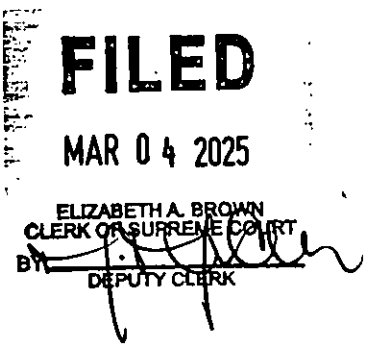
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DOUGLAS LYNCH; JACQUELINE LEVENTHAL; AND MARSHA LYNCH,
Appellants,
vs.
COLD CREEK CANYON HOMEOWNERS ASSOCIATION; ADRIA FORD; MIRANDA SCHMUTZ; RANDY BLIZZARD; AND MELISSA WATKINS,
Respondents.

No. 87459-COA



ORDER OF AFFIRMANCE

Douglas Lynch, Jacqueline Leventhal, and Marsha Lynch (appellants) appeal from district court orders granting summary judgment in favor of respondents in a civil action involving a homeowners' association. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

Douglas is the owner of two non-adjoining lots within the Cold Creek Canyon community and he resides with Jacqueline in a home on one of the lots but the other lot does not contain a permanent dwelling. Marsha is the owner of two lots within the community but does not reside there and neither lot contains a permanent dwelling. On the lots without dwellings, Douglas, Jacqueline, and Marsha (appellants) have built stables or horse corrals and use those lots to operate a non-profit horse sanctuary containing approximately 20 animals.

The properties in question are within a homeowners' association, respondent Cold Creek Canyon Homeowners Association (HOA). The HOA's declaration of covenants, conditions, and restrictions (CC&Rs) state, at Article 7(e), that a "[p]roperty shall be used for residential

purposes only" and not for commercial uses. A unit owner had previously complained that the horse sanctuary should constitute a commercial use, thus violating the CC&Rs. The HOA sought a legal opinion concerning that issue and, in 2019, a law firm retained by the HOA issued an opinion stating it did not believe the horse sanctuary constituted commercial use, as it was not run for profit. The 2019 opinion further explained that the CC&Rs did not specifically define what constituted residential purposes but noted there was statutory authority for residential use of stables or pens for animals on a unit within a residential community.

In 2021, the HOA adopted a rule providing clarification of the residential use provision of the CC&Rs with respect to the storage and maintenance of livestock on lots within the community. The rule reasserted that the community is for permanent single-family dwellings and explained that a unit owner may store and maintain livestock, so long as the livestock is not housed for commercial purposes, as an ancillary use of the lot if the owner has constructed an appropriate single-family dwelling on that lot. In addition, the rule explained that an owner of two adjacent lots with a permanent dwelling on one lot may house and maintain livestock on either lot.

Following adoption of the 2021 rule, the HOA issued several notices to Douglas and Marsha concerning their use of the lots without first constructing a dwelling. Douglas and Marsha also received several additional notices of other violations of the HOA rules, including problems from the build-up of manure.

The parties engaged in unsuccessful mediation concerning the 2021 rule and appellants' use of their properties. Appellants thereafter initiated the instant action against the HOA and respondents Adria Ford,

Miranda Schmutz, Randy Blizzard, and Melissa Watkins as board members of the HOA. In the operative complaint, appellants contended the 2021 rule caused them harm because it would either cause them to cease operation of the horse sanctuary or have to build additional dwellings. Appellants further alleged the 2021 rule was improperly adopted because it was inconsistent with the CC&R's and required the construction of a capital improvement by a unit owner that was not required by the governing documents. Appellants also asserted the rule was selectively enforced or was retaliatory in nature and that respondents committed a breach of contract or breach of the implied covenant of good faith and fair dealing. In addition, appellants alleged the board members committed acts of harassment and trespass. In light of the foregoing, appellants sought declaratory relief in the form of an order finding that the amended rule was invalid and asserted they were entitled to monetary damages.

Respondents answered and this matter proceeded to discovery. Respondents moved for summary judgment, arguing that the undisputed facts demonstrated the HOA lawfully adopted the 2021 rule, had not selectively enforced the rule, and had not improperly retaliated against appellants. Respondents also contended the undisputed facts demonstrated that the HOA board members had not committed acts of harassment or trespass. Finally, respondents asserted the undisputed facts demonstrated that appellants were not entitled to any monetary damages. Appellants opposed summary judgment and respondents filed a reply.

The district court ultimately concluded the undisputed facts demonstrated that appellants were not entitled to declaratory relief and the HOA was permitted to adopt the 2021 rule under the CC&Rs and NRS 116.3102(1)(a). The court concluded the 2021 rule clarified the CC&Rs and

reiterated that owners that use or develop a lot must do so for residential purposes. The court accordingly concluded the rule was consistent with the CC&Rs provision stating that the community was to be used for residential purposes. The court also concluded the rule did not require a capital improvement that was not otherwise required by the CC&Rs, as the rule did not force an owner to build on an unimproved lot but rather merely required an owner to build a residence or dwelling before using a lot for other purposes. In addition, the court concluded the undisputed facts did not support appellants' claims of harassment, retaliation, or trespass. Finally, the court concluded appellants failed to establish they were entitled to monetary damages. Accordingly, the district court concluded that appellants were entitled to summary judgment in their favor. This appeal followed.

Appellants argue the district court erred by granting summary judgment in favor of respondents. This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence "must be viewed in a light most favorable to the nonmoving party." *Id.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31. The party moving for summary judgment must meet its initial burden of production to show no genuine disputes of material fact exist. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). The nonmoving party must then "transcend the pleadings and, by affidavit or other admissible

evidence, introduce specific facts that show a genuine [dispute] of material fact." *Id.* at 603, 172 P.3d at 134.

First, appellants contend there remain disputes of fact as to whether the 2021 rule was improperly adopted by the HOA. Appellants assert the CC&Rs state that 75 percent of the lot owners must approve an amendment of the CC&Rs before such an amendment may be adopted, that the HOA did not obtain the approval of 75 percent of the lot owners, and thus lacked the authority to adopt the 2021 rule.

Appellants' argument is misplaced as the HOA did not amend the CC&Rs but rather used its authority to adopt a rule related to the use of properties within the community. NRS 116.2117(1) states that a community's CC&Rs "may be amended only by vote or agreement of units' owners of units to which at least a majority of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment." Here, Article 8, Section 1 of the CC&Rs provides for the amendment of the CC&Rs themselves and provides that such an amendment must be approved by 75 percent of the unit owners. However, Article 4, Section 1(h) states that the HOA may establish "general [r]ules and [r]egulations as the [a]ssociation may deem reasonable in connection with use and maintenance of all properties" and that the rules "may be altered and amended from time to time as the [a]ssociation may see fit." Such rules are also permitted by NRS 116.3102(1)(a), which states "subject to the provisions of the [CC&Rs]," the association "may adopt and amend rules and regulations." Neither the CC&Rs nor NRS 116.3102(1)(a) required the HOA to seek approval from 75 percent of the unit owners before adopting this type of rule.

Moreover, there is no genuine dispute that the 2021 rule did not amend the CC&Rs. The 2021 rule was adopted to clarify the requirement under Article 7, Section (e) of the CC&Rs, which states that the community is to "used for residential purposes." Accordingly, there was no genuine dispute that the HOA did not have to seek approval of 75 percent of the unit owners before adopting the 2021 rule. Therefore, we conclude appellants are not entitled to relief based on this argument.

Second, appellants contend there remains a genuine dispute of fact as to whether the 2021 rule was invalid because they assert the rule's definition of appropriate residential use is not consistent with the CC&Rs, as appellants argue the CC&Rs allowed them to utilize lots to operate a horse sanctuary but the 2021 rule does not. Appellants further contend that the 2021 rule was not reasonably related to the purpose for which it was adopted and it arbitrarily restricts appellants' conduct. In support of their argument, appellants assert that the definition of residential use in NRS 116.083 includes stables, agricultural stalls and pens. Appellants also note that the legal opinion obtained by the HOA in 2019 did not find that appellants' horse sanctuary constituted an improper use of their lots.

As stated previously, NRS 116.3102(1)(a) and the CC&Rs permitted the HOA to adopt or amend rules concerning the use and maintenance of properties within the community. In addition, NRS 116.31065(1) states that a homeowners' association's rules "[m]ust be reasonably related to the purpose for which they are adopted." Pursuant to NRS 116.31065(4), the rules "[m]ust be consistent with the governing documents of the association."

The undisputed facts demonstrate that on three lots owned by appellants, there were no dwellings and appellants did not reside thereon.

Instead, appellants utilized those lots to operate a non-profit horse sanctuary and constructed stables and/or horse corrals. In addition, the undisputed facts demonstrate the HOA adopted the 2021 rule to provide clarification of the CC&Rs "residential purposes" and clarified that unit owners were permitted to house livestock so long as the unit owner first constructed a dwelling on a single lot or on one of two adjoining lots. In light of the HOA's authority to adopt rules pursuant to NRS 116.3102(1)(a) and the CC&Rs, the undisputed facts demonstrate that the HOA was permitted to adopt a rule concerning the residential purpose of the community.

Further, NRS 116.083 states "'[r]esidential use' means use as a dwelling or for personal, family or household purposes by ordinary customers" and that such use can include "stables, agricultural stalls and pens." By its plain meaning, NRS 116.083 encompasses personal use of a residential property by the unit owners, and not the use of a property to operate a non-profit entity. *See Young v. Nev. Gaming Control Bd.*, 136 Nev. 584, 586, 473 P.3d 1034, 1036 (2020) (providing that Nevada's appellate courts generally interpret statutes based on their plain meaning). Thus, appellants' argument that NRS 116.083 permits them to use lots that lack dwellings to operate the non-profit horse sanctuary is unavailing, as such use is beyond the scope of the definition of residential use in NRS 116.083.

Turning to appellants' contention that the 2019 legal opinion permitted their use of lots as a horse sanctuary, we conclude appellants are not entitled to relief based on this argument. Preliminarily, appellants cite no relevant authority in support of their contention that the 2019 legal opinion bound a later court to recognize any conclusion reached in that

document. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument). Moreover, the legal opinion explained that it analyzed whether the horse sanctuary constituted a commercial use. In reaching the conclusion that the horse sanctuary did not constitute a commercial use, the opinion noted that the CC&Rs did not explicitly define what activities constituted "use for residential purposes" and found that NRS 116.083 did not bar appellants from using stables, stalls, and pens on their lots so long as those structures were not used for commercial purposes. Of note, the undisputed facts demonstrate the HOA did not use its rulemaking authority to adopt the 2019 legal opinion or the information contained therein as a rule.

Following the legal opinion, the HOA adopted the 2021 rule to provide a clarification of the CC&Rs' statement that the community was for "residential purposes" and clarified that unit owners were permitted to house livestock so long as the unit owner first constructed a dwelling on a single lot or on one of two adjoining lots. The 2019 legal opinion predated the 2021 rule and thus did not analyze the validity of that rule. The legal opinion further noted that the CC&Rs did not have a specific definition of "use for residential purposes" and it ultimately addressed a different issue than presented here, as it considered whether the horse sanctuary constituted an improper commercial use.

Here, as stated previously, the CC&Rs state that units within the community must be used for "residential purposes." The 2021 rule reiterated the residential nature of the community and clarified that when a unit owner wishes to conduct ancillary activities, such as housing livestock on a unit, there must first be a dwelling on a single lot or on one

of two adjoining lots. So long as a unit meets the aforementioned dwelling requirement, a unit owner may properly house livestock on that unit. As the CC&Rs plainly provided that the community was for residential purposes and the 2021 rule clarified that provision and reiterated the residential nature of the community, there remains no genuine dispute that the rule was consistent with the CC&Rs. Moreover, there is no genuine dispute that appellants' operation of a non-profit horse sanctuary on lots without dwellings was not the sort of residential purpose permitted by the CC&Rs, NRS 116.083, or the 2021 rule. In consideration of the CC&Rs' statement that the community was to be used for residential purposes, the 2021 rule clarification of the residential purpose of the community was reasonably related to the purpose for which it was adopted, was consistent with the CC&Rs, and did not arbitrarily restrict conduct. *See* NRS 116.31065(1), (4). Accordingly, appellants are not entitled to relief based on this argument.

Third, appellants contend there remains a genuine dispute of fact as to whether the 2021 rule improperly requires them to make a capital expenditure, as they assert they are now required to build a dwelling on several lots in order to continue housing animals on their properties. A rule adopted or amended by a homeowners' association must not "require the construction of any capital improvement by a unit's owner that is not required by the governing documents of the association." NRS 116.31065(4).

As stated previously, the 2021 rule clarified that unit owners were permitted to house livestock so long as the lot first contained a dwelling on a single lot or on one of two adjoining lots. The 2021 rule does not require a unit owner to construct a capital improvement that was not

required by the CC&Rs. Rather the rule clarified that the residential purpose of the community must first be satisfied before a unit owner houses livestock on a unit as an ancillary use of the property. Appellants are thus not required to construct a capital improvement upon their lots and may instead cease housing livestock on the otherwise unoccupied lots. Accordingly, there is no genuine dispute of material fact as to whether the 2021 rule required appellants to construct a capital improvement in violation of NRS 116.31065(4). Therefore, appellants are not entitled to relief based on this argument.

Fourth, appellants contend there remains a genuine dispute of fact as to whether the 2021 rule violates NRS 116.31065(5) because it is not uniformly enforced against all owners, as they assert that unit owners with adjoining lots need not build a dwelling. NRS 116.31065(5) states a rule "[m]ust be uniformly enforced under the same or similar circumstances against all units' owners. Any rule that is not so uniformly enforced may not be enforced against any unit's owner."

As explained previously, the 2021 rule clarified that when a unit owner wishes to conduct ancillary activities, such as house livestock on a unit, there must first be a dwelling on a single lot or on one of two adjoining lots. The 2021 rule plainly applies to all unit owners and requires unit owners to build dwellings before using their properties to house livestock as an ancillary activity.

Appellants also did not demonstrate that the HOA has allowed other unit owners to ignore the 2021 rule. Appellants point to an email drafted by a board member that discusses the HOA's decision to allow a unit owner to have a garage on a lot adjoining his other lot containing a dwelling but that same email explains that the garage was permitted by the 2021

rule because the unit owner constructed a dwelling on one of two adjoining lots and further states that the HOA "need[s] to be fair [with] everyone." The email plainly stated that the 2021 rule was to be applied in a fair manner and noted that a unit owner's use of the property complied with the 2021 rule. Thus, the email from the board member was insufficient to create a genuine dispute of material fact as to whether the HOA had not uniformly enforced the 2021 rule against all unit owners.

Here, respondents provided affidavits and documents in support of their contention that the HOA uniformly enforced the 2021 rule, including a log indicating that other unit owners had been notified that they had improperly utilized their lots for ancillary activities without first constructing a dwelling. Respondents' aforementioned affidavits and documents required appellants to do more than make general allegations or conclusory statements concerning this issue but rather they had to introduce specific facts by affidavit or other admissible evidence to demonstrate that there remained a genuine dispute of fact, *see Wood*, 121 Nev. at 731, 121 P.3d at 1030-31; *Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134, but appellants failed to do so. Based on the foregoing, we conclude that appellants failed to demonstrate a genuine dispute of fact remained as to this issue.

Fifth, appellants contend there remains a genuine dispute of fact as to whether the 2021 rule was adopted for retaliatory purposes in violation of NRS 116.31183. They assert that they were singled out and penalized because they performed activities on their lots before first building a residence thereon. NRS 116.31183(1)(a) prohibits a HOA board or a member of that board from taking retaliatory action against a unit owner *because* that owner has "[c]omplained in good faith about any alleged

violation of any provision in [NRS Chapter 116] or the governing documents of the association."

Here, respondents provided affidavits and documents demonstrating that the 2021 rule was adopted to clarify the residential purpose of the community as provided for in the CC&Rs. In opposition, appellants noted that Douglas complained to the HOA concerning the 2021 rule. However, appellants did not provide evidence that any action taken by respondents was done in retaliation for Douglas's complaint concerning the 2021 rule. Instead, appellants provided general allegations and conclusory statements concerning this issue, which are insufficient to demonstrate that there remained a genuine dispute of fact. *See Wood*, 121 Nev. at 731, 121 P.3d at 1030-31; *Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134. As explained previously, the undisputed facts demonstrated that the 2021 rule was adopted to clarify the residential purpose of the community and allowed unit owners to house livestock under conditions consistent with the residential purpose of the community. While appellants contend they were singled out because they keep livestock on their property as part of the operation of a horse sanctuary, appellants fail to demonstrate that respondents' action to enforce the community's governing documents concerning the residential nature of the community constituted an improper, retaliatory act in violation of NRS 116.31183. As appellants point to no information provided to the district court that demonstrates there remains a genuine dispute of fact as to this issue, we conclude that appellants failed to demonstrate they are entitled to relief.[1]

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[1]The district court also granted summary judgment in respondents' favor concerning appellants' claims that they were entitled to monetary damages under NRS Chapter 116, breach of contract, breach of the implied

In light of the foregoing analysis, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Danielle K. Pieper, District Judge
Jay Young, Settlement Judge
Boyack Orme & Anthony
Murchison & Cumming, LLC/Las Vegas
Leach Kern Gruchow Anderson Song/Las Vegas
Eighth District Court Clerk

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covenant of good faith and fair dealing, harassment, and trespass. Appellants fail to challenge the district court's grant of summary judgment as to these issues in their opening brief. As a result, appellants have waived any argument related to the same. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues an appellant does not raise on appeal are waived); *Hung v. Genting Berhad*, 138 Nev. 547, 549-50, 513 P.3d 1285, 1287-88 (Ct. App. 2022) (providing that an appellant generally must challenge all the independent alternative grounds relied upon by the district court, otherwise the ruling will be affirmed).