IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ALLEN LYTLE AND TRUDI LEE LYTLE, AS TRUSTEES OF THE LYTLE TRUST,
Appellants,
vs.
ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION,
Respondent.

No. 54886

FILED

SEP 29 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order confirming an arbitration award in a real property action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellants John and Trudi Lytle owned property in a subdivision governed by Covenants, Conditions, and Restrictions (CC&Rs), the provisions of which were enforced by respondent Rosemere Estates Property Owners Association (the Association). After a dispute between the parties, they entered into arbitration pursuant to NRS Chapter 38. The Association ultimately prevailed, so the Lytles filed a civil action on June 26, 2009, pursuant to NRS 38.330(5), seeking declaratory and injunctive relief from the district court. The Association filed a motion to dismiss the Lytles' complaint and to confirm the arbitration award, arguing that the complaint was untimely pursuant to NRS 38.330(5) because the Lytles filed it more than 30 days after the initial May 4, 2009, arbitration decision and award was served on the parties.

The Lytles opposed the motion, arguing that the complaint was timely because the arbitration decision and award was not final until

the arbitrator assessed the amount of attorney fees and costs, which occurred on June 1, 2009. The district court determined that the service date of the initial May 4, 2009, decision and award, which resolved all issues except for the amount of attorney fees and costs, was the applicable date for purposes of NRS 38.330(5). Thus, the court dismissed the Lytles' complaint, finding it untimely, and confirmed the arbitrator's award. The Lytles now appeal.

"A motion to dismiss is properly granted when there is a lack of subject matter jurisdiction on the face of the complaint." Rosequist v. Int'l Ass'n of Firefighters, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002), overruled on other grounds by Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 573 n.22, 170 P.3d 989, 995 n.22 (2007); cf. Kame v. Employment Security Dep't, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989) (stating that statutory time requirements for filing petitions for judicial review of administrative decisions are mandatory and jurisdictional). Pursuant to NRS 38.310(2), the district court must dismiss any civil action if the matter has not first proceeded through arbitration and all administrative remedies in the CC&R's have been exhausted. Subject matter jurisdiction and statutory construction are questions of law subject to de novo review. Ogawa v. Ogawa, 125 Nev. ___, ___, 221 P.3d 699, 704 (2009); Westpark Owners' Ass'n v. Dist. Ct., 123 Nev. 349, 357, 167 P.3d 421, 426-27 (2007).

NRS 38.330(5) requires a final decision on all issues before a party may commence a civil action

At the time the Lytles filed their civil action in the district court, NRS 38.330(5) provided, in pertinent part, that "any party to the nonbinding arbitration may, within 30 days after a decision and award have been served upon the parties, commence a civil action in the proper court concerning the claim which was submitted for arbitration." The

Lytles contend that NRS 38.330(5) is ambiguous because it is unclear whether the statute requires the resolution of all issues by the arbitrator before proceeding in the district court, or whether a civil action may be filed after service of a decision and award that resolves less than all of the issues before the arbitrator.

"Generally, when a statute's language is plain and its meaning clear, the courts will apply that plain language." Leven v. Frey, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007). However, a statute is ambiguous when it is susceptible to more than one reasonable interpretation, and we resolve that ambiguity by looking to legislative history and "construing the statute in a manner that conforms to reason and public policy." Great Basin Water Network v. State Eng'r, 126 Nev. ___, ___, 234 P.3d 912, 918 (2010). We have "a duty to construe statutes as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized." Hardy Companies, Inc. v. SNMARK, LLC, 126 Nev. ___, ___, 245 P.3d 1149, 1153 (2010). Here, we determine that the prior version[1] of NRS 38.330(5) was ambiguous because it may reasonably be interpreted to refer to the single decision and award that resolves all issues in the arbitration, or to each decision and award issued by the arbitrator.

Because we discern no clear legislative intent regarding whether a "decision and award" means a final decision, we must look to

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[1]NRS 38.330(5) was subsequently amended in the 2011 legislative session.

reason and public policy to resolve the ambiguity.[2] In doing so, we recognize important public policy reasons for requiring the arbitrator to adjudicate all issues before a party proceeds in the district court. The general legislative intent for requiring pre-civil action arbitration of disputes between homeowners associations and resident-members of those associations is to reduce the time it takes to resolve those disputes. See Hearing on A.B. 152 Before the Assembly Judiciary Comm., 68th Leg. (Nev., February 14, 1995). Thus, arbitration is designed to expeditiously resolve disputes among parties, without directly involving the district courts, and to avoid costly litigation. Requiring or allowing a party to file multiple actions in the district court stemming from a single arbitration would undermine this goal. Additionally, as the Lytles contend, "it is far less complex and risky to require that a 'final' decision and award be on all issues involved in an arbitration proceeding so as to minimize the amount of trial de novo actions that may be fueled by uncertainty as to the amount of an as-yet-to-be quantified attorney fee award." We agree that it would render arbitration far more cumbersome if trials de novo are sought each time the arbitrator issues multiple decisions and awards adjudicating various aspects of the case—instead, it is more reasonable to infer that the Legislature intended only one civil action to be filed after those proceedings, and that must take place after the entire arbitration has concluded.

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[2]At the time the Lytles filed their complaint in district court, the legislative history for NRS 38.330(5) was inconclusive regarding whether the statute required a final decision.

Further supporting our determination regarding legislative intent, during the 2011 legislative session, the Legislature amended NRS 38.330(5) to address the very issue the Lytles present in this appeal—when, under NRS 38.330(5), the 30-day period for filing a civil action after nonbinding arbitration begins to run. As amended, NRS 38.330(5) now provides that a party to a nonbinding arbitration may not commence a civil action in district court until "after a final decision and award which are dispositive of any and all issues of the claim which were submitted to nonbinding arbitration have been served upon the parties." See A.B. 317, 76th Leg. (Nev. 2011). "Where a former statute is amended, or a doubtful meaning clarified by subsequent legislation, such amendment or subsequent legislation is strong evidence of the legislative intent of the first statute." 2B Norman J. Singer & J.D. Shambie Singer, Sutherland Statutory Construction § 49:11, at 145 (7th ed. 2008); see also Public Employees' Benefits Prog. v. LVMPD, 124 Nev. 138, 157, 179 P.3d 542, 554-55 (2008) (holding that when the Legislature clarifies a statute "through subsequent legislation, we may consider the subsequent legislation persuasive evidence of what the Legislature originally intended"). In adopting this amendment to NRS 38.330(5), the Legislature clarified any confusion stemming from the statute's previous language. Specifically, in presenting the bill to the Senate Committee on Judiciary, Assemblyman Tick Segerblom stated:

> The issue is when you file an appeal from the Real Estate Division to the district court. It is not clear. When you get a judgment from the arbitrator and then ask for attorney's fees, there is an attorney's fees award. The question is whether the appeal is filed. If the attorney's fees award is still being considered, is the appeal filed 30 days after that award? This bill says the appeal is filed 30 days

> after all those things are resolved rather than trying to file the appeal after one award or the other. This would clarify the issue of when to file the notice of appeal.

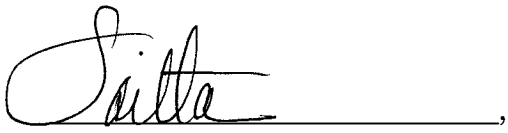
Hearing on A.B. 317 Before the Senate Judiciary Comm., 76th Leg. (Nev., May 10, 2010).

Since the Legislature's amendment addresses the precise issue presented in this appeal, we are persuaded that the Legislature's original intent was to require a final decision and award from the arbitrator that disposes of "all issues of the claim" before the 30-day period for commencing a civil action begins to run. A.B. 317, 76th Leg. (Nev. 2011).

In light of this clarifying amendment to NRS 38.330(5), we conclude that the 30-day period for commencing a civil action does not begin to run until the arbitrator has issued a final decision and award that disposes of all matters involved in the dispute, including attorney fees and costs, and that decision and order is served on the complaining party. Here, the arbitrator's first decision and award issued on May 4, 2009, did not dispose of all matters involved in the dispute because it did not dispose of the attorney fees and costs issue. Thus, the 30-day period for the Lytles to commence civil action did not start to run until the arbitrator's June 1, 2009, award of attorney fees and costs was served on the parties. Accordingly, we conclude that the district court erred in dismissing the Lytles' complaint and confirming the arbitration award.

For the reasons stated above, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for further trial de novo proceedings on the Lytles' complaint.



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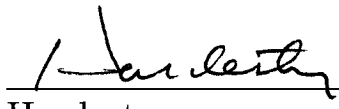

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Craig A. Hoppe, Settlement Judge
Sterling Law, LLC
Santoro, Driggs, Walch, Kearney, Holley & Thompson
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Eighth District Court Clerk