STEVE EGGLESTON, Appellant, *v.* GEORGINA STUART; CLARK COUNTY, NEVADA; LISA CALLAHAN; and BRIAN CALLAHAN, Respondents.

No. 80838

September 23, 2021 495 P.3d 482

Appeal from a district court order dismissing an action raising federal civil rights and state law tort claims for failure to exhaust administrative remedies. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Affirmed in part, reversed in part, and remanded.

McFarling Law Group and *Emily M. McFarling*, Las Vegas, for Appellant.

Olson Cannon Gormley & Stoberski and *Felicia Galati*, Las Vegas, for Respondents Clark County, Nevada, and Georgina Stuart.

Brian Callahan, New Lenox, Illinois, Pro Se.

Lisa Callahan, New Lenox, Illinois, Pro Se.

Before the Supreme Court, Parraguirre, Stiglich, and Silver, JJ.

OPINION

By the Court, Silver, J.:

Appellant Steve Eggleston filed a 42 U.S.C. § 1983 civil rights claim, as well as various state law tort claims, in the district court. In his complaint, Eggleston alleged that respondent Georgina Stuart, who is employed by the Clark County Department of Family Services (DFS), and two police officers forced him to sign a temporary guardianship over his two minor children under threat of never seeing his children again. The papers gave temporary guardianship to the children's maternal aunt, Lisa Callahan, who thereafter took the children to another state. One month after Eggleston signed the papers, DFS made a finding of child maltreatment against Eggleston, which he administratively appealed. But Eggleston delayed the administrative hearing before a fair hearing officer and, in the meantime, filed the aforementioned civil rights and tort claims in the district court. The district court determined that punitive damages were not available and dismissed Eggleston's

request for such damages against Stuart and thereafter dismissed Eggleston's § 1983 and state law tort claims for failure to exhaust his administrative remedies. Eggleston then appealed.

In this opinion, we conclude that, consistent with *Patsy v. Board of Regents*, 457 U.S. 496 (1982), a party generally is not required to exhaust administrative remedies before filing a § 1983 civil rights claim. We also acknowledge that *Zinermon v. Burch*, 494 U.S. 113 (1990), provides a limited exception to *Patsy*'s general rule for procedural due process claims. Here, we conclude that the district court erred by requiring Eggleston to administratively exhaust all potential remedies in his DFS case before bringing his § 1983 and state law tort claims, because, while related, the cases ultimately seek different remedies for different wrongs. The district court also erred by finding that Eggleston's § 1983 claim was solely a procedural due process claim subject to the exhaustion doctrine because Eggleston actually presented a substantive due process claim. Therefore, the district court improperly dismissed Eggleston's § 1983 and state law tort claims. We also conclude that the district court erred by determining that punitive damages were unavailable against Stuart at this point in the litigation.

FACTS AND PROCEDURAL HISTORY

Clark County and Stuart became involved with Eggleston after the mother of Eggleston's two minor children, Laura Battistella, allegedly expressed suicidal ideation in December 2014 and emergency services were summoned. As a result of Stuart's involvement, Eggleston asserts, he and Battistella agreed to participate in a DFS program designed to help increase the well-being of the entire family, which also included two other minor children of Battistella. In addition, Battistella's sister, Lisa Callahan, visited from the Chicago area to help with childcare and to support Battistella.

Eggleston alleges that on January 6, 2015, Stuart arrived at Eggleston and Battistella's home with two armed police officers, Lisa Callahan, and others. According to Eggleston, Stuart ordered Eggleston and Battistella to immediately sign temporary guardianship of the children over to Lisa Callahan, threatening that the police would take their children into custody and they would never see their children again if they did not comply. Under duress, Eggleston claims, he and Battistella signed the prepared temporary guardianship papers in front of a notary. Lisa Callahan thereafter took the children out of state, allegedly to Illinois to hide them from Eggleston.[1] Eggleston alleges that he has not seen his children since this event, for over five years now.

[1]Lisa Callahan and her husband Brian Callahan are named as respondents in this appeal, but neither filed an answering brief.

Thereafter, in early February, DFS made a finding of child maltreatment against Eggleston.[2] Eggleston appealed the finding to the DFS appeals unit, and the appeals unit manager upheld the finding. Eggleston then requested a fair hearing to administratively appeal that decision (the DFS case), as set forth in the relevant statutes. At Eggleston's request, the fair hearing was initially set for August 1, 2017, but Eggleston thereafter requested three continuances and stopped communicating with DFS to coordinate a date for that hearing.

At no point did DFS move to terminate Eggleston's parental rights in Nevada. After Lisa Callahan fled to Illinois, Eggleston alleges he did not know the whereabouts of Lisa and his children for years. Unbeknownst to Eggleston, Lisa Callahan petitioned for permanent guardianship in an Illinois court. Eggleston then moved to terminate the guardianship in Illinois.

Over one year after he requested a fair hearing in the DFS case, Eggleston filed a complaint against Georgina Stuart, DFS, Child Support Services, Clark County, Lisa Callahan, and Brian Callahan, alleging civil rights and tort law violations. Clark County and Stuart moved to dismiss the claims, arguing that Eggleston failed to state a claim upon which relief can be granted and that punitive damages were not permitted pursuant to NRS 41.035(1), which precludes punitive damages awards against employees of political subdivisions acting in the scope of employment. The district court granted the motion, concluding that some of the claims were deficient and that punitive damages were unavailable, but leave to amend was granted.

Eggleston filed a first amended complaint, again claiming violation of his civil rights under 42 U.S.C. § 1983 against Clark County and Stuart; conspiracy to violate his civil rights and intentional infliction of emotional distress (IIED) against Clark County, Stuart, and the Callahans; and defamation against Clark County, Stuart, and Lisa Callahan. Clark County and Stuart moved to dismiss Eggleston's first amended complaint under NRCP 12(b)(5) based on Eggleston's failure to exhaust his administrative remedies in his DFS case. Clark County and Stuart argued that because Eggleston's fair hearing was still pending, the exhaustion of administrative remedies doctrine barred Eggleston's civil complaint. Eggleston opposed the motion, but the district court dismissed his claims, finding that Eggleston initiated an administrative appeals process in the DFS case that was still pending when he filed his first amended complaint in the district court. The court further found that Eggleston's civil rights claims were based on procedural due process violations and thus excepted from the general rule that

[2]Specifically, DFS found physical injury, neglect, and plausible risk of physical injury as to four minor children.

§ 1983 claims do not require exhaustion. Accordingly, the district court found that Eggleston must first exhaust his administrative remedies in the DFS case and dismissed his § 1983 civil rights and state law tort claims on that basis. Eggleston moved for reconsideration, which was denied.[3]

Eggleston appeals, arguing the exhaustion doctrine does not apply here and, therefore, the district court improperly dismissed his § 1983 and state law tort claims. He further argues the district court improperly dismissed his request for punitive damages against Stuart.

DISCUSSION

Standard of review

A dismissal for failure to state a claim pursuant to NRCP 12(b)(5) is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). 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.*

Eggleston was not required to exhaust his administrative remedies before filing a 42 U.S.C. § 1983 civil rights claim in the district court

Eggleston argues that the district court erred by dismissing his 42 U.S.C. § 1983 civil rights claim because under *Patsy v. Board of Regents*, 457 U.S. 496 (1982), he was not required to exhaust the administrative remedies in his DFS case before filing a § 1983[4] civil rights claim in the district court. Clark County and Stuart counter that Eggleston must first exhaust the administrative remedies in his DFS case under the exhaustion doctrine because his § 1983 claim is a procedural due process claim, which is an exception to *Patsy* under *Zinermon v. Burch*, 494 U.S. 113 (1990).[5] We conclude that Eggleston was not required to exhaust his administrative remedies before bringing his § 1983 claim in the district court.

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[3]After the order dismissing the action was entered, the case was reassigned to Judge Cristina D. Silva, who decided the motion for reconsideration.

[4]Eggleston refers to his two civil rights claims as § 1983 claims. However, his conspiracy claim actually falls under 42 U.S.C. § 1985. Eggleston fails to provide any authority or argument regarding § 1985 or demonstrate that the exception to the exhaustion doctrine for § 1983 claims applies to § 1985 claims. Therefore, his arguments regarding this claim are waived, and we affirm the dismissal of Eggleston's § 1985 conspiracy claim. *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (noting that arguments not raised in the opening brief are deemed waived).

[5]We have considered Stuart's arguments regarding the finality doctrine, NRS 432B.317, and NRS 233B.130, and in light of our decision here, we conclude those arguments are without merit. We also do not address Stuart's argument that the district court properly denied Eggleston's NRCP 56(f) request for discovery because Eggleston does not dispute this ruling on appeal.

"Ordinarily, before availing oneself of district court relief from an agency decision, one must first exhaust available administrative remedies." *Malecon Tobacco, LLC v. State, Dep't of Taxation*, 118 Nev. 837, 839, 59 P.3d 474, 475-76 (2002). "[F]ailure to do so renders the controversy nonjusticiable." *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 571, 170 P.3d 989, 993 (2007). "The exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and conserves judicial resources, so its purpose is valuable; requiring exhaustion of administrative remedies often resolves disputes without the need for judicial involvement." *Id.* at 571-72, 170 P.3d at 993-94.

However, a party is generally not required to exhaust state administrative remedies before bringing a civil rights claim in federal or state court under 42 U.S.C. § 1983.[6] *Patsy*, 457 U.S. at 516; *Felder v. Casey*, 487 U.S. 131, 146-47 (1988). Section 1983's purpose is "to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law." *Patsy*, 457 U.S. at 503 (internal quotation marks omitted). "[O]verlapping state remedies are generally irrelevant to the question of the existence of a cause of action under § 1983," *Zinermon*, 494 U.S. at 124, because "[t]he federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked." *Monroe v. Pape*, 365 U.S. 167, 183 (1961), *overruled in part on other grounds by Monell v. N.Y. City Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

This general rule applies to § 1983 claims for fundamental rights violations or substantive due process claims. *Zinermon*, 494 U.S. at 125. "Substantive due process guarantees that no person shall be deprived of life, liberty or property for arbitrary reasons." *In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 166, 87 P.3d 521, 527 (2004) (internal quotation marks omitted). Substantive due process protects certain individual liberties against arbitrary government deprivation regardless of the fairness of the state's procedure. 16C C.J.S. *Constitutional Law* § 1884 (2021). It does not protect against all government infringement, but is "reserved for the most egregious governmental abuses against liberty or property rights, abuses that shock the conscience or otherwise offend judicial notions of fairness and that are offensive to human dignity." *Id.*

[6]42 U.S.C. § 1983 reads as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

The exhaustion doctrine is not a bar to § 1983 substantive due process claims because "the constitutional violation actionable under § 1983 is complete when the wrongful action is taken." *Zinermon*, 494 U.S. at 125.

The same cannot be said for procedural due process claims, which are an exception to the general rule. *Id.* ("[T]he existence of state remedies *is* relevant" to a § 1983 claim "brought for a violation of procedural due process."). Procedural due process rules protect persons from deprivations of life, liberty, or property that are mistaken or unjustified. 16C C.J.S. *Constitutional Law* § 1884 (2021). Procedural due process claims arise where the State interferes with a liberty or property interest and the State's procedure was constitutionally insufficient. *Malfitano v. Cty. of Storey*, 133 Nev. 276, 282, 396 P.3d 815, 819 (2017). In such claims, State deprivation "of a constitutionally protected interest in life, liberty, or property is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law*." *Zinermon*, 494 U.S. at 125 (internal quotation marks omitted). Therefore, "[t]he constitutional violation actionable under § 1983 is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process." *Id.* at 126.

Here, the district court correctly stated that a § 1983 claim for a violation of procedural due process will not stand until the State fails to provide due process. But as set forth in more detail below, we conclude the district court incorrectly applied that standard to Eggleston's § 1983 claim in this case.

First, we conclude the district court erroneously determined Eggleston's due process claim was a procedural one. Although Eggleston complains in part that Clark County and Stuart failed to provide him with notice of the allegations against him and an opportunity to respond in rebuttal, at its core, Eggleston's complaint presents a substantive due process claim for violation of the fundamental right to parent his children. The fundamental right to "bring up children" is encompassed within the right to liberty, a core guarantee protected by the Due Process Clause of the Fourteenth Amendment. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *see also In re L.S.*, 120 Nev. at 166, 87 P.3d at 527 (addressing a parent's substantive due process rights). Indeed, "[t]he liberty interest . . . of parents in the care, custody, and control of their children[ ] is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Here, not only is Eggleston claiming that he was not afforded adequate process protecting against the mistaken or unjustified loss of that right, but he is alleging that Clark County and Stuart arbitrarily and capriciously interfered with this right when, without cause, they forced him under duress to sign temporary guardianship papers leading to

the unwarranted removal of his children from his care.[7] Eggleston further alleges that he thereafter did not have contact with his children for over five years, and the woman who fled the state with his children was able to obtain guardianship over his children in Illinois. Moreover, he claims, the children's forced removal from his home was part of a design to enhance the county budget and for personal gain. Taking Eggleston's allegations as true, as we must in the context of a motion to dismiss, the State's actions "shock the conscience" by removing the possibility of reunification and by violating Eggleston's fundamental right to raise his children. The constitutional violation was complete when the State forced Eggleston to sign the temporary guardianship papers, and thus this claim is fundamentally a substantive due process one exempt from the exhaustion doctrine.

Moreover, while Stuart argues, and the district court found, that Eggleston's § 1983 claim was an extension of his DFS case, the two cases are separate from each other, as they arise from two separate factual circumstances. Eggleston's allegations for his § 1983 claim arise from an incident that occurred before DFS made its finding of child maltreatment, while the DFS proceedings concern only that finding. And there is nothing in the record to suggest that DFS's finding of child maltreatment arose from the same set of facts underlying Eggleston's allegations that DFS coerced Eggleston into signing away his guardianship rights at the time that DFS removed the children from Eggleston. Thus, the district court improperly linked the case before it with the DFS case.

We further note that because Eggleston alleges DFS forced him to sign temporary guardianship papers without first implementing any process, Eggleston's allegations arise from a situation for which there were no administrative remedies available to redress the harm of losing his children. Importantly, if the State had instead petitioned the district court for temporary guardianship over Eggleston's children, it would have given Eggleston the chance to appear and oppose the temporary guardianship in open court. Thus, in that situation, due process would have been available to Eggleston, which he would have been required to pursue before raising his § 1983 claim. But here, Eggleston alleges that he was coerced by the government to sign temporary guardianship papers releasing his children to the Callahans' care and he has never had an opportunity to see them again in over five years. Therefore, his § 1983 claim seeks to redress the harm stemming from that particular event, whereas even if Eggleston prevailed in the DFS case by proving the abuse allegations were unsubstantiated, his only

[7]Furthermore, the record on appeal demonstrates that Clark County and Stuart focused their defense on the exhaustion of administrative remedies and did not provide any contradicting facts as to what happened when Eggleston signed the temporary guardianship below.

remedy is that his name would be removed from the DFS's Central Registry. Accordingly, there is no relevant administrative remedy available to Eggleston stemming from these unique circumstances.

In sum, the district court improperly linked the DFS case to Eggleston's complaint, which, at its core, presents a substantive due process claim, and there is no relevant administrative remedy for Eggleston to exhaust. Therefore, we conclude that the district court erred by dismissing[8] Eggleston's § 1983 civil rights claim for failure to exhaust administrative remedies.[9]

The district court erred by dismissing Eggleston's state law tort claims

Eggleston next argues that the district court erred by dismissing his state tort IIED and defamation claims based on the failure to exhaust administrative remedies. Stuart responds that because Eggleston's state law tort claims are related to DFS's finding of child maltreatment, he must first exhaust his administrative remedies.

Eggleston's state law tort claims do not implicate any administrative process. "Any preliminary, procedural or intermediate act or ruling by an agency in a contested case is reviewable if review of the final decision of the agency would not provide an adequate remedy." NRS 233B.130(1). NRS 432B.317(1) provides for the administrative appeal of the substantiation of the agency's report of abuse or neglect and "the agency's intention to place the person's name in the Central Registry." Where an agency is "without authority to award damages caused by defamation[,] . . . the doctrine of exhaustion of administrative remedies is not applicable." *Ambassador Ins. Corp. v. Feldman*, 95 Nev. 538, 539, 598 P.2d 630, 631 (1979).

Here, the district court dismissed all of Eggleston's tort claims based on failure to exhaust administrative remedies. But to the extent that Eggleston's IIED and defamation claims rest on his allegations that he was forced to sign a temporary guardianship over his children, exhaustion is not required because, as explained above, these allegations do not arise from an administrative process. Moreover, the exhaustion doctrine does not preclude Eggleston's defamation claim because the agency is unable to grant the damages he seeks. *See* NRS 233B.130(1); *Ambassador Ins. Corp.*, 95 Nev. at 539, 598 P.2d at 631. Finally, the exhaustion doctrine does not apply

[8]In light of our decision, the parties' arguments regarding NRCP 12 and the affidavit are moot, and we need not consider them. *See Edwards v. City of Reno*, 45 Nev. 135, 143, 198 P. 1090, 1092 (1921) ("Appellate courts do not give opinions on moot questions or abstract propositions.").

[9]We recognize the complaint includes language that appears to reference DFS's finding of child maltreatment and administrative remedies, suggesting the claim may be an administrative one, but we conclude the heart of the complaint is a § 1983 action. The district court may address the extraneous language upon remand.

to the claims against the Callahans because they are not an administrative agency. *See Benson v. State Engineer*, 131 Nev. 772, 777, 358 P.3d 221, 224 (2015) ("Ordinarily, before availing oneself of district court relief *from an agency decision*, one must first exhaust administrative remedies.") (emphasis added). Accordingly, we conclude the district court improperly dismissed these claims.[10]

The district court erred by disallowing punitive damages against Stuart

Eggleston argues that the district court erred by disallowing punitive damages against Stuart.[11] Clark County and Stuart respond that the district court properly disallowed punitive damages because Eggleston sued Stuart in her official capacity.

A tort action against an employee of the State or its political subdivision "arising out of an act or omission within the scope of the person's public duties or employment" may not include punitive damages. NRS 41.035(1). To determine whether a party has been sued in his or her official or individual capacity, this court looks to the allegations of the complaint. *See N. Nev. Ass'n of Injured Workers v. Nev. State Indus. Ins. Sys.*, 107 Nev. 108, 114-15, 807 P.2d 728, 732 (1991). "[C]ivil rights violations . . . are hardly descriptive of acts that may be rationally included within the prerogatives of an employee's official capacity." *Id.* at 115, 807 P.2d at 732.

Here, Eggleston appeals from a final judgment, the district court's order dismissing Eggleston's claims. In a prior order, the district court dismissed punitive damages against Stuart, finding Stuart was immune from punitive damages because Eggleston's complaint alleged Stuart was acting within the scope of her employment with the exception of "certain occasions" not specifically pleaded within the complaint. However, in his complaint, Eggleston alleged that Stuart arrived at his home with two police officers and forced him to sign temporary guardianship papers under the threat that he would otherwise never see his children again. Taking these allegations as true, Eggleston could prove that Stuart violated his civil rights and, therefore, that Stuart was acting in her individual capacity rather than her official capacity. In turn, Eggleston could be able to pursue punitive damages against Stuart. Therefore, we conclude that the district court erred by determining that punitive damages against Stuart were unavailable to Eggleston at this point in the case.

[10]However, because Eggleston's state law tort claims appear to be tied, at least to some extent, to the facts of the DFS case in that they implicitly dispute the DFS's finding of child maltreatment, a stay may be appropriate here for certain claims. We therefore reverse the order dismissing these claims but remand for the district court to determine whether a stay is appropriate.

[11]Eggleston disputes the district court's dismissal of the request for punitive damages only as to Stuart on appeal, so we affirm the district court's dismissal of punitive damages against Clark County.

CONCLUSION

Under *Patsy v. Board of Regents*, 457 U.S. 496 (1982), a party is generally not required to exhaust administrative remedies before filing a § 1983 civil rights claim. Here, the § 1983 claim is, at its core, one for substantive due process, and because the exception for procedural due process claims does not apply, the district court improperly dismissed Eggleston's § 1983 civil rights claim for failure to exhaust administrative remedies. Thus, we reverse the dismissal of Eggleston's § 1983 civil rights claim. We likewise reverse the district court's dismissal of Eggleston's state law tort claims, reverse the district court's dismissal of punitive damages against Stuart, and remand for further proceedings consistent with this opinion. We affirm the district court's dismissal of Eggleston's § 1985 conspiracy claim and determination that punitive damages against Clark County are not available.

Parraguirre and Stiglich, JJ., concur.

SATICOY BAY, LLC, SERIES 9720 HITCHING RAIL, A NEVADA LIMITED LIABILITY COMPANY, APPELLANT, *v.* PECCOLE RANCH COMMUNITY ASSOCIATION; AND NEVADA ASSOCIATION SERVICES, INC., RESPONDENTS.

No. 81446

September 23, 2021 495 P.3d 492

Appeal from a district court order granting a motion to dismiss in a tort action arising out of a homeowners' association foreclosure sale. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Reversed and remanded.

Roger P. Croteau & Associates, Ltd., and *Roger P. Croteau*, Las Vegas, for Appellant.

Lipson Neilson P.C. and *Kaleb D. Anderson* and *Amanda A. Ebert*, Las Vegas, for Respondents.

Before the Supreme Court, PARRAGUIRRE, STIGLICH, and SILVER, JJ.

OPINION

By the Court, STIGLICH, J.:

NRS 38.310 requires parties to attempt alternative dispute resolution as a prerequisite to filing a civil action "based upon a claim relating to . . . [t]he interpretation, application or enforcement of any covenants, conditions or restrictions [CC&Rs] applicable to residential property or any bylaws, rules or regulations adopted by an association." In this opinion, we consider whether a suit dismissed for noncompliance with this statute fell within its scope. Appellant Saticoy Bay, LLC, Series 9720 Hitching Rail purchased property at a homeowners' association (HOA) foreclosure sale conducted after the previous owner defaulted on HOA assessments imposed by the CC&Rs. Saticoy Bay claims it believed it was purchasing the property free of other liens. However, the first deed of trust on the property survived the foreclosure sale, and Saticoy Bay sued the HOA and its agent, alleging misrepresentation, breach of the duty of good faith, conspiracy, and violation of NRS Chapter 113.

The district court granted respondents' motion to dismiss on the ground that Saticoy Bay had not engaged in alternative dispute resolution before filing suit, violating NRS 38.310. Saticoy Bay appeals, arguing that NRS 38.310 did not apply to its claims. We agree. The mere fact that these claims arose out of an HOA foreclosure sale is not sufficient to trigger NRS 38.310's mediation requirement.

Mediation is required before a district court can hear a claim that itself requires "interpretation, application or enforcement" of HOA CC&Rs, rules, bylaws, or regulations. Here, there is no dispute that the HOA properly foreclosed after the owner failed to pay their assessments, only that it did not disclose to the prospective new owner an existing interest in the property. Because the tort claims asserted in this matter are unrelated to the interpretation, application, or enforcement of HOA CC&Rs or rules, NRS 38.310's scope does not encompass those claims.

BACKGROUND

The previous owner of 9720 Hitching Rail Drive in Las Vegas entered into a first deed of trust with Countrywide KB Home Loans, LLC. Several years later, this deed of trust was assigned to Bank of America, N.A. (BANA). The homeowner became delinquent on her assessment fees to Peccole Ranch Community Association (the HOA), and the HOA, through its agent Nevada Association Services, Inc., recorded a notice of default and election to sell in December 2011. BANA, through its agent, subsequently tendered the amount of the superpriority lien to preserve its deed of trust, but the HOA trustee rejected the payment and moved forward with the property's sale. In 2014, Saticoy Bay purchased the property at the foreclosure sale.

In 2016, BANA filed a quiet title complaint in federal district court. The federal court found that BANA's deed of trust survived the foreclosure sale. This finding was based on our 2018 decision that "a first deed of trust holder's unconditional tender of the superpriority amount due results in the buyer at foreclosure taking the property subject to the deed of trust," even if the HOA rejects the tender. *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018). Saticoy Bay sued respondents the HOA and its trustee, alleging misrepresentation, breach of the duty of good faith, conspiracy, and violation of NRS 113.130. Its claims hinge on the assertion that the HOA and its trustee should have disclosed BANA's tender of the superpriority lien that made Saticoy Bay's ownership of the property subject to BANA's first deed of trust. Saticoy Bay asserts that, if it had been aware of any tender by BANA, it would not have bid on the property.

Respondents moved to dismiss the suit for noncompliance with NRS 38.310 or alternatively for dismissal for failure to state a claim or for summary judgment. The district court dismissed the case without prejudice, concluding that the action was "related to the enforcement of CC&Rs," that NRS 38.310 therefore applied, and that Saticoy Bay had filed its complaint without participating in prelitigation mediation. The district court accordingly declined to reach respondents' alternative bases for relief. Saticoy Bay appeals.

DISCUSSION

The district court's order dismissing the action based on NRS 38.310 involves a question of statutory interpretation; we therefore review this appeal de novo. *See McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 129 Nev. 610, 614, 310 P.3d 555, 558 (2013). As a preliminary matter, however, we begin with respondents' contention that we lack jurisdiction to consider this matter.

The district court's order was a final, appealable judgment

Respondents contend that the district court's order granting the motion to dismiss in this action was not a final, appealable judgment because the case was dismissed without prejudice. The order stated that the case may be filed again if the parties were unable to successfully resolve their claims through mediation. NRAP 3A(b)(1) allows an appeal to be taken from "[a] final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." Whether a dismissal without prejudice pursuant to an exhaustion statute like NRS 38.310 is a final judgment is a question of first impression.

We have clarified that "a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs." *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (internal quotation marks omitted). Generally, a dismissal without prejudice expresses that the same claims could be refiled as a new case. *See* 24 Am. Jur. 2d *Dismissal* § 2 ("[T]he primary meaning of 'dismissal without prejudice' is dismissal without barring the defendant from returning later, to the same court, with the same underlying claim.").

We have said that "a district court order dismissing a complaint with leave to amend is not final and appealable." *Bergenfield v. BAC Home Loans Servicing, LP*, 131 Nev. 683, 685, 354 P.3d 1282, 1284 (2015). Although a dismissal without prejudice is not entirely different from a general dismissal with leave to amend, that is not the case for dismissals under NRS 38.310.

Here, Saticoy Bay's case was dismissed with allowance to leave the public courts, enter mediation for its claims, and refile in the district court only if mediation fails. The district court made clear that refiling without entering mediation would mandate dismissal again in this matter. Saticoy Bay insisted—and continues to insist—that its claims do not require mediation.

In all circumstances, "[t]he finality of an order or judgment depends on what the order or judgment actually *does* . . . ." *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013) (internal quotation marks omitted). NRS 38.310's prefiling requirement is not dissimilar to requirements of exhaustion

of administrative remedies before filing a civil complaint. *See Nationstar Mortg., LLC v. Maplewood Springs Homeowners Ass'n*, 238 F. Supp. 3d 1257, 1269 (D. Nev. 2017) (holding that "NRS 38.310 is an exhaustion statute that creates *prerequisites* for filing certain state-law claims" (emphasis added)). The effect of the district court's order here more conclusively bars Saticoy Bay from the courts than a typical dismissal without prejudice. We agree with the Eleventh Circuit's conclusion that "a 'district court's dismissal of a case without prejudice for failure to exhaust administrative remedies is a final order, giving an appellate court jurisdiction.' . . . [T]he practical effect of the district court's order here is to deny the plaintiffs judicial relief until they have exhausted their administrative remedies." *Peterson v. BMI Refractories*, 132 F.3d 1405, 1411 (11th Cir. 1998) (quoting *Kobleur v. Grp. Hospitalization & Med. Servs., Inc.*, 954 F.2d 705, 708 (11th Cir. 1992)). Therefore, we conclude that orders dismissing without prejudice on the basis of failure to comply with NRS 38.310 constitute appealable final orders subject to the jurisdiction of this court on appeal.

NRS 38.310 did not require prefiling alternative dispute resolution in this case

Saticoy Bay contends that its claims do not implicate NRS 38.310 because this case does not require the interpretation, application, or enforcement of any CC&Rs or HOA rules. We agree.

NRS 38.310 bars certain civil actions from being filed unless the dispute has already been submitted to alternative dispute resolution. As relevant to this case, NRS 38.310(1) provides as follows:

> No civil action based upon a claim relating to:
>
> (a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association;
>
> . . .
>
> may be commenced in any court in this State unless the action has been submitted to mediation or, if the parties agree, has been referred to a program pursuant to the provisions of NRS 38.300 to 38.360, inclusive . . . .

No alternative dispute resolution processes were undertaken before Saticoy Bay filed its complaint.

NRS 38.310(1)(a)'s bar is triggered when (1) the case is a "civil action,"[1] and (2) the action is based on claims "relating to . . . [t]he interpretation, application or enforcements" of CC&Rs or HOA

[1]For the purposes of this statute, a civil action "includes an action for money damages or equitable relief. The term does not include an action in equity for injunctive relief in which there is an immediate threat of irreparable harm, or an action relating to the title to residential property." NRS 38.300(3).

rules or bylaws.[2] NRS 38.310. The parties dispute only the second prong of this portion of the statute. We take this opportunity to clarify when the second requirement is met, before applying that analysis to the facts of this case.

Determining the scope of NRS 38.310(1)'s limitation on filing civil actions

Saticoy Bay disputes that the district court properly dismissed its entire complaint pursuant to NRS 38.310. Our cases on whether an action relates to the interpretation, application, or enforcement of CC&Rs have left open two salient questions. First, how connected must a claim be to the CC&Rs in order to trigger NRS 38.310's requirements? Second, should courts dismiss an entire suit if a claim relates to the CC&Rs, or only those claims that are barred by the statute?

First, we clarify that a civil action falls within NRS 38.310(1)(a)'s scope if resolving the claim's merits would *require* the interpretation, application, or enforcement of CC&Rs. In *Hamm v. Arrowcreek Homeowners' Association*, 124 Nev. 290, 183 P.3d 895 (2008), this court examined a suit dismissed pursuant to NRS 38.310 that had been brought by property owners against their HOA after it had placed a lien on the property. Because the plaintiffs had explicitly asked for interpretation of the CC&Rs to see if fees must be paid on vacant lots, "resolving the merits of the [ ] complaint would require the district court to interpret the CC&Rs' meaning," and this court found that the plaintiffs "must submit their claims to arbitration or mediation before instituting an action in the district court." *Id.* at 296, 183 P.3d at 900. *Hamm* did not explicitly hold that NRS 38.310 applies only when interpreting the CC&Rs is *necessary*, but instead lists the fact that one claim required interpretation of the CC&Rs among other reasons why NRS 38.310 applied. *Id.* at 296, 183 P.3d at 900.

In *McKnight Family, LLP v. Adept Management Services, Inc.*, 129 Nev. 610, 310 P.3d 555 (2013), this court read the statute more broadly. In *McKnight*, the plaintiffs' home was sold after an HOA foreclosure, and plaintiffs brought a suit making seven claims, which were all dismissed pursuant to NRS 38.310. *Id.* at 613, 310 P.3d at 557. But, while considering whether the plaintiffs' claims under NAC 116.300, NAC 116.341,[3] NRS 116.1113, and NRS 116.3103 were barred, this court determined that these claims fell under NRS 38.310 because they "required the district court to interpret *regulations and statutes* that contained conditions

[2]This matter does not present the opportunity to determine when something analogously relates to an association's bylaws, rules, or regulations.

[3]NAC 116.300 is now NAC 116A.320, and NAC 116.341 is now NAC 116A.345.

and restrictions applicable to residential property." *Id*. at 615, 310 P.3d at 558 (emphasis added). We conclude that this language in *McKnight* improperly extended the scope of NRS 38.310 by treating "covenants, conditions, or restrictions" as a term encompassing *all* conditions and restrictions on property, no matter their source. NRS 38.310, in using the phrase "covenants, conditions or restrictions," utilizes a term of art for those rules contained in an HOA's recorded declaration or deed and enforceable through the association's power to impose sanctions. *See* NRS 116.2105; NRS 116.3102(3); *cf. Hawk v. PC Vill. Ass'n, Inc*., 309 P.3d 918, 922 (Ariz. Ct. App. 2013) ("CC & Rs [sic] are contracts that create enforceable property rights and obligations that may run with the land.").

Holding that any statute or regulation which conditions or restricts residential property falls within NRS 38.310's scope would expand the statute to include claims based on dozens of restrictions that have nothing to do with common-interest communities' CC&Rs. The only way of reading the statute to cover non-CC&R restrictions is to willfully ignore that "covenants, conditions, or restrictions" as used in the statute is a term of art with a specific meaning. A primary duty of courts is to interpret, apply, and enforce a jurisdiction's statutes and regulations. The CC&Rs that NRS 38.310 refers to are not such statutes and regulations, but rather private contracts—and a specific kind of private contract that the Legislature has decided should be subject to mediation before coming into court. As we stated in *Hamm*, "NRS 38.310 expresses Nevada's public policy favoring arbitration of disputes involving the interpretation and enforcement of CC&Rs." 124 Nev. at 299 n.34, 183 P.3d at 902 n.34.

Accordingly, we clarify that, under NRS 38.310, a claim does not relate to the CC&Rs unless deciding the claim *requires* interpreting, applying, or enforcing the CC&Rs. *See id.* at 295-96, 183 P.3d at 900. This interpretation does not significantly narrow the statute's scope or redefine the broad phrase "relating to."[4] A district court tasked, even in part, with resolving a claim through interpreting, applying, or enforcing CC&Rs would necessarily consider those CC&Rs. Given the policy justification expressed in *Hamm*, the statute certainly does not encompass every claim where a decision-maker might, in passing, look at the CC&Rs or a claim with a passing connection to the CC&Rs. Rather, the statute's function is to prevent a court from having to insert itself into the weeds of HOA CC&R disputes, unless the parties have already tried and

[4]*See Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1760 (2018) ("Use of the word 'respecting' in a legal context generally has a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject. . . . [W]hen asked to interpret statutory language including the phrase 'relating to,' which is one of the meanings of 'respecting,' this Court has typically read the relevant text expansively.").

failed to resolve the dispute through mediation. Therefore, only in disputes where the claim itself requires—not where the facts surrounding the claim merely involve—the interpretation, application, or enforcement of CC&Rs, does the claim relate to the CC&Rs for the purposes of NRS 38.310.

Next, we turn to our second question: may a court dismiss only *some* claims in a complaint for noncompliance with NRS 38.310? The statute refers to a "civil action based upon a claim relating to" the CC&Rs. However, many civil suits bring a variety of claims together against the same party, only some of which might have any connection to the CC&Rs. We hold that, under NRS 38.310, a district court must only dismiss those claims that fall within NRS 38.310's scope and do not comply with its requirements—leaving any remaining claims to proceed in the court. In *Hamm*, this court did not explicitly address whether each cause of action in the complaint fell under NRS 38.310. *See Hamm*, 124 Nev. at 295-96, 183 P.3d 895, 900 (analyzing the "complaint" overall, rather than each claim therein). However, in *McKnight*, this court examined, claim by claim, whether a dismissal pursuant to NRS 38.310 was appropriate. But in *McKnight*, this court only explicitly addressed whether each claim was a "civil action," while addressing whether the CC&Rs were sufficiently implicated for three of the seven claims. *McKnight*, 129 Nev. at 615-17, 310 P.3d at 558-60. This was in error; the court only "showed its work" for half of the questions it should have addressed. In analyzing whether dismissal under NRS 38.310(1) is warranted, courts must consider whether each claim requires the district court to interpret, apply, or enforce an association's CC&Rs in order to resolve the claim (and, if relevant, whether the claim falls into one of NRS 38.310's exceptions).

The district court erred in dismissing this action

Now, we consider whether the district court abused its discretion in finding that NRS 38.310(1) mandated dismissal of Saticoy Bay's complaint. Saticoy Bay brought four claims: misrepresentation, breach of the duty of good faith under NRS 116.1113, conspiracy, and violation of NRS 113.130. Each claim falls within the definition of civil action under NRS 38.300. The district court found that NRS 38.310 required dismissal because the statute was "implicated in the instant case," the case did not fall under any exception to the statute, and "under the *McKnight* case, the Supreme Court reads NRS 38.310[1](a) fairly broadly." We conclude this was incorrect, because no claim required the district court to interpret, apply, or enforce the CC&Rs.

Saticoy Bay first claimed intentional or, alternatively, negligent misrepresentation by the HOA and the HOA trustee. Saticoy Bay argued that respondents did not disclose BANA's attempt to satisfy the superpriority lien because they did not want prospective

purchasers like Saticoy Bay to know that the property might be subject to the first deed of trust. Of course, the sale happened because the homeowner did not pay HOA fees due, which are required in the HOA's CC&Rs. Thus, the claim's factual background *involved* the CC&Rs. But mere involvement is not enough to make a claim fall within the statute. The claim hinges on an allegation that respondents breached a duty they owed to Saticoy Bay before Saticoy Bay purchased the property, i.e., to disclose BANA's tender offer. The duty supposed by this claim originated in common law, not the CC&Rs. In *McKnight*, we said that a wrongful foreclosure claim was barred by NRS 38.310 because it challenged the *authority* behind the foreclosure, which derived from the CC&Rs. 129 Nev. at 616, 310 P.3d at 559. In contrast, Saticoy Bay does not argue that the HOA lacked the authority to foreclose on the property, just that it misrepresented the property it was selling. As a result, this claim could be resolved without interpreting the CC&Rs and therefore falls outside NRS 38.310's scope.

Saticoy Bay next claimed a violation of NRS 116.1113's duty of good faith. This claim, too, is dependent on a prepurchase nondisclosure which would not require analysis of the CC&Rs. This claim has nothing to do with the foreclosure sale authority or any duties under the CC&Rs. Respondents argue that *McKnight* supports their contention that the NRS 116.1113 breach-of-good-faith claim was properly dismissed under NRS 38.310. This is incorrect for two reasons. First, the breach-of-good-faith claim in *McKnight* related to the allegation that the HOA should not have foreclosed on the plaintiffs' property under authority of the CC&Rs. 129 Nev. at 616, 310 P.3d at 559. That differs from this matter, where a purchaser at a foreclosure sale is suing based on a breach of good faith related to nondisclosure that does not involve whether the HOA or the homeowner complied with the CC&Rs. Second, as discussed above, *McKnight* wrongly suggested that NRS 116.1113 *itself* was a condition or restriction on residential property as referred to in NRS 38.310(1)(a), and respondents cannot rely on *McKnight*'s mistake.

Saticoy Bay next claimed conspiracy, alleging that the HOA and HOA trustee conspired to commit the wrongs alleged in its first two claims. As with those claims, the alleged conspiracy does not require looking to the CC&Rs for resolution, and respondents have not shown that this claim involved interpreting, applying, or enforcing the CC&Rs.

Lastly, Saticoy Bay claimed that NRS Chapter 113's requirements applied to HOA foreclosure sale disclosures and that NRS Chapter 113 required the HOA to submit a real property disclosure form disclosing "defects," which would include a preexisting deed of trust. This claim does not involve a duty arising from the CC&Rs or any other provision of the CC&Rs. As noted above, statutory requirements themselves are not CC&Rs and do not trigger the limitations

of NRS 38.310 unless they require interpretation, application, or enforcement of CC&Rs.

Accordingly, we conclude that because none of Saticoy Bay's claims fell within the scope of NRS 38.310, the district court erred in dismissing the claims on those grounds.

CONCLUSION

In granting a request for dismissal pursuant to NRS 38.310(1)(a), courts should make a finding that resolving the dismissed claims would necessitate interpreting, applying, or enforcing the CC&Rs or association rules. When a court dismisses an action without prejudice under this statute, we may consider an appeal of that judgment. The district court erred in dismissing appellant's complaint under NRS 38.310 because resolving the claims would not require interpreting, applying, or enforcing respondent HOA's CC&Rs. However, the district court declined to consider the other grounds for dismissal in respondents' motion below. Therefore, we reverse the district court's order and remand for consideration of the other rationales in the respondents' motion for dismissal or summary judgment that the district court did not reach.

Parraguirre and Silver, JJ., concur.

DEKKER/PERICH/SABATINI LTD.; NEVADA BY DESIGN, LLC, DBA NEVADA BY DESIGN; MELROY ENGINEERING, INC., DBA MSA ENGINEERING CONSULTANTS; JW ZUNINO & ASSOCIATES, LLC; NINYO AND MOORE GEOTECHNICAL CONSULTANTS; RICHARDSON CONSTRUCTION, INC.; THE GUARANTEE COMPANY OF NORTH AMERICA USA; AND JACKSON FAMILY PARTNERSHIP LLC, DBA STARGATE PLUMBING, PETITIONERS, *v.* THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE TREVOR L. ATKIN, DISTRICT JUDGE, RESPONDENTS, AND CITY OF NORTH LAS VEGAS, REAL PARTY IN INTEREST.

No. 81459

September 23, 2021 495 P.3d 519

Original petition for a writ of mandamus or, alternatively, prohibition.

Petition denied.

[Rehearing denied October 28, 2021]

[En banc reconsideration denied May 18, 2022]

W&D Law, LLP, and *John T. Wendland* and *Anthony D. Platt*, Henderson, for Petitioners Dekker/Perich/Sabatini Ltd. and Nevada By Design, LLC, dba Nevada By Design.

W&D Law, LLP, and *Jeremy R. Kilber*, Henderson, for Petitioner Melroy Engineering, Inc., dba MSA Engineering Consultants.

Clyde & Co US LLP and *Dylan P. Todd* and *Lee H. Gorlin*, Las Vegas, for Petitioner JW Zunino & Associates, LLC.

Wilson Elser Moskowitz Edelman & Dicker, LLP, and *Jorge A. Ramirez, Harry Peetris*, and *Jonathan C. Pattillo*, Las Vegas, for Petitioner Ninyo & Moore Geotechnical Consultants.

Parker, Nelson & Associates, Chtd., and *Theodore Parker* and *Jennifer A. DelCarmen*, Las Vegas, for Petitioners Richardson Construction, Inc., and The Guarantee Company of North America USA.

Lincoln, Gustafson & Cercos, LLP, and *Shannon G. Splaine* and *Paul D. Ballou*, Las Vegas; *Resnick & Louis, P.C.*, and *Paul A. Acker*, Las Vegas, for Petitioner Jackson Family Partnership LLC, dba Stargate Plumbing.

Snell & Wilmer LLP and *Richard C. Gordon, Kelly H. Dove, Aleem A. Dhalla*, and *Gil Kahn*, Las Vegas, for Real Party in Interest.

Before the Supreme Court, PARRAGUIRRE, STIGLICH, and SILVER, JJ.

OPINION

By the Court, SILVER, J.:

In this writ proceeding, petitioning contractors and subcontractors assert that the district court properly dismissed the City of North Las Vegas's construction defect claims against them as precluded by the former six-year statute of repose and that the district court thereafter lacked authority to revive those claims once a statutory amendment extending the repose period became effective, since the original complaint was invalid and, by then, the claims had expired under the extended deadline as well. Because the Legislature expressly directed that the amended statute of repose apply retroactively, and because the City of North Las Vegas's action was filed within the extended deadline and remained pending when the amendment became effective, we conclude that the district court did not manifestly abuse or arbitrarily or capriciously exercise its discretion when it applied the extended repose period and revived the claims.

FACTS AND PROCEDURAL HISTORY

The City of North Las Vegas (CNLV), real party in interest here, hired petitioner Dekker/Perich/Sabatini Ltd. to construct a fire station. Dekker then hired several subcontractors to assist in the construction.[1] On July 13, 2009, CNLV recorded a notice of completion for the fire station.

Years later, CNLV noticed cracks in the building's foundation and walls. A 2017 investigation found that excessive settlement and expansive soil activity had damaged the building. At the time, NRS 11.202 imposed a six-year repose period on construction defect actions. In 2019, however, the Legislature enacted Assembly Bill 421, which extended NRS 11.202's repose period to ten years. 2019 Nev. Stat., ch. 361, § 7, at 2262. On July 11, 2019, after the six-year repose period had expired and before the amendment took effect, CNLV filed the underlying complaint in this case against Dekker.

[1]Many of those subcontractors have joined in the petition, including Nevada By Design, LLC, Melroy Engineering, Inc., JW Zunino & Associates, LLC, Ninyo and Moore Geotechnical Consultants, Richardson Construction, Inc., The Guarantee Company of North America USA, and Jackson Family Partnership LLC (collectively with Dekker/Perich/Sabatini Ltd., Dekker).

Dekker immediately moved to dismiss the action, arguing that CNLV's claims were time-barred under NRS 11.202's six-year period of repose. The district court heard the motion on September 30, 2019—the day before A.B. 421's amendment to the repose period took effect—and on October 14, 2019, the court issued a written order dismissing CNLV's complaint based on the six-year statute of repose.

Shortly thereafter, CNLV timely moved to alter the judgment under NRCP 59(e), arguing that the ten-year statute of repose was now in effect and governed its claims. Dekker countered that the claims were statutorily barred when the complaint was filed and thus void ab initio and unrevivable. Dekker also asserted that granting CNLV's motion would violate its due process rights. The district court granted CNLV's motion to alter the judgment, determining that NRS 11.202 applied retroactively and constitutionally, and reinstated the claims. This writ petition followed.

DISCUSSION

We exercise our discretion to entertain the writ petition

"A writ of mandamus is available to compel the performance of an act which the law . . . [requires] as a duty resulting from an office, trust or station, or to control a manifest abuse or an arbitrary or capricious exercise of discretion."[2] *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 39, 175 P.3d 906, 907-08 (2008) (internal quotation marks and footnote omitted) (alterations in original). Mandamus is an extraordinary remedy, available only when there is no "plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; *see also Cote H.*, 124 Nev. at 39, 175 P.3d at 908.

The decision to entertain a petition for a writ of mandamus is within our sole discretion. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). "Because an appeal is ordinarily an adequate remedy, this court generally declines to consider writ petitions challenging interlocutory district court orders." *Helfstein v. Eighth Judicial Dist. Court*, 131 Nev. 909, 912, 362 P.3d 91, 94 (2015). However, when a writ petition presents an opportunity to clarify an important issue of law and doing so serves judicial economy, we may elect to consider the petition. *Id.* Similarly, writ relief may be appropriate where the petition presents a matter of first impression and considerations of judicial economy support its review. *Humboldt Gen. Hosp. v. Sixth Judicial Dist. Court*, 132 Nev. 544, 547, 376 P.3d 167, 170 (2016).

Dekker's writ petition raises an important legal issue of first impression with statewide importance—whether NRS 11.202's 2019 amendment extending the repose period allows a claim to

[2]Dekker alternatively seeks a writ of prohibition. In light of Dekker's requested relief, we consider Dekker's petition as one for a writ of mandamus.

proceed even if the repose period in effect when the claim was filed barred that claim. Additionally, clarifying which version of the statute of repose applies in this situation serves judicial economy, as the action is in its initial stages and, if successful, Dekker's argument would preclude CNLV from pursuing its claims any further. We therefore elect to consider the writ petition.

The district court did not manifestly abuse or arbitrarily or capriciously exercise its discretion by retroactively applying NRS 11.202's ten-year repose period to CNLV's claims

Dekker argues that because CNLV filed suit before NRS 11.202's extended ten-year period took effect, the complaint was void ab initio and the district court erred by reviving it. Dekker further asserts that, in so doing, the district court violated its due process rights under the Nevada Constitution.[3] CNLV argues that the district court correctly decided that the claims are timely under the ten-year statute of repose, as retroactively applied, and that Dekker has neither shown a vested right to be free from the claims under the former statute of repose nor demonstrated that the amendment is invalid under a rational basis review.

In the context of a writ petition, we generally review district court orders for manifest abuse or an arbitrary or capricious exercise of discretion. *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). However, "[s]tatutory interpretation is a question of law that we review de novo, even in the context of a writ petition." *Id*. at 198, 179 P.3d at 559. If the plain meaning of a statute is clear on its face, then this court does not look beyond the statute's language. *Zohar v. Zbiegien*, 130 Nev. 733, 737, 334 P.3d 402, 405 (2014).

Although statutes are generally applied prospectively only, a statute applies retroactively when legislative intent to do so is clear. *See Pub. Emps.' Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 154-55, 179 P.3d 542, 553 (2008) ("In Nevada, as in other jurisdictions, statutes operate prospectively, unless the Legislature clearly manifests an intent to apply the statute retroactively . . . . [W]hen the Legislature intends retroactive application, it is capable of stating so clearly."). In amending NRS 11.202, the Legislature explicitly provided that the ten-year repose period applies retroactively. Indeed, A.B. 421 expressly defines the scope

[3]Dekker raises a third argument as well: that CNLV's complaint was void ab initio for failing to comply with NRS 11.258, which required CNLV to include with its complaint an attorney affidavit and an expert report supporting that a reasonable basis for filing the action exists. In finding the affidavit and expert report CNLV included with its complaint met NRS 11.258's requirements, the district court carefully considered those documents, and we likewise have reviewed Dekker's arguments concerning the affidavit and expert report and conclude those documents are sufficient under the circumstances of this case.

of the amendment's application, providing that the amendment "appl[ies] retroactively to actions in which the substantial completion of the improvement to the real property occurred before October 1, 2019." 2019 Nev. Stat., ch. 361, § 11(4), at 2268. Notably, too, the Legislature has twice amended NRS 11.202's repose period: once in 2015 to decrease the period from ten to six years, and again in 2019 to reinstate the ten-year repose period.[4] 2015 Nev. Stat., ch. 2, §§ 17 & 22, at 17 & 21; 2019 Nev. Stat., ch. 361, § 7, at 2262. The 2019 amendment was intended to relieve prejudice to Nevada landowners who were unaware of property damage that did not manifest within the six-year repose period. Hearing on A.B. 421 Before the S. Comm. on Judiciary, 80th Leg. (Nev., May 15, 2019). Applying the statute retroactively thus comports with A.B. 421's express language and legislative intent.

In this case, the fire station's date of substantial completion was July 13, 2009, when the notice of completion issued. *See* NRS 11.2055 (explaining the date of substantial completion is when the final building inspection is conducted, the notice of completion is issued, or the certificate of occupancy is issued, whichever occurs later); *Somersett Owners Ass'n v. Somersett Dev. Co.*, 137 Nev. 357, 358, 492 P.3d 534, 535 (2021) (explaining substantial completion under NRS 11.2055 occurs when the construction work is "sufficiently complete so that the owner can occupy or utilize the improvement"). As the retroactivity provision provides that the 2019 amendment applies to actions based on improvements substantially completed before the amendment went into effect, the extended repose period applies to this action.

As amended, NRS 11.202(1) provides that "[n]o action may be *commenced* . . . more than 10 years after the substantial completion." (Emphasis added.) By its plain language, the statute allows an action to proceed so long as it was filed within ten years of the date of substantial completion. As an action based on improvements with a July 13, 2009, substantial completion date, CNLV's July 11, 2019, complaint was timely filed within the 2019 amendment's ten-year repose period. That complaint was still pending when the amendment went into effect and thus was subject to the new law. *See, e.g.*, *Gray v. First Winthrop Corp.*, 989 F.2d 1564, 1571 (9th Cir. 1993) (recognizing that a case is not final but remains pending until the appellate process has been completed). When the district court nevertheless dismissed the claims, CNLV properly filed a motion to alter the judgment under NRCP 59(e). *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010) ("Among

[4]Prior to 2015, the repose period varied from six to twelve years, depending on the alleged defect. 1983 Nev. Stat., ch. 468, §§ 1-6, at 1237-39. We note, however, the Senate Committee on Judiciary clarified that the extended statute of repose did not affect any applicable statutes of limitations. Hearing on A.B. 421 Before the S. Comm. on Judiciary, 80th Leg. (Nev., May 15, 2019).

the basic grounds for a Rule 59(e) motion are correcting manifest errors of law or fact, newly discovered or previously unavailable evidence, the need to prevent manifest injustice, or a change in controlling law." (internal quotation marks and brackets omitted) (citing 11 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2810.1, at 124-27 (2d ed.1995))). Therefore, on its face, the action was not time-barred.

The complaint was not void ab initio

Dekker nevertheless argues that dismissal was warranted because CNLV's complaint was filed when NRS 11.202's six-year repose period was still in effect, rendering the complaint void ab initio. We disagree.

Something that is "void ab initio" is "[n]ull from the beginning" and cannot be validly further acted upon. *Void ab Initio*, *Black's Law Dictionary* (11th ed. 2019); *see Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006) (recognizing that, when a complaint "is void ab initio, it does not legally exist and thus it cannot be amended"). Generally, determining whether a court action is void ab initio "involves the underlying authority of a court to act on a matter":

> An order is void ab initio if entered by a court in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the court had no power to render it, or if the mode of procedure used by the court was one that the court could "not lawfully adopt."

Singh v. Mooney, 541 S.E.2d 549, 551 (Va. 2001). Similarly, we have recognized that a complaint alleging professional negligence is void ab initio when filed without the required supporting affidavit because it is defective and the courts are without authority to act upon it. *See Washoe Med. Ctr.*, 122 Nev. at 1303-04, 148 P.3d at 793-94 (concluding NRS 41A.071's requirement that courts "shall dismiss" medical malpractice complaints filed without an expert affidavit evidenced the Legislature's intent that courts have no discretion with respect to a defective complaint's dismissal); *Szydel v. Markman*, 121 Nev. 453, 461, 117 P.3d 200, 205 (2005) (explaining that "NRS 41A.071 is jurisdictional in nature") (Hardesty, J., dissenting). To the contrary, nothing in NRS 11.202 indicates the repose period is jurisdictional and would render an untimely complaint void ab initio. *See Sec'y, U.S. Dep't of Labor v. Preston*, 873 F.3d 877, 880-82 (11th Cir. 2017) (recognizing that "when, as here, a statute speaks only to a claim's timeliness, not to a court's power, it should be treated as non-jurisdictional" (internal quotation omitted) and rejecting the argument that boilerplate language, such as "No action may be commenced," limits a court's jurisdiction). Moreover,

Dekker fails to point to any authority concluding that claims filed after expiration of the repose period renders the complaint void ab initio.

Retroactive application does not violate Dekker's due process rights

Dekker argues that permitting the 2019 amendment to NRS 11.202 to retroactively restore a time-barred claim would violate its due process rights under the Nevada Constitution. In this, Dekker asserts that it had a vested right to be free from construction defect claims six years after the substantial completion date and that the Legislature's removal of that right violated due process. Nevada's Due Process Clause mirrors its federal counterpart, *see* U.S. Const. amends. V and XIV, § 1; Nev. Const. art. 1, § 8(2), and Dekker thus urges us to look to federal law in resolving its argument.[5] *See generally Hernandez v. Bennett-Haron*, 128 Nev. 580, 587, 287 P.3d 305, 310 (2012) (recognizing that federal law is informative as to the scope of Nevada's procedural due process guarantee).

Although several jurisdictions appear to recognize substantive rights under statutes of repose, Dekker does not point to any Nevada law characterizing statutes of repose as awarding an entitlement to be free from a stale claim. *See, e.g.*, *Police & Fire Ret. Sys. of Detroit v. IndyMac MBS, Inc.*, 721 F.3d 95, 109 (2d Cir. 2013); *Sepmeyer v. Holman*, 642 N.E.2d 1242, 1245 (Ill. 1994); *Sch. Bd. of Norfolk v. U.S. Gypsum Co.*, 360 S.E.2d 325, 328 (Va. 1987); *cf. Alsenz v. Twin Lakes Vill., Inc.*, 108 Nev. 1117, 1123, 843 P.2d 834, 838 (1992) (discussing an accrued right of action as vested and subject to restriction on impairment). Regardless, even assuming, arguendo, that the running of a statute of repose creates a vested right, Dekker's constitutional argument fails. To meet due process requirements, the retroactive application of NRS 11.202 must be justified by a rational legislative purpose. *See, e.g.*, *Schaeffler Grp. USA, Inc. v. United States*, 786 F.3d 1354, 1362 (Fed. Cir. 2015) (explaining that the retroactive application of a statute does not offend due process when it is supported by a legitimate legislative purpose furthered by a rational means); 16B Am. Jur. 2d *Constitutional Law* § 964 ("While retroactive legislation must meet a burden not faced by legislation that has only future effects, the burden is met simply by showing that the retroactive application of the legislation itself is justified by a rational legislative purpose."). As explained above, the Legislature extended the repose period to reflect the timeframe in which these types of defects most often materialize and thus more fairly allow the pursuit of claims based

[5]For this reason, although Dekker also points to authority from other states in which the local constitution affords greater due process protections than the federal Constitution, we need not consider whether Nevada's constitution extends greater protections.

on such defects. Accordingly, application of NRS 11.202's extended repose period does not offend due process. Thus, the action was not barred by the statute of repose, and the district court properly granted the motion to alter the judgment.

CONCLUSION

We conclude that, as amended in 2019, NRS 11.202's extended ten-year repose period retroactively applies to CNLV's claims against Dekker. The Legislature lengthened the statute of repose because the shorter repose period prejudiced Nevada residents, and the Legislature clearly intended the amendment to apply retroactively. Furthermore, as amended, the plain language of NRS 11.202 allows a claim to be brought so long as it was filed within ten years after the date of substantial completion of the construction work, regardless of whether the claim would have been barred under the previous six-year statute of repose at the time the complaint was filed. Therefore, we conclude that CNLV's claims were properly filed within the ten-year statute of repose. Accordingly, we deny the petition for writ relief.

Parraguirre and Stiglich, JJ., concur.

NUVEDA, LLC, Petitioner, *v.* THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for THE COUNTY OF CLARK; and THE HONORABLE ELIZABETH GONZALEZ, District Judge, Respondents, and SHANE TERRY; PHIL IVEY; and DOTAN Y. MELECH, Receiver for CWNEVADA, LLC, a Nevada Limited Liability Company, Real Parties in Interest.

No. 82649

September 23, 2021 495 P.3d 500

Original petition for a writ of prohibition or, in the alternative, mandamus challenging a district court order denying a motion to transfer indirect contempt proceedings to another judge under NRS 22.030(3).

Petition denied.

[Rehearing denied October 11, 2021]

Law Office of Mitchell Stipp and *Mitchell Stipp*, Las Vegas, for Petitioner.

Mushkin & Coppedge and *Michael R. Mushkin* and *L. Joe Coppedge*, Las Vegas, for Real Parties in Interest.

Before the Supreme Court, Parraguirre, Stiglich, and Silver, JJ.

OPINION

By the Court, Stiglich, J.:

NRS 22.030(3) provides that in cases of indirect contempt, "the judge of the court in whose contempt the person is alleged to be shall not preside at the trial of the contempt over the objection of the person." This statute gives accused contemnors a peremptory challenge, which must be granted if the objection is timely and properly made. Here, petitioner NuVeda, LLC, moved for a change of judge under NRS 22.030(3) 37 days after the court set a date for the contempt trial. The district court denied this motion as untimely, and NuVeda petitioned this court for extraordinary writ relief. We hold that motions for a change of judge under NRS 22.030(3) must be made with reasonable promptness under the circumstances, and here, the district court did not err by determining the motion was untimely. Accordingly, we deny the petition.

FACTS AND PROCEDURAL HISTORY

This contempt case arises out of a relatively complex business dispute. Petitioner NuVeda, in conjunction with CWNevada, LLC,

formed CWNV as a joint venture in 2017 for the purpose of building and operating cannabis establishments. CWNevada was later placed under receivership. NuVeda and its managing member, Dr. Pejman Bady, allegedly dissolved CWNV and later created a new entity with the same name. This act not only created difficulties for the receiver, but it also is alleged to violate a court order, constituting contempt. NuVeda denies that it committed contempt, and many of the facts remain disputed. Most of the details of the supposed contempt and the situation underlying it are immaterial to this writ petition.

For our purposes, the critical facts are these. On February 1, 2021, during a hearing on a motion for an order to show cause concerning the alleged contempt, the district court (Judge Elizabeth Gonzalez) found that a show cause order was warranted and scheduled a contempt hearing for March 1. But Dr. Bady had a previously scheduled medical appointment and could not attend on that date. On or around February 22, the district court rescheduled the hearing to April 5. On March 10, NuVeda for the first time invoked NRS 22.030(3) and objected to Judge Gonzalez presiding over the contempt hearing. At a hearing on March 17, the district court stated that while it might have granted the request for a new judge if NuVeda had made such a request sooner, NuVeda had waived any objection when it failed to include one in its prior motion for a continuance. NuVeda denied that it had ever moved for a continuance, pointing out that it had previously stated it was willing to go forward without Dr. Bady. NuVeda renewed its objection under NRS 22.030(3), but the district court overruled the objection.

NuVeda now petitions this court for a writ of prohibition and/or mandamus. It asks us to disqualify Judge Gonzalez from presiding over the contempt hearing and to order the Chief Judge of the Eighth Judicial District Court to randomly reassign that hearing to another judge. We stayed the contempt hearing pending resolution of this writ petition.

DISCUSSION

We will entertain this writ petition

"Because both writs of prohibition and writs of mandamus are extraordinary remedies, we have complete discretion to determine whether to consider them." *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008); *see Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). This court may exercise its discretion to entertain a petition for extraordinary writ relief when "an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of [considering] the petition." *Archon Corp. v. Eighth Judicial Dist. Court*, 133 Nev. 816, 820, 407 P.3d 702, 706 (2017)

(quoting *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197-98, 179 P.3d 556, 559 (2008)). We conclude that our consideration of this writ petition is warranted. NRS 22.030(3) is a procedural rule that is potentially implicated in every indirect contempt hearing, no matter the underlying substantive issues. Just this year, we addressed the timeliness of a motion under NRS 22.030(3), yet that case left open the precise issue presented by this case. *See Detwiler v. Eighth Judicial Dist. Court*, 137 Nev. 202, 207-08 & n.4, 486 P.3d 710, 717 & n.4 (2021). "[B]ecause this petition involves a question of first impression that arises with some frequency, the interests of sound judicial economy and administration favor consideration of the petition." *See Cote H.*, 124 Nev. at 39-40, 175 P.3d at 908.

Standard of review

Here, NuVeda seeks both mandamus and prohibition. It seeks mandamus to the extent it asks us to direct the district court to grant its motion to transfer the contempt proceedings to a new judge, and it seeks prohibition to the extent it asks us to direct Judge Gonzalez *not* to preside at the contempt hearing. NuVeda appears to argue that Judge Gonzalez was automatically recused, by operation of law, when it filed its objection and therefore she would exceed her legal authority if she were to preside over the hearing.

"A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of discretion." *Agwara v. State Bar of Nev.*, 133 Nev. 783, 785, 406 P.3d 488, 491 (2017) (internal quotation marks omitted). "A writ of prohibition is the counterpart to a writ of mandamus and may be issued to compel a person or body exercising judicial functions to cease performing beyond its legal authority." *Id.* (internal quotation marks omitted). Specifically, "[w]hen the district court acts without or in excess of its jurisdiction, a writ of prohibition may issue to curb the extrajurisdictional act." *Canarelli v. Eighth Judicial Dist. Court*, 136 Nev. 247, 250, 464 P.3d 114, 119 (2020) (internal quotation marks omitted).

"When considering a writ of mandamus, we generally apply a manifest abuse of discretion standard . . . ." *Stephens Media, LLC v. Eighth Judicial Dist. Court*, 125 Nev. 849, 860, 221 P.3d 1240, 1248 (2009). In contrast, where a party contends in a petition for a writ of prohibition that the district court has exceeded or is about to exceed its jurisdiction, we review that issue de novo. *See Fulbright & Jaworski LLP v. Eighth Judicial Dist. Court*, 131 Nev. 30, 35, 342 P.3d 997, 1001 (2015). Because NuVeda seeks both types of relief arising out of the same alleged procedural error, we will review the jurisdictional facts de novo, making separate review for manifest abuse of discretion unnecessary. Still, even when challenging the district court's jurisdiction, "[p]etitioners bear the burden of

showing that this court's extraordinary intervention is warranted." *Nev. State Bd. of Architecture, Interior Design & Residential Design v. Eighth Judicial Dist. Court*, 135 Nev. 375, 377, 449 P.3d 1262, 1264 (2019).

A motion for a new judge under NRS 22.030(3) must be made reasonably promptly

NuVeda argues that the district court was required to grant its request for a new judge because—in its view—a party can object under NRS 22.030(3) at *any time* before commencement of the trial on contempt. NuVeda contends that disqualification is automatic upon lodging the objection and that objections cannot be waived. Reviewing this matter of statutory interpretation de novo, *see Fulbright*, 131 Nev. at 35, 342 P.3d at 1001, we hold that objections can be waived if not asserted reasonably promptly.

NRS 22.030(3) provides accused contemnors with a peremptory challenge that serves to "eliminate the possibility of a reasonable apprehension that a judge might not be entirely free from bias in enforcing the orders and decrees of the court of which [s]he is the judge." *McCormick v. Sixth Judicial Dist. Court*, 67 Nev. 318, 331-32, 218 P.2d 939, 945 (1950). We have described NRS 22.030(3) as "an automatic recusal." *Awad v. Wright*, 106 Nev. 407, 411, 794 P.2d 713, 715 (1990), *abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000). At the same time, we emphasized that the objection in that case was "timely and properly made." *Id.* at 410, 794 P.2d at 715. Thus, recusal is not truly "automatic." Rather, the accused contemnor must request recusal, and must do so in a timely fashion.[1]

We have recently reaffirmed in *Detwiler v. Eighth Judicial District Court* that "timeliness is essential, as '[g]rounds for disqualifying a judge can be waived by failure to timely assert such grounds.'" 137 Nev. at 208, 486 P.3d at 717 (alteration in original) (quoting *City of Las Vegas Downtown Redev. Agency v. Hecht*, 113 Nev. 644, 651, 940 P.2d 134, 139 (1997)). The petitioner in *Detwiler* did not invoke his rights under NRS 22.030(3) until after the hearing had already taken place, which we explained was "untimely under any possible standard." *Id.* at 208 n.4, 486 P.3d at 717 n.4. Accordingly, we had no reason to consider in detail what would make a motion for a change of judge "timely." We simply held that such a motion made after the contempt trial is untimely. Nevertheless, we "encourage[d] litigants to act without undue delay in exercising peremptory challenges to judges." *Id.* at 203, 486 P.3d at 713.

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[1]In many cases, the accused contemnor might prefer *not* to change judges. Especially in a complex case with disputed facts, a party may well prefer to explain itself to the judge who is most familiar with the factual background and with the context of the order allegedly violated.

We must now reach the issue we left open in *Detwiler*: Can a court deny a motion for a new judge under NRS 22.030(3) as untimely if the motion is made *before* the contempt trial, but nevertheless after a significant delay? We conclude the answer is yes. Although "NRS 22.030(3) contains no express deadline," *Detwiler*, 137 Nev. at 208, 486 P.3d at 717, that fact does not provide license for undue delay. Courts routinely imply timely filing requirements for recusal motions "despite the text's silence." *See Kolon Indus. Inc. v. E.I. DuPont de Nemours & Co.*, 748 F.3d 160, 168-69 (4th Cir. 2014). "While there is no *per se* rule that recusal motions must be made at a fixed point in order to be timely, such motions should be filed with reasonable promptness after the ground for such a motion is ascertained." *United States v. Mikhel*, 889 F.3d 1003, 1026 (9th Cir. 2018) (quoting *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1295 (9th Cir. 1992)). For example, when a party discovers new grounds for disqualifying a judge under Nevada Code of Judicial Conduct Canon 3E, the party must move for disqualification "as soon as possible after becoming aware of the new information." *Towbin Dodge, LLC v. Eighth Judicial Dist. Court*, 121 Nev. 251, 260, 112 P.3d 1063, 1069 (2005).[2] We hold that disqualifications under NRS 22.030(3) are no different, and a party must move for such disqualification with reasonable promptness.

NuVeda's proposal that such objections may be made at any time before the commencement of the hearing, simply because the statute provides no express deadline, is both an incorrect and an unrealistic standard. Not requiring some reasonable measure of promptness "would result in increased instances of wasted judicial time and resources and a heightened risk that litigants would use recusal motions for strategic purposes." *Preston v. United States*, 923 F.2d 731, 733 (9th Cir. 1991) (internal citations omitted). To be sure, if a party learns of *new* grounds for disqualification, those grounds may be raised reasonably promptly after learning the new information. *Towbin Dodge*, 121 Nev. at 260, 112 P.3d at 1069; *see Preston*, 923 F.2d at 733 (finding motion to disqualify judge was timely when filed 18 months after case was transferred, but 10 days after learning of grounds for disqualification). But as this court has noted, a party accused of contempt should be aware that a peremptory challenge is available under NRS 22.030(3) "as soon as he or she receives the order to show cause." *Detwiler*, 137 Nev. at 208, 486 P.3d at 717. When the party raises a peremptory challenge after substantial delay, that is evidence of inattention at best and of intent to delay the proceedings at worst. *See Mikhel*, 889 F.3d at 1026 (noting that "unexplained delay in filing a recusal motion suggests

[2]*Towbin Dodge* concerned former NCJC Canon 3E, which is now Canon 2. *See In re Amendment of the Nev. Code of Judicial Conduct*, ADKT 427 (Order, Dec. 17, 2009).

that the recusal statute is being misused" (internal quotation marks omitted)).

Accordingly, we hold that litigants are not only "encourage[d] . . . to act without undue delay in exercising peremptory challenges to judges," *see Detwiler*, 137 Nev. at 203, 486 P.3d at 713, but are in fact required to do so. A motion under NRS 22.030(3) must be made with "reasonable promptness after the ground for [the] motion is ascertained," *see Mikhel*, 889 F.3d at 1026, and these grounds are typically ascertained when the party receives notice that it is facing a contempt hearing, *Detwiler*, 137 Nev. at 208, 486 P.3d at 717. Undue delay may result in the motion being denied.

The district court did not err by finding this motion was untimely

Having rejected NuVeda's argument that a motion for recusal is necessarily timely at *any* time before the hearing, we must decide whether the district court erred by concluding *this* motion was untimely. NuVeda argues that the district court found NuVeda waived its rights under NRS 22.030(3) *solely* because it moved for a continuance on February 22 and that this was error because NuVeda did *not* in fact move for a continuance. NuVeda reads the district court's reasoning too narrowly. The district court properly found that NuVeda's motion was untimely when it was filed on March 10—37 days after NuVeda was notified of the contempt hearing on February 1—whether or not NuVeda moved for a continuance on February 22.

It is true that a party does not necessarily waive its right to request a new judge simply because it moves for a continuance first. Certain objections, like objections to personal jurisdiction or service of process, "must be raised at the first available opportunity" or be waived. *See Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1106 (9th Cir. 2000); *see also* NRCP 12(g)(2), (h)(1). Nothing indicates that objections under NRS 22.030(3) are of this type. A court determining whether an NRS 22.030(3) motion is timely should not look mechanically at whether the objection was raised at the first opportunity; rather, it should consider whether the party objected reasonably promptly under the circumstances.

But our agreement with NuVeda ends there. While the record is unfortunately unclear as to whether NuVeda in fact moved for a continuance on February 22, the record does show that NuVeda had ample opportunity after February 1 to move for a change of judge, yet did not do so for 37 days. When the district court asked NuVeda's counsel why he did not invoke the statute before February 22—the date the court first continued the hearing—counsel replied only that it was not clear to him whether he could make the objection at that time. Of course, that is not ordinarily good cause for a delay. Although the district court did refer to NuVeda's purported motion for a continuance, it is ultimately immaterial whether NuVeda in fact

moved for a continuance or whether the district court continued the hearing sua sponte. Had the district court simply asked why NuVeda did not move for a new judge within three weeks after the hearing date was originally set, the result would have been the same.

Although we do not defer to the district court's reasonableness determinations when jurisdiction is at stake, *see Fulbright & Jaworski*, 131 Nev. at 35, 342 P.3d at 1001, petitioners must show why this court's extraordinary intervention is warranted, *Nev. State Bd. of Architecture*, 135 Nev. at 377, 449 P.3d at 1264. We conclude that the district court did not err, and thus NuVeda has failed to carry its burden. This court has held that an objection under NRS 22.030(3) was timely when it was made nine days after the party received an order to show cause. *See Awad*, 106 Nev. at 408, 410, 794 P.2d at 714, 715. NuVeda's 37-day delay was far longer, and NuVeda has offered no justification for that delay. Under these circumstances, we are concerned that the lateness of NuVeda's motion might have indicated a "misuse[ ]" of the recusal statute, *see Mikhel*, 889 F.3d at 1026, or would "waste[ ] judicial time and resources" by necessitating a second continuance, *see Preston*, 923 F.2d at 733. In the absence of any reasonable justification for the delay, we hold that 37 days is too long. The district court properly found that NuVeda's delay was unreasonable and properly denied the motion to change judges.

CONCLUSION

While a district court has no discretion to deny a timely and proper motion for a new judge under NRS 22.030(3), a party may waive its right to request a new judge by failing to make that request in a reasonably prompt manner. Because NRS 22.030(3) provides a peremptory challenge that does not depend on the facts of a particular case, a party that wishes to exercise its rights under that statute has the ability to do so promptly. Here, the district court properly found NuVeda's request was not made reasonably promptly when that request was made 37 days after the district court set the hearing date. Accordingly, we deny NuVeda's petition for writ relief. The stay this court granted on April 2, 2021, is lifted, and the district court may proceed with the contempt hearing.

Parraguirre and Silver, JJ., concur.

THE STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS DIVISION, Appellant, *v.* TITLEMAX OF NEVADA, INC., a Delaware Corporation, Respondent.

No. 79224

September 23, 2021 495 P.3d 506

Appeal from a district court summary judgment in a declaratory relief action. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Affirmed in part and reversed in part.

Aaron D. Ford, Attorney General, *Heidi J. Parry Stern*, Solicitor General, *David J. Pope*, Chief Deputy Attorney General, and *Vivienne Rakowsky*, Deputy Attorney General, Carson City, for Appellant.

Lewis Roca Rothgerber Christie LLP and *Daniel F. Polsenberg, Joel D. Henriod*, and *Malani D. Kotchka-Alanes*, Las Vegas, for Respondent.

Before the Supreme Court, Cadish, Pickering, and Herndon, JJ.

OPINION

By the Court, Pickering, J.:

NRS 604A.5065 to NRS 604A.5089 regulate title loans, a financial product for which a lender "[c]harges an annual percentage rate of more than 35 percent" and "[r]equires the customer to secure the loan" via title to their vehicle (excluding purchase-money security interests). NRS 604A.105. While NRS 604A.5074(1) generally limits the permissible duration of the original term of a title loan to 30 days, NRS 604A.5074(3) extends the permissible duration to "up to" 210 days, provided that the title loan meets the requirements delineated in that subsection; as relevant here, such loans (210-day title loans) cannot be subject to "any extension." NRS 604A.5074(3)(c) (the extension prohibition). NRS 604A.5076(1) (the FMV limitation) separately limits the permissible amount of any title loan to the "fair market value" of the securing vehicle.

With regard to these two limitations, in this appeal the Nevada Department of Business and Industry, Financial Institutions Division (FID) argues that (1) a refinance qualifies as a species of extension within the meaning of the extension prohibition and is therefore a prohibited practice for 210-day title loans; and (2) a lender must calculate interest and other costs and fees along with the principal loan amount into the FMV limitation for all title loans.

FID asks that we reverse the district court's order granting summary judgment in favor of TitleMax and declaratory relief to the contrary. On the first point, we agree with FID—the unambiguous language of NRS 604A.065 (defining "extension") includes a refinance such that the extension prohibition reaches the practice at issue here. As to the second, we agree with TitleMax and the district court; the text of the FMV limitation demonstrates that only the principal loan amount is included as part of that calculation. Accordingly, we affirm in part and reverse in part as follows.

I.

Respondent TitleMax of Nevada, Inc., is a licensed lender offering title loans to its customers; appellant FID regulates that practice to ensure compliance with NRS Chapter 604A, including those sections laid out above. At issue in this appeal are TitleMax's 210-day title loans, on which interest accrues daily. Despite the extension prohibition in NRS 604A.5074(3)(c), TitleMax regularly offers borrowers on 210-day title loans the opportunity to "refinance," whereby the parties effectively agree to extend the period in which the title loan's principal amount is amortized for another 210 days in exchange for the borrower paying off the interest then owed. With regard to the FMV limitation, TitleMax limits the principal amount loaned to the fair market value of the vehicle in question, but it does not include the daily accruing interest or other associated fees and costs in the calculation of that upper limit.

In 2018, FID conducted an examination of TitleMax's practices and issued several Records of Examination (ROEs). As relevant to this appeal, the 2018 ROEs stated that (1) TitleMax's "refinances" were actually "extensions" that violated the extension prohibition, and (2) TitleMax had underwritten several loans that exceeded the fair market value of the securing vehicle because, as FID subsequently explained, FID believes TitleMax should account for "[t]he total amount the borrower must pay back includ[ing] the principal, interest, and fees" in the calculation. Based on these findings, FID issued TitleMax a "Needs Improvement" rating, meaning that TitleMax was subject to additional regulatory oversight and required to make changes to its practices to bring them into compliance with the statutory requirements or else face liability and potential loss of its lender's license.

Rather than modifying its practices to conform with FID's demands, TitleMax sued in the Nevada district court, seeking declaratory relief from the findings of the 2018 ROEs, as well as temporary and permanent injunctive relief enjoining FID from imposing or seeking to impose discipline based on those alleged violations. As relevant here, TitleMax asked that the district court declare that (1) refinancing a title loan does not amount to a prohibited extension and (2) the FMV limitation refers only to the

principal amount of the loan. FID moved for summary judgment, and TitleMax opposed and moved for summary judgment in its own right. The district court denied FID's motion for summary judgment and granted TitleMax's, as follows:

> This Court hereby finds, concludes, and declares, that TitleMax's practice of "refinancing" does not violate either NRS 604A.5074 or NRS 604A.065.
>
> This Court further finds, concludes, and declares, that the language of NRS 604A.5076 which refers to the "fair market value" of a vehicle, refers only to the principal amount of the loan, and does not include interest, fees, or other expenses or other recoverable amounts.

FID's appeal followed.

II.

The district court's order granting summary judgment is subject to de novo review. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). So too, the interpretation the district court gave to the various statutes at issue in reaching that result. *Zohar v. Zbiegien*, 130 Nev. 733, 737, 334 P.3d 402, 405 (2014). In this case, the language of those statutes is sufficiently plain to answer the questions FID's appeal poses. *Wheble v. Eighth Judicial Dist. Court*, 128 Nev. 119, 122, 272 P.3d 134, 136 (2012) (stating that "[w]hen a statute is clear on its face, [this court] will not look beyond the statute's plain language").

A.

FID's first challenge is to the district court's determination that TitleMax's practice of offering its customers repeated opportunities to "refinance" violates the extension prohibition for 210-day title loans, as informed by the definition of "extension" found in NRS 604A.065. In full, NRS 604A.5074(3) provides,

> The original term of a title loan may be up to 210 days if:
> (a) The loan provides for payments in installments;
> (b) The payments are calculated to ratably and fully amortize the entire amount of principal and interest payable on the loan;
> (c) *The loan is not subject to any extension*;
> (d) The loan does not require a balloon payment of any kind; and
> (e) The loan is not a deferred deposit loan.

(emphasis added). NRS 604A.065, somewhat circularly, defines an extension as "any *extension* or *rollover* of a loan beyond the date on which the loan is required to be paid in full under the original terms of the loan agreement, *regardless of the name given to the extension or rollover*." (emphases added).

The ordinary meaning of an extension is "[a] period of additional time to take an action, make a decision, accept an offer, or complete a task." *Extension*, *Black's Law Dictionary* (11th ed. 2019); *see Lofthouse v. State*, 136 Nev. 378, 380, 467 P.3d 609, 611 (2020) (noting that the court gives statutory words their plain and ordinary meanings unless the context requires a technical meaning or a different meaning is apparent from the context). TitleMax argues that, in a refinance, the first loan is paid off and second loan is made, such that the original loan term is not "extended." But when the same lender and the same borrower are involved, the principal is only given to the borrower once, at the inception of the original loan, and must be repaid when the refinanced loan's term expires. Thus, functionally, such a "refinancing" product offers customers who accept its terms a "period of additional time"—210 days from the day of "refinancing"—to pay TitleMax back the principal of the originally issued, later refinanced loan. Accordingly, "regardless of the name" TitleMax gives to this particular practice, in substance, based on the common understanding of the term, it appears to fall within NRS 604A.065 and, by reference, the extension prohibition.

But even setting this aside, under NRS 604A.065 a prohibited extension may also be a "rollover," which is "[t]he extension or renewal of a short term loan; *the refinancing* of a maturing loan or note." *Rollover*, *Black's Law Dictionary* (11th ed. 2019) (emphasis added). Accordingly, the parties' dispute over whether TitleMax's refinancing product was, in fact, a refinance is beside the point in any case. In this context, given the ordinary meaning of the statutory terms used, an extension is a rollover, and a rollover is a refinance; refinances are therefore a species of extension that fall within the extension prohibition. *See Bruce v. First Fed. Sav. & Loan Ass'n of Conroe, Inc.*, 837 F.2d 712, 719 (5th Cir. 1988) (holding, in the context of the former Thrift Institution Restructuring Act, that a lender's "offer to refinance the loan . . . may constitute an extension of credit"); *Cf.* Nathalie Martin & Ozymandias Adams, *Grand Theft Auto Loans: Repossession and Demographic Realities in Title Lending*, 77 Mo. L. Rev. 41, 74 (2012) (discussing practice of title loan extensions, rollovers, and refinancing as synonymous and collecting data from service providers).

Despite the seeming clarity of the language laid out above, TitleMax attempts to call this analysis into question. First, TitleMax points to graphics on a pamphlet offered to the Legislature by the assemblyperson who presented the bill that enacted NRS Chapter 604A and argues that the caption on those graphics demonstrates that a "rollover," as referenced in NRS 604A.065, is a very specific kind of financial product that meaningfully differs from a refinance. But even assuming that the pamphlet graphics imply what TitleMax says they do, any implicit suggestion drawn from the caption on a graphic on a pamphlet presented, at one point, to the Legislature

cannot overcome the enacted text of the statute itself. *Wheble*, 128 Nev. at 122, 272 P.3d at 136. The Legislature could not have written NRS 604A.065 more expansively—an "[e]xtension" is "any extension or rollover" of a loan beyond its original due date, "regardless of the name [the lender gives] the extension or rollover."

TitleMax also suggests that treating a refinance as a type of extension renders certain language found elsewhere in NRS Chapter 604A superfluous. *See Buckwalter v. Eighth Judicial Dist. Court*, 126 Nev. 200, 202, 234 P.3d 920, 922 (2010) (noting that statutes should be construed together to avoid rendering any language superfluous). NRS 604A.5037, which regulates high-interest loans, is structured similarly to NRS 604A.5074. NRS 604A.5037(1) generally prohibits the original term of a high-interest loan from exceeding 35 days, though subsection (2) allows the original term to be for a longer period (90 days) if certain criteria are met, including—as with the limitations on title loans—that the high-interest loan does not allow for "any extension." According to TitleMax, if a refinance is a type of prohibited extension, NRS 604A.5037(3), which separately prohibits the lender from "agree[ing] to establish or extend the period for the repayment, renewal, *refinancing* or consolidation of an outstanding high-interest loan for a period that exceeds 90 days after the date of the origination of the loan," would have no meaning. But this is not the case; NRS 604A.5037(3) limits the period of extensions for high-interest loans under NRS 604A.5037(1), not those that meet the heightened requirements of subsection (2), for which no extension is allowed in the first place. Put differently, a high-interest loan might fall under subsection (1), with, say, a 35-day original term and provisions that allow for an extension of that term; however, subsection (3) would *still* prohibit the lender from stretching that extension beyond 90 days from the date of the original loan. If anything, NRS 604A.5037(3)'s allowance of additional time via refinancing, so long as the total period does not exceed 90 days from the original date of the loan, confirms that in the Legislature's view a refinance is in fact a form of extension. Our reading of extension to include refinances as a subcategory does not violate the *Buckwalter* principle.

TitleMax relatedly argues that the Legislature's use of the word "refinancing" in NRS 604A.5037(3)—which express reference is also found in NRS 604A.501 (regulating deferred deposit loans)—means that it did not intend to include a refinance as a type of "extension" under NRS 604A.5074(3). But, as discussed, the plain meaning of an extension in this context broadly encompasses a refinance, among other types of loan renewals or agreements to extend the loan-term period; the reverse is not true. Accordingly, where the Legislature refers to "any extension" in NRS Chapter 604A, it is really saying "a refinance, among any other product with similar effect"; where, in contrast, the Legislature refers to "refinancing"

specifically, it is limitedly pointing to that financial practice in particular. Thus, TitleMax's citation in its favor of the principle that this court "presume[s] that the variation in language indicates a variation in meaning," *Williams v. State, Dep't of Corr.*, 133 Nev. 594, 598, 402 P.3d 1260, 1264 (2017), does not land—our understanding of extension as a top-line category of financial products, and refinances as a subvarietal thereof, still gives distinct meaning to each term.

Neither do the remainder of TitleMax's arguments on this point sway the outcome. Citing *Becerra v. Superior Court*, 240 Cal. Rptr. 3d 250, 265 (Ct. App. 2018), TitleMax argues that because "refinances" are not forbidden they are implicitly allowed; but, as established, refinances *are actually forbidden* as a species of extension. *See* NRS 604A.5074(3)(c). And, while TitleMax seems to claim that this interpretation would infringe upon its due process rights, the text itself plainly counsels this result; any claim of a failure of notice stemming therefrom thus necessarily fails. *Cf. Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 514, 217 P.3d 546, 554 (2009) (holding that statute did not give notice of what conduct was prohibited because plain meaning of undefined terms could not be ascertained). Finally, while the parties dispute the proper application of the maxim *expressio unius est exclusio alterius* in this context, *see Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. 362, 369, 373 P.3d 66, 71 (2016), this is beside the point—NRS 604A.065 defines "extension" functionally, "regardless of the name given to the extension," making the *expressio unius* canon inapposite. *See Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (2011).

We therefore reverse the district court's order granting declaratory relief to the extent that it held that "TitleMax's practice of 'refinancing' does not violate either NRS 604A.5074 or NRS 604A.065."[1]

B.

FID bases its second challenge on the latter part of the district court's declaratory judgment—that the FMV limitation refers only to the principal amount of the loan. In relevant part, NRS 604A.5076(1) provides, "A licensee who makes title loans shall not . . . [m]ake a title loan that exceeds the fair market value of the vehicle securing the title loan." Pursuant to NRS 604A.105,

> 1. "Title loan" means a loan made to a customer pursuant to a loan agreement which, under its original terms:
>
> (a) Charges an annual percentage rate of more than 35 percent; and

[1]With regard to the merits of TitleMax's motion to strike portions of FID's reply brief, it is unnecessary to address them—this decision is founded in the text of the relevant statutes, rather than any argument FID raises in reply. TitleMax's motion to strike is therefore denied.

(b) Requires the customer to secure the loan by either:

(1) Giving possession of the title to a vehicle legally owned by the customer to the licensee or any agent, affiliate or subsidiary of the licensee; or

(2) Perfecting a security interest in the vehicle by having the name of the licensee or any agent, affiliate or subsidiary of the licensee noted on the title as a lienholder.

2. The term does not include a loan which creates a purchase-money security interest in a vehicle or the refinancing of any such loan.

NRS Chapter 604A's definition of "loan" is, again, unhelpfully circular, "referring the reader [back] to" the definitions of the products regulated by the chapter. *State, Dep't of Bus. & Indus., Fin. Insts. Div. v. Check City P'ship, LLC*, 130 Nev. 909, 913, 337 P.3d 755, 758 (2014); *see also* NRS 604A.080. But the ordinary meaning of the term, as relevant here, is "a sum of money lent at interest," not the sum of money lent *and* the interest. *Loan*, *Black's Law Dictionary* (11th ed. 2019); *see also Check City*, 130 Nev. at 913, 337 P.3d at 758 (recognizing that the "usual and natural reading" of the term is the principal amount borrowed before applying different statutory definition). Indeed, like Nevada, many other states similarly regulate the practice of title loans, and definitions in these foreign statutes further support this common understanding of the term. *See* Mark S. Edelman, Robert A. Aitken, Raechelle C. Yballe, *The Road Ahead: Emerging Trends in Personal Property Finance*, 63 Bus. Law. 597, 598 (2008) (collecting statutes treating the principal amount of a loan as distinct from interest); *see also* Unif. Consumer Credit Code § 1.301(25)(a)(i), 7 U.L.A. 126 (2002) (defining "loan" as "the creation of [a] debt"); Fla. Stat. Ann. § 537.003 (West 2013) (defining a title loan as "a loan of money to a consumer" secured by a vehicle title and separately defining "[i]nterest" as the cost of obtaining a title loan); Ill. Admin. Code tit. 38, § 110.300 (separating the terms "loan" and "interest . . . charged [thereon]" in the definition of title loan); *Berger v. State, Dep't of Revenue*, 910 P.2d 581, 586 (Alaska 1996) (defining a loan, for the purposes of the Alaska Small Loans Act, as "the payment of money by a lender to a borrower in exchange for an agreement to repay with or without interest").

As FID recognizes, this court departed from the ordinary meaning of "loan" in *Check City*—which examined the limitations on another financial product regulated by NRS Chapter 604A, deferred deposit loans—by holding that interest and other fees had to be included in the calculation of the permissible upper limit of such a loan. 130 Nev. at 912, 337 P.3d at 757 (interpreting NRS 604A.425, recodified with amendment as NRS 604A.5017, which provided, "A licensee shall not . . . [m]ake *a deferred deposit loan* that exceeds 25 percent of the expected gross monthly income of the customer when

the loan is made"). But this court did so because NRS 604A.050 defined a deferred deposit loan as "a transaction," such that it was clear that "the principal amount borrowed is merely one aspect of the larger transaction" at play in the deferred deposit loan context. *Check City*, 130 Nev. at 912, 337 P.3d at 757. In contrast, with regard to title loans (and high-interest loans), the Legislature straightforwardly phrased the products' definitions in terms of types of "loan[s]" rather than "transaction[s]," such that there is no reason to deviate from what this court previously recognized is the ordinary meaning of the relevant term. *See* NRS 604A.065; NRS 604A.0703 (defining a high-interest loan as "a loan made to a customer pursuant to a loan agreement which, under its original terms, charges an annual percentage rate of more than 40 percent").

Moreover, contrary to FID's claims that reaching a result inapposite from *Check City* would be "nonsensical" here, it actually makes pragmatic and policy sense for the Legislature to have regulated deferred deposit loans differently than either title loans or high-interest loans. As this court recognized in *Check City*, deferred deposit loans are unusual because the whole cost of the "transaction"—including interest—is included upfront in the check the borrower gives the lender; that is, at the outset, "a deferred deposit loan transaction encompasses more than simply the amount borrowed but also includes some consideration to the lender beyond the customer's promise to repay the amount borrowed." 130 Nev. at 913, 337 P.3d at 757. In terms of the workability of the rule, given that the total cost to the borrower is readily discernable at the time the lender accepts the post-dated check, the reference to the "transaction" and the inclusion of interest and other fees therein makes sense. Not so in the title loan context, where interest accrues daily and can typically only be determined *post hoc*, when the loan is finally paid off.

Policy reasons further support the distinction. In contrast to a deferred deposit loan, a title loan is nonrecourse, meaning that the lender's recovery will ultimately be limited to the value of the vehicle that secures its loan. *Compare* NRS 604A.503 (providing that deferred deposit lender may recover total amount of principal owed plus unpaid interest), *with* NRS 604A.5078 (providing that "the sole remedy of the licensee who made the title loan is to seek repossession and sale of the vehicle which the customer used to secure the title loan"); *see also* Jim Hawkins, *Regulating on the Fringe: Reexamining the Link Between Fringe Banking and Financial Distress*, 86 Ind. L.J. 1361, 1392 (2011) (noting that in the context of title loans, as opposed to other "fringe" banking products, "consumers have a safety hatch they can use if they cannot pay off the loan—they can walk away with the money and lose their vehicle"). Thus, a title loan lender does not have the same incentive to inflate the total amount of a loan and interest as does a deferred deposit

lender, and a borrower is less likely to fall into a cycle of unmanageable debt as a result of the former. *See* Hawkins, 86 Ind. L.J. at 1393 (concluding that title loan lenders "have structured the transaction to prevent the total financial breakdown of the people who use them"). The Legislature therefore could have feasibly determined that the interest charged on deferred deposit loans needed to be more tightly regulated. *See State, Dep't of Bus. & Indus., Fin. Insts. Div. v. Dollar Loan Ctr., LLC*, 134 Nev. 112, 112, 412 P.3d 30, 32 (2018) (noting that in enacting NRS Chapter 604A the Legislature was "[r]esponding to a so-called 'debt treadmill'").[2]

Further, while FID relies heavily on the policy underlying NRS Chapter 604A in support of its interpretation of the FMV limitation, *see id.*, 134 Nev. at 115, 412 P.3d at 34 (suggesting that NRS Chapter 604A has a protective purpose), scholars who study these types of financial products have argued that laws capping the amount of a title loan based on the value of the securing vehicle should actually "aim to incentivize lenders to loan the *highest percentage* of the vehicle's value possible because then borrowers who lose a vehicle will lose the least amount of their equity." Jim Hawkins, *Credit on Wheels: The Law and Business of Auto-Title Lending*, 69 Wash. & Lee L. Rev. 535, 601 (2012) (emphasis added). This means that FID's favored interpretation of the FMV limitation may actually undercut the very policy it seeks to promote. Accordingly, to the extent that policy considerations were even pertinent to our interpretation of the FMV limitation, those considerations do not clearly counsel in favor of our sidestepping the plain meaning laid out above and rolling the interest charged on a loan into the FMV limitation. *Lofthouse*, 136 Nev. at 380, 467 P.3d at 611.

III.

In sum, we conclude that (1) the extension prohibition on 210-day title loans includes refinances as a species of extension based on the plain language of NRS 604A.065 and (2) the FMV limitation only refers to the principal amount of the loan. We therefore reverse in part and affirm in part the district court's order granting summary judgment and declaratory relief in TitleMax's favor.

Cadish and Herndon, JJ., concur.

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[2]This is not to minimize the potential detrimental effect of losing one's vehicle after making repeated payments on an over-secured loan, *see, e.g.*, Jessie Lundberg, *Big Interest Rates Under the Big Sky: The Case for Payday and Title Lending Reform in Montana*, 68 Mont. L. Rev. 181, 191 (2007) (arguing that "[t]itle loans can be every bit as disastrous as payday loans"), but to illuminate a potential rationale for regulating other types of consumer financial products even more aggressively.