

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DIVINA PIAZZA, AN INDIVIDUAL,
Appellant,
vs.
SPRING MOUNTAIN RANCH MASTER
ASSOCIATION,
Respondent.

No. 88493-COA

FILED

JUL 31 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Divina Piazza appeals from a district court order granting summary judgment. Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

This matter arises out of a dispute between Piazza, and her homeowners' association, respondent Spring Mountain Ranch Master Association (Association), regarding her driveway. Piazza alleged that when she bought the home approximately 18 years ago it had a stained driveway, and in 2015 she "touched up" the stain because it had faded. Piazza claimed she did not need prior approval through the Association's Architectural Review process because the CC&Rs permitted "touch ups" so long as the color and material were the same as the prior strain. In contrast, the Association issued Piazza a notice indicating she had altered the driveway in such a manner that she was required to obtain prior approval. Piazza, however, contended this notice was the result of an ongoing dispute between herself and an HOA board member.

The parties were unable to resolve the dispute, and the Association issued Piazza a fine of \$50 every 7 days for as long as the violation remained. Because Piazza disputed the validity of the fine, she

refused to pay it and instead filed a civil complaint against the Association. The complaint asserted two causes of action: declaratory relief and retaliation pursuant to NRS 116.31183. Regarding the declaratory relief claim, Piazza sought declaratory relief stating that she did not violate the CC&Rs because the driveway work did not require preapproval.

The Association subsequently filed a motion for summary judgment. Relevant here, the Association argued Piazza failed to comply with NRCP 16.1 by failing to produce a computation of damages and requested the court strike her request for damages and enter summary judgment in its favor. Piazza opposed and argued she was seeking “general damages” and thus did not need to produce a computation of damages. She further argued she was seeking declaratory relief, which did not require damages, and asserted that if she succeeded on her retaliation claim, she could bring a separate action to recover her attorney fees. The district court held a hearing, at which it construed the Association’s argument as seeking case ending sanctions and ordered the parties to submit supplemental briefing regarding the relevant *Young* factors. See *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990).

The Association filed its supplemental motion for summary judgment and changed its argument to assert it was entitled to summary judgment because Piazza could not prove an essential element of her claims, specifically damages. The Association argued that, pursuant to NRS 116.4117(1), Piazza was required to demonstrate actual damages to bring a civil complaint for monetary damages or declaratory relief. The Association further argued actual damages are synonymous with compensatory damages and that unpaid fines and potential future attorney fees do not constitute compensatory damages. Piazza opposed and argued that,

because one of her claims sought declaratory relief, she was not required to demonstrate actual damages. Further, Piazza argued she did not bring her retaliation claim pursuant to NRS 116.4117 but pursuant to NRS 116.31183, which did not contain an actual damages requirement. Further, while she acknowledged attorney fees are not compensatory damages, she maintained she could still bring a separate action to recover them pursuant to NRS 116.31183(2)(b) and thus they were damages. Finally, Piazza clarified she was not seeking emotional distress or punitive damages and instead argued the unpaid fine, which was then approximately \$9,000, constituted damages. However, Piazza did not argue that she brought her claim pursuant to NRS 30.030, nor did she assert that, under that statute, she did not allege actual damages.

Following a hearing, the district court entered an order granting the supplemental motion for summary judgment. The district court found that both claims were subject to NRS 116.4117(1), which requires a plaintiff to demonstrate actual damages when bringing a civil complaint that alleges a violation of NRS Chapter 116 or the CC&Rs. Further, the district court found the term actual damages was synonymous with compensatory damages and the unpaid fine did not constitute compensatory damages. Finally, the district court concluded the potential of future attorney fees likewise did not constitute compensatory damages.

We review a district court order granting summary judgment de novo. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). Summary judgment is appropriate when no genuine dispute of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* “Statutory interpretation is a question of law subject to de novo review.” *Williams v. State Dep’t of Corr.*, 133 Nev. 594, 596, 402

P.3d 1260, 1262 (2017). “The goal of statutory interpretation is to give effect to the Legislature’s intent.” *Id.* (internal quotation marks omitted). “To ascertain the Legislature’s intent, we look to the statute’s plain language.” *Id.* “When the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, this court must give effect to that plain meaning as an expression of legislative intent without searching for meaning beyond the statute itself.” *Bd. of Parole Comm’rs v. Second Jud. Dist. Ct. (Thompson)*, 135 Nev. 398, 404, 451 P.3d 73, 78-79 (2019) (internal quotation marks omitted).

Piazza presents several arguments on appeal, but they largely fall into two categories: (1) NRS 116.4117(1) does not apply to either cause of action and thus she need not demonstrate actual damages and (2) assuming she is required to demonstrate actual damages, unpaid fines and a lien constitute actual damages. The Association disagrees on both grounds. Having considered the parties’ arguments, we conclude the district court did not err in its interpretation and application of NRS 116.4117(1) to this case and we affirm the grant of summary judgment.

Beginning with Piazza’s first argument, she contends NRS 116.4117 does not apply to her claims because she sought declaratory relief and she was not “seeking to hurt her HOA.” But Piazza’s argument in this regard is belied by the plain language of NRS 116.4117(1), which states that

[I]f a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons *suffering actual damages* from the failure to comply may bring a civil action *for damages or other appropriate relief*.

(Emphasis added.) As the district court recognized, the right of action provided by this statute is limited to situations where the plaintiff suffers actual damages. By its express terms, the “actual damages” requirement applies both to civil actions for damages as well as civil actions seeking other appropriate relief. Importantly, there is nothing in the text of the statute that can be read as suggesting that actions for declaratory relief are not encompassed by the other appropriate relief provision set forth therein and, thus, the plain language of the statute demonstrates it applies to actions such as the one at issue here. *Bd. of Parole Comm’rs*, 135 Nev. at 404, 451 P.3d at 78-79 (providing that, when the plain language of the statute is clear and unambiguous, we do not look beyond that language).

While Piazza cites to NRS 40.430(6) to support her position that NRS 116.4117 does not apply to her claims, this argument does not provide a basis for relief. NRS 40.430(6)(d)¹ defines what constitutes an “action” brought pursuant to NRS 40.430, which governs the recovery of any debt secured by a mortgage or a lien upon real estate. But Piazza has never argued that she brought her declaratory relief claim pursuant to NRS 40.430 nor does she argue that NRS 40.430 somehow limits the application of NRS 116.4117(1) to her underlying declaratory relief claim. Indeed, Piazza has not offered any explanation or analysis as to how this statutory provision impacts her claims or otherwise impacts the application of NRS 116.4117(1). Accordingly, we do not consider her argument in this regard. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d

¹NRS 40.430(6)(d) provides that an action does not include an act or proceeding “for the recovery of damages arising from the commission of a tort, including a recovery under NRS 40.750, or the recovery of any declaratory or equitable relief.”

1280, 1288 n.38 (2006) (providing that this court need not consider claims that are unsupported by cogent arguments).

Based on the forgoing analysis, we conclude the district court did not err by concluding NRS 116.4117(1) requires a showing of actual damages to obtain declaratory relief.²

Piazza next argues that NRS 116.4117(1) does not apply to her retaliation claim because she brought it pursuant to NRS 116.31183 and that statute does not contain actual damages language. Again, the plain language of NRS 116.4117(1) makes clear that it applies when a plaintiff has alleged the defendant is “subject to [NRS Chapter 116]” and has “fail[ed] to comply with any of its provisions.” Here, Piazza argued the Association, which is subject to NRS Chapter 116, violated NRS 116.31183 by issuing fines in retaliation for a dispute between herself and a member of the board. Because Piazza argued the Association violated NRS Chapter 116, NRS 116.4117(1) applies and—as discussed above—the plain language of that statute requires that she demonstrate actual damages to proceed with her

²We note that Piazza did not argue below, and does not now argue on appeal, that she brought her claim pursuant to NRS 30.030 which provides that “[n]o action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for.” Thus, we take no position on the potential interaction between NRS 30.030 and NRS 116.4117 and disagree with the dissent that we should reverse the district court judgment on a point of law not argued by the parties nor decided by the district court. *See State v. Eighth Jud. Dist. Ct. (Doane)*, 138 Nev., Adv. Op. 90, 521 P.3d 1215, 1221 (2022) (recognizing the Nevada appellate courts “follow the principle of party presentation” and thus “rely on the parties to frame the issues for decisions and assign to courts the role of neutral arbiter of matters the parties present” (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008))); *Senjab v. Alhulaibi*, 137 Nev. 632, 633-34, 497 P.3d 618, 619 (2021) (“We will not supply an argument on a party’s behalf but review only the issues the parties present.”).

claim. Accordingly, we discern no error in the district court's determination that NRS 116.4117(1) applies to her retaliation claim.

Having concluded that Piazza was required to show actual damages for both of her claims, we turn to the district court's conclusion that Piazza failed to demonstrate such damages. On this point, we conclude the district court did not err by finding the unpaid fine and resulting lien does not constitute actual damages.³

The supreme court has defined actual damages as being "synonymous with compensatory damages." *Davis v. Beling*, 128 Nev. P.3d 301, 316, 278 P.3d 501, 512 (2012) (internal quotation marks omitted). The term "actual damages" then serves to "distinguish compensatory damages from other broad types of damages." *Id.* In line with this authority, Piazza's opening brief argues actual damages should be defined as "an amount awarded to a complainant to compensate for a proven injury or loss."

On appeal, Piazza argues that an unpaid fine, which is turned over to collections and results in a lien, is "proof of damages." Piazza argues she demonstrated actual damages because the "fine became a lien on the property when it was issued." Thus, the value of the home is impacted and if she were to sell the home it would "decrease the amount of compensation" she receives such that the fine constitutes actual damages. But Piazza's argument fails because she did not allege that she is attempting to sell the

³As noted above, in addition to addressing the unpaid fine, the district court also found that her potential attorney fees did not constitute damages for the purposes of NRS 116.4117. While Piazza suggests on appeal that the potential availability of attorney fees for a retaliation claim is sufficient to establish damages, she fails to present any authority to support this contention, and thus we do not consider it. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

home and thus any damages resulting from the alleged lien have not been incurred and are currently uncertain. *See Sorenson v. Pavlikowski*, 94 Nev. 440, 444, 581 P.2d 851, 854 (1978) (actual damages must be appreciable); *see also Clark v. Robison*, 113 Nev. 949, 951, 944 P.2d 788, 789-90 (1997) (actual damages cannot be speculative). Accordingly, we conclude that this argument does not provide a basis for relief under the circumstances presented here.

Piazza next argues the unpaid fine constitutes actual damages pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692k, and the United States Bankruptcy Code § 101(5)(A). However, the Association correctly notes that Piazza failed to raise these arguments before the district court and thus has waived them. *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.”). Although Piazza may have generally argued her belief that unpaid fines constitute actual damages before the district court, she failed to make the arguments she now attempts to assert on appeal regarding the applicability of these federal statutes.⁴

⁴To the extent Piazza asserts it is against public policy to require payment of a fine before you have actionable damages and that such a rule creates statute of limitations and spoilage issues, those arguments were not raised below and, thus, they are waived. *See Old Aztec Mine, Inc.*, 97 Nev. at 52, 623 P.2d at 983. We note that, despite her waived public policy argument, Piazza does not address the voluntary payment doctrine or suggest that an exception to that doctrine would apply. *See Nev. Ass’n Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130 Nev. 949, 955-59, 338 P.3d 1250, 1254-1256 (2014) (discussing the ability to make a payment under protest and the application of the voluntary payment doctrine to HOA liens). Accordingly, we do not address its potential application to NRS 116.4117(1).

Further, even if these arguments were not waived, she failed to provide cogent argument explaining how the ability to bring a claim under the Fair Debt Collection Practices Act or the ability to discharge unpaid debt pursuant to the United States Bankruptcy Code demonstrates unpaid fines are *compensatory* damages pursuant to NRS 116.4117(1). *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (providing that this court need not consider claims that are unsupported by cogent arguments).

Accordingly, based on the arguments before us, we conclude the district court did not err in granting summary judgment and we affirm the district court's decision.⁵

It is so ORDERED.


_____, J.
Gibbons


_____, J.
Westbrook

⁵Insofar as Piazza raises 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. However, we note that because her claims were dismissed for not presently demonstrating actual damages, and the Association conceded that if she were to pay the fine it would constitute actual damages, our resolution of this matter should not be read as preventing future actions regarding the dispute.

BULLA, C.J., concurring in part and dissenting in part:

Although I concur with the majority's conclusion that the district court properly granted summary judgment on Piazza's retaliation claim, I respectfully dissent from the majority's determination that the district court did not err by granting summary judgment on Piazza's declaratory relief claim.

Piazza's complaint—specifically her first cause of action—plainly set forth a claim for declaratory relief to determine whether she violated Article VI, Section 6.2 of the Association's CC&Rs such that the Association could properly impose fines against her for the alleged violation. And Piazza has steadfastly advanced her claim for declaratory relief, both below—from her complaint through her opposition to the Association's motion for summary judgment and her supplemental opposition—and on appeal before this court. In particular, she has consistently maintained that declaratory relief was proper and warranted to address whether she violated the CC&Rs and that she was not required to demonstrate damages to bring a claim for declaratory relief.

Under Nevada law, an independent action for declaratory relief may be maintained as it gives courts the “power to declare rights, status and other legal relations whether or not further relief is or could be claimed.” NRS 30.030. This statute further provides that “[n]o action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for.” As our supreme court has acknowledged, a declaratory judgment “determines [the parties'] legal rights without undertaking to compel either party to pay money or to take some other action to satisfy such rights as are determined to exist by the declaratory judgment.” *Aronoff v. Katleman*, 75 Nev. 424, 432, 345 P.2d 221, 225 (1959).

Thus, when a party seeks declaratory relief under this statute, there is no requirement that a party be entitled to damages in order to obtain a declaratory judgment.⁶

This court has previously recognized that “declaratory relief is a creature of statute that was ‘unknown to the common law, either at law or in equity.’” *See Res. Grp., LLC, v. Hydr-O-Dynamic Corp.*, Case No. 80752-COA, 2021 WL 2473712, *3 (Nev. Ct. App. June 16, 2021) (quoting 26 C.J.S. *Declaratory Judgments* § 2 (2021)). In Nevada, the availability of declaratory relief is governed by NRS Chapter 30—Nevada’s version of the Uniform Declaratory Judgments Act—and particularly NRS 30.030, which provides for an independent action for declaratory relief. And given that the availability of a claim for declaratory relief originates with a statute, the fact that Piazza did not cite the exact statutory provision in her complaint does not preclude the district court from granting declaratory relief. Stated another way, Piazza’s declaratory relief claim, as pled, is necessarily grounded in NRS 30.030 as there is no other way in which she could obtain declaratory relief where damages are not being sought.⁷ *See*

⁶The majority expresses concern about determining the potential interaction between NRS 30.030 and NRS 116.4117 before permitting a declaratory relief action to proceed under NRS 30.030, and because the parties did not argue this point of law below or on appeal, we should not address it. I am less concerned. In my view, we need not consider the potential interaction between the two statutes as both are independently available to a party seeking declaratory relief to challenge the enforcement of CC&Rs, albeit one requires proof of damages, and the other does not.

⁷For this same reason I am not persuaded that Piazza’s failure to cite NRS 30.030 in her appellate briefing precludes its application in resolving her appeal. This court reviews district court summary judgment orders de novo. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). And where, as here, the statutory basis of a claim is

generally *Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 308, 468 P.3d 862, 878 (Ct. App. 2020) (holding that, under Nevada’s liberal notice pleading standard, a plaintiff must provide sufficient allegations supporting a legal theory, but need not identify the specific legal theory on which the claim is based).

Below, the district court found that NRS 116.4117(1) only allows individuals who suffer actual damages to bring claims against a homeowners’ association under that statute. And because the district court determined Piazza could not demonstrate actual damages, it granted the Association summary judgment on her declaratory relief claim.

While the district court was correct that NRS 116.4117(1) provides that only a person “suffering actual damages . . . may bring a civil action for damages or other appropriate relief” based on NRS 116.4117, this

clear, nothing precludes this court from considering and applying that statute in the course of our de novo review of a grant of summary judgment. As our supreme court recently concluded, “[w]hen an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law.” *Nev. Policy Research Inst., LLC v. Miller*, 140 Nev. Adv. Op. 69, 558 P.3d 319, 331 (2024) (quoting *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991)). In adopting this approach to the party presentation rule, the *Nevada Policy Research* court further cited, with approval, authority from the United States Supreme Court recognizing that “the ‘party presentation principle is supple, not ironclad’ and that ‘a court is not hidebound by the precise arguments of counsel.’” *Id.* (quoting *United States v. Sineneng-Smith*, 590 U.S. 371, 376, 380 (2020)). Thus, in my opinion, we can consider the application of NRS 30.030 to the facts and circumstances of this case even though Piazza did not specifically plead the statute, as it provides the legal means for her to seek declaratory relief without ascertaining damages.

does not preclude Piazza from seeking declaratory relief. NRS 116.4117(7), expressly states that “[t]he civil remedy provided by this section is in addition to, and not exclusive of, any other available remedy or penalty.” And here, Piazza utilized another available remedy by seeking a declaratory judgment that she did not violate the Association’s CC&Rs such that it could not impose fines against her for the purported violation as is permitted by NRS 30.030.

Given that Piazza sufficiently pled her claim for declaratory relief as permitted by statute without the necessity of alleging damages—actual or otherwise—I would conclude that the district court erred in granting summary judgment to the Association on this claim based on Piazza’s failure to demonstrate actual damages because declaratory relief is permitted under Nevada law without proof of damages.⁸ I would therefore reverse this decision and remand this matter to the district court for further proceedings on Piazza’s declaratory relief claim.

Accordingly, for the reasons set forth above, I respectfully dissent.


_____, C.J.
Bulla

⁸While the district court relied upon this court’s decision in *Edelman v. Monterey at Las Vegas Country Club Homeowners’ Ass’n.*, Case No. 83494-COA, 2022 WL 12469850, *2 n.2 (Nev. Ct. App. Oct. 20, 2022), to grant summary judgment, this court did not consider the availability of a declaratory relief claim under NRS 30.030 in *Edelman*, in part, because the appellant in that case failed to raise it before the district court.

cc: Hon. Jasmin D. Lilly-Spells, District Judge
Jay Young, Settlement Judge
David J. Winterton & Associates, Ltd.
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Eighth District Court Clerk