certified its judgment as final under NRCP 54(b), the district court's judgment did not award damages with respect to any of the Jennings' claims, even though the Jennings sought damages on the claims. Airpark and the Jennings have since responded to our order.

Having considered these responses, we conclude that we lack jurisdiction over Airpark's appeal, given that the district court did not finally adjudicate any of the four claims that Airpark challenges on appeal because no damages were awarded. As we noted in our show-cause order, "a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs." *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (internal quotation marks omitted). When a claimant prevails on a claim seeking damages, that claim is not finally adjudicated until damages are assessed. *See, e.g.*, *Mohler v. Elliott*, 332 So. 3d 1120, 1121 (Fla. Dist. Ct. App. 2022) (recognizing that a judgment that does not award damages on a claim seeking damages is not a final judgment); *John Cheeseman Trucking, Inc. v. Dougan*, 805 S.W.2d 69, 70 (Ark. 1991) (same); *Linnebur v. Pub. Serv. Co. of Colorado*, 716 P.2d 1120, 1123 (Colo. 1986) (same); *Pinnix v. LaMorte*, 438 A.2d 102, 103 (Conn. 1980) (same).

Consequently, despite the district court's NRCP 54(b) certification, none of the four claims adjudicated against Airpark have been finally resolved. *Cf. Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984) ("The district court does not have the power, even when a motion for [NRCP 54(b)] certification is unopposed, to transform an interlocutory order . . . into a final judgment."). Because no statute or court rule authorizes an appeal from the district court's summary judgment order, we lack jurisdiction to consider Airpark's appeal and order it dismissed. *See id.*

With respect to the Jennings' cross-appeal, we conclude that we have jurisdiction. Namely, as the Jennings observe, the district court ruled

against them on their fifth claim. The district court thus did not need to address the Jennings' request for damages as to that claim. Accordingly, the district court properly certified as final the portion of the summary judgment order that resolved the fifth claim against the Jennings. The cross-appeal therefore is properly before this court.

As for the merits of the Jennings' argument regarding their fifth claim, the Jennings contend that Rule 4.5 is invalid because it violates NRS 116.31065. In relevant part, that statute provides that an HOA's rules "[m]ust be consistent with the governing documents of the association." NRS 116.31065(4). Here, Airpark's governing documents are its CC&Rs. Because this issue involves the interpretation of Airpark's CC&Rs, our review is de novo. *See Vegas United Inv. Series 105, Inc. v. Celtic Bank Corp.*, 135 Nev. 456, 459, 453 P.3d 1229, 1231 (2019) ("We use the rules governing contract interpretation to interpret a [common interest community's] declaration of its CC&Rs. When the facts are not disputed, contract interpretation is subject to de novo review as a question of law." (internal citation omitted)).

The Jennings contend that Rule 4.5 conflicts with Section 6.06 of the CC&Rs, which requires a "boat, trailer, recreational vehicle, camper, truck other than a pickup, [and] commercial vehicle" to be parked in an enclosed area—i.e., either the home's garage or the accompanying airplane hangar. Section 6.06 further provides that "[a]ny garages or airplane hangars shall be used for parking automobiles, airplanes or other vehicles, only, and shall not be converted for living, recreational activities or commercial purposes." According to the Jennings, Section 6.06 requires "vehicles" such as recreational vehicles and commercial vehicles—which can obviously exceed 12,500 pounds—to be parked in a garage or a hangar.

Further according to the Jennings, the only means of accessing their hangar is via the taxiway connected to Lakeview Drive. Thus, the Jennings conclude that Rule 4.5's 12,500-pound weight limitation conflicts with Section 6.06 because Section 6.06 contains no weight limit, yet Rule 4.5 prohibits them from moving their 12,500 pound-plus vehicles in and out of their hangar.

Despite the Jennings having clearly articulated their argument that Rule 4.5 conflicts with Section 6.06 of the CC&Rs, the district court did not address that argument in its partial summary judgment order, and Airpark has not addressed it on appeal.[2] Instead, Airpark contends that its decision to adopt Rule 4.5 is protected by the business-judgment rule. Airpark is correct that NRS 116.3103(1)(a) requires HOA directors "to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation, subject to the business-judgment rule." However, Airpark has presented no authority to support the idea that the "business-judgment rule"—which shields a director from individual liability for certain acts, *see Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, 133 Nev. 369, 375, 399 P.3d 334, 341-42 (2017)—can somehow validate Rule 4.5 when it otherwise conflicts with Section 6.06 of the CC&Rs in violation of NRS 116.31065(4). *Cf. Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (observing that it is a party's

[2]Airpark's Statement of Facts in its combined answering and reply brief briefly observes that "[i]t is the vaguery of the Association's CC&Rs in Section 6.06 as to what types of 'other' vehicles are actually allowed to be stored/parked within residential aircraft hangars" that authorized Airpark to enact Rule 4.5. But Section 6.06 also unambiguously refers to certain vehicles that presumptively exceed 12,500 pounds, so we are not persuaded that there is any "vaguery" in Section 6.06's reference to "other vehicles."

responsibility to support arguments with relevant authority). Absent such authority, we are unwilling to construe NRS 116.3103's passing reference to the business-judgment rule as carving out a far-reaching exception to NRS 116.31065(4).[3] *Cf. Matter of B.J.W.-A.*, 139 Nev., Adv. Op. 1, 522 P.3d 814, 816 (2023) ("Where possible, we interpret statutes within a common scheme harmoniously with each other and in accordance with those statutes' general purpose.").

Consistent with the foregoing, we dismiss Airpark's appeal for lack of jurisdiction. We also reverse the district court's partial summary judgment order insofar as it ruled against the Jennings on their claim challenging the validity of Rule 4.5, and we remand to the district court for further proceedings consistent with this order.

It is so ORDERED.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Leon Aberasturi, District Judge
Debbie Leonard, Settlement Judge
Hall & Evans / Las Vegas
Gunderson Law Firm
Lemons, Grundy & Eisenberg
Third District Court Clerk

[3]In light of our resolution of this issue, we need not address the Jennings' alternative arguments that Rule 4.5 "arbitrarily restrict[s] conduct" or is not "reasonably related to the purpose for which [the Airport Rules] were adopted" so as to potentially violate NRS 116.31065.