EDDY MARTEL, aka MARTEL-RODRIGUEZ; MARY ANNE CAPILLA; JANICE JACKSON-WILLIAMS; and WHITNEY VAUGHAN, on Behalf of Themselves and All Others Similarly Situated, Appellants, *v.* HG STAFFING, LLC; and MEI-GSR HOLDINGS, LLC, dba GRAND SIERRA RESORT, Respondents.

No. 82161

August 11, 2022, as amended September 8, 2022 519 P.3d 25

Appeal from a final judgment in an employment matter concerning unpaid wages. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Affirmed.

Thierman Buck LLP and *Joshua D. Buck, Mark R. Thierman, Joshua R. Hendrickson*, and *Leah L. Jones*, Reno, for Appellants.

Littler Mendelson, P.C., and *Diana G. Dickinson* and *Montgomery Y. Paek*, Las Vegas, for Respondents.

Before the Supreme Court, En Banc.

AMENDED OPINION

By the Court, Stiglich, J.:

Appellants filed a class action complaint against their former employer to obtain unpaid minimum and overtime wages. For various reasons, their claims were dismissed and denied. In this appeal from the district court's orders, we clarify four matters of employment law. First, a two-year limitations period applies to appellants' wage claims. Second, a collective bargaining agreement (CBA) is valid so long as the employer and the union objectively manifest their assent to the agreement. Third, claims under NRS 608.040, which penalizes employers for failing to timely pay earned wages to former employees, cannot be utilized to recover wages that are time-barred under other statutes. And fourth, an employer that is a party to a CBA is exempt from Nevada's overtime statute, NRS 608.018, when the CBA provides overtime in a manner different from the statute. Because the district court adhered to this law in its orders and appellants failed to show a genuine issue of material fact, we affirm.

FACTS AND PROCEDURAL HISTORY

Between 2011 and 2015, appellants Eddy Martel, Mary Anne Capilla, Janice Jackson-Williams, and Whitney Vaughan (collec-

tively, the Martel employees) worked at the Grand Sierra Resort (GSR) in Reno. Their employers, respondents HG Staffing, LLC, and MEI-GSR Holdings, LLC (collectively, HG Staffing), own and operate the GSR. All four Martel employees allege that during their employment they were required to complete tasks—such as attending meetings or classes, getting into uniform, or reconciling cash amounts—without pay. The Martel employees further allege that similarly situated employees were not paid for completing the same tasks. Employees at the GSR are generally members of the Culinary Workers Union Local 226 (the Culinary Union), which maintains a CBA with HG Staffing.

In 2016, the Martel employees filed a putative class action asserting four claims. They alleged that HG Staffing failed to pay them for the work they completed in violation of (1) NRS 608.016 (requiring an employer to pay wages for each hour worked); (2) the Minimum Wage Amendment (MWA) of Nevada's Constitution, Nev. Const. art. 15, § 16 (requiring employers to pay employees a minimum hourly wage); (3) NRS 608.018 (requiring an employer to pay overtime wages); and (4) NRS 608.020 through NRS 608.050 (requiring an employer to timely pay a former employee their earned wages).

In the aggregate, the district court issued three orders in HG Staffing's favor that the Martel employees now challenge: (1) an order granting in part HG Staffing's motion to dismiss, (2) an order granting HG Staffing's motion for summary judgment, and (3) a clarification order explaining that the previous order for summary judgment extended to Jackson-Williams's individual claims. The procedural history underlying each of these orders is discussed below. In sum, all claims asserted by the Martel employees were resolved in favor of HG Staffing and did not proceed to trial. This appeal followed.

DISCUSSION

The district court did not err by granting in part HG Staffing's motion to dismiss

"A dismissal for failure to state a claim pursuant to NRCP 12(b)(5) is reviewed de novo." *Eggleston v. Stuart*, 137 Nev. 506, 509, 495 P.3d 482, 487 (2021). "A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the complainant." *Id.* Further, "[w]hen the facts are uncontroverted, . . . the application of a statute of limitations to bar a claim is a question of law that this court reviews de novo." *JPMorgan Chase Bank, Nat'l Ass'n v. SFR Invs. Pool 1, LLC*, 136 Nev. 596, 598, 475 P.3d 52, 55 (2020).

A two-year limitations period applies to the Martel employees' claims arising under NRS Chapter 608

Collectively, the Martel employees worked at the GSR from 2011 to 2015. Relevant to our statute-of-limitations analysis, it is undisputed that the Martel employees ceased working at the GSR after the following dates: June 2013 (Vaughan), September 2013 (Capilla), June 2014 (Martel), and December 2015 (Jackson-Williams). The Martel employees filed their complaint on June 14, 2016. As noted, they asserted causes of action under NRS 608.016, NRS 608.018, and NRS 608.020 through NRS 608.050. HG Staffing moved to dismiss all claims that accrued before June 14, 2014, on the ground that they were subject to a two-year limitations period. The district court agreed and dismissed all claims asserted by Vaughan and Capilla, all but one day of Martel's claims, and all but 18 months of Jackson-Williams's claims.

The Martel employees argue that the district court erred by dismissing the foregoing statutory claims because they are subject to a three-year limitations period. They argue that NRS 608.260, which governs claims for statutory minimum wages, expressly provides that an action must be brought within two years, whereas the other wage statutes are silent in this regard. Thus, they argue that NRS 11.190(3)(a)'s three-year limitations period for statutorily created causes of action applies. HG Staffing, also pointing to NRS 608.260, asserts that a two-year limitations period applies to the Martel employees' claims under the doctrine of analogous limitations. We agree with HG Staffing.

While we previously held that claims under NRS 608.016, NRS 608.018, and NRS 608.020 through NRS 608.050 can be asserted as private causes of action, *see Neville v. Eighth Judicial Dist. Court*, 133 Nev. 777, 782-83, 406 P.3d 499, 504 (2017), we have yet to address which limitations period applies to claims brought under these statutes. We now clarify that the Martel employees' claims under these statutes are governed by a two-year limitations period under the doctrine of analogous limitations, which provides that "when a statute lacks an express limitations period, courts look to analogous causes of action for which an express limitations period is available either by statute or by case law." *Perry v. Terrible Herbst, Inc*., 132 Nev. 767, 770-71, 383 P.3d 257, 260 (2016) (alteration omitted) (internal quotation marks omitted), *superseded by statute as stated in U.S. Bank, N.A. v. Thunder Props., Inc.*, 138 Nev. 16, 503 P.3d 299 (2022).

In *Perry*, we applied the doctrine of analogous limitations and held that minimum-wage claims brought under the MWA are subject to a two-year limitations period. *Id.* at 773-74, 383 P.3d at 262. We recognized that although the MWA includes no express limitations period, such a claim "remains most *closely analogous* to one statute, NRS 608.260, which [expressly] carries a two-year limita-

tions period."[1] *Perry*, 132 Nev. at 773, 383 P.3d at 262 (emphasis added); *see also* Nev. Const. art. 15, § 16(B) (omitting a limitations period). This is because a minimum-wage claim under the MWA "closely resembles, if it is not in fact, an action for back pay under NRS 608.260." *Perry*, 132 Nev. at 771, 383 P.3d at 260.

The doctrine of analogous limitations, however, was recently superseded by statute. *See Thunder Props.*, 138 Nev. at 20 n.3, 503 P.3d at 304 n.3 (citing 2021 Nev. Stat., ch. 161, § 2, at 723-24 (amending NRS 11.220)). Yet, as we explained, this statutory amendment applies only prospectively. *Id.*; *see* 2021 Nev. Stat., ch. 161, § 3, at 724 ("The amendatory provisions of this act apply to an action commenced on or after the effective date of this act."). Thus, claims that were commenced before the 2021 amendatory provisions of NRS 11.220 became effective—such as the Martel employees' claims—are still subject to the doctrine of analogous limitations.

Having considered the parties' arguments, we conclude that the district court properly applied the doctrine of analogous limitations and that a two-year limitations period applies to the Martel employees' statutory claims. A two-year limitations period creates consistent application of the law, chiefly because "NRS 608.115 requires employers to maintain an employee's record of wages for [only] two years." *Perry*, 132 Nev. at 773, 383 P.3d at 262. Like the analysis in *Perry*, if we accepted the Martel employees' invitation to apply a three-year limitations period to this dispute, "an employee could bring a claim after the employer is no longer legally obligated to keep the record of wages for the employee."[2] *Id.* Thus, uniformity of law requires the application of a two-year limitations period to the Martel employees' claims under NRS 608.016, NRS 608.018, and NRS 608.020 through NRS 608.050.

The Martel employees' claims under NRS 608.016 are similar to back-pay claims under NRS 608.260 because they both seek to recover unpaid wages. Further, their claims are analogous to claims under the MWA because, if an employee is not paid wages, they have not received the minimum wage. *See* Nev. Const. art. 15, § 16(A) ("Each employer shall pay a wage to each employee of *not less* than the hourly rates set forth in this section." (emphasis

[1]NRS 608.260(1) provides that, "[i]f any employer pays any employee a lesser amount than the minimum wage set forth in NRS 608.250[,] . . . the employee may, at any time within 2 years, bring a civil action against the employer."

[2]At oral argument before this court, the Martel employees argued that federal law allows employees to assert claims for unpaid wages after the employer's record-keeping obligation has expired. Thus, they contend that the record-keeping benefit described by *Perry* is not dispositive to our analysis. This argument was not included in the Martel employees' briefs, so we decline to consider it. *See Rives v. Farris*, 138 Nev. 138, 146 n.6, 506 P.3d 1064, 1071 n.6 (2022) (explaining that we need not address arguments "raised for the first time at oral argument").

added)). Because the Martel employees are seeking wages that were allegedly not paid, i.e., they received less than the minimum wage, they are functionally asserting claims under NRS 608.260 and the MWA, both of which are governed by a two-year limitations period. Thus, we discern no reason to depart from *Perry*.[3]

In sum, we conclude that the district court correctly applied a two-year limitations period to the Martel employees' claims.[4] We therefore affirm the district court's decision to dismiss, in relevant part, their claims as time-barred.

Summary judgment was appropriate

"A district court's decision to grant summary judgment is reviewed de novo." *A Cab, LLC v. Murray*, 137 Nev. 805, 813, 501 P.3d 961, 971 (2021). "Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter of law." *Id.* (internal quotation marks omitted). "All evidence [is] viewed in [the] light most favorable to the nonmoving party." *Id.* (internal quotation marks omitted).

The Martel employees raise four arguments regarding the district court's summary judgment order. They assert that the district court erred by concluding that (1) the CBA between the Culinary Union and HG Staffing was valid, (2) the individual Martel employees lacked standing to represent Culinary Union members in a putative class-action lawsuit, (3) Martel was not entitled to relief under NRS 608.020 through NRS 608.050, and (4) the CBA provided otherwise for overtime such that it was exempt from NRS 608.018. We address the Martel employees' arguments as follows.

The CBA is valid because it was ratified by the Culinary Union

As noted, HG Staffing and the Culinary Union were parties to a CBA that governed employees at the GSR. Several issues turn on whether this CBA was valid, which the parties dispute.

The CBA, which the Martel employees refer to as the "redline draft," is unsigned and omits HG Staffing as a party. Instead, the CBA lists as parties to the agreement the Culinary Union and Worklife Financial, Inc., the former owner of the GSR. The CBA also contains redlines showing edits.[5] And although it states that it

[3]The Martel employees commenced this lawsuit in 2016, so we need not decide which limitations period applies to claims under NRS Chapter 608 that were commenced after the 2021 amendatory provisions of NRS 11.220 became effective. *See* 2021 Nev. Stat., ch. 161, §§ 3-4, at 724.

[4]Given that MWA claims also have a two-year limitations period, the district court correctly dismissed the Martel employees' time-barred MWA claims consistent with the foregoing analysis.

[5]Although the Martel employees point to other versions of the CBA, we do not analyze them because all evidence in the record shows that HG Staffing

is effective between "2010-20," it does not contain any date showing when the Culinary Union accepted it. The district court concluded that the CBA was valid because *all* evidence in the record showed that the Culinary Union ratified the CBA.

The Martel employees contend that the district court erred because the CBA is unsigned, undated, and does not list HG Staffing as a party to the agreement. They further argue that the edits on the CBA show that it was not a final agreement. Thus, they contend that a genuine issue of material fact remains regarding whether the CBA was a binding agreement. HG Staffing argues that the CBA is valid because the Culinary Union ratified it. We disagree with the Martel employees.

Unlike a typical written agreement, the "technical rules of contract [formation] do not control whether a [CBA] has been reached." *Pepsi-Cola Bottling Co. v. NLRB*, 659 F.2d 87, 89 (8th Cir. 1981). Further, a CBA need not be signed or unexpired to be valid. *Line Constr. Benefit Fund v. Allied Elec. Contractors, Inc.*, 591 F.3d 576, 581 (7th Cir. 2010). Instead, the validity of a CBA "rest[s] ultimately on the principle of mutual assent," *Operating Eng'rs Pension Tr. v. Gilliam*, 737 F.2d 1501, 1503 (9th Cir. 1984), and "[u]nion acceptance of an employer's final offer [for a CBA] is all that is necessary to create a contract," *Warehousemen's Union Local No. 206 v. Cont'l Can Co.*, 821 F.2d 1348, 1350 (9th Cir. 1987) (explaining that courts look no further if parties objectively manifest assent to a CBA).[6] Thus, even if the CBA does not strictly adhere to contractual formalities, it is valid if evidence shows that the employer and the union objectively manifested assent to the agreement.[7]

Here, as the district court concluded, the Culinary Union objectively manifested assent to the CBA because (1) a Culinary Union representative testified at an arbitration hearing that the parties ratified it in November 2011, (2) the Culinary Union filed grievances and conducted arbitration under the CBA, and (3) the Culinary Union wrote in an arbitration brief that the CBA governed and was ratified

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and the Culinary Union were operating under the redlined CBA at the time the Martel employees worked at the GSR.

[6]The Martel employees further argue that the CBA is invalid because, when the case was removed to federal court, the court found it to be "extremely problematic." *Martel v. MEI-GSR Holdings, LLC*, No. 3:16-cv-00440-RJC-WGC, 2016 WL 7116013, at *4 (D. Nev. Dec. 6, 2016). While recognizing that a CBA need not be signed to be enforceable and that the Culinary Union conducted grievances under the redlined CBA, the federal court ultimately declined to address whether the CBA was valid and remanded the case on other grounds. *Id.* at *4, *7.

[7]The Martel employees also argue that the sale of the GSR caused the CBA to expire. As noted, however, a CBA need not be unexpired to be valid. *Line Constr.*, 591 F.3d at 581. Because the Culinary Union ratified the CBA, we disagree that the CBA's purported expiration necessarily rendered it invalid. Nothing in the record shows that the Culinary Union or HG Staffing acted as if the CBA had expired. Thus, this argument is meritless.

in November 2011. Moreover, GSR's Human Resources Director stated in a declaration that the CBA covered the named employees. This fact objectively shows that, after HG Staffing purchased the GSR, it offered to be bound by the redline CBA that was already in existence. In sum, this evidence shows that HG Staffing and the Culinary Union objectively manifested assent to be bound by the CBA. The Martel employees point to no evidence in the record to show that the Culinary Union repudiated or did not ratify the CBA.

Therefore, because the Martel employees have not cited to any evidence in the record—below or on appeal—to show that the CBA was not ratified, there is no genuine issue of material fact.[8] We therefore affirm the district court's conclusion that the CBA was valid.

HG Staffing is entitled to summary judgment on Martel's claims arising under NRS 608.020 through NRS 608.050

As relevant here, NRS 608.020 through NRS 608.050 collectively require employers to pay former employees their earned wages and penalize them for failing to timely do so. Martel resigned after his last shift on June 13, 2014, his final paycheck was due on June 19, 2014, and he filed his complaint on June 14, 2016. The complaint alleged that he was not paid wages pursuant to NRS 608.016 and NRS 608.018, and therefore HG Staffing was subject to the penalties set forth in NRS 608.020 through NRS 608.050 for failure to timely pay wages owed. As previously discussed, the district court correctly determined that Martel's claims under NRS 608.016 and NRS 608.018 were subject to a two-year limitations period. Given that Martel's complaint was filed two years and one day after his last shift, his claims under NRS 608.016 and NRS 608.018 were time-barred. The district court therefore granted summary judgment on Martel's claims under NRS 608.020 through NRS 608.050 after concluding they were derivative of his time-barred claims under NRS 608.016 and NRS 608.018.

On appeal, Martel argues that his claims under NRS 608.020 through NRS 608.050 are timely.[9] Relying on NRS 608.040(1)(b), which provides for a penalty for each day up to 30 days that an employer fails to pay wages after an employee resigns, Martel alleges that claims under NRS 608.020 through NRS 608.050 accrue 30 days after the employment relationship ends. He points to evidence in the record showing that payment of his final wages was due on June 19, 2014. He argues that his claim accrued 30 days later. Martel therefore contends that he can recover wages earned

[8]The district court denied the Martel employees' request to extend discovery under NRCP 56(d). On appeal, they do not challenge the denial of that motion.

[9]NRS 608.020 and NRS 608.050 apply to discharged employees. Accordingly, because Martel resigned from his job, we limit our analysis to NRS 608.030 and NRS 608.040.

under NRS 608.016 and NRS 608.018 for the entirety of his employment under NRS 608.040. We disagree with Martel.

If an employee resigns, like Martel, he or she "must be paid no later than . . . [t]he day on which the employee would have regularly been paid," or "[s]even days after the employee resigns or quits," whichever is earlier. NRS 608.030(1)-(2). The statute authorizing the imposition of penalties if an employer fails to pay a former employee earned wages is as follows:

> 1. If an employer fails to pay:
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> (a) Within 3 days after the wages or compensation of a discharged employee becomes due; or
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> (b) On the day the wages or compensation is due to an employee who resigns or quits,
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> the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit or was discharged until paid or for 30 days, whichever is less.

NRS 608.040(1).

The parties agree that Martel's last paycheck was due on June 19, 2014.[10] Although Martel's last wages were due on June 19, 2014, he never alleged below—or on appeal—that he failed to receive those wages.[11] Instead, he argues that he earned wages under NRS 608.016 and NRS 608.018 throughout his employment that were never paid and therefore those wages were due under NRS 608.040. In doing so, he attempts to use NRS 608.040 to avoid the statute of limitations under NRS 608.016 and NRS 608.018. As noted, however, Martel's claims under NRS 608.016 and NRS 608.018 are time-barred because he filed his complaint two years and one day after his last shift. Accordingly, Martel cannot recover time-barred wages under NRS 608.016 and NRS 608.018 by proceeding under NRS 608.040.

Because Martel did not allege that he failed to timely receive his final paycheck wages under NRS 608.040, he has not shown that a genuine issue of material fact exists. Thus, HG Staffing is entitled

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[10]Martel argues that a claim under NRS 608.040 accrues 30 days after the employment relationship ends. "A cause of action accrues when a suit may be maintained thereon." *Clark v. Robison*, 113 Nev. 949, 951, 944 P.2d 788, 789 (1997) (internal quotation marks omitted). A claim under NRS 608.040(1)(b) accrues the day the employer fails to pay the wages or compensation due the employee under NRS 608.030 because that is the date the employee can claim the penalty. *See Accrue*, *Black's Law Dictionary* (11th ed. 2019) ("To come into existence as an enforceable claim or right . . . ."). The 30-day period in the statute speaks to the quantum of the penalty. Martel's accrual-date argument, however, misses the mark because NRS 608.040 cannot be utilized as a mechanism to recover time-barred wages under NRS 608.016 and NRS 608.018.

[11]The parties dispute whether NRS 608.040 applies to wages an employee incurs before the final-paycheck period. We need not address this argument because Martel's claims under NRS 608.016 and NRS 608.018 were time-barred. Thus, as a matter of law, Martel could not recover any of these alleged damages utilizing NRS 608.040.

to judgment as a matter of law, and we affirm the district court's order granting summary judgment on Martel's claims under NRS 608.040.

The CBA "provides otherwise" for overtime under NRS 608.018

As relevant to this issue, NRS 608.018 sets forth certain overtime rates that employers must pay, but it provides an exemption for "[e]mployees covered by collective bargaining agreements which *provide otherwise* for overtime." NRS 608.018(3)(e) (emphasis added).

Here, Jackson-Williams had 18 months of claims that were not time-barred. The district court determined that Jackson-Williams could not assert claims under NRS 608.018 because Jackson-Williams was subject to the CBA, which "provides otherwise" for overtime such that it is exempt from Nevada's overtime statute. Jackson-Williams now argues that the CBA does not provide otherwise for overtime and is, therefore, not exempt from NRS 608.018. She argues that a CBA must provide a *premium* overtime rate to qualify for the exemption. HG Staffing argues that a CBA qualifies for the exemption if it offers overtime in a *different manner* than the statute. HG Staffing contends that the CBA provides overtime in a different manner than the statute and therefore qualifies for the exemption. We agree with HG Staffing and the district court.

We interpret a statute by its plain meaning. *Young v. Nev. Gaming Control Bd.*, 136 Nev. 584, 586, 473 P.3d 1034, 1036 (2020). We also have "jurisdiction to determine questions of statutory law that may or may not fall outside of collective bargaining agreements." *Clark Cty. Sch. Dist. v. Riley*, 116 Nev. 1143, 1148, 14 P.3d 22, 25 (2000). Turning to the statutory text,

> 1. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate set forth in NRS 608.250 works:
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> (a) More than 40 hours in any scheduled week of work; or
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> (b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.
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> 2. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate set forth in NRS 608.250 works more than 40 hours in any scheduled week of work.

NRS 608.018(1)-(2). As indicated, however, subsections 1 and 2 do not apply to "[e]mployees covered by collective bargaining agreements which *provide otherwise* for overtime." NRS 608.018(3)(e) (emphasis added). The Legislature did not define the term "provide

otherwise for overtime," *see id.*, and we have not yet interpreted this text.

There is limited authority to guide our analysis. California has a similar statute that excludes employees covered by a CBA from that state's overtime-wage statute "if the agreement provides *premium* wage rates." Cal. Lab. Code § 514 (West 2020) (emphasis added). "[T]he purpose of section 514 is to provide an opt-out provision which allows parties to collective bargaining agreements to provide any premium wage over the regular rate for any overtime work . . . ." *Vranish v. Exxon Mobil Corp.*, 166 Cal. Rptr. 3d 845, 850 (Ct. App. 2014) (internal quotation marks omitted).

Unlike the California statute, NRS 608.018(3)(e) does not state that a CBA must pay *premium* overtime wage rates to qualify for the exemption. Thus, we conclude that the California statute has minimal persuasive value and instead limit our analysis to NRS 608.018(3)(e)'s language, which states that a CBA must "provide otherwise for overtime" to qualify for the exemption. The technical and ordinary meaning of "otherwise" is a different way or manner.[12] *See Otherwise*, *Black's Law Dictionary* (11th ed. 2019) ("In a different way; in another manner . . . ."); *see also Otherwise*, *Webster's Third New Int'l Dictionary* (2002) ("[I]n a different way or manner . . . ."). Therefore, under NRS 608.018(3)(e)'s plain language, we hold that a CBA qualifies for the overtime exemption so long as it provides overtime in a different way or manner than NRS 608.018(1)-(2).

The CBA here provided overtime in a different way or manner than NRS 608.018(1) because it set up an independent overtime scheme.[13] Specifically, it states in relevant part,

> For purposes of computing overtime, for an employee scheduled to work five (5) days in one (1) workweek, any hours in

[12]The Martel employees urge us to consult legislative history to interpret NRS 608.018(3)(e). We decline to do so because the text is unambiguous. *See Wingco v. Gov't Emps. Ins. Co.*, 130 Nev. 177, 181, 321 P.3d 855, 857 (2014) (stating that we consult legislative history only when the text is ambiguous); *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 310-11, 301 P.3d 364, 367 (2013) (observing that a finding of ambiguity in a term is not necessary before consulting a dictionary definition of that term).

[13]Notably, the CBA is silent as to the overtime wage rate. Although Jackson-Williams contends that a CBA must provide premium overtime-wage rates to qualify for NRS 608.018(3)(e)'s exemption, we are unpersuaded by this argument. This is because the statute is silent on any overtime-wage rate, and our role is to apply the statute as written. *See Holiday Ret. Corp. v. State, Div. of Indus. Relations*, 128 Nev. 150, 154, 274 P.3d 759, 761 (2012) ("It is the prerogative of the Legislature, not this court, to change or rewrite a statute."). We recognize that Jackson-Williams presents strong public policy justifications for requiring a CBA to provide premium overtime wages, but the Legislature has not adopted that policy in the current version of NRS 608.018(3)(e). We leave for the Legislature to address whether this exception should require a *premium* overtime rate.

> excess of eight (8) hours in a day or forty (40) hours in a week shall constitute overtime. For an employee scheduled to work four (4) days in one (1) workweek, any hours worked in excess of ten (10) hours in a day or forty (40) hours in a week shall constitute overtime. Overtime shall be effective and paid only after the total number of hours not worked due to early outs is first subtracted from the total number of hours actually worked per shift, per workweek. Overtime shall not be paid under this Section for more than one (1) reason for the same hours worked.

The overtime scheme in the CBA departs from NRS 608.018(1)-(2) because it does not calculate an employee's ability to obtain overtime compensation based on the employee's wage. The statute, however, calculates an employee's overtime eligibility based on the employee's wage in relation to the minimum wage. In other words, an employee under the CBA can earn daily overtime regardless of whether they make more than 1 1/2 times the minimum wage. Likewise, the CBA's scheme is based on a four- or five-day workweek, whereas NRS 608.018 does not define the term workweek to include a specific number of days. While the two schemes are similar, the CBA provides overtime in a sufficiently different manner to fall within NRS 608.018(3)(e)'s exemption.

Given that the CBA provided overtime in a different manner, Jackson-Williams's claims for unpaid overtime cannot be asserted under NRS 608.018. Because Jackson-Williams has not provided any calculation of the overtime pay to which she alleges she is specifically entitled under the CBA, no genuine issue of material fact exists, and the district court properly granted summary judgment on her claims under NRS 608.018.

HG Staffing is entitled to summary judgment on Jackson-Williams's remaining claims

After the district court's summary judgment order, Jackson-Williams had claims remaining under the MWA, NRS 608.016, and NRS 608.040, as well as a request for attorney fees under NRS 608.140. The district court issued a clarification order concluding that HG Staffing was entitled to summary judgment on her remaining claims because Jackson-Williams lacked standing to assert them, specifically because she failed to allege that the Culinary Union breached its duty of fair representation. On appeal, Jackson-Williams contends that the district court erred in granting summary judgment on these claims but cites no caselaw or portions of the record to show a genuine issue of material fact. As noted, a court is not required to wade through the record to find disputed material facts. *Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 438, 245 P.3d 542, 545 (2010). Accordingly, we conclude that HG Staffing is entitled to summary judgment on these claims con-

sistent with the district court's order. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (observing that it is an appellant's responsibility to provide cogent arguments supported by salient authority).

Further, in opposition to HG Staffing's motion for summary judgment below, Jackson-Williams argued that she was entitled to wages under NRS 608.018 and NRS 608.040 but failed to argue that she was entitled to wages under NRS 608.016, NRS 608.020 through NRS 608.050, or the MWA. In Jackson-Williams's motion for clarification, she provided no argument as to why her claims were still viable. Finally, reviewing Jackson-Williams's complaint, she alleged that she worked 151 hours of unpaid time and that she was owed payment for these hours based on the *overtime* rate. Yet, as we explained, the CBA here is exempt from NRS 608.018's overtime-pay scheme. In sum, we are unable to find any evidence to support the notion that Jackson-Williams demonstrated a genuine issue of material fact concerning these claims.[14]

CONCLUSION

In sum, the Martel employees' claims under NRS 608.016, NRS 608.018, and NRS 608.020 through NRS 608.050 were correctly dismissed under a two-year limitations period. The district court's summary judgment order correctly concluded that (1) the CBA was valid; (2) claims under NRS 608.040 cannot be utilized to recover time-barred wages under other statutes; and (3) an employer that is a party to a CBA is exempt from the overtime scheme imposed under NRS 608.018, so long as the CBA provides overtime in a different manner than the statute. Because we discern no error from the record, we affirm.

Parraguirre, C.J., and Hardesty, Cadish, Silver, Pickering, and Herndon, JJ., concur.

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[14]Although the district court concluded that the Martel employees lacked standing to represent Culinary Union members in a class action lawsuit, and the parties urge us to address the propriety of this ruling, this issue is moot. Generally, class certification requires "that the named representatives of the putative class possess a valid cause of action." *Landesman v. Gen. Motors Corp.*, 377 N.E.2d 813, 814 (Ill. 1978). Because the Martel employees have no surviving causes of action, it is unnecessary for us to determine whether they have standing to represent a putative class of GSR employees. Further, the Martel employees point to nothing in the record to show that the class was certified. *See* NRCP 23(d)(1) (stating that a class must be certified by the district court). Thus, this issue is also moot because the class was never certified. *Cf. Sargeant v. Henderson Taxi*, 133 Nev. 196, 199, 394 P.3d 1215, 1218 (2017) (stating that class certification issues are moot if the plaintiff's claims are dismissed on a motion to dismiss or summary judgment). In light of the foregoing, we decline to address this issue.

FEDERAL NATIONAL MORTGAGE ASSOCIATION; AND GRANDBRIDGE REAL ESTATE CAPITAL, LLC, APPELLANTS, *v.* WESTLAND LIBERTY VILLAGE, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND WESTLAND VILLAGE SQUARE, LLC, A NEVADA LIMITED LIABILITY COMPANY, RESPONDENTS.

No. 82174

August 11, 2022 515 P.3d 329

Appeal from a district court order granting a preliminary injunction and denying appointment of a receiver in a dispute concerning real property loan agreements. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Reversed and remanded.

[Rehearing denied September 16, 2022]

Snell & Wilmer LLP and *Kelly H. Dove, Nathan G. Kanute*, and *Bob L. Olson*, Las Vegas, for Appellant Federal National Mortgage Association.

Holland & Hart LLP and *Joseph G. Went, Lars K. Evensen*, and *Sydney R. Gambee*, Las Vegas, for Appellant Grandbridge Real Estate Capital, LLC.

Campbell & Williams and *J. Colby Williams* and *Philip R. Erwin*, Las Vegas; *Law Offices of John Benedict* and *John Benedict*, Las Vegas; and *Westland Real Estate Group* and *John W. Hofsaess*, Long Beach, California, for Respondents.

Fennemore Craig, P.C., and *Leslie Bryan Hart* and *John D. Tennert*, Reno, for Amicus Curiae Federal Housing Finance Agency.

Before the Supreme Court, EN BANC.

OPINION

By the Court, STIGLICH, J.:

This appeal permits us to clarify when a lender or its assignee is entitled to the appointment of a receiver after a borrower defaults on a real property loan agreement. The borrower here owns properties housing multi-family apartment complexes, and the lender observed a significant decrease in occupancy after the borrower assumed ownership. The lender's inspector observed that significant repairs were needed, and the lender demanded deposits into repair and replacement escrow accounts, relying on specific provisions in the loan agreements. The borrower did not make the demanded depos-

its, which the lender deemed a default under the loan agreements. The lender sued and sought a receiver. The borrower countersued, alleging breach of contract and seeking a preliminary injunction. The district court found that there was no default and issued a wide-ranging preliminary injunction, reaching matters that had been neither briefed nor argued.

We have not previously had cause to interpret NRS 32.260(2)(b) and NRS 107A.260(1)(a)(1), which provide that a lender is entitled to the appointment of a receiver when the borrower agrees to such in the event of a default and, after a default, the lender seeks a receiver in enforcing the loan, NRS 32.260(2), or the property is subject to the assignment of rents, NRS 107A.260(1). As the lender has an entitlement to a receiver in such instances, appointment of a receiver is not subject to the district court's discretion. The agreement itself may state what circumstances constitute a default.

The district court here erred in disregarding the loan agreements' provisions setting forth what constituted a default. The loan agreements contain clear terms setting forth the parties' obligations and what constitutes default. The borrower here failed to perform several duties mandated under the loan agreements, including the duty to make the demanded deposits, and this failure constituted default. As the borrower agreed to the provisions in the loan documents stating that the lender may obtain a receiver in the event of default, the lender was entitled to the appointment of a receiver on the borrower's default, and the district court abused its discretion in refusing to appoint one. The district court further abused its discretion in issuing a preliminary injunction because it rested its order on clearly erroneous factual determinations, did not apply the relevant standards for injunctive relief, and failed to recognize the lender's entitlement to a receiver. We accordingly reverse and remand.[1]

FACTS AND PROCEDURAL HISTORY

This appeal involves a dispute concerning mortgage loans entered into to finance the purchase of two properties housing multifamily apartment complexes. Appellant Federal National Mortgage Association (Fannie Mae) is the successor-in-interest to the original lender for the loan agreements; appellant Grandbridge Real Estate Capital, LLC, is its loan servicer. Respondents Westland Liberty Village, LLC, and Westland Village Square, LLC (collectively, Westland) are the successors-in-interest to the original borrowers. The predecessor borrowers executed a loan agreement for approximately $9.4 million to finance the purchase of a property known as "Village Square Apartments." The predecessor borrowers executed another mortgage loan agreement for $29 million to

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

purchase "Liberty Village Apartments." The predecessor lender held a note and deed of trust on each property (loan documents). The agreements have materially equivalent operative provisions. The predecessor lender assigned both Village Square and Liberty Village loan documents to Fannie Mae. Westland executed assumption and release agreements to take on the Village Square and Liberty Village loan obligations, including payment and performance obligations, from the original borrowers and guarantors. In doing so, Westland expressly adopted all of the terms and obligations of the loan documents and associated instruments.

Compliance with the provisions of these agreements is at the essence of this dispute. The loan agreements provide that the borrower shall pay the expenses to maintain and repair the property (§ 6.02(b)). The borrower must permit the lender or its agent to inspect the property, subject to routine constraints, such as business hours (§ 6.02(d)). If, in connection with an inspection, the lender determines that the property has deteriorated beyond that of ordinary wear and tear, the lender may obtain a property condition assessment (PCA) at the borrower's expense (§ 6.03(c)). The lender may require additional lender repairs or replacements on the basis of the PCA (§ 6.03(c)).

Additional repairs and deposits

With timely written notice, the lender may require the borrower to make an additional deposit to the replacement reserve account or the repairs escrow account "if Lender determines that the amounts on deposit in either [account] are . . . not sufficient to cover the costs for . . . Additional Lender Repairs . . . or Additional Lender Replacements," pursuant to section 13.02(a)(9) (§ 13.02(a)(4)). Section 13.02(a)(9) provides that the lender may require the borrower to make additional lender repairs or replacements and provides general terms for the lender to disburse from the reserve or escrow accounts to pay for those repairs when all other conditions are met (§ 13.02(a)(9)(B)). It further provides that "[n]othing in this Loan Agreement shall limit Lender's right to require an additional deposit to the [reserve or escrow accounts]" or to require additional monthly deposits for additional lender repairs or replacements. The borrower may contest any demanded deposit's amount or validity by the appropriate legal process, though the lender may require the borrower to deposit the contested sum (§ 12.02(e)). Whether additional deposits or repairs are warranted generally falls within the lender's discretion throughout the agreement.

Defaults

The loan agreements set forth numerous automatic default events, including any failure by the borrower to deposit any amount

required by the agreement (§ 14.01(a)(1)). In the event of a default, the lender has the option to accelerate the loan and demand payment of all the remaining unpaid balance and any other money due; it may also foreclose (§ 14.02(a)). The lender need not disburse payments for repairs or replacements from the reserve or escrow accounts if there is a default (§§ 13.02(a), 14.02(b)).

Pursuant to the deed of trust, the borrower agrees to assign all rents to the lender. In the event of a default, the lender may request the court to appoint a receiver. If the lender chooses to seek a receiver, the borrower expressly consents to the appointment of a receiver. The original borrowers signed each deed of trust in executing it, and Westland expressly assumed all of the terms of the collected loan documents.

After Westland began operating the apartment complexes, Fannie Mae observed a substantial decrease in occupancy rates and became concerned that this decline resulted from deterioration in the condition of the properties. Fannie Mae inspected the properties' condition and then retained a third-party inspector to produce a PCA, documenting the repairs needed, for each property. The inspector examined the properties and concluded that Village Square was in substandard condition, Liberty Village was in fair to poor condition, and they required approximately $1.09 million and $1.75 million, respectively, in repairs and replacements.

Fannie Mae's agent sent Westland notices of demand for each property, requiring Westland to deposit an aggregate sum of approximately $2.8 million in the repairs escrow accounts. The notices also increased monthly deposits to the repairs escrow accounts by $9,557. Westland responded that there was no basis to demand the deposit, there was no failure to maintain because the properties were dilapidated when they were acquired, the repairs requested improperly constituted ordinary wear and tear repairs, and Fannie Mae had no right to conduct a PCA. Fannie Mae filed and served notices of default based on Westland's purported failures to maintain the properties and to make the required account deposits.

Fannie Mae petitioned the district court for the appointment of a receiver. In response, Westland moved for a preliminary injunction to enjoin any foreclosure proceedings, opposed the appointment of a receiver, and asserted counterclaims, alleging Fannie Mae breached the loan agreement. Westland named Grandbridge as a third-party defendant, asserting claims against it as Fannie Mae's agent.

The district court held a hearing and expressed doubt that Westland defaulted because Fannie Mae did not show that Westland ceased paying entirely. It found a factual dispute as to the alleged default and found that Westland would suffer irreparable harm in losing the properties by foreclosure. It thus concluded that a preliminary injunction was warranted and that a receiver was not. The court enjoined Fannie Mae from acting to foreclose, interfering

with Westland's operation of the properties, appointing a receiver, possessing the property, enforcing a judgment or security interest against the properties without court approval, or taking any adverse action against any Westland-affiliated corporate entity with respect to any other loans. The court further required that Fannie Mae turn over the monthly debt service invoices, disburse any funds paid in excess of the monthly debt service obligations, disburse any excess funds Fannie Mae held in a repairs account, pay Westland the interest that would have been earned had certain monies been held in an interest-bearing account rather than one that did not, and timely respond to disbursement requests. And the court struck the notices of demand, notices of default, acceleration of the notes, and the demands and notices per NRS 107A.270.[2]

Fannie Mae appealed. In addition to Fannie Mae's challenge, Grandbridge appealed, asserting that it should not be subject to the injunction because it did not timely become a party to the litigation. Federal Housing Finance Agency (FHFA), which serves as conservator for Fannie Mae, filed an amicus brief.

DISCUSSION

We review for an abuse of discretion a district court's decisions whether to appoint a receiver, *Med. Device All., Inc. v. Ahr*, 116 Nev. 851, 862, 8 P.3d 135, 142 (2000), *abrogated on other grounds by Costello v. Casler*, 127 Nev. 436, 440 n.4, 254 P.3d 631, 634 n.4 (2011), or to grant a preliminary injunction, *Shores v. Glob. Experience Specialists, Inc.*, 134 Nev. 503, 505, 422 P.3d 1238, 1241 (2018). "An abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination or disregards controlling law." *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 89, 343 P.3d 608, 614 (2015).

The district court erred in finding Westland did not default

Fannie Mae argues that the district court clearly erred when it found a dispute as to Westland's default. It argues that Westland defaulted by triggering certain events specified in the contract as constituting default, including failing to provide additional deposits requested into the repairs escrow account, failing to maintain the properties, and failing to permit Fannie Mae to inspect the properties. Westland concedes that it did not make the requested deposits but argues that this was not a default because Fannie Mae was not

[2]This court stayed operation of provisions in the district court's order directing Fannie Mae to remove the notices of default and election to sell from the properties' titles, such that those notices remain of record, though we did not stay operation of the remaining provisions. *Fed. Nat'l Mortg. Ass'n v. Westland Liberty Vill., LLC*, Docket No. 82174, at *2 (Order Granting Stay in Part and Denying Stay in Part, Feb. 11, 2021) (staying paragraphs 2 and 3).

permitted to unilaterally demand additional deposits. Westland argues that there was "no monetary default" because it was current on its monthly payments.

We interpret unambiguous contracts according to the plain language of their written terms. *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). Contracts must be read as a whole without negating any term. *Rd. & Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 390, 284 P.3d 377, 380 (2012). And courts will look to an agreement's terms to determine what events constitute a default. *See Squyres v. Zions First Nat'l Bank*, 95 Nev. 375, 377, 594 P.2d 1150, 1152 (1979); *see also* 68A Am. Jur. 2d *Secured Transactions* § 426 (2014) ("[T]he security agreement itself must define the standards for determining whether a default occurs, and any breach by the debtor of the terms of the security agreement constitutes a default, entitling the secured party to any available remedies therefor . . . ." (footnotes omitted)). We review contracts de novo, *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005), but we defer to the district court's factual findings and will not set them aside unless they are clearly erroneous or not supported by substantial evidence, *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013).

During its hearing on the competing claims for relief, the district court focused on whether Westland was making monthly payments to the escrow accounts to any extent, finding a factual dispute as to default for this reason. The court found that Westland submitted documentation showing no deterioration and that Fannie Mae was required to show deterioration before Westland could default. It thus found "substantial factual disputes" regarding default.

The district court clearly erred in finding that Westland did not default because it disregarded the provisions of the loan agreement. Section 6.03(c) of the loan agreement permits Fannie Mae to order a PCA after inspecting the properties and to require additional lender repairs or replacements on this basis. If Fannie Mae concludes that existing amounts on deposit in the corresponding reserve or escrow accounts are inadequate, it may require additional deposits under section 13.02(a)(4). The loan agreement leaves these determinations to Fannie Mae's discretion, and section 13.02(a)(9) further provides that nothing in the agreement limits Fannie Mae's right to require additional deposits. Westland may dispute a required repair or deposit, but section 12.03(e) requires that Westland use the appropriate legal process and permits Fannie Mae to demand that Westland deposit the contested amount. If Westland fails to pay any required amount, that is a default under section 14.01(a)(1). Fannie Mae would then have the rights to accelerate the loan and foreclose under section 14.02(a).

Here, Fannie Mae inspected the property in connection with a decline in occupancy and obtained a PCA. The PCA concluded

that extensive repairs were required, and Fannie Mae accordingly demanded that Westland deposit an amount to pay for the expected costs of the repairs. Westland did not deposit this amount or challenge the demand through the procedures set forth in the agreement—facts that it concedes—and thus defaulted. The loan agreement does not contain any term supporting Westland's contention that it could only default by failing to make its monthly payments. Westland's counterclaims do not constitute a proper way to dispute Fannie Mae's demand. And evidence showing that Westland conducted certain repairs does not cure the default under the terms of the loan agreement. The district court clearly erred in ruling otherwise and in looking solely to Westland's monthly payments without considering Fannie Mae's entitlement to demand additional deposits.

The district court abused its discretion in failing to appoint a receiver

Fannie Mae thus argues that the district court abused its discretion in denying its application for a receiver because it disregarded Westland's obligations under the loan agreement in finding that Westland did not default. Relying on NRS 32.260, Fannie Mae subsequently argues that a receiver was warranted because Westland agreed in the deed of trust to the appointment of a receiver on default and the properties were subject to waste and dissipation.[3] And relying on NRS 107A.260, Fannie Mae argues that it was entitled to a receiver because the properties were subject to the assignment of rents and the same agreement in the deed of trust to a receiver. Westland argues that no receiver was warranted because the district court found that the properties had not deteriorated. We agree with Fannie Mae.

This appeal presents the first opportunity this court has had to interpret NRS 32.260 and NRS 107A.260. Statutory interpretation is a question of law that we review de novo. *Leven v. Frey*, 123 Nev. 399, 402, 168 P.3d 712, 714 (2007). "Generally, when a statute's language is plain and its meaning clear, the courts will apply that plain language." *Id.* at 403, 168 P.3d at 715.

Nevada enacted NRS 32.260 in adopting the Uniform Commercial Real Estate Receivership Act and NRS 107A.260 in adopting the Uniform Assignment of Rents Act. NRS 32.100; NRS 107A.010. NRS 32.260 provides for both the mandatory and the discretionary appointment of a receiver. NRS 32.260(1) states conditions when a receiver "may" be appointed. This includes when a party

[3]Fannie Mae also asserts without argument that NRS 107.100 supports its entitlement to a receiver. We need not consider this assertion. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

with an apparent interest in the property shows that the property is subject to or at risk "of waste, loss, dissipation[,] or impairment." NRS 32.260(1)(a)(1). In stating that the district court "may" appoint a receiver, the statute provides the court discretion whether to appoint a receiver in situations under NRS 32.260(1). *See Sengbusch v. Fuller*, 103 Nev. 580, 582, 747 P.2d 240, 241 (1987) ("'May' is to be construed as permissive, unless the clear intent of the legislature is to the contrary."); *see also* Unif. Commercial Real Estate Receivership Act § 6 cmt. 1 (2015) (explaining that the draft language enacted in NRS 32.260(1) reflected the historical approach permitting a court to exercise its discretion in settling whether a receiver was needed to preserve or administer a property); *cf. SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 744, 334 P.3d 408, 410 (2014) (looking to uniform law and its commentary when interpreting a Nevada statute based on that uniform law), *holding modified on other grounds by Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, 133 Nev. 28, 32, 388 P.3d 970, 974 (2017).

NRS 32.260(2), meanwhile, provides that "a mortgagee is entitled to appointment of a receiver" in connection with enforcing the mortgage in certain instances, including when "[t]he mortgagor agreed in a signed record to appointment of a receiver on default." NRS 32.260(2)(b). In providing that "a mortgagee is entitled to appointment of a receiver," the Legislature conferred a right to such mortgagees to demand that a court appoint a receiver, instead of conferring a discretionary right on district courts. *See* Unif. Commercial Real Estate Receivership Act § 6(b) (stating alternative operative language for this provision for legislatures to enact, either "[a mortgagee is entitled to appointment of]" or "[the court may appoint] a receiver" (alterations in original)); *id.* cmt. 2 (discussing trend towards holding appointment of a receiver to be mandatory where the loan agreement contains a clause by which the mortgagor consented to appointing a receiver); *see also* NRS 0.025(1)(a) (stating that, generally, "'is entitled' confers a private right"). NRS 107A.260(1)(a)(1) likewise provides that the assignee of rents "is entitled to the appointment of a receiver for the real property subject to the assignment of rents" when the assignor has defaulted and agreed in a signed writing to appointing a receiver in the case of default.[4] Thus, when the requirements are met under these statutes, the mortgagee/assignee is entitled to the appointment of a receiver as a matter of right.

[4]We observe no meaningful distinction between the entitlements in NRS 32.260(2) and NRS 107A.260(1) and clarify that being entitled to the appointment of a receiver has the same meaning in each statute. *Cf.* Unif. Commercial Real Estate Receivership Act § 6 cmt. 2 (observing that the entitlement to a receiver in the uniform act enacted in NRS 32.260(2) tracks the comparable provision in that enacted in NRS 107A.260(1)).

We conclude the district court abused its discretion in denying Fannie Mae's request for the appointment of a receiver. First, its decision rested on the clearly erroneous finding that Westland had not defaulted. As a result, the court did not appreciate that Fannie Mae was entitled to the appointment of a receiver, as Westland expressly agreed to the appointment of a receiver in the event of default and had defaulted and Fannie Mae sought a receiver in connection with enforcing the loan agreement and for a property subject to the assignment of rents.[5] *See* NRS 32.260(2)(b); NRS 107A.260(1)(a)(1). Accordingly, we reverse the district court's order declining to appoint a receiver.

Preliminary injunction

To begin, the preliminary injunction is reversed because Westland's default entails that it was not likely to succeed on the merits. *See Shores*, 134 Nev. at 505, 422 P.3d at 1241 (requiring a movant

[5]Westland raises several additional unpersuasive arguments against this conclusion. Its contention that Fannie Mae was only entitled to demand additional deposits when the loan was issued or transferred fails because Westland addresses a provision permitting adjustments in those instances, section 13.02(a)(3), but disregards section 13.02(a)(4), which permits the lender to demand additional deposits if the lender determines the balances to be insufficient. Next, Westland argues that section 13.02(a)(4) only permits increases for repairs of the types listed in the initial repair and replacement schedules and that those stated in the PCA exceed that limit. While this observation is accurate, the agreements set forth procedures by which Westland could challenge the propriety of Fannie Mae's demand, which Westland did not do. Further, it does not appear that any such challenge would have merit because the initial schedules and PCA cover similar types of repairs. We note that Westland did not make a specific argument regarding how the types of repairs and replacements in the initial schedules and the PCA were fundamentally dissimilar. Westland next argues that Fannie Mae was only permitted to obtain a PCA in response to deterioration occurring after the effective date of the loans, where Westland asserts that the damage or degradation observed predated the loans. Westland, however, assumed the representations in the loan agreement that the properties at the time the loans were entered were in good condition, were undamaged, and that any prior damage had been repaired (§ 9.01(b)(1)-(2)). Further, whether Fannie Mae concluded, in connection with an inspection, that the properties had deteriorated and warranted a PCA lies within Fannie Mae's discretion under section 6.03(c). Next, Westland argues that Fannie Mae was required to give it an opportunity to complete the identified repairs before demanding a deposit under sections 6.02(b)(3)(B) & (C). Westland is mistaken: those provisions require that it promptly commence work on any repairs Fannie Mae identified. Further, this claim misapprehends the nature of repairs under the agreement. As to repairs, the agreement provides that Westland must maintain adequate deposits in the escrow and reserve accounts, complete identified repairs and replacements, provide evidence of satisfactory completion, and then seek reimbursement by asking the servicer to disburse the appropriate amount from the appropriate account.

In sum, Westland has not shown that it was not in default or that the district court did not abuse its discretion.

to "show a likelihood of success on the merits of their case and that they will suffer irreparable harm without preliminary relief" to obtain a preliminary injunction and reversing a district court's decision to issue a preliminary injunction where it relied on a clearly erroneous factual finding). We continue because the district court's order contains several deficiencies that warrant our attention.

An order granting an injunction must state why it issued, its specific terms, and the acts restrained or required in reasonable detail. NRCP 65(d)(1). When the district court here issued an injunction that ranged beyond the scope of the relief sought by Westland or briefed and argued by the parties, it violated this requirement by imposing vague and overbroad mandates. For instance, paragraph 4 enjoins Fannie Mae from "interfer[ing] with Westland's enjoyment of the Properties." The order found that Fannie Mae inspected the properties, sent notices regarding its deposit demand, and pursued foreclosures. The order does not contain findings showing a reason for this injunction to issue, as there was no suggestion that Fannie Mae had interfered with Westland's enjoyment, and it does not state what is restrained in reasonable detail. Many other of the numerous specific injunctions within the district court's order have similar deficiencies, lacking specific findings to show a reason that they should issue or reasonable precision as to what specifically is mandated. We caution district courts to exercise care in ensuring that injunctions provide the requisite guidance to the enjoined party and do not exceed the scope of that required to serve the injunction's purpose.[6]

CONCLUSION

We conclude that the district court erred in determining that Westland did not default and failing to apprehend Fannie Mae's entitlement to a receiver. The loan agreements define what constitutes

[6]Further, while "[i]t is common practice for Clark County district courts to direct the prevailing party to draft the court's order," *King v. St. Clair*, 134 Nev. 137, 142, 414 P.3d 314, 318 (2018), the court must "ensure that the proposed order drafted by the prevailing party accurately reflects the district court's findings," *Byford v. State*, 123 Nev. 67, 69, 156 P.3d 691, 692 (2007). We urge prevailing parties to take appropriate care to submit suitable draft orders that accurately reflect the findings, *Schoenberg v. Benner*, 59 Cal. Rptr. 359, 363 (Ct. App. 1967), and district courts to scrutinize those draft orders, being mindful that they assume responsibility for those findings and attendant rulings upon entry of the order, *Kamuchey v. Trzesniewski*, 98 N.W.2d 403, 406-07 (Wis. 1959). This obligation warrants particular care where the opposing party objects that the draft order strays from the record.

In light of our disposition, we need not reach Grandbridge's argument that it received inadequate notice of Westland's request for a preliminary injunction or Fannie Mae's argument that the injunction was void ab initio for violating the anti-injunction clause of the Housing and Economic Recovery Act, 12 U.S.C. § 4617(f) (2018).

a default, and under the agreements, Westland defaulted. The loan documents further provide that Westland agreed to the appointment of a receiver in the event of default. Fannie Mae relied on this agreement in seeking the appointment of a receiver after Westland defaulted. Under NRS 32.260(2)(b) and NRS 107A.260(1)(a)(1), Fannie Mae was entitled to the appointment of a receiver in this instance. Accordingly, the district court abused its discretion in entering a preliminary injunction and denying the request for a receiver. We reverse and remand for further proceedings.

Parraguirre, C.J., and Hardesty, Cadish, Silver, Pickering, and Herndon, JJ., concur.

DANNY CEBALLOS, Appellant, *v.* NP PALACE, LLC, dba PALACE STATION HOTEL & CASINO, Respondent.

No. 82797

August 11, 2022 514 P.3d 1074

Appeal from a district court judgment in an employment action. Eighth Judicial District Court, Clark County; Bita Yeager, Judge.

Affirmed.

[Rehearing denied September 16, 2022]

Lagomarsino Law Office and *Andre M. Lagomarsino*, Henderson, for Appellant.

Fisher & Phillips LLP and *Scott M. Mahoney*, Las Vegas, for Respondent.

Before the Supreme Court, En Banc.

OPINION

By the Court, Pickering, J.:

NRS 613.333 creates a private right of action in favor of an employee who is discharged from employment for engaging in "the lawful use in this state of any product outside the premises of the employer during the employee's nonworking hours." The question presented is whether adult recreational marijuana use qualifies for protection under this statute. We agree with the district court that it does not. Although Nevada has decriminalized adult recreational marijuana use, the drug continues to be illegal under federal law. Because federal law criminalizes the possession of marijuana in Nevada, its use is not "lawful . . . in this state" and does not support a private right of action under NRS 613.333. Further, because NRS 678D.510(1)(a) authorizes employers to prohibit or restrict recreational marijuana use by employees, an employee discharged after testing positive at work based on recreational marijuana use does not have a common-law tortious discharge claim. We therefore affirm.

I.

Danny Ceballos worked as a table games dealer at Palace Station for more than a year, with no performance or disciplinary issues. But toward the end of his shift on June 25, 2020, he slipped and fell in the employee breakroom. Palace Station security responded, first assisting Ceballos, then requiring him to submit to a drug test. The test came back positive for marijuana, and on July 16, 2020, Palace Station terminated Ceballos based on the positive test result.

Ceballos sued, and the district court dismissed the complaint under NRCP 12(b)(5) for failure to state a claim upon which relief can be granted.

Because this appeal challenges the grant of a motion to dismiss, our review is de novo, and we accept as true all well-pleaded facts alleged in the complaint. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Per the complaint, Ceballos was not intoxicated or impaired during his June 25 shift; he did not use marijuana in the 24 hours before that shift; and he was at home, not at work, when he engaged in the recreational marijuana use that produced the positive test result. The complaint also alleges facts establishing that Ceballos's marijuana use complied with Nevada's recreational marijuana laws.

II.

A.

Ceballos frames his complaint in two counts. The first count asserts a claim for damages under NRS 613.333. This statute makes it an unlawful employment practice for an employer to:

> Discharge . . . any employee . . . *because the employee engages in the lawful use in this state of any product* outside the premises of the employer during the employee's nonworking hours, if that use does not adversely affect the employee's ability to perform his or her job or the safety of other employees.

NRS 613.333(1)(b) (emphasis added). "An employee who is discharged . . . in violation of subsection 1 . . . may bring a civil action against the employer" for "[d]amages equal to the amount of the lost wages and benefits." NRS 613.333(2)(d).

Nevada decriminalized adult recreational marijuana use by voter initiative effective January 1, 2017. *See* Secretary of State, Statewide Ballot Question No. 2, 14 (Nev. Nov. 8, 2016). Consistent with the original initiative statutes, NRS 678D.200(1) provides that adult recreational marijuana use "is exempt from state prosecution" so long as such use complies with the conditions stated in NRS Chapter 678D.[1] Since the complaint sufficiently alleges facts establishing that the marijuana use that produced Ceballos's positive test result complied with NRS Chapter 678D, such use qualifies as "lawful"

[1]The initiative statutes were initially codified as NRS Chapter 453D. The 2019 Legislature added to and amended these statutes and recodified them as NRS Chapter 678D, effective July 1, 2020. *See* 2019 Nev. Stat., ch. 595, § 245, at 3896; *id.* § 246(4)(a), at 3896. Ceballos's marijuana use and subsequent termination straddle the July 1, 2020, date when NRS Chapter 678D replaced NRS Chapter 453D. The parties analyze the issues on appeal under NRS Chapter 678D, and so do we. The recodification/amendment process did not materially change the provisions in NRS Chapter 678D addressed in this appeal.

under Nevada state law. But marijuana possession remains illegal and federally prosecutable under the federal Controlled Substances Act (the CSA). *See* 21 U.S.C. § 844(a) (2018). So, we must decide what the phrase "lawful use in this state" means for purposes of NRS 613.333(1)—does it mean lawful under state law, or does it mean generally lawful, under both state and federal law?

The general-terms canon is a basic rule courts follow in interpreting statutes. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 101 (2012). Under this canon, "general terms are to be given their general meaning." *Id.* Ceballos posits that, because NRS 613.333 was enacted in 1991, decades before Nevada decriminalized recreational marijuana use, the drafters did not think about the state-federal split that exists today as to marijuana. On this basis, he urges us to infer an exception for federal illegality in NRS 613.333 and read lawful "in this state" to mean lawful "under Nevada state law." But this runs directly contrary to the general-terms canon, which holds that "the presumed point of using general words is to produce general coverage—not to leave room for courts to recognize ad hoc exceptions." *Id.*

"Lawful" means "legal; warranted or authorized by the law; having the qualifications prescribed by law; not contrary to nor forbidden by the law; not illegal." *Lawful*, *Black's Law Dictionary* 885 (6th ed. 1990); *see also Lawful*, *Merriam-Webster's Collegiate Dictionary* 705 (11th ed. 2019) (defining "lawful" as "being in harmony with the law" and "constituted, authorized, or established by law"). The prepositional phrase "in this state" is not synonymous with "under state law"—when the Legislature means to specify state law, it does so. *See, e.g.*, NRS 451.556(1)(b) (allowing a minor to be an organ donor where the minor is "[a]uthorized under state law to apply for a driver's license"); NRS 624.920(1) (requiring that a contractor be licensed "under state law"). Instead, the phrase connotes geographical boundaries and indicates that laws applicable to conduct occurring in Nevada are to be considered in assessing the legality of an employee's product use. One of these laws is the federal criminal prohibition against marijuana possession. *See Ross v. RagingWire Telecomms., Inc.*, 174 P.3d 200, 204 (Cal. 2008) (explaining that state laws cannot completely legalize marijuana use "because the drug remains illegal under federal law") (citing the CSA, 21 U.S.C. §§ 812, 844(a) (2006)).

The Colorado Supreme Court confronted a similar issue in *Coats v. Dish Network, LLC*, 350 P.3d 849 (Colo. 2015). The statute considered in *Coats* made it an unfair employment practice to discharge an employee "due to that employee's engaging in *any lawful activity* off the premises of the employer during non-working hours." Colo. Rev. Stat. § 24-34-402.5(1) (2012) (emphasis added). Coats's employer fired him after he tested positive for marijuana on a ran-

dom drug test, in violation of the employer's drug policy. *Coats*, 350 P.3d at 850-51. Like Ceballos's marijuana use, Coats's marijuana use was legal under state law but illegal under federal law. *See id.* at 850, 852. Because "lawful activity" signifies an activity that is permitted by law, or, conversely, not contrary to or forbidden by law, the court held that the statute did not apply to Coats because his marijuana use, though legal under state law, was illegal under federal law.

> Nothing in the language of the statute limits the term "lawful" to state law. Instead, the term is used in its general, unrestricted sense, indicating that a "lawful" activity is that which complies with applicable "law," *including state and federal law*. We therefore decline Coats's invitation to engraft a state law limitation onto the statutory language.

Id. at 852 (emphasis added). Ceballos notes that the statute in *Coats* referred to "lawful activity," whereas NRS 613.333(1)(b) refers to activity "lawful . . . in this state." But this difference in phrasing does not alter the analysis—the phrase "lawful . . . in this state" is general and encompasses state and federal law applicable to conduct occurring within the state. Acts committed in Nevada that violate federal law are not "lawful . . . in this state" under the general phrasing in NRS 613.333(1).

Ceballos cites two additional statutes—NRS 613.132 and NRS 678D.510(1)(a)—that he contends support reading "lawful in this state" to mean "lawful under state law." Enacted in 2019, NRS 613.132(1) addresses hiring, not discharge; it provides that, with certain exceptions, "[i]t is unlawful for any employer in this State to fail or refuse to hire a prospective employee because the prospective employee submitted to a screening test and the results of the screening test indicate the presence of marijuana." 2019 Nev. Stat., ch. 421, § 2, at 2625. NRS 678D.510(1)(a) was one of the original initiative statutes decriminalizing adult marijuana use that took effect January 1, 2017. *See* Statewide Ballot Question No. 2, *supra*, at 27; *supra* note 1. NRS 678D.510(1)(a) provides that "[t]he provisions of this chapter"—NRS Chapter 678D, decriminalizing adult recreational marijuana use—"do not prohibit . . . [a] public or private employer from maintaining, enacting and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under this chapter."

NRS 613.132 and NRS 678D.510(1)(a) recognize and address the policy tensions between the statutes decriminalizing marijuana and employment law. But these statutes do not support Ceballos's reading of NRS 613.333(1)(b) and, in fact, confirm our reading of it. Subsection 1(a) of NRS 613.333 extends the "unlawful employment practice" it establishes to reach employers who "[f]ail or refuse to

hire a prospective employee," equally with those who discharge an employee, based on product use that is "lawful . . . in this state." If Ceballos is right and NRS 613.333 only addresses product use that is lawful under Nevada law, passing NRS 613.132 in 2019 would have served little purpose, since NRS 613.333(1)(a) would already reach the employer who refuses to hire a prospective employee who tests positive for marijuana. And read as Ceballos urges, NRS 613.333(1)(b) would conflict with NRS 678D.510(1)(a), which expressly permits employers to enforce workplace policies prohibiting or restricting employees' recreational marijuana use. Whenever possible, this court interprets separate statutes harmoniously. *See Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 131 Nev. 783, 789, 358 P.3d 228, 232 (2015). Read in harmony with NRS 613.333, NRS 613.132 and NRS 678D.510 support that when NRS 613.333(1) refers to product use that is lawful in this state, it means lawful under both state and federal law, not just lawful under Nevada law.

B.

The second count of the complaint asserts a common-law tortious discharge claim. "An employer commits a tortious discharge by terminating an employee for reasons which violate public policy." *D'Angelo v. Gardner*, 107 Nev. 704, 712, 819 P.2d 206, 212 (1991). Ceballos argues that his termination offends public policy in two ways. First, he maintains that "Nevada has a strong public policy interest in protecting the statutory rights of its citizens" and that "[i]t is [his] statutory right, under NRS [Chapter] 678D, to engage in [marijuana] consumption pursuant to the chapter's guidelines." Second, he avers that "Nevada has a strong public policy interest in ensuring its citizens are not denied the ability to support themselves and their families due to engagement in statutorily protected and completely lawful activities."[2]

The public policies Ceballos identifies do not rise to the level required to establish a tortious discharge claim arising out of a presumptively at-will employment relationship. In Nevada, "tortious discharge actions are severely limited to those rare and exceptional cases where the employer's conduct violates strong and compelling public policy." *Sands Regent v. Valgardson*, 105 Nev. 436, 440, 777 P.2d 898, 900 (1989). This court has found a sufficient violation of "strong and compelling public policy" to justify a tortious discharge claim when an employer terminated an employee (1) "for refusing to work under conditions unreasonably dangerous to the employee," *D'Angelo*, 107 Nev. at 718, 819 P.2d at 216; (2) for refusing to engage in illegal conduct, *Allum v. Valley Bank of Nev.*, 114

[2]The complaint and the record of proceedings in the district court do not support that Ceballos's complaint asserted, or tried to assert, a privacy-based tort claim.

Nev. 1313, 1323, 970 P.2d 1062, 1068 (1998); (3) for filing a workers' compensation claim, *Hansen v. Harrah's*, 100 Nev. 60, 64, 675 P.2d 394, 397 (1984); *see also Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 378, 989 P.2d 882, 885-86 (1999); (4) for reporting the employer's illegal activities to outside authorities, *Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 293, 774 P.2d 432, 433 (1989) (dictum); and (5) for performing jury duty, *D'Angelo*, 107 Nev. at 712, 819 P.2d at 212 (dictum). Conversely, in *Chavez v. Sievers*, this court declined to allow an employee to pursue a tortious discharge claim for race discrimination against an employer too small for the state anti-discrimination laws to apply. 118 Nev. 288, 293-94, 43 P.3d 1022, 1025-26 (2002). And in *Sands Regent*, the court held that "age discrimination, as objectionable as it may be," does not justify allowing an employee to recover compensatory and punitive damages on a tortious discharge theory, where the statute prohibiting age discrimination in employment created a private right of action that limited the relief available to reinstatement and two years of lost wages. 105 Nev. at 439-40, 777 P.2d at 900.

Applying this law to the public policies Ceballos has identified, his tortious discharge claim falls short. Ceballos asserts a statutory right to engage in adult recreational marijuana use under NRS Chapter 678D when not at work, despite that use being detected by a drug test administered at work. Even setting aside its federal illegality, this asserted right is personal to Ceballos. It does not concern employer-coerced criminal activity, workers' compensation for an on-the-job injury, or public service, like jury duty or whistleblowing. With no public dimension or tie to dangerous or illegal working conditions, Ceballos's claim differs fundamentally from the "rare and exceptional cases" discussed above, in which this court allowed a public-policy-based tortious discharge claim to proceed because not allowing the claim would offend "strong and compelling public policy." *Id.* at 440, 777 P.2d at 900; *see* 2 Mark A. Rothstein et al., *Employment Law* § 9:9 (6th ed. 2019) (noting that most states have recognized public-policy-based tortious discharge claims and that the acts vindicated fall "into one or more of four broad categories[:] . . . (1) refusing to perform unlawful acts, (2) exercising legal rights, (3) reporting illegal activity (whistleblowing), and (4) performing public duties") (footnotes omitted); *id.* at § 9:11 (addressing tortious discharge claims falling into category 2—claims by employees terminated for exercising legal rights—and noting that "[c]ourts generally require that this right relate to employment; employees must enjoy the right because of their status as employees, and not because of some other status they may have, such as citizen or taxpayer").

The interplay between adult recreational marijuana use and employment law, moreover, is one the Legislature has addressed

in NRS 678D.510(1)(a) and, to a lesser extent, in NRS 613.132. Palace Station terminated Ceballos for failing a workplace drug test after engaging in adult recreational marijuana use before his shift. NRS 678D.510(1)(a) specifically authorizes employers to adopt and enforce workplace policies prohibiting or restricting such use. If the Legislature meant to require employers to accommodate employees using recreational marijuana outside the workplace but who thereafter test positive at work, it would have done so. *Cf.* NRS 678C.850(3) (requiring employers to accommodate the medical needs of employees who use medical marijuana unless certain exceptions exist). It did not. It also did not extend the protections afforded by NRS 613.333 and NRS 613.132 to reach the circumstances giving rise to Ceballos's termination. *See supra* Section II.A. (discussing the limits the Legislature has set on the protections NRS 613.333 and NRS 613.132 afford). This court declined to allow the employees in *Chavez* and *Sands Regent* to pursue common-law tortious discharge claims to redress the discrimination they alleged, because doing so would intrude on the prerogative of the Legislature, which had enacted statutes addressing the same subject matter. *See Chavez*, 118 Nev. at 294, 43 P.3d at 1026; *Sands Regent*, 105 Nev. at 440, 777 P.2d at 900. Doing so would be even less appropriate here.

We affirm.

Parraguirre, C.J., and Hardesty, Stiglich, Cadish, Silver, and Herndon, JJ., concur.

LAS VEGAS POLICE PROTECTIVE ASSOCIATION, INC., Petitioner, *v.* THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for THE COUNTY OF CLARK; and THE HONORABLE NANCY L. ALLF, District Judge, Respondents, and JORDAN TRAVERS; and LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Real Parties in Interest.

No. 83793

August 18, 2022 515 P.3d 842

Original petition for a writ of mandamus or prohibition challenging a district court permanent injunction and an order denying a motion to intervene.

Petition denied.

[Rehearing denied September 19, 2022]

[En banc reconsideration denied October 31, 2022]

Sgro & Roger and *Anthony P. Sgro* and *Jennifer V. Willis Arledge*, Las Vegas; *David J. Roger*, Las Vegas, for Petitioner.

Law Office of Daniel Marks and *Daniel Marks* and *Adam Levine*, Las Vegas, for Real Party in Interest Jordan Travers.

Marquis Aurbach, Chtd., and *Nick D. Crosby*, Las Vegas, for Real Party in Interest Las Vegas Metropolitan Police Department.

Before the Supreme Court, Hardesty, Stiglich, and Herndon, JJ.

OPINION

By the Court, Stiglich, J.:

Real party in interest Jordan Travers was an officer with real party in interest Las Vegas Metropolitan Police Department (LVMPD). He was not a member of petitioner Las Vegas Police Protective Association (LVPPA), the recognized exclusive bargaining agent for nonsupervisory peace officers employed by LVMPD for matters that fall under NRS Chapter 288. After Travers witnessed an officer-involved shooting, LVMPD notified Travers that he was statutorily required to appear for an investigatory interview regarding the incident. Travers then exercised his NRS 289.080 right to choose an attorney to represent him in the investigation, selected an attorney covered by his FOP Plan,[1] and did not elect to use a representative from LVPPA.

[1]Travers paid for benefits from the Fraternal Order of Police Legal Defense Plan (FOP Plan). The FOP Plan pays for attorney fees for its plan

Pursuant to NRS 289.080 in the Peace Officer Bill of Rights, a peace officer may have two representatives of their choosing assist them in an internal investigation. Reviewing the statute in *Bisch v. Las Vegas Metropolitan Police Department*,[2] we concluded that NRS 289.080 provides a peace officer with procedural protections during an internal investigation conducted by their employer. We further concluded that the statute does not impose a duty for the recognized bargaining agent to represent a peace officer during an internal investigation. *Bisch*, 129 Nev. at 336-37, 302 P.3d at 1114.

Here, after Travers exercised his right to choose a representative, LVMPD denied his representation, and Travers sought injunctive relief concerning representation during internal investigations. After the district court issued the permanent injunction in Travers' favor, LVPPA moved to intervene in the action. LVPPA argued, as the recognized bargaining agent, that it was a necessary party to the litigation. The district court declined to permit intervention because it had already entered a final judgment in the matter and, in doing so, did not address whether LVPPA was a necessary party.

We conclude that the district court properly denied LVPPA's motion to intervene because a final judgment had been entered that resolved the case prior to LVPPA's attempt to intervene. Additionally, while we agree that a writ petition is the appropriate vehicle to challenge the final order, as LVPPA was not a party to the proceedings below, we decline to grant the requested writ relief because we further conclude LVPPA was not a necessary party required to be joined in the underlying action such that the district court erred.

FACTS AND PROCEDURAL HISTORY

While serving as an LVMPD officer, Travers witnessed an officer-involved shooting. LVMPD then notified Travers that he was statutorily required to participate in an investigatory interview regarding the incident conducted by LVMPD's Critical Incident Review Team that could result in punitive action. Travers advised LVMPD that he would be represented by an attorney covered by his FOP Plan during the investigation, pursuant to NRS 289.080. LVMPD subsequently informed the attorney that it would not allow him to represent Travers, under the belief that the Fraternal Order of Police is a "rival organization" and that a recent Employee-Management Relations Board (EMRB) decision prohibited representation by such an organization.

Travers filed a petition for injunctive relief pursuant to NRS 289.120 against LVMPD, requesting a permanent injunction "to

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members in certain circumstances, including representation in administrative investigations.

[2]129 Nev. 328, 302 P.3d 1108 (2013).

prohibit LVMPD from denying any peace officer a representative of their own choosing pursuant to NRS 289.080 (1) or (2)." LVMPD took no position on the issue. The district court granted the permanent injunction, enjoining LVMPD "from denying any peace officer in its employ during any phase of any interview, interrogation, or hearing the right to be represented by two representatives of the peace officer's own choosing including, without limitation, a lawyer, a representative of a labor union or another peace officer." It further ordered that "LVMPD cannot deny a peace officer's choice of counsel because the chosen counsel has or does provide representation for other employee organizations." The district court clarified that this permanent injunction was "limited to investigations within the meaning of NRS 289.057" and that the EMRB shall continue to govern other matters.

LVPPA then moved to intervene, citing as relevant here NRCP 19(a) (joinder of necessary parties) and NRCP 24(a) (intervention of right by someone protecting an interest in the action). The district court denied the motion "because after the entry of the injunction there is nothing further to litigate." The district court did not address LVPPA's assertion that it was a necessary party. LVPPA subsequently filed the instant petition for a writ of mandamus or prohibition with this court, requesting that we either compel the district court to terminate the permanent injunction or prohibit its enforcement and allow LVPPA to participate as a party in further proceedings.

DISCUSSION

A writ petition is the appropriate method for a nonparty to challenge a district court order

Whether to entertain a writ petition is within this court's sole discretion. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). This court may issue a writ of mandamus to compel the performance of an act that the law requires or to control a district court's arbitrary or capricious exercise of discretion. NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). And this court may issue a writ of prohibition "when a district court acts without or in excess of its jurisdiction." *Nev. State Bd. of Architecture, Interior Design & Residential Design v. Eighth Judicial Dist. Court*, 135 Nev. 375, 377, 449 P.3d 1262, 1264 (2019) (citing NRS 34.320). This extraordinary relief may be available if a petitioner does not have a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170 (mandamus); NRS 34.330 (prohibition).

Initially, we agree with LVPPA that a writ petition is the appropriate vehicle to challenge the district court's injunction and order denying its motion to intervene. Pursuant to NRAP 3A(a), only

a party has standing to appeal a district court order. *See Gladys Baker Olsen Family Tr. v. Olsen*, 109 Nev. 838, 839-40, 858 P.2d 385, 385-86 (1993) (recognizing that NRAP 3A(a) limits standing to appeal to parties to the proceedings below). Here, LVPPA was not a party to the district court proceedings, as the district court denied its motion to intervene. *See Aetna Life & Cas. Ins. Co. v. Rowan*, 107 Nev. 362, 363, 812 P.2d 350, 350 (1991) (recognizing "that a proposed intervenor does not become a party to a lawsuit unless and until the district court grants a motion to intervene"). Thus, as a nonparty to the proceedings below, LVPPA can only seek relief via a petition for extraordinary relief. *See id.* at 363, 812 P.2d at 350-51 (dismissing an appeal for a lack of standing where the appellant was never a party to the underlying district court proceedings and stating that an extraordinary writ petition was the proper method for appellant to seek relief from the subject order). We therefore exercise our discretion to review the merits of this petition.

LVPPA's motion to intervene was untimely

LVPPA argues in its petition that the timing of its motion to intervene was "irrelevant," suggesting that the district court should have substantively considered its motion. Travers responds that the district court properly denied LVPPA's motion because it was untimely filed after entry of the final judgment resolving the underlying proceedings.

"Determinations on intervention lie within the district court's discretion," and we generally defer to the court's exercise of its discretion. *Nalder v. Eighth Judicial Dist. Court*, 136 Nev. 200, 203, 462 P.3d 677, 682 (2020). However, "[t]his court reviews a district court's interpretation of the Nevada Rules of Civil Procedure and statutory construction de novo." *Humphries v. Eighth Judicial Dist. Court*, 129 Nev. 788, 792, 312 P.3d 484, 487 (2013).

An entity[3] has a right to intervene in an action where it "shows that (1) it has a sufficient interest in the subject matter of the litigation, (2) its ability to protect its interest would be impaired if it does not intervene, (3) its interest is not adequately represented, and (4) *its application is timely*." *Nalder*, 136 Nev. at 206, 462 P.3d at 684 (emphasis added); *see also* NRCP 24(a) (discussing intervention of right). Additionally, "[o]n *timely motion*, the court may permit anyone to intervene who: (A) is given a conditional right to intervene by a state or federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact." NRCP 24(b)(1) (discussing permissive intervention) (emphasis added). NRS 12.130(1)(a) further outlines that intervention may be

[3]This court uses "person" or "entity" interchangeably as appropriate when discussing nonparties in a case. *See Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994).

permitted "[b]efore the trial," which we have held "does not permit intervention subsequent to the entry of a final judgment," *Lopez v. Merit Ins. Co.*, 109 Nev. 553, 556, 853 P.2d 1266, 1268 (1993); *see also Nalder*, 136 Nev. at 201, 462 P.3d at 680 (holding that "intervention after final judgment is impermissible under NRS 12.130"). When possible, we interpret similar statutes and rules in harmony, *see generally State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 295, 995 P.2d 482, 486 (2000) ("Whenever possible, this court will interpret a rule or statute in harmony with other rules or statutes."), and therefore timeliness under NRCP 24 must at least mean before entry of final judgment to accord with our previous interpretations of NRS 12.130.

Here, LVPPA sought to intervene after the district court ordered the permanent injunction that constituted the final judgment in the proceedings below. Based on the foregoing authorities, the district court properly denied LVPPA's motion to intervene because the motion was untimely. Indeed, our previous interpretation of the relevant rule and statute makes plain that the district court does not have the discretion to allow intervention after it has entered final judgment in the action.

LVPPA was not a necessary party to the action

LVPPA alternatively argues that writ relief is warranted because it was a necessary party that the district court failed to join to the proceedings under NRCP 19. LVPPA represents that "the permanent injunction severely impairs its ability to protect its statutory and contractual interests under" NRS Chapter 288 and the collective bargaining agreement between itself and LVMPD. LVPPA asserts that it has a right to represent peace officers in disciplinary matters, including internal investigations, under the collective bargaining agreement. Travers responds that LVPPA was not a necessary party because the cause of action was between an aggrieved peace officer and his employer under NRS Chapter 289.

Under NRCP 19, a district court is required to join an entity if (1) in the entity's absence, "the court cannot accord complete relief among existing parties"; or (2) the entity has an interest relating to the subject of the action and its absence may "impair or impede the [entity]'s ability to protect the interest" or subject an existing party to the action "to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." NRCP 19(a)(1). If an entity required by NRCP 19 is not joined as a party, a district court should not enter a final order. *Univ. of Nev. v. Tarkanian*, 95 Nev. 389, 396, 594 P.2d 1159, 1163 (1979) ("If the interest of the absent parties may be affected or bound by the decree, they must be brought before the court, or it will not proceed to a decree." (internal quotation marks omitted)).

Travers brought the underlying action pursuant to NRS 289.120, which allows a peace officer who is aggrieved by an action of their employer in violation of NRS Chapter 289 to seek relief in the district court. *See Ruiz v. City of North Las Vegas*, 127 Nev. 254, 262-64, 255 P.3d 216, 222-23 (2011) (explaining that a peace officer has standing under NRS 289.120 to bring claims for judicial relief regarding violations of the Peace Officer Bill of Rights in NRS Chapter 289). Travers specifically alleged that LVMPD violated his rights under NRS 289.080(2), which provides that

> a peace officer who is a witness in an investigation conducted pursuant to NRS 289.057 may upon request have two representatives of the peace officer's choosing present with the peace officer during an interview relating to the investigation, including, without limitation, a lawyer, a representative of a labor union or another peace officer.

The only explicit limitation on a peace officer choosing their representatives, which does not exist in this situation, is that "[a] representative must not otherwise be connected to, or the subject of, the same investigation." NRS 289.080(5).

In *Bisch v. Las Vegas Metropolitan Police Department*, this court interpreted rights and obligations stemming from NRS Chapter 289, including whether any entity is required to represent a peace officer during an internal investigation pursuant to NRS 289.080. 129 Nev. 328, 302 P.3d 1108. In that matter, LVPPA refused to represent a peace officer in an investigation because it had a policy that it would provide representation only to peace officers who did not procure their own attorney, and the peace officer had retained private counsel. *Id.* at 332, 302 P.3d at 1111. The peace officer argued that in doing so LVPPA violated her right under NRS 289.080 to have two representatives of her choice at her interview. *Id.* at 335, 302 P.3d at 1113.

Reviewing the district court's interpretation of NRS 289.080 de novo, we concluded that the statute did "not expressly impose any affirmative duties" on entities to provide representation and instead only gave the employee a right to choose two representatives to be present during an investigation interview. *Id.* at 336, 302 P.3d at 1114. Looking beyond the plain meaning to the statutory scheme of NRS Chapter 289, we observed that NRS Chapter 289 concerns rights peace officers retain when dealing with their employers and duties imposed on those employers. *Id.* at 336-37, 302 P.3d at 1114. Therefore, this court concluded that "nothing in NRS 289.080 or the rest of the Peace Officer Bill of Rights governs [LVPPA's] responsibility toward[s] its members" and that NRS 289.080 did not impose any duties on LVPPA regarding representing peace officers in internal investigations. *Id.* at 337, 302 P.3d at 1114.

The language of NRS 289.080 providing that a peace officer may have two representatives of the peace officer's choosing present during an internal investigation has not changed since we decided *Bisch*. Therefore, we reaffirm our conclusions that NRS 289.080 does not impose any affirmative duties on LVPPA and that the right to choose representatives during an investigation belongs to the peace officer. *See id.* at 336-37, 302 P.3d at 1114. As NRS 289.080 neither imposes a duty nor gives LVPPA a right to represent peace officers during NRS 289.057 investigations, it follows that a district court decision resolving a complaint concerning a peace officer's selected representatives does not "impair or impede" any interest held by LVPPA under that statute. *See* NRCP 19(a)(1)(B)(i).

We recognize that LVPPA has certain rights under NRS Chapter 288, which governs relations between governments and public employees and gives public employees bargaining rights. *See Truckee Meadows Fire Prot. Dist. v. Int'l Ass'n of Firefighters, Local 2487*, 109 Nev. 367, 374, 849 P.2d 343, 348 (1993). Indeed, NRS Chapter 288 gives LVPPA the exclusive right to represent LVMPD peace officers for purposes of collective bargaining, including negotiating disciplinary procedures. *See* NRS 288.150(2)(i) (indicating that disciplinary procedures are a mandatory bargaining subject); *see also* NRS 288.133 (defining "bargaining agent" as "an employee organization recognized by the local government employer as the exclusive representative of all local government employees in the bargaining unit for purposes of collective bargaining").

However, NRS Chapter 289 is a distinct chapter affording separate rights to peace officers. *See Ruiz*, 127 Nev. at 264 n.9, 255 P.3d at 223 n.9 (explaining that "the Peace Officer Bill of Rights represents the Nevada Legislature's recognition that peace officers, because of the important role they play in maintaining public safety, deserve additional protections that are unavailable to other public employees"). "When our Legislature enacts statutes purporting to grant a group of people certain rights, we will construe the statutes in a manner consistent with the enforceability of those rights." *Id.*; *see also Cable v. State ex. rel. Emp'rs Ins. Co. of Nev.*, 122 Nev. 120, 125, 127 P.3d 528, 531 (2006) ("This court presumes that the Legislature, when enacting statutes, is aware of other similar statutes."). The right to choose representatives to be present and to assist them during internal investigations pursuant to NRS 289.057 belongs to the peace officers and no other party. NRS 289.080; *see also Bisch*, 129 Nev. at 336-37, 302 P.3d at 1114.

With no obligations or rights under NRS Chapter 289, LVPPA did not have a valid interest that made it a necessary party to the underlying litigation between Travers and LVMPD. *See* NRCP 19(a)(1)(B)(i); *cf. Tarkanian*, 95 Nev. at 396, 594 P.2d at 1163 (explaining that the NCAA was a necessary party in the litigation

because "the interest of the NCAA in the subject matter of this litigation was such that either the university would be affected, or the NCAA's ability to protect its interests would be impaired, and . . . further litigation of the controversy would be likely, should it proceed without joinder of the NCAA"). Accordingly, we conclude extraordinary relief is not warranted and deny LVPPA's petition.

CONCLUSION

The district court properly denied LVPPA's motion to intervene after final judgment was entered in the underlying matter between Travers and LVMPD. And, as we explained in *Bisch*, NRS 289.080 does not impose affirmative duties on or otherwise grant any rights to the recognized bargaining agent. Nor has LVPPA demonstrated that its right to exclusively represent nonsupervisory peace officers for purposes of NRS Chapter 288 extends to limit peace officers' rights under NRS 289.080 such that it had an impairable interest subject to the outcome of the case. As provided by the Legislature, a peace officer such as Travers subject to an investigation conducted pursuant to NRS 289.057 has a right to choose their own representatives, regardless of the representatives' affiliations, so long as the representatives are not connected to, or the subject of, the same investigation and the representatives follow the guidelines set forth in NRS Chapter 289. Therefore, we conclude LVPPA was not a necessary party in the underlying matter and deny LVPPA's petition for writ relief.

Hardesty and Herndon, JJ., concur.

ELK POINT COUNTRY CLUB HOMEOWNERS' ASSOCIATION, INC., AKA ELK POINT COUNTRY CLUB, INC., A NEVADA NONPROFIT, NONSTOCK CORPORATION, APPELLANT, *v.* K.J. BROWN, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND TIMOTHY D. GILBERT AND NANCY AVANZINO GILBERT, AS TRUSTEES OF THE TIMOTHY D. GILBERT AND NANCY AVANZINO GILBERT REVOCABLE FAMILY TRUST DATED DECEMBER 27, 2013, RESPONDENTS.

No. 82484

August 18, 2022 515 P.3d 837

Appeal from a district court order granting a preliminary injunction. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Reversed.

[Rehearing denied November 14, 2022]

Resnick & Louis, P.C., and *Prescott T. Jones* and *Carissa C. Yuhas*, Las Vegas, for Appellant.

Leach Kern Gruchow Anderson Song and *Sophie A. Karadanis* and *Gayle A. Kern*, Reno, for Respondents.

Before the Supreme Court, SILVER, CADISH, and PICKERING, JJ.

OPINION

By the Court, CADISH, J.:

The challenged district court order enjoins appellant, a homeowners' association, from allowing its members to use their units in the common-interest community for short- or long-term rental use. Appellant asserts that the district court's injunction is based on a faulty reading of the homeowners' association's governing documents and its resulting erroneous conclusion that such rental activity violates the Bylaws' provisions restricting the units to "single family residential purposes only" and prohibiting appellant from operating "its properties or facilities with the view of providing profit to its Unit Owners." Pursuant to NRS 116.340(1)(a), we conclude that members of a common-interest community may use their units for transient commercial use, such as a short-term vacation rental, even when the association's governing documents contain a "residential use" restriction, so long as the governing documents do not prohibit transient commercial use. Because appellant's Bylaws do not prohibit transient commercial use, the district court abused its discretion when it granted respondents' motion for a preliminary injunction. Accordingly, we reverse the district court's order.

FACTS AND PROCEDURAL HISTORY

In 1925, several individuals incorporated appellant Elk Point Country Club Homeowners' Association, Inc. (EPCC) as a Nevada nonprofit corporation. EPCC is a private, members-only social club with federal tax-exemption status under 26 U.S.C. § 501(c)(7). However, EPCC operates like an HOA, where individual members own the 100 individual units within EPCC, but EPCC holds title to all other real property, including roads and parking areas, a 13-acre beach and beach deck, a marina and boat storage area, a private water system and water tank, a barbeque area, and 89-acre feet of water rights. No individual member has any ownership right or interest in EPCC's real property, but individual members do have the ability to access and use common areas. EPCC's current governing documents consist of its 2005 Amended Bylaws (Bylaws), and the recorded Elk Point Country Club Homeowners' Rules, Regulations, and Guidelines (Rules).[1]

K.J. Brown, LLC, Timothy D. Gilbert, and Nancy Avanzino Gilbert (collectively, respondents) are members of EPCC. They filed the underlying lawsuit against EPCC, asserting claims for violations of NRS Chapter 116 and various contract breaches and torts, based on allegations that several other EPCC members were using their units for short-term vacation rentals. Shortly thereafter, respondents moved for a preliminary injunction to enjoin EPCC "from allowing, actively engaging in, and providing permission to" EPCC members to use their units for short-term vacation rentals. Respondents argued that they had a likelihood of success on the merits because the members who rented their units violated the Bylaws, which specifically prohibited EPCC from operating its properties or facilities to provide income to members and because EPCC's tax-exempt status prohibits members from using their units in EPCC to generate income. They also asserted that they faced irreparable harm because the prohibited rentals jeopardized EPCC's tax-exempt status and revocation of that status would result in "serious" tax exposure for respondents as unit owners and would "certainly alter the character of the community."

After a hearing, the district court granted the preliminary injunction, finding that "a consistent reading of the Bylaws that gives meaning to all provisions included therein is that members are not permitted to operate their Units or any EPCC property and facilities in order to generate revenue or for a profit," including renting units for short- and long-term rental use. The court also found "that

[1]EPCC's Bylaws are the equivalent to CC&Rs found in most other homeowners' associations. *See Moretto v. Elk Point Country Club Homeowners Ass'n, Inc.*, 138 Nev. 195, 196, 507 P.3d 199, 201 (2022) (explaining that EPCC's Bylaws are equivalent to CC&Rs found in most modern common-interest communities).

there are many different classifications of tenancies recognized by the State of Nevada" and that it would "lead to inconsistent and contradictory results" to interpret the word "tenant" in the Bylaws to include renters. The court concluded that respondents showed a reasonable likelihood of success on the merits because the Bylaws prohibited members from using or operating any unit in EPCC or its property and facilities to generate profit or revenue. It also concluded that respondents demonstrated the threat of irreparable harm due to the financial costs if EPCC lost its tax exemption, as well as the change in the nature and character of the community. Accordingly, the district court enjoined all short- and long-term rentals in EPCC.

DISCUSSION

"We review a decision to grant a preliminary injunction for an abuse of discretion." *Duong v. Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.*, 136 Nev. 740, 742, 478 P.3d 380, 382 (2020). However, we review questions of law implicated by the preliminary injunction de novo. *Excellence Cmty. Mgmt., LLC v. Gilmore*, 131 Nev. 347, 351, 351 P.3d 720, 722 (2015). A preliminary injunction is appropriate where the moving party can demonstrate that (1) "it has a reasonable likelihood of success on the merits"; and (2) "absent a preliminary injunction, it will suffer irreparable harm for which compensatory damages would not suffice." *Id.*

EPCC argues that the district court's interpretation that the Bylaws preclude short-term rentals by restricting the property to "single family residential purposes only" conflicts with NRS 116.340(1), which allows individuals in planned communities to engage in short-term rental activity absent an explicit prohibition of such activity in the governing documents. Because EPCC's Bylaws do not include an explicit provision precluding owners from renting their units to others, EPCC contends that the district court erroneously concluded that respondents had a likelihood of prevailing on the merits of their complaint. Finally, EPCC argues that the district court erred by sua sponte ordering that the preliminary injunction applied to long-term rentals because respondents did not address long-term rentals in their motion practice and the injunction in that regard was wholly unsupported. We agree and therefore reverse the district court's preliminary injunction.

The Bylaws state that "[t]he property of Unit Owners shall be used for single family residential purposes only." By statute, a property owner who, like here, owns "one or more units within a planned community that *are restricted to residential use* by the [governing] declaration *may use that unit . . . for a transient commercial use* only if . . . [t]he governing documents of the association and any

master association do not prohibit such use."[2] NRS 116.340(1)(a) (emphases added). While jurisdictions are split regarding the scope of the phrase "single family residential purposes only," *see Slaby v. Mountain River Estates Residential Ass'n, Inc.*, 100 So. 3d 569, 575 (Ala. Civ. App. 2012) (recognizing that the phrase "single family residential purposes only," and "other similar phrases, has engendered many conflicting opinions across the country as to whether the language restricts the types and number of structures that may be erected on the property, the use to which those structures may be put, or both"), respondents do not argue that the phrase as used in the Bylaws has a meaning distinct from "restricted to residential use" as used in NRS 116.340(1)(a). Thus, we assume, without deciding for purposes of this appeal, that the Bylaws' language restricting use to "single family residential purposes only" is equivalent to a "residential use" restriction such that NRS 116.340(1)(a) applies, and the restriction to residential use cannot be construed as a prohibition on short-term rentals within the meaning of that statute since NRS 116.340(1)(a) explicitly says that residents in a community limited to such use may engage in such rentals absent a prohibition in the governing documents. The Bylaws thus do not contain an express prohibition against owners using units for transient commercial use, i.e., short-term rentals. Accordingly, unless the Bylaws or other governing documents contain other language that implicitly or necessarily prohibits such rentals, respondents cannot show a reasonable likelihood of success on the merits, as short-term rentals would be permissible.

We review questions of contract interpretation de novo. *Oella Ridge Tr. v. Silver State Sch. Credit Union*, 137 Nev. 760, 762, 500 P.3d 1253, 1255 (2021); *see Nev. State Educ. Ass'n v. Clark Cty. Educ. Ass'n*, 137 Nev. 76, 83, 482 P.3d 665, 673 (2021) (observing that bylaws are a contract subject to contract interpretation rules). When interpreting a contract, we "look[ ] to the language of the agreement and the surrounding circumstances," *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (quoting *Redrock Valley Ranch, LLC v. Washoe County*, 127 Nev. 451, 460, 254 P.3d 641, 647-48 (2011)), and "enforce[ ]" the contract "as written" if the "language of the contract is clear and unambiguous," *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012).

Here, neither the Bylaws nor the other governing documents explicitly or even implicitly prohibit EPCC members from using their units for short- or long-term rentals. First, the plain language of the Bylaws' preamble does not prohibit unit rentals as it merely

[2]Transient commercial use "means the use of a unit, for remuneration, as a hostel, hotel, inn, motel, resort, *vacation rental* or other form of transient lodging if the term of the occupancy, possession or use of the unit is for less than 30 consecutive calendar days." NRS 116.340(4)(b) (emphasis added).

states that EPCC "shall not operate its properties or facilities *with the view of providing profit to its Unit Owners* but rather, such properties and facilities shall be held, operated, and made available for the use and enjoyment of its Unit Owners." (Emphasis added.) While such language obligates EPCC to regularly maintain its properties and facilities and precludes EPCC itself from operating the same with an intent to increase or otherwise provide profit to its members, on its face it does not prohibit EPCC members from profiting from their individual units.

Second, the Bylaws do not define "tenant," but they make numerous references to members and their "tenants" or "guests." For example, the Bylaws give the Executive Board the power to "adopt as necessary, rules for the conduct and government of the Unit Owners, their guests and tenants, in connection with the exercise of their privileges as Unit Owners, tenants and guests and their use of the Corporation property." The Bylaws also provide that "[i]t shall be each Unit Owner's responsibility to require guests *and tenants* to obey said rules," and that a Unit Owner's rights "shall be suspended" if a "Unit Owner or *the tenant* or guests, of the Unit Owner" violate or otherwise fail to comply with EPCC's governing documents. (Emphases added.) These references provide a context for interpreting "tenant" according to its plain meaning, which is defined as "[s]omeone who pays rent for the temporary use and occupation of another's land under a lease or similar arrangement." *Tenant*, *Black's Law Dictionary* (11th ed. 2019). Accordingly, to give the Bylaws' terms their plain meaning, the word tenant includes a renter, and such renters are explicitly contemplated and permitted by the Bylaws.

Third, the other governing documents support this interpretation. Notably, the Rules provide that "[m]embers are responsible for the actions and behavior of their renters and guests" and that "[r]enters must comply with all rules and regulations of the [Elk Point] Country Club." The Rules also provide that "[m]embers renting their property must notify the Caretaker (for the Board of Directors), of the names of the tenants and the terms of their rental agreement." Thus, not only do the Rules explicitly refer to renters, but they also equate "tenants" with "renters." Although the district court found that it would "lead to inconsistent and contradictory results" to interpret the word "tenant" in the Bylaws to include renters, the record, as discussed above, does not support that finding. Because the Bylaws and other governing documents do not preclude EPCC members from renting out their units in the community, we hold that the district court abused its discretion by concluding that respondents showed a reasonable likelihood of success on the merits.

Respondents' arguments to the contrary are not persuasive. First, the preamble does not clearly prohibit the "operation of EPCC's

properties or facilities which provide profit to EPCC or its social club members." Instead, the preamble only prohibits EPCC from operating *its* properties or facilities "with the view of providing profit to its Unit Owners." This language is directed at EPCC common properties and facilities, and by not addressing members, the preamble implicitly allows a member to profit from his or her own unit regardless of how EPCC itself operates the common properties and facilities. *See Alta Vista Props., LLC v. Mauer Vision Ctr., PC*, 855 N.W.2d 722, 727 (Iowa 2014) (applying the canon that "the expression of one thing of a class implies the exclusion of others not expressed" to the interpretation of a lease). Further, respondents' "plain language" analysis parses individual clauses of the preamble such that it renders other provisions in the Bylaws that allow tenants meaningless in violation of well-established canons of construction. *See Road & Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 390, 284 P.3d 377, 380-81 (2012) (explaining that this court reads contracts "as a whole" to "avoi[d] negating any contract provision").

Second, respondents waived the argument that EPCC is not a common-interest community governed by NRS Chapter 116 because they did not raise that argument below, even after EPCC argued that NRS 116.340 allows Unit Owners to rent out their units in the community. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (recognizing that arguments raised for the first time on appeal are waived). Regardless, respondents initially alleged that EPCC violated NRS Chapter 116, and NRS Chapter 116 applies only to common-interest communities. *See* NRS 116.1201 (providing that NRS Chapter 116 "applies to all common-interest communities created within this State"). Thus, respondents' contention that EPCC violated NRS Chapter 116 constitutes a judicial admission regarding whether EPCC is a common-interest community in this case.[3] *See Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.*, 127 Nev. 331, 343, 255 P.3d 268, 276 (2011) (explaining that a judicial admission is a "deliberate, clear, unequivocal statement[ ] by a party about a concrete fact within that party's knowledge" (quoting *Smith v. Pavlovich*, 914 N.E.2d 1258, 1267 (Ill. 2009))).

Moreover, because the Bylaws do not prohibit members from renting out their units, EPCC's actions in maintaining a rental calendar that tracks when a property is rented do not violate the Bylaws and are consistent with the Rules' requirement that EPCC members inform EPCC of the names and terms of any rental agreement. Accordingly, because NRS 116.340(1) allows homeowners in

[3]We have previously recognized that EPCC is a common-interest community. *Moretto*, 138 Nev. at 196, 507 P.3d at 201 (observing that EPCC "is the governing body of the Elk Point subdivision, a common-interest community located at Lake Tahoe's Zephyr Cove, in Douglas County, Nevada").

common-interest communities with residential use restrictions to use their units for transient commercial use, unless the community's governing documents otherwise prohibit transient commercial use, and the Bylaws and Rules here do not prohibit such use, we conclude that the district court abused its discretion by granting respondents' motion for a preliminary injunction based on its finding that respondents demonstrated a reasonable likelihood of success on the merits.[4]

CONCLUSION

Under NRS 116.340(1), respondents could only establish a likelihood of success to support their request for a preliminary injunction against short-term vacation rentals in their community by showing that EPCC's governing documents prohibited members from using their units for that purpose. Because the plain language of EPCC's Bylaws and Rules both implicitly and explicitly acknowledges that members may rent their properties and does not contain any prohibition of short-term vacation rentals, we conclude that respondents failed to show a reasonable likelihood of success on the merits of their claims. Thus, the district court abused its discretion when it granted respondents' motion for a preliminary injunction. Accordingly, we reverse the district court's order granting respondents' motion for a preliminary injunction.

Silver and Pickering, JJ., concur.

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[4]In light of our conclusion that respondents failed to show a reasonable likelihood of success on the merits, we need not address EPCC's remaining arguments regarding irreparable harm. However, we agree with EPCC that the district court improperly enjoined long-term rentals, as the injunction on such rentals exceeds the scope of relief respondents sought. *Cf. Williams v. Cottonwood Cove Dev. Co.*, 96 Nev. 857, 860, 619 P.2d 1219, 1221 (1980) ("The pleading must give fair notice of the nature and basis of the claim.").