REPORTS OF CASES

DETERMINED BY THE

SUPREME COURT

OF THE

STATE OF NEVADA

Volume 130

RECONTRUST COMPANY, N.A.; COUNTRYWIDE HOME LOANS, INC., A NEW YORK CORPORATION; NATIONAL TITLE CO., A NEVADA CORPORATION; AND SILVER STATE FINANCIAL SERVICES, INC., A NEVADA CORPORATION, APPELLANTS/CROSS-RESPONDENTS, *v.* LANLIN ZHANG, RESPONDENT/CROSS-APPELLANT.

No. 58602

January 30, 2014 317 P.3d 814

Appeal and cross-appeal from judgment and orders entered following reversal and remand by a panel of this court in a real property dispute. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Prospective purchaser of residence brought action against vendor for specific performance and recorded a lis pendens against the property. The district court granted the motion to dismiss and denied purchaser's motion to amend. Purchaser petitioned for a writ of mandamus. The supreme court issued the writ directing the district court to reinstate purchaser's complaint and to vacate its expungement order. After vendor defaulted on his mortgage, prospective purchaser amended her complaint to join lender and to add claims for declaratory judgment, negligence, slander of title, and to quiet title. Following a bench trial on prospective purchaser's claims

against lender, the district court entered judgment in favor of lender, and prospective purchaser appealed. The supreme court affirmed in part, reversed in part, and remanded. On remand, the district court entered judgment recognizing prospective purchaser as the owner of the subject property, and lender appealed, and prospective purchaser cross-appealed. Sitting en banc, the supreme court, PICKERING, J., held that: (1) lender's claim for equitable subrogation did not become the law of case, (2) lender's failure to raise equitable subrogation in a prior appeal did not preclude it from doing so on remand, and (3) resolving an equitable subrogation issue on remand did not require a new trial.

Vacated and remanded.

Gerrard Cox & Larsen and *Douglas D. Gerrard* and *Sheldon A. Herbert*, Henderson, for Appellants/Cross-Respondents.

Marquis Aurbach Coffing and *Scott A. Marquis, Micah S. Echols*, and *Tye S. Hanseen*, Las Vegas, for Respondent/Cross-Appellant.

1. SUBROGATION.
   "Equitable subrogation" permits a person who pays off an encumbrance to assume the same priority position as the holder of the previous encumbrance, so long as the payor (1) reasonably expected to receive a security interest in the real estate with the priority of the mortgage being discharged, and (2) subrogation does not materially prejudice the holders of intervening interests in the real estate. Restatement (Third) of Property: Mortgages § 7.6(b)(4).
2. APPEAL AND ERROR; COURTS.
   Lender's claim for equitable subrogation with regard to prospective purchaser's quiet title action, for monies paid to vendor who disappeared with loan proceeds, that was not reached or resolved by the district court, was not raised in appellate briefs, or discussed by the court panel on appeal, did not become the law of case; while the panel discussed prospective purchaser's quiet title claim in broad and expansive terms, its reference to quieting title in prospective purchaser was a description of her claim, not a disposition of the unmentioned equitable subrogation claim. Restatement (Third) of Property: Mortgages § 7.6(b)(4).
3. APPEAL AND ERROR; COURTS.
   The "law-of-the-case doctrine" refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided, i.e., established as law of the case, by that court or a higher one in earlier phases.
4. COURTS.
   Normally, for the law-of-the-case doctrine to apply, the appellate court must actually address and decide the issue explicitly or by necessary implication.
5. COURTS.
   Subjects an appellate court does not discuss, because the parties did not raise them, do not become the law of the case by default.

6. Appeal and Error.
   Lender's failure to raise equitable subrogation in a prior appeal from a judgment quieting title to real property in a prospective purchaser did not preclude it from doing so on remand to the district court; the district court did not rule on the equitable subrogation claim before the appeal, and thus, lender had no error to argue on the first appeal.
7. Appeal and Error.
   While there are clear adjudicative efficiencies created by requiring appellants to bring all of their objections to a judgment in a single appeal rather than *seriatim*, forcing appellees to put forth every conceivable alternative ground for affirmance might increase the complexity and scope of appeals more than it would streamline the progress of the litigation.
8. Appeal and Error.
   Courts hesitate to find waiver when the judgment from which an appeal is taken is entirely favorable to the appellee and that party, after losing the appeal, then seeks to raise a new issue during a later appeal of an unfavorable judgment.
9. Appeal and Error.
   Resolving an equitable subrogation issue on remand did not require a new trial, where the issue had already been tried to, but not yet decided by, the district court.
10. Appeal and Error.
    When an appellate court declines in its discretion to rehear a case en banc after a panel orders a remand, the court retains authority to rehear the matter en banc at a subsequent stage of the proceedings.
11. Appeal and Error.
    Denial of en banc reconsideration signifies that the petition does not qualify under the stringent requirements of the rule governing a petition for en banc consideration, nothing more. NRAP 40A.

Before the Court En Banc.[1]

OPINION

By the Court, Pickering, J.:

This real property dispute returns to this court for the third time. We vacate and remand for the district court to decide the lender's equitable subrogation claim, which neither the trial nor the prior appeals resolved.

I.

This dispute grows out of a contract giving respondent Lanlin Zhang the right to buy Frank Sorichetti's house (the Property). Sorichetti reneged, so Zhang sued him for specific performance and recorded a lis pendens against the Property. Sorichetti moved to dis-

[1]The Honorable Ron D. Parraguirre, Justice, voluntarily recused himself from participation in the decision of this matter.

miss and to expunge Zhang's lis pendens; the district court granted his motions. Zhang successfully petitioned this court for a writ of mandamus directing the district court to reinstate Zhang's complaint and vacate its expungement order. *Zhang v. Eighth Judicial Dist. Court* (*Zhang I*), 120 Nev. 1037, 103 P.3d 20 (2004), *abrogated in part by Buzz Stew, L.L.C. v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008).[2]

Months later, someone (the parties suspect Sorichetti) recorded the district court's nullified order of dismissal and expungement, giving the document a new title: "Release of Lis Pendens." Sorichetti then applied to appellant Countrywide for a $705,000 loan.[3] Before making the loan, Countrywide conducted a title search, which revealed both the lis pendens and the "Release." Countrywide accepted the "Release" as proof that the Property was no longer in litigation and loaned Sorichetti $705,000. Countrywide secured its loans by recording first and second deeds of trust against the Property. Of the amount loaned, $281,090.12 went to retire the preexisting mortgage debt. Sorichetti pocketed the balance and disappeared.

Sorichetti defaulted and Countrywide initiated foreclosure. When Zhang learned about the pending foreclosure, she amended her complaint to join Countrywide and add claims for declaratory judgment, negligence, slander of title, and to quiet title. Eventually, the district court entered default judgment against Sorichetti and ordered him to convey the Property to Zhang for the agreed-upon purchase price ($532,500) less damages due Zhang from Sorichetti ($262,868.31). But Zhang could not complete the purchase because of Countrywide's deeds of trust.

The district court conducted a bench trial on the dispute between Zhang and Countrywide. Before trial, the parties submitted a joint pretrial memorandum. The memorandum identified the "principal legal issue" as the validity and effect of Zhang's lis pendens. The parties stipulated "that Countrywide paid off prior loans against the Property in the amount of $230,864.29 and $50,225.83" and identified as an additional legal issue "[w]hether Countrywide is entitled to equitable subrogation in the amount of $281,090.12," the combined paid-off sum.

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[2]The case was assigned to and decided by a different district judge than the judge who rendered the order underlying this appeal.

[3]Refinancing was provided by appellant Silver State Financial Services, Inc., who assigned the notes and deeds of trust to its co-appellant Countrywide Home Loans, Inc. The third appellant, National Title Company, performed the title search. The parties do not differentiate among the appellants/cross-respondents in addressing the issues presented by this appeal and, for simplicity's sake, we refer to the appellants/cross-respondents collectively as Countrywide.

The district court ruled in Countrywide's favor without reaching equitable subrogation. It held that the ostensibly released lis pendens did not give Countrywide actual or constructive notice of Zhang's specific performance claim against Sorichetti. Thus, Countrywide's deeds of trust had priority for the full $705,000 they secured. Since the $705,000 included the $281,090.12 that retired the preexisting mortgage debt against the Property—the object of Countrywide's equitable subrogation claim—the district court did not need to decide that issue, and it didn't. It struck the equitable-subrogation references in the draft findings of fact and conclusions of law Countrywide submitted. It also denied Zhang's claims for negligence, slander of title, and to quiet title and awarded costs to Countrywide.[4]

Zhang appealed, and her appeal was heard by a three-judge panel of this court. The panel found no merit in Zhang's contention that the district court erred in rejecting Zhang's negligence and slander-of-title claims, but reversed as to Zhang's declaratory and quiet-title claims and costs. *Zhang v. Recontrust Co., N.A.* (*Zhang II*), Docket Nos. 52326/52835 (Order of Reversal and Remand, February 26, 2010). It held that Zhang's lis pendens put Countrywide on inquiry notice as to Zhang's suit against Sorichetti. Thus, the panel accepted Zhang's argument that "the district court erred in . . . concluding that Zhang's lis pendens should not be given priority over [Countrywide's] deeds of trust." *Id.* "Since it was error for the district court to conclude that the deeds of trust had priority over the lis pendens," the *Zhang II* panel wrote, "the district court's determination that title could not be quieted in Zhang's name because of the priority of the deeds of trust on the Property was also error." *Id.* The order and remittitur in *Zhang II* state that we "ORDER the judgment of the district court REVERSED and REMAND this matter to the district court for proceedings consistent with this order." *Id.*

Both sides filed petitions for panel rehearing and, when these were denied, for en banc reconsideration. Zhang challenged the panel's rejection of her negligence and slander-of-title claims, while Countrywide challenged the panel's decision that the lis pendens gave it constructive notice of Zhang's specific performance claim against Sorichetti. The parties questioned a footnote in *Zhang II* that stated, "Because we order the district court's judgment reversed, we vacate the district court's award of costs. We therefore remand to the district court to make a determination of whether attorney fees and costs are appropriate *pending the outcome of the new trial*." *Id.*

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[4]The district court rejected Zhang's negligence claim on the basis that she failed to establish the standard of care required to perform a "skillful and diligent title search and, further, whether a breach [of duty] occurred." It rejected her slander-of-title claim because she did not prove that Countrywide's deeds of trust were maliciously recorded.

(emphasis added). They asked the court to clarify the "new trial" the footnote alluded to.

The en banc court denied reconsideration, over Justice Hardesty's dissent. In doing so, it modified the questioned footnote to delete the reference to a "new trial." As modified, the footnote read: "We therefore remand this matter to the district court to determine whether attorney fees and costs are appropriate in light of this order." *Zhang v. Recontrust Co., N.A.*, Docket Nos. 52326/52835 (Order Denying En Banc Reconsideration and Modifying Prior Order, November 17, 2010). Otherwise, the en banc court left the panel order unchanged.

On remand, Countrywide asked the district court for a decision on equitable subrogation. The district court acknowledged the undecided equitable subrogation claim but stated that it did not "feel it [could] award equitable subrogation [since] it was not given jurisdiction to do so by the Supreme Court's Decision reversing and remanding this matter." The district court then entered judgment as follows: "Upon recordation of this Judgment, Lanlin Zhang shall be recognized in all official records as the owner of [property address]." The court also awarded most of what Zhang requested in fees and costs.

Countrywide filed a motion to alter or amend the judgment. It argued that not granting equitable subrogation meant that Zhang acquired the Property without paying off the debt to which it already was subject when she agreed to buy it. The district court pondered why "a person should get a free home." But it reiterated that, since the panel order did not give "any guidance as to how to handle the equitable subrogation issue whatsoever," it felt constrained to deny relief.

Countrywide appealed and Zhang cross-appealed.[5]

II.

A.

[Headnote 1]

Nevada recognizes the doctrine of equitable subrogation as formulated in section 7.6 of the Restatement (Third) of Property: Mortgages (1997). *Am. Sterling Bank v. Johnny Mgmt. LV, Inc.*, 126 Nev. 423, 428-29, 245 P.3d 535, 539 (2010). Equitable subrogation "permits 'a person who pays off an encumbrance to assume the same priority position as the holder of the previous en-

[5]Zhang argues that this court lacks jurisdiction because Countrywide filed an untimely notice of appeal. This argument lacks merit. As a motions panel of this court previously held, Countrywide filed a timely NRCP 59 motion which tolled the time for filing its appeal. *See* NRAP 4(a)(4). We also deny Countrywide's motion to strike Zhang's supplemental authorities.

cumbrance,' " *Houston v. Bank of Am. Fed. Sav. Bank*, 119 Nev. 485, 488, 78 P.3d 71, 73 (2003) (quoting *Mort v. United States*, 86 F.3d 890, 893 (9th Cir. 1996)), so long as the payor (1) "reasonably expected to receive a security interest in the real estate with the priority of the mortgage being discharged, and [(2)] subrogation [does] not materially prejudice the holders of intervening interests in the real estate." Restatement (Third) of Prop.: Mortgages § 7.6(b)(4). "The payor is subrogated only to the extent that the funds disbursed are actually applied toward payment of the prior lien. There is no right of subrogation with respect to any excess funds." *Id.* cmt. e.

Applying these principles to this case, Countrywide had a strong equitable subrogation position. It loaned Sorichetti $705,000, part of which paid off preexisting debt against the Property in the stipulated amount of $281,090.12. This left it to the district court to decide the other equitable-subrogation factors—Countrywide's reasonable expectations and the cognizable prejudice to Zhang of crediting Countrywide's position. *See Am. Sterling Bank*, 126 Nev. at 429-32, 245 P.3d at 539-41. But the district court did not decide equitable subrogation because it resolved the case on other, later-reversed grounds.

Although Zhang argues otherwise, Countrywide adequately raised equitable subrogation in the district court. The joint pretrial memorandum, submitted before trial pursuant to NRCP 16 and EDCR 2.67, stipulated without qualification or objection from Zhang that equitable subrogation was a legal issue in the case. *See* EDCR 2.67(b)(8) (the joint pretrial memorandum shall include a statement "of each principal issue of law which may be contested at the time of trial [and] include with respect to each principal issue of law the position of each party"); *cf. Walters v. Nev. Title Guar. Co.*, 81 Nev. 231, 234, 401 P.2d 251, 253 (1965) ("As a general proposition a pretrial order . . . control[s] the subsequent course of the trial and supersedes the pleadings."). Thus, as the district court acknowledged, equitable subrogation was legitimately in play, at least up until *Zhang II*.

B.

[Headnote 2]

The question we must decide is *Zhang II*'s impact on Countrywide's equitable subrogation claim. The district court took *Zhang II* as, *sub silentio*, rejecting equitable subrogation in favor of granting unencumbered title to Zhang. This reads more into the *Zhang II* proceedings and our law-of-the-case doctrine than either can sustain.

[Headnotes 3-5]

The law-of-the-case doctrine "refers to a family of rules embodying the general concept that a court involved in later phases of a law-

suit should not re-open questions decided (i.e., established as law of the case) by that court or a higher one in earlier phases." *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739 (D.C. Cir. 1995). Normally, "for the law-of-the-case doctrine to apply, the appellate court must actually address and decide the issue explicitly or by necessary implication." *Dictor v. Creative Mgmt. Servs., L.L.C.*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010); *see Wheeler Springs Plaza, L.L.C. v. Beemon*, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003) ("The doctrine only applies to issues previously determined, not to matters left open by the appellate court."). "Subjects an appellate court does not discuss, because the parties did not raise them, do not become the law of the case by default." *Bone v. City of Lafayette, Ind.*, 919 F.2d 64, 66 (7th Cir. 1990), *quoted with approval in Dictor*, 126 Nev. at 45, 223 P.3d at 334.

Zhang II did not decide equitable subrogation explicitly or by necessary implication. Zhang appealed the district court's conclusion that her lis pendens did not give Countrywide notice of her suit against Sorichetti, such that its deeds of trust had complete priority over her claim to specific performance. She also appealed the district court's rejection of her quiet title, negligence, and slander-of-title claims. Because the district court did not reach much less resolve equitable subrogation, the *Zhang II* briefs did not discuss it. And consistent with the general rule against considering matters not raised in the briefs, *see Fanders v. Riverside Resort & Casino, Inc.*, 126 Nev. 543, 549 n.2, 245 P.3d 1159, 1163 n.2 (2010), the panel did not discuss equitable subrogation either.

Nor did *Zhang II* reject equitable subrogation by necessary implication. To be sure, the panel in *Zhang II* discussed Zhang's quiet-title claim in broad and expansive terms. But the panel assumed that, if Zhang's lis pendens gave Countrywide constructive notice of her specific performance claim, its deeds of trust would be wholly subordinate to her right to purchase. "A position that has been assumed without decision for purposes of resolving another issue is not the law of the case." 18B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4478 (2d ed. 2002). The panel's reference to quieting title in Zhang was a description of her claim, not a disposition of the unmentioned equitable subrogation claim. *See Snow-Erlin ex rel. Estate of Erlin v. United States*, 470 F.3d 804, 808 (9th Cir. 2006) (holding that reference in the decision of a prior appeal in the same case to the plaintiff's claim as being for negligence, not false imprisonment, was descriptive not dispositive and did not establish law of the case for purposes of a later challenge to subject matter jurisdiction under the Federal Tort Claims Act, which waives the federal government's sovereign immunity for negligence but not false imprisonment claims).

C.

[Headnote 6]

Zhang next argues that Countrywide could and should have asserted equitable subrogation *defensively* in its answering brief in *Zhang II* and that Countrywide's omission supports the judgment in her favor. In effect, she invokes the "common . . . rule that a question that could have been but was not raised on one appeal cannot be resurrected on a later appeal to the same court in the same case." Wright, Miller & Cooper, *supra*, § 4478.6; *see United States v. Parker*, 101 F.3d 527, 528 (7th Cir. 1996) ("A party cannot use the accident of a remand to raise in a second appeal an issue that he could just as well have raised in the first appeal . . . ."). Certainly, it would have been prudent for Countrywide to advise the *Zhang II* panel of its undecided equitable subrogation claim as its fallback position, so the panel could make clear that it did not express an opinion on that claim. But its failure to raise equitable subrogation in *Zhang II* did not preclude it from doing so on remand to the district court for two reasons.

First, the district court did not rule on equitable subrogation before *Zhang II.* Waiver in the law-of-the-case context "applies only when the trial court has expressly or impliedly ruled on a question and there has been an opportunity to challenge that ruling on a prior appeal." *Crocker*, 49 F.3d at 740-41 n.2. Since the district court did not decide equitable subrogation, there was no error for Countrywide to argue.

[Headnotes 7, 8]

Second, Countrywide was the respondent or appellee in *Zhang II*, not the appellant. "While there are clear adjudicative efficiencies created by requiring *appellants* to bring all of their objections to a judgment in a single appeal rather than *seriatim* . . . , forcing *appellees* to put forth every conceivable alternative ground for affirmance might increase the complexity and scope of appeals more than it would streamline the progress of the litigation." *Crocker*, 49 F.3d at 740-41 (emphasis added) (also noting that an appellant seeking to persuade the court to overturn a district court ruling "enjoys the offsetting procedural benefit of filing both the opening and reply briefs," while an "appellee presenting alternative grounds for affirmance and facing a potential application of the waiver doctrine must also attack an adverse district court ruling . . . without the offsetting advantage of being able to file a reply brief"). For these reasons, courts hesitate to find waiver "where, as here, the judgment from which an appeal is taken is entirely favorable to the appellee and that party, after losing the appeal, then seeks to raise a new issue during a later appeal of an unfavorable

judgment." *United States v. Moran*, 393 F.3d 1, 12 (1st Cir. 2004); *see Eichorn v. AT&T Corp.*, 484 F.3d 644, 657-58 (3d Cir. 2007); *Laitram Corp. v. NEC Corp.*, 115 F.3d 947, 954 (Fed. Cir. 1997).

[Headnotes 9-11]

The proceedings on rehearing and reconsideration in *Zhang II* do not counsel a different result. When an appellate court "declines in its discretion to rehear a case en banc after a panel orders a remand, the court retains authority to rehear the matter en banc at a subsequent stage of the proceedings." *Cottier v. City of Martin*, 604 F.3d 553, 556-57 (8th Cir. 2010). Denial of en banc reconsideration signifies that the petition does not qualify under the stringent requirements imposed by NRAP 40A, nothing more. And the deletion of the "new trial" reference in footnote 3 of *Zhang II* addressed both sides' concerns that the order seemingly *required* a new trial when, in fact, trial of all issues already occurred. Resolving equitable subrogation—an issue already tried to but not yet decided by the district court—did not require a new trial. We thus do not find a fatal inconsistency between Countrywide's positions on rehearing and later on remand.

III.

For these reasons, we vacate the district court's judgment in favor of Zhang and remand with instructions to decide Countrywide's equitable subrogation claim on the merits and to enter final judgment accordingly. Vacating the judgment removes the predicate for the award of fees and costs contested on cross-appeal. We therefore vacate and remand as to attorney fees and costs as well.

GIBBONS, C.J., and HARDESTY, DOUGLAS, CHERRY, and SAITTA, JJ., concur.

GABRIELA GONZALES-ALPIZAR, APPELLANT/CROSS-RESPONDENT, *v.* EDWIN GRIFFITH, RESPONDENT/CROSS-APPELLANT.

No. 59387

January 30, 2014 317 P.3d 820

Appeal and cross-appeal from a final determination concerning a complaint for divorce. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Ex-wife sought to enforce order of child and spousal support, which order was obtained by ex-wife against ex-husband in Costa Rican court prior to entry of Costa Rican divorce decree. The district court found enforceable any support provision within order, provid-

ing order was valid and enforceable under Costa Rican law, concluded that Costa Rica was appropriate forum to determine enforceability of order, and directed parties to litigate issues of enforceability in Costa Rica. Ex-wife appealed, and ex-husband cross-appealed. The supreme court, HARDESTY, J., held that: (1) support order was not enforceable in Nevada courts under Uniform Interstate Family Support Act, (2) Restatement (Third) of Foreign Relations Law of the United States section would be adopted, (3) lack of due process did not provide basis for Nevada courts to refuse to enforce support order under doctrine of comity, (4) the district court did not commit reversible error in concluding that premarital agreement was enforceable, (5) the supreme court would decline to recognize and enforce spousal support order under doctrine of comity, and (6) the supreme court would remand to the district court to make appropriate findings of fact and conclusions of law regarding enforceability of child support order.

Affirmed in part, reversed in part, and remanded.

Richard F. Cornell, Reno, for Appellant/Cross-Respondent.

Kristi Beth Luna, Reno, for Respondent/Cross-Appellant.

1. CHILD SUPPORT.
   Uniform Interstate Family Support Act governs multiple jurisdiction involvement in child support issues, and its purpose is to ensure that only one child support order is effective at any given time. NRS 130.0902 *et seq.*
2. CHILD SUPPORT.
   Uniform Interstate Family Support Act provides procedures for the enforcement and modification of a child support order issued by another state. NRS 130.0902 *et seq.*
3. CHILD SUPPORT.
   Costa Rica was not a "foreign reciprocating country," for purposes of Uniform Interstate Family Support Act enforcement of support order obtained by ex-wife against ex-husband in Costa Rican court, under federal law. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 371(a), 42 U.S.C. § 659a; NRS 130.10179(2)(b).
4. CHILD SUPPORT.
   Nevada did not recognize Costa Rica as a "state" for purposes of Uniform Interstate Family Support Act enforcement of support order obtained by ex-wife against ex-husband in Costa Rican court, where Nevada Attorney General had not declared Costa Rica to be a foreign country in which reciprocal provisions were made to ensure the enforceability of foreign support orders, and Costa Rica did not maintain reciprocal agreement with United States or Nevada. NRS 130.035(1), 130.10179(2)(c).
5. CHILD SUPPORT.
   Ex-wife failed to prove that Costa Rica met definition of a "state," for purposes of Uniform Interstate Family Support Act (UIFSA) enforcement of Costa Rican support order against ex-husband, by having procedures for enforcement of support orders that were substantially similar to those under UIFSA, where ex-wife presented only irrelevant evidence comparing laws for establishing and modifying child support in Nevada and Costa Rica and made no argument that Costa Rica had enacted procedures for interjurisdictional enforcement similar to those under UIFSA. NRS 130.10179(2)(a).

6. Child Support.
   Support order obtained by ex-wife against ex-husband in Costa Rican court was not enforceable in Nevada courts under Uniform Interstate Family Support Act (UIFSA), where ex-wife failed to establish that Costa Rica was a "state" for purposes of UIFSA enforcement. NRS 130.035(1), 130.10179(2).
7. Courts; International Law.
   The doctrine of "comity" is a principle of courtesy by which the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect.
8. Child Support; Divorce.
   Restatement (Third) of Foreign Relations Law of the United States section, providing analytical framework for determining whether to enforce a foreign judgment or order under doctrine of comity, would be adopted to analyze whether a foreign support award for spousal and child support should be recognized under the doctrine of comity. Restatement (Third) of Foreign Relations Law of the United States § 482.
9. Constitutional Law.
   Due process, in relation to comity, encompasses the idea that a foreign order was granted after proper service or voluntary appearance of the defendant. U.S. Const. amend. 14.
10. Child Support; Constitutional Law; Divorce.
    Lack of due process by failure of notice to ex-husband of ex-wife's action for child and spousal support did not provide basis for Nevada courts to refuse to enforce under doctrine of comity support order obtained by ex-wife against ex-husband in Costa Rican court; at minimum, ex-husband was made reasonably aware that ex-wife was serving him with some form of legal papers, despite his inability to understand Spanish, when he was personally handed papers while in ex-wife's attorney's office to discuss divorce settlement. U.S. Const. amend. 14.
11. Husband and Wife.
    Premarital agreement precluding any award of spousal support unless divorce left either party eligible for public assistance support was enforceable against ex-wife, where ex-wife knowingly and voluntarily signed agreement and failed to demonstrate how agreement was unconscionable. NRS 123A.080(1), (2).
12. Husband and Wife.
    The validity of a premarital agreement is reviewed by the supreme court de novo. NRS 123A.080.
13. Divorce.
    The supreme court would decline to recognize and enforce under doctrine of comity an order of spousal support obtained by ex-wife against ex-husband in Costa Rican court after purposefully failing to provide Costa Rican court with enforceable premarital agreement precluding any award of spousal support unless divorce left either party eligible for public assistance support. NRS 123A.080.
14. Appeal and Error; Child Support.
    The supreme court was unable to determine whether order of child support obtained by ex-wife against ex-husband in Costa Rican court should be enforced in Nevada courts as a matter of comity, and thus the supreme court would remand to the district court to make appropriate findings of fact and conclusions of law under Restatement (Third) of Foreign Relations Law of the United States approach adopted by the supreme court, where the district court deferred ruling on ex-husband's defenses to child support award to Costa Rican court. Restatement (Third) of Foreign Relations Law of the United States § 482.

Before the Court EN BANC.

OPINION

By the Court, HARDESTY, J.:

In this appeal, we address whether a spousal and child support order entered by a family court in Costa Rica is enforceable in Nevada. The Uniform Interstate Family Support Act (UIFSA), as enacted in Nevada, allows for the enforcement of a foreign support order when the order is entered in a country that is a recognized "state" under NRS Chapter 130. UIFSA sets forth three different methods by which a foreign country may be considered a "state" for purposes of enforcing that country's support orders. The first method clearly does not apply here, and we determine that neither of the other two methods authorizes the court to consider Costa Rica a state for UIFSA purposes. Pursuant to the second method, the Nevada Attorney General, under NRS 130.035(1), has not declared Costa Rica a foreign country in which reciprocal provisions will be made ensuring the enforceability of foreign support orders. Further, under the third method, the record fails to demonstrate, pursuant to NRS 130.10179(2)(a), that Costa Rica follows enforcement procedures that are "substantially similar" to those established under UIFSA. Accordingly, UIFSA does not require the district court to enforce the order.

In addition to UIFSA, however, a foreign support order may be enforced under the doctrine of comity. We determine that, because the existence of the parties' premarital agreement was not disclosed to the Costa Rican court issuing the support order, the award for spousal support should not be recognized in Nevada as a matter of comity. The child support award may be recognized, however, and we remand for the district court to make factual findings on Griffith's claim that the child support was obtained through fraud because Gonzales-Alpizar misrepresented Griffith's income and assets to the Costa Rican court.

FACTS AND PROCEDURAL HISTORY

Respondent/cross-appellant Edwin Griffith, a resident of Reno, met appellant/cross-respondent Gabriela Gonzales-Alpizar, a citizen and native of Costa Rica, when he went to Costa Rica to visit friends. In 1999, the two were married in Costa Rica. Prior to the marriage, the parties entered into a premarital agreement prepared by Griffith's counsel and signed by both Gonzales-Alpizar and her counsel Maria Fait-Shaw in Costa Rica. Among other provisions, the premarital agreement waived any claim for alimony or spousal support, unless the divorce resulted in one party becoming eligible for public assistance support. It also provided that the laws of the

State of Nevada would govern the premarital agreement's execution and performance, without regard to where the parties resided.

After the parties were married, they returned to Reno with Gonzales-Alpizar's daughter Nicolle. Shortly thereafter, Gonzales-Alpizar gave birth to a son, Anthony Griffith-Gonzalez. Griffith and Gonzales-Alpizar resided in Reno for over three years. In 2002, their relationship began to deteriorate.

The family traveled to Costa Rica in February 2003, but Gonzales-Alpizar refused to return to Reno. Griffith returned alone, leaving Gonzales-Alpizar and the two children in Costa Rica. Griffith subsequently visited Costa Rica twice in 2003 and once in 2004. Griffith returned to Costa Rica one last time in February 2005, and the parties met to discuss a divorce settlement.

Procedural history in Costa Rica

2005 Costa Rican spousal and child support order

At the commencement of the parties' divorce settlement discussions in Costa Rica, Griffith was allegedly served with notice and process of a Demand for Alimony, which as explained by Gonzales-Alpizar includes spousal and child support under Costa Rican law. The parties dispute what occurred and whether Griffith was actually served with process. According to Gonzales-Alpizar, after both she and her attorney explained to Griffith that he was being served with legal documents regarding alimony and child support, Griffith became very angry, threw the papers to the floor, and immediately left. According to Griffith, however, a stranger approached him in the waiting room of the attorney's office and read aloud from paperwork in Spanish. Griffith did not understand what the person was saying, and Gonzales-Alpizar refused to respond to his multiple requests to explain what was happening. He left the office with no paperwork and no explanation in English as to what was said. Gonzales-Alpizar's version is supported by a Costa Rican court officer's affidavit asserting that she served the Demand for Alimony upon Griffith in an attorney's office, Griffith understood what the documents were, he refused to receive them, and he left immediately.

Based on this alleged service and Griffith's failure to answer the complaint in a Costa Rican court, a default judgment was entered against Griffith in September 2005, which ordered him to pay $180 per month in spousal support, $235 per month in child support for Anthony, and an additional $235 per month in child support for Nicolle (2005 Costa Rican support order).[1] The support award was based on Gonzales-Alpizar's representation of Griffith's earned in-

[1]Nicolle is not Griffith's biological child. A dispute exists as to whether Griffith adopted Nicolle under Costa Rican law.

come. Gonzales-Alpizar failed to disclose the terms of the premarital agreement to the court.

2007 Costa Rican divorce decree

In January 2006, Gonzales-Alpizar filed a complaint for divorce against Griffith in Costa Rica. After an initial, unsuccessful attempt to serve process of the divorce complaint, Gonzales-Alpizar obtained the Costa Rican court's permission to seek service of process upon Griffith through publication in Costa Rica, despite knowing that Griffith resided in Nevada and making no effort to notify him of the divorce proceedings. Gonzales-Alpizar's divorce complaint also failed to inform the Costa Rican court of the existence of the premarital agreement entered between the parties in August 1999.

Griffith never responded to or appeared in the action, and in April 2007, the Costa Rican court entered a final divorce decree (2007 Costa Rican decree), granting Gonzales-Alpizar's request for divorce and giving her custody of the two children with parental authority jointly held. The prior award of alimony and child support under the 2005 Costa Rican support order was confirmed. The parties were finally divorced under Costa Rican law in June 2007, when the decree was published in the "Boletin Judicial."

Procedural history in Nevada

Meanwhile, Griffith filed a complaint for divorce in Nevada in April 2007.[2] Although a default divorce decree was initially entered, Gonzales-Alpizar successfully moved to set aside the default decree, and she filed an answer to Griffith's complaint for divorce in June 2010. At issue in the district court was whether the court had jurisdiction over the divorce proceeding, in light of the 2007 Costa Rican decree, and whether the court had authority to enforce the 2005 Costa Rican support order.

The district court first found that because the parties had been effectively divorced under the 2007 Costa Rican decree, it was unnecessary to enter any decree dissolving the bonds of matrimony in Nevada. Nevertheless, the court determined that service of process was not valid in the Costa Rican divorce proceeding, and while the court had no authority to set aside that decree, the court would not enforce the spousal support and child custody provisions contained within it.[3]

As for the 2005 Costa Rican support order, the district court concluded that Griffith was served with notice and process in that pro-

[2]Griffith initially filed for divorce in Nevada in April 2006. However, the first divorce action was dismissed due to a lack of proper service.

[3]The parties do not challenge, and we do not address, the court's determination that the parties were effectively divorced under the 2007 Costa Rican divorce decree.

ceeding.[4] The court found enforceable any support provision within that order, provided that the order is valid and enforceable under Costa Rican law. The district court also concluded that Costa Rica was the appropriate forum to determine the enforceability of the 2005 Costa Rican support order, including any defenses Griffith might have in that action, whether that order is still valid, or whether the 2007 divorce decree served to modify or vitiate it. The district court directed the parties to litigate those issues in Costa Rica, under the presumption that the district court would have authority to enforce the order once it was found to be valid and effective. The district court entered a final determination as to its jurisdiction over the matter, and both parties timely appealed. On appeal, Gonzales-Alpizar argues that the 2005 Costa Rican support order is enforceable in Nevada and that the support arrears should be reduced to judgment.[5] Griffith asserts that the support order is unenforceable based on improper service of the Demand for Alimony and fraud in the procurement of the support order.

DISCUSSION

To resolve this appeal, we must determine whether the 2005 Costa Rican support order is enforceable in Nevada either under the terms of UIFSA or under the doctrine of comity, both of which are issues of first impression.

The 2005 Costa Rican support order is not enforceable under UIFSA

[Headnotes 1, 2]

UIFSA governs multiple jurisdiction involvement in child support issues, and its purpose is to ensure that only one child support order is effective at any given time. *See Vaile v. Porsboll*, 128 Nev. 27, 30, 268 P.3d 1272, 1274 (2012). UIFSA has been codified in Nevada under NRS Chapter 130 and provides procedures for the enforcement and modification of a support order issued by another state. Under NRS 130.10179(2), the term "state" is defined to include a foreign country if one of the following three conditions is met: (1) the country has been declared to be a foreign reciprocating country under federal law, (2) the state's attorney general has declared

[4]The district court found that although Griffith

> certainly did not understand the Demand for Alimony because it was written in Spanish, he had resources with which to understand the document and retain legal assistance. [Griffith] was also on notice of the difficulties he could encounter. He married a woman from another country, in her country and acquiesced to her post-marriage presence in her home country.

[5]Gonzales-Alpizar does not challenge the district court's finding that the 2007 Costa Rican decree is invalid as it relates to spousal and child support.

the country a "state" because it has reciprocal provisions ensuring the enforcement of support orders, or (3) the country has enacted law or established procedures for enforcing support orders that are substantially similar to those under UIFSA. *See* NRS 130.10179(2).

[Headnote 3]

The parties do not dispute that Costa Rica has not been declared a foreign reciprocating country under federal law. *See* NRS 130.10179(2)(b). Thus, the first definition of "state" is not met. And, we turn to whether Nevada has declared Costa Rica a "state" for purposes of UIFSA. Gonzales-Alpizar argues that the 2005 Costa Rican support order is enforceable under UIFSA because Costa Rica constitutes a "state" pursuant to NRS 130.035(1). NRS 130.035(1) provides that "[w]hen the Attorney General is satisfied that reciprocal provisions will be made by any foreign country . . . for the enforcement therein of support orders made within this State, the Attorney General may declare the foreign country . . . to be a state" as intended by NRS Chapter 130.

[Headnote 4]

We conclude that Nevada has not recognized Costa Rica as a "state" for purposes of UIFSA enforcement. The Attorney General has not declared Costa Rica to be a foreign country in which reciprocal provisions will be made to ensure the enforceability of foreign support orders, as required by NRS 130.035(1). Additionally, the Nevada Department of Health and Human Services provides that "[r]eciprocity is the mutual agreement between the United States or State of Nevada and a foreign country to process child support cases." *See* Nev. Dep't of Health and Human Servs., Div. of Welfare and Supportive Serv., Child Support Enforcement Manual (Manual), ch. II § 211 (March 1, 2011). Costa Rica is not a foreign country that maintains a reciprocal agreement with the United States or Nevada. *Id.* Nevada specifically provides reciprocity in child support cases with only four countries other than those recognized by the United States, and Costa Rica is not listed as one of those countries. *See* Manual, *supra*, § 211.

[Headnote 5]

We next consider whether Costa Rica meets the third definition of "state" by having procedures for the enforcement of support orders that are substantially similar to those under UIFSA. *See* NRS 130.10179(2). Gonzales-Alpizar contends that Costa Rica has procedures substantially similar to those under UIFSA, thereby meeting the definition of "state" and permitting Nevada to enforce the 2005 Costa Rican support order, but not to modify the terms of that judgment. *See* NRS 130.2055(2). The only support for Gonzales-Alpizar's "substantially similar" argument is a compar-

ison of the laws for establishing and modifying child support in Nevada and Costa Rica. That comparison, however, is not the relevant inquiry.

Rather, under NRS 130.10179(2), a foreign country may qualify as a state when it "[h]as enacted a law or established procedures . . . which are substantially similar to the procedures established under the Uniform Interstate Family Support Act." Thus, Costa Rica may be considered a "state" only if it can be shown that it has laws or procedures that allow for a foreign judgment to be recognized, *i.e.*, laws on reciprocity, and that those laws are "substantially similar" to UIFSA. *See* NRS 130.10179(2); *see also Haker-Volkening v. Haker*, 547 S.E.2d 127, 131 (N.C. Ct. App. 2001) ("UIFSA requires that 'a foreign nation must have substantially similar law or procedures to . . . UIFSA . . . (*that is, reciprocity*) in order for its support orders to be treated as if they had been issued by a sister State.' " (alterations in original) (emphasis added) (quoting Official Comment, N.C. Gen. Stat. § 52C-1-101(19) (1999))).

[Headnote 6]

The evidence presented by Gonzales-Alpizar, comparing Nevada's laws with Costa Rica's laws regarding child support awards, is irrelevant to the question of whether Costa Rica is a "state," and she makes no argument that Costa Rica has enacted procedures for interjurisdictional enforcement similar to those under UIFSA. Thus, because Gonzales-Alpizar did not establish that Costa Rica was a "state," we conclude that the 2005 Costa Rican support order is not enforceable under UIFSA. *See Haker-Volkening*, 547 S.E.2d at 131 (refusing to enforce a foreign support order when the party seeking to enforce the order failed to establish on the record that Switzerland was a "state" for the purposes of UIFSA).

The spousal support provision of the 2005 Costa Rican support order is not enforceable under the doctrine of comity

[Headnote 7]

Although UIFSA does not apply to the 2005 Costa Rican support order, we must still consider whether the order might be enforceable by a Nevada court under the doctrine of comity. This doctrine is a principle of courtesy by which "the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect." *Mianecki v. Second Judicial Dist. Court*, 99 Nev. 93, 98, 658 P.2d 422, 424-25 (1983). This court has not previously considered the circumstances under which a foreign spousal and child support order will be enforceable in Nevada under the doctrine of comity.

[Headnote 8]

In doing so, we consider the approach taken by the Restatement (Third) of Foreign Relations Law of the United States, which discusses reasons why a foreign judgment or order should not be enforced under comity. Section 482(1) provides: "[a] court in the United States may not recognize a judgment of the court of a foreign state" if "the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with due process of law," or if "the court that rendered the judgment did not have jurisdiction over the defendant." Restatement (Third) of Foreign Relations Law of the United States § 482(1) (1987). Section 482(2) further provides that a court "need not recognize" a foreign judgment if:

> (a) the court that rendered the judgment did not have jurisdiction of the subject matter of the action;
>
> (b) the defendant did not receive notice of the proceedings in sufficient time to enable him to defend;
>
> (c) the judgment was obtained by fraud;
>
> (d) the cause of action on which the judgment was based, or the judgment itself, is repugnant to the public policy of the United States or of the State where recognition is sought;
>
> (e) the judgment conflicts with another final judgment that is entitled to recognition; or
>
> (f) the proceeding in the foreign court was contrary to an agreement between the parties to submit the controversy on which the judgment is based to another forum.

Id. § 482(2).

The Ninth Circuit Court of Appeals has adopted the Restatement (Third) approach to enforcing foreign judgments, stating that it "provide[s] sound guidance for assessing legal judgments of other nations." *Wilson v. Marchington*, 127 F.3d 805, 810 (9th Cir. 1997). Several state courts have also adopted section 482 of the Restatement (Third) to analyze whether foreign orders should be recognized under the doctrine of comity. *See Office of Child Support v. Sholan*, 782 A.2d 1199, 1203-04 (Vt. 2001) (adopting the Restatement approach in determining whether or not to enforce a foreign support order); *see also Alberta Sec. Comm'n v. Ryckman*, 30 P.3d 121, 126 (Ariz. Ct. App. 2001); *Bondi v. Citigroup, Inc.*, 32 A.3d 1158, 1185-86 (N.J. Super. Ct. App. Div. 2011).

We find the reasoning of section 482 of the Restatement (Third) and these courts to be consistent with Nevada's jurisprudence under the Full Faith and Credit Clause, as Nevada courts will refuse to recognize a judgment or order of a sister state if there is "a showing of fraud, lack of due process, or lack of jurisdiction in the rendering

state." *Rosenstein v. Steele*, 103 Nev. 571, 573, 747 P.2d 230, 231 (1987). We therefore adopt section 482 of the Restatement (Third) of Foreign Relations Law of the United States to analyze whether a foreign support award for spousal and child support should be recognized by Nevada courts under the doctrine of comity.

Griffith argues that the 2005 Costa Rican support order cannot be enforced by a Nevada court under the doctrine of comity based on lack of due process and fraud in the procurement of the order. We must consider whether Griffith's contentions are valid and thus prevent this court from recognizing the 2005 Costa Rican support order.

[Headnote 9]

First, as to the due process argument, although the parties offer differing versions of the service of the Demand for Alimony, the district court found that Griffith was served with notice and process of the 2005 Costa Rican support order. Due process, in relation to comity, encompasses the idea that the order was granted after "proper service or voluntary appearance of the defendant." *Wilson*, 127 F.3d at 811. This court has stated that " '[a]n elementary and fundamental requirement of due process . . . is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections.' " *Browning v. Dixon*, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

[Headnote 10]

Here, the record demonstrates that, at the very least, Griffith was reasonably made aware that Gonzales-Alpizar was serving him with some form of legal papers despite his inability to understand Spanish. Griffith was personally handed these papers while in an attorney's office to discuss a divorce settlement. Thus, substantial evidence supports the district court's determination that Griffith was properly served with the Demand for Alimony. *Bedore v. Familian*, 122 Nev. 5, 9-10, 125 P.3d 1168, 1171 (2006) (stating that this court will not disturb a district court's findings of fact "if they are supported by substantial evidence" (internal quotation omitted)). As such, lack of due process would not provide a basis to refuse to enforce the support order under the principle of comity.

[Headnote 11]

Second, Griffith argues that the spousal support award was procured through fraud because Gonzales-Alpizar failed to disclose to the Costa Rican court the existence of the premarital agreement, which precluded any award of spousal support. Gonzales-Alpizar does not appear to challenge this factual assertion, instead arguing

that the premarital agreement was void as a matter of Costa Rican law such that the lack of disclosure is immaterial.

[Headnote 12]

Specifically, Gonzales-Alpizar argues that the parties' premarital agreement was unenforceable because she did not execute the agreement knowingly or voluntarily and because the agreement is unconscionable. *See* NRS 123A.080(1)(a) and (b). The validity of a premarital agreement is reviewed by this court de novo. *See Fick v. Fick*, 109 Nev. 458, 463, 851 P.2d 445, 449 (1993); *Sogg v. Nev. State Bank*, 108 Nev. 308, 312, 832 P.2d 781, 783 (1992); *see also* NRS 123A.080(3). Our review of the record demonstrates that Gonzales-Alpizar did knowingly and voluntarily sign the premarital agreement, and Gonzales-Alpizar has failed to demonstrate how the agreement was unconscionable. Thus, we conclude that the district court did not commit reversible error in concluding that the parties' premarital agreement was enforceable. *See* NRS 123A.080(1) and (2); *Sogg*, 108 Nev. at 312, 832 P.2d at 783-84.

[Headnote 13]

Because the premarital agreement is enforceable, we decline to recognize and enforce the 2005 Costa Rican spousal support order under the doctrine of comity where a spouse purposefully failed to provide to the foreign court the premarital agreement that governed the parties' agreement regarding spousal support.

The child support portion of the 2005 Costa Rican support order might be entitled to enforcement under the doctrine of comity

[Headnote 14]

However, the failure to disclose the premarital agreement would not necessarily prevent the district court from enforcing the child support order because the agreement contained no provision concerning child support. The 2005 Costa Rican support order awarded child support for Griffith's biological son Anthony and Gonzales-Alpizar's daughter Nicolle. Griffith challenges any responsibility to support Nicolle because Griffith claims Gonzales-Alpizar misrepresented Griffith's parental relationship with Nicolle to the Costa Rican court. Griffith also argues that the entire child support award was procured through fraud because Gonzales-Alpizar misrepresented his income and properties in procuring the award, and the award would render him destitute in violation of Nevada public policy. The district court failed to make any specific findings concerning Griffith's adoption of Nicolle or his fraud claim, instead concluding that

> [Griffith] may have had and may still have valid defenses to the alimony/child support proceedings. The questions of his

> responsibility for Nicolle, . . . and [Gonzales-Alpizar's] alleged fraud, in describing Plaintiff's resources to the Costa Rican court . . . are not resolved to [Griffith's] satisfaction. However, the only forum for resolving these issues is the Country of Costa Rica.

Because the district court deferred ruling on Griffith's parental status in regard to Nicolle and his other defenses to the child support award to the Costa Rican court, this court is unable to determine whether comity should be granted or denied to the child support award. Thus, we remand this issue to the district court to make appropriate findings of fact and conclusions of law under the Restatement (Third) approach adopted by this court, and to determine whether the child support portion of the 2005 Costa Rican support order should be enforced as a matter of comity.

Because the district court erred in concluding that it may have to enforce the spousal support provision of the 2005 Costa Rican support order if it is determined valid and enforceable in a Costa Rican court, we reverse that portion of the district court's order, and we affirm in all other respects.

GIBBONS, C.J., and PICKERING, PARRAGUIRRE, DOUGLAS, CHERRY, and SAITTA, JJ., concur.

ERNESTO TORRES AND LEONOR TORRES, INDIVIDUALLY, AND ERNESTO TORRES, AS SPECIAL ADMINISTRATOR FOR ANDRES TORRES, DECEASED; ERNESTO TORRES FOR ARMANDO TORRES AND CRYSTAL TORRES, MINORS, REPRESENTED AS THEIR GUARDIAN AD LITEM; VICTORIA CAMPE, AS SPECIAL ADMINISTRATOR OF FRANK ENRIQUEZ, DECEASED; PATRICIA JAYNE MENDEZ, FOR JOSEPH ENRIQUEZ, JEREMY ENRIQUEZ, AND JAMIE ENRIQUEZ, MINORS, REPRESENTED AS THEIR GUARDIAN AD LITEM; AND MARIA ARRIAGA FOR KOJI ARRIAGA, REPRESENTED AS HIS GUARDIAN AD LITEM, APPELLANTS, *v.* GOODYEAR TIRE & RUBBER COMPANY, RESPONDENT.

No. 60904

January 30, 2014 317 P.3d 828

Appeal from a post-judgment order refusing to award compound post-judgment interest. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

After obtaining jury verdict awarding damages from tire manufacturer for personal injuries and multiple deaths caused by

single-vehicle accident, motorists sought compound post-judgment interest. The district court denied request. Motorists appealed. The supreme court, SAITTA, J., held that there was no statutory authorization for award of compound interest on judgment.

Affirmed.

Cap & Kudler and *Allen A. Cap*, Las Vegas; *Albert D. Massi, Ltd.*, and *Albert D. Massi*, Las Vegas, for Appellants.

Lewis Roca Rothgerber, LLP, and *Daniel F. Polsenberg* and *Joel D. Henriod*, Las Vegas, for Respondent.

1. INTEREST.
   Compound interest is generally not favored by the law and is typically allowed only by statute or agreement between the parties.
2. APPEAL AND ERROR.
   The supreme court reviews an award of interest upon a judgment for error.
3. APPEAL AND ERROR.
   The supreme court uses a de novo standard of review when it interprets a statute.
4. STATUTES.
   When interpreting a statute, the supreme court gives words their plain meaning unless attributing the plain meaning would violate the spirit of the statute.
5. STATUTES.
   If a statute is unambiguous, the supreme court is not permitted to look beyond the statute itself when determining its meaning.
6. STATUTES.
   A statute is ambiguous when it is capable of more than one reasonable interpretation.
7. INTEREST.
   When not provided for by an agreement, compound interest on a judgment is only permissible if authorized by statute.
8. STATUTES.
   Statutes must be interpreted as a whole.
9. INTEREST.
   Statutory term "adjusted accordingly" in the last sentence of the statute that provided a statutory right for interest on judgments did not mean that every time the interest was adjusted, the judgment's principal was to be adjusted to include the interest accrued during the prior six-month period, but, rather, as used in this statute, "adjusted accordingly" instructed the reader that the interest rate had to be adjusted every six months to a rate that was two percent higher than the prime rate at Nevada's largest bank, and statute did not state that the amount of principal was to be adjusted, or that interest was to accrue on interest that had already been accumulated. NRS 17.130.
10. INTEREST.
    Although the use of the term "per annum" in a statute about interest rates may be sufficient to dictate the use of simple interest, it is not a necessary term for requiring the use of simple interest.

Before the Court EN BANC.

OPINION

By the Court, SAITTA, J.:

[Headnote 1]

After obtaining a jury verdict awarding damages for personal injuries and multiple deaths caused by a single vehicle accident, members of the Torres and Enriquez families and Koji Arriaga (the appellants) sought compound post-judgment interest on the judgment. At issue here is whether the appellants are entitled to compound interest on the judgment awarded to them. We hold that they are not. "As a general rule, compound interest is not favored by the law and is generally allowed only in the presence of a statute or an agreement between the parties allowing for compound interest." *Campbell v. Lake Terrace, Inc*., 111 Nev. 1329, 1333, 905 P.2d 163, 165 (1995), *overruled on other grounds by Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 115, 110 P.3d 59, 60-61 (2005). NRS 17.130(2), the statute that provides a default interest rate for judgments, directs that the interest rate will be adjusted biannually, although the statute does not authorize compound interest. Because it does not authorize compound interest, NRS 17.130(2) only allows for the award of simple interest on judgments.

FACTS AND PROCEDURAL HISTORY

The underlying facts of this case were before this court in *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 235 P.3d 592 (2010), and *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 606, 245 P.3d 1182 (2010). The appellants, along with members of the Bahena family, were traveling in a rental vehicle whose tire separated while on a highway in Utah. As a result, the vehicle rolled over. Several people were killed and several others were severely injured.

The district court struck Goodyear's answer for failure to properly conduct discovery and entered a default liability judgment against Goodyear. After a jury verdict and post-trial motions on the issue of damages, the district court entered a judgment awarding damages to the appellants and the other plaintiffs. The parties then reached a settlement in which the appellants preserved their right to seek compound interest. Goodyear paid the settlement amount and simple interest to the appellants.

The appellants then filed a motion to recover compound interest on the judgment. The district court denied their motion because it concluded that NRS 17.130 only allowed simple interest. This appeal followed.

DISCUSSION

[Headnotes 2, 3]

The sole issue in this appeal is whether NRS 17.130, which provides a statutory right for interest on judgments, authorizes an award of compound interest. We review the award of interest upon a judgment for error. *Schiff v. Winchell*, 126 Nev. 327, 329, 237 P.3d 99, 100 (2010). Moreover, because the parties dispute the meaning of NRS 17.130, we use a de novo standard of review as we interpret the statute. *Kerala Props., Inc. v. Familian*, 122 Nev. 601, 604, 137 P.3d 1146, 1149 (2006).

[Headnotes 4-6]

"When interpreting a statute, we give words their plain meaning unless attributing the plain meaning would violate the spirit of the statute." *Banks ex rel. Banks v. Sunrise Hosp.*, 120 Nev. 822, 846, 102 P.3d 52, 68 (2004). If the statute is unambiguous, we are "not permitted to look beyond the statute itself when determining its meaning." *Westpark Owners' Ass'n v. Eighth Judicial Dist. Court*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007). A statute "is ambiguous when it is capable of more than one reasonable interpretation." *Orion Portfolio Servs. 2, L.L.C. v. Cnty. of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. 397, 402, 245 P.3d 527, 531 (2010).

[Headnote 7]

Simple interest is "[i]nterest paid on the principal only and not on accumulated interest." *Black's Law Dictionary* 887 (9th ed. 2009). Compound interest is "[i]nterest paid on both the principal and the previously accumulated interest." *Id*. When not provided for by an agreement, compound interest on a judgment is only permissible if authorized by statute. *Campbell*, 111 Nev. at 1333, 905 P.2d at 165. Because there is no agreement that provides for compound interest on the appellants' judgment, NRS 17.130 must authorize compound interest for it to be applied to their judgment instead of simple interest.

NRS 17.130(2) dictates the method of determining the interest rate. It provides that the default interest rate on judgments shall be based on the prime rate at Nevada's largest bank and be adjusted biannually:

> When no rate of interest is provided by contract or otherwise by law, or specified in the judgment, the judgment draws interest from the time of service of the summons and complaint until satisfied, except for any amount representing future damages, which draws interest only from the time of the entry of the judgment until satisfied, at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1,

> as the case may be, immediately preceding the date of judgment, plus 2 percent. *The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.*

NRS 17.130(2) (emphasis added).

[Headnotes 8, 9]

The parties disagree about the meaning of the last sentence in the statute: "The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied." NRS 17.130(2). They also dispute whether the term "per annum" is necessary to denote the use of simple interest.

The appellants argue that the term "adjusted accordingly" in the last sentence of NRS 17.130(2) means that every time the interest is adjusted, the judgment's principal must be adjusted to include the interest accrued during the prior six-month period. However, this interpretation takes the phrase "adjusted accordingly" out of context. Statutes must be interpreted as a whole, and the appellants fail to read the two sentences of the statute together. *See Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (2011) (explaining that provisions of a statute must be read as a whole). As used in this statute, "adjusted accordingly" instructs the reader that the interest rate must be adjusted every six months to a rate that is two percent higher than the prime rate at Nevada's largest bank. The statute does not state that the amount of principal is to be adjusted, or that interest is to accrue on interest that has already been accumulated. Therefore, the phrase "adjusted accordingly" does not authorize compound interest.[1]

[Headnote 10]

The appellants also argue that the phrase "per annum" designates that the interest is to be simple. The failure to use this term in NRS 17.130(2), they argue, authorizes an award of compound interest. Cases from other jurisdictions demonstrate that "per annum" can designate the application of simple interest. *See, e.g.*, *Am. Sav. Bank v. Michael*, 474 N.Y.S.2d 300, 303 (App. Div. 1984) ("[W]hen an interest rate is . . . expressed as a percent per annum, it should be

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[1]Additionally, the use of a variable interest rate in a statute does not necessarily imply the use of compound interest. *See D.E. Shaw Laminar Portfolios, L.L.C. v. Archon Corp.*, 755 F. Supp. 2d 1122, 1128-29 (D. Nev. 2010) (applying a statutory interest rate that adjusts every six months to calculate an award of simple interest), *aff'd mem.*, 483 F. App'x 358 (9th Cir. 2012); *see also Fendi Adele S.R.L. v. Burlington Coat Factory Warehouse Corp.*, 689 F. Supp. 2d 585, 626 (S.D.N.Y. 2010) (applying the federal underpayment rate found in the Internal Revenue Code but requiring the calculation of simple interest).

understood as indicating a simple annual rate rather than one that is compounded."), *modified*, 477 N.E.2d 430 (N.Y. 1985). Although the use of the term "per annum" in a statute about interest rates may be sufficient to dictate the use of simple interest, it is not a necessary term for requiring the use of simple interest. *See Burlington N. R.R. Co. v. Whitt*, 611 So. 2d 219, 223 (Ala. 1992) (stating that using an annual interest rate has no bearing on whether the interest is simple or compound). Therefore, the failure to use this term in the statute does not prohibit the application of the statute's plain meaning which, in the absence of language authorizing compound interest, unambiguously authorizes the award of simple interest only.[2]

CONCLUSION

Interest is simple unless otherwise stated in a contract or statute. Because NRS 17.130(2) does not provide for compound interest, interest awarded under this statute is simple. Thus, the district court did not err in denying the appellants' motion for compound interest. Therefore, we affirm the judgment of the district court.

GIBBONS, C.J., and PICKERING, HARDESTY, PARRAGUIRRE, DOUGLAS, and CHERRY, JJ., concur.

LIBERTY MUTUAL; AND CARSON CITY SENIOR CITIZENS CENTER, APPELLANTS/CROSS-RESPONDENTS, *v.* ROBERT THOMASSON, RESPONDENT/CROSS-APPELLANT.

No. 59176

February 6, 2014 317 P.3d 831

Appeal and cross-appeal from a district court order transferring venue of a petition for judicial review in a workers' compensation matter. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Workers' compensation insurer petitioned for judicial review of appeals officer's decision that reversed insurer's denial of claimant's workers' compensation claim. The district court transferred venue. Insurer appealed. The supreme court, PARRAGUIRRE, J., held that: (1) Administrative Procedure Act provision governing forum for judicial review was mandatory and jurisdictional; and (2) on an issue

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[2]We have also considered the parties' policy arguments. In light of the plain meaning of this unambiguous statute, we need not address these arguments. *See Westpark Owners' Ass'n*, 123 Nev. at 357, 167 P.3d at 427.

of first impression, insurer was not resident of county in which petition for judicial review was filed.

Vacated and remanded.

Piscevich & Fenner and *Kimberley Fenner* and *Mark J. Lenz*, Reno, for Appellants/Cross-Respondents.

Nevada Attorney for Injured Workers and *W. Darrell Nedd*, Senior Deputy, Carson City, for Respondent/Cross-Appellant.

1. Workers' Compensation.
   Provision of Administrative Procedure Act requiring aggrieved party to file petition for judicial review of an administrative decision in county of residence was a mandatory jurisdictional requirement, and therefore the district court that was not in aggrieved party's county of residence lacked jurisdiction to consider party's petition for judicial review of workers' compensation decision and should have dismissed it rather than transfer venue, where provision's use of the term "must" imposed a mandatory requirement, and the forum language of the provision did not "speak the language of venue." NRS 233B.130(2)(b).
2. Appeal and Error.
   The supreme court reviews questions of law de novo.
3. Administrative Law and Procedure.
   When seeking judicial review of an administrative decision pursuant to the Administrative Procedure Act (APA), the petitioner must challenge that decision according to the APA's specific procedures in order to invoke the district court's jurisdiction. NRS 233B.130(2)(b).
4. Administrative Law and Procedure.
   When seeking judicial review of an administrative decision, a party must strictly comply with the Administrative Procedure Act's jurisdictional requirements, and noncompliance with the requirements is grounds for dismissal. NRS 233B.130(2)(b).
5. Workers' Compensation.
   Workers' compensation insurer was not resident of county in which petition for judicial review of workers' compensation decision was filed, and therefore the district court of county in which petition was filed lacked jurisdiction to consider petition, when insurer had an office in county in which petition was filed, for purposes of provision of Administrative Procedure Act that required aggrieved party to file petition for judicial review in county in which it resided, but a corporation's "residence" was that which was listed as the principal place of business in its articles of incorporation. NRS 233B.139(2)(b).

Before Hardesty, Parraguirre and Cherry, JJ.

OPINION

By the Court, Parraguirre, J.:

Appellant/cross-respondent Liberty Mutual filed a petition for judicial review in the Second Judicial District Court in Washoe

County, challenging an appeals officer's decision that reversed Liberty Mutual's denial of respondent/cross-appellant Robert Thomasson's workers' compensation claim. Thomasson filed a motion to dismiss, alleging that Liberty Mutual could not file its petition in the Second Judicial District because it was not a resident of Washoe County. Liberty Mutual opposed, seeking either consideration on the merits or a transfer of venue. The Second Judicial District Court transferred venue. NRS 233B.130(2)(b) provides that a petition for judicial review of an agency determination must be filed in Carson City, the aggrieved party's county of residence, or the county where the agency proceeding occurred. We conclude that NRS 233B.130(2)(b) is a mandatory jurisdictional requirement and that because Liberty Mutual is not a resident of Washoe County, the Second Judicial District Court lacked jurisdiction to consider its petition for judicial review and should have dismissed it rather than transfer venue. We accordingly vacate the district court's order transferring venue and remand this matter to the district court with directions to dismiss Liberty Mutual's petition for judicial review.

FACTUAL AND PROCEDURAL HISTORY

Carson City Senior Citizens Center employed Thomasson to deliver meals to elderly persons in Carson City. In May 2010, Thomasson slipped down a flight of stairs while delivering a meal and injured his knee. Thomasson filed a workers' compensation claim for the injury, but Liberty Mutual, his employer's workers' compensation insurer, found that the injury did not occur within the scope of Thomasson's employment and denied the claim. Thomasson administratively appealed, and although the Department of Administration hearing officer affirmed Liberty Mutual's decision, the appeals officer reversed the claim denial.[1] Liberty Mutual then filed a petition for judicial review in the Second Judicial District Court in Washoe County.

Thomasson filed a motion to dismiss Liberty Mutual's petition on the ground that it did not comply with NRS 233B.130(2)(b). Thomasson argued that NRS 233B.130(2)(b) is a jurisdictional statute that specifically sets forth the courts in which a petition for judicial review may be filed, and because Liberty Mutual is not a resident of Washoe County, the petition did not comply with the statutory residency requirement. In opposition, Liberty Mutual argued that since it has an office in Reno, venue was proper and, in the alternative, the motion to dismiss should be treated as a motion to transfer venue. The district court agreed with Thomasson that filing the petition in the Second Judicial District Court was improper, but the court granted Liberty Mutual's request to treat the motion to dismiss as a motion to transfer venue. Accordingly, the district court ordered that

[1]The administrative appeal was heard in Carson City.

the case be transferred to the First Judicial District Court in Carson City. The parties now bring this appeal and cross-appeal.

DISCUSSION

In addressing the district court's order transferring venue, we must first consider the threshold issue of jurisdiction raised by Thomasson's cross-appeal. We conclude that NRS 233B.130(2)(b) is mandatory and jurisdictional and that because Liberty Mutual is not a resident of Washoe County, the petition failed to satisfy the jurisdictional burden imposed by NRS 233B.130(2)(b). As a result, the Second Judicial District Court lacked jurisdiction over the matter. Furthermore, because NRS 233B.130(2)(c) provides that the petition must be brought within 30 days and that time period has passed, Liberty Mutual cannot amend or refile its petition to correct the deficiency. We therefore vacate the district court's order transferring venue and remand the matter to the district court with directions to dismiss the petition for lack of jurisdiction.[2]

NRS 233B.130(2)(b) is mandatory and jurisdictional

[Headnote 1]

Thomasson argues that NRS 233B.130(2)(b) sets forth a mandatory jurisdictional requirement, and because Washoe County was the incorrect location for Liberty Mutual to file its petition for judicial review, the Second Judicial District Court did not have jurisdiction to consider the petition. Furthermore, Thomasson asserts that the time frame for filing the petition in NRS 233B.130(2)(c) has lapsed, and thus Liberty Mutual cannot now correct its error. Whether NRS 233B.130(2)(b) establishes a jurisdictional requirement or a venue requirement is a matter of first impression in Nevada.

[Headnote 2]

We review questions of law, such as statutory interpretation, de novo. *Washoe Cnty. v. Otto*, 128 Nev. 424, 430-31, 282 P.3d 719, 724 (2012). Nevada's Administrative Procedure Act (APA), codified at NRS Chapter 233B, sets forth the procedure for judicial review of agency decisions. At issue in this appeal is one of three filing requirements delineated in NRS 233B.130(2), which provides:

> Petitions for judicial review *must*:
>
> (a) Name as respondents the agency and all parties of record to the administrative proceeding;

[2]Liberty Mutual previously filed a motion to dismiss Thomasson's cross-appeal, arguing that this court lacks jurisdiction to hear it. In an unpublished order, we denied the motion. Liberty Mutual renews this jurisdictional argument in its briefs; as we conclude that Liberty Mutual's arguments in this regard are unpersuasive, we consider Thomasson's cross-appeal on its merits.

(b) Be instituted by filing a petition in the district court in and for Carson City, *in and for the county in which the aggrieved party resides* or in and for the county where the agency proceeding occurred; and

(c) Be filed within 30 days after service of the final decision of the agency.

(Emphases added.) We have previously construed NRS 233B.130(2)(a) and (c) to be mandatory jurisdictional requirements, but we have not before addressed NRS 233B.130(2)(b). *See Otto*, 128 Nev. at 432-33, 282 P.3d at 725 (construing paragraph (a)); *Civil Serv. Comm'n v. Second Judicial Dist. Court*, 118 Nev. 186, 189, 42 P.3d 268, 271 (2002) (addressing paragraph (c)).[3]

Otto provides a straightforward answer to the question raised in this appeal. There, this court held that paragraph (a) is mandatory and jurisdictional, and we stated that nothing in NRS 233B.130(2)'s plain language "suggests that its requirements are anything but mandatory and jurisdictional." 128 Nev. at 432, 282 P.3d at 725. We explained that the word "must," which precedes paragraphs (a) through (c), imposes a mandatory requirement, that this court previously held that the requirements of paragraph (c) are mandatory and jurisdictional, *see Civil Serv. Comm'n*, 118 Nev. at 189, 42 P.3d at 271, and that there is no reason to construe paragraph (a) differently than paragraph (c). *Otto*, 128 Nev. at 432, 282 P.3d at 725.

Despite this precedent, Liberty Mutual argues that this court has read similar language in another statute as imposing a venue requirement, not a mandatory jurisdictional requirement. In *In re Nevada State Engineer Ruling No. 5823*, we interpreted a forum clause in NRS Chapter 533 as imposing a venue requirement, not a mandatory jurisdictional requirement. 128 Nev. 232, 244-45, 277 P.3d 449, 457 (2012). NRS 533.450(1) provides that a party seeking judicial review of a *water rights* decision by the State Engineer "must be initiated in the proper court of the county in which the matters affected or a portion thereof are situated." Noting that the forum language of NRS 533.450(1) "speaks the language of venue," we held that the forum clause addressed venue, not jurisdiction. *In re Nev. State Eng'r Ruling No. 5823*, 128 Nev. at 244, 277 P.3d at 457.

[Headnotes 3, 4]

Although the forum language of NRS 533.450(1) is superficially similar to the APA, NRS Chapter 533 is a separate statutory

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[3]In *Civil Service Commission*, this court held that despite NRS 233B.130(2)(a) being mandatory and jurisdictional, failure to comply with that provision does not preclude judicial review. 118 Nev. at 189-90, 42 P.3d at 271. In *Otto*, we overruled that portion of the holding and held that failure to comply with either NRS 233B.130(2)(a) or (c) deprives the district court of jurisdiction to consider the petition for judicial review. 128 Nev. at 433 n.9, 282 P.3d at 725 n.9.

scheme, and we have consistently held that the APA has strict jurisdictional requirements for judicial review of agency decisions. *Crane v. Cont'l Tel. Co. of Cal.*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989) (holding that "[c]ourts have no inherent appellate jurisdiction over official acts of administrative agencies except where the [L]egislature has made some statutory provision for judicial review," and such procedures are therefore controlling). Thus, when seeking judicial review of an administrative decision pursuant to the APA, the petitioner must challenge that decision according to the APA's specific procedures in order to invoke the district court's jurisdiction. *Otto*, 128 Nev. at 432-33, 282 P.3d at 725. Therefore, a party must strictly comply with the APA's jurisdictional requirements, and " '[n]oncompliance with the requirements is grounds for dismissal.' " *Id.* (quoting *Kame v. Emp't Sec. Dep't*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989)).

Accordingly, *In re Nevada State Engineer Ruling No. 5823* does not provide useful guidance in interpreting whether NRS 233B.130(2)(b) is jurisdictional. Instead, we agree with Thomasson that *Otto* directly applies to the issue on appeal and conclude that NRS 233B.130(2)(b) is mandatory and jurisdictional. Thus, failure to strictly comply with NRS 233B.130(2)(b) requires dismissal.[4]

Liberty Mutual is not a resident of Washoe County under NRS 233B.130(2)(b)

[Headnote 5]

In order for its petition for judicial review, filed in the Second Judicial District Court, to comply with NRS 233B.130(2)(b), Liberty Mutual must be a resident of Washoe County. The district court determined that Liberty Mutual was not a resident of Washoe County, and we now address Liberty Mutual's argument that the district court erred in making this determination because it has an office in Reno. The term "resides," as used in NRS 233B.130(2)(b), is not defined, and its definition in this context is an issue of first impression.

We review questions of statutory interpretation de novo and do not look beyond a statute itself to determine its meaning where the

[4]Although the language of NRS 233B.130(2)(b) is clear, it is within the Legislature's power to amend the provision if it no longer intends the provision to provide a mandatory jurisdictional requirement. *See Berkson v. LePome*, 126 Nev. 492, 503, 245 P.3d 560, 568 (2010) (leaving alterations of unambiguous statutes of limitations to the Legislature); *see also State ex rel. Dir. of Revenue v. Gaertner*, 32 S.W.3d 564, 567 (Mo. 2000) (explaining that after the court held that where a statute requires an appeal from an administrative decision to be filed in a certain court, that court alone has jurisdiction to entertain the appeal, the Missouri Legislature amended its venue statute to grant a limited jurisdiction to the court to transfer any case filed in an improper venue to a court otherwise designated by the Legislature to hear the appeal).

statute is unambiguous. *Otto*, 128 Nev. at 432, 282 P.3d at 724-25. "[W]here a statute has no plain meaning, a court should consult other sources such as legislative history, legislative intent and analogous statutory provisions." *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 294, 995 P.2d 482, 485 (2000).

Liberty Mutual argues that although its headquarters are in Boston, it has an office in Reno and therefore qualifies as a resident of Washoe County. Thomasson argues that a foreign corporation can never have a fixed residence in any particular county in Nevada for purposes of NRS 233B.130(2)(b).

The meaning of the word "reside," or "residence" in the context of corporations, provides little guidance. On one hand, "residence" is defined as "the place of the principal office of a corporation or business concern designated in its articles of incorporation or originally registered in accordance with law," *Webster's Third New International Dictionary* 1931 (3d ed. 1976), which appears consistent with Thomasson's interpretation that a corporation's residence is the location of its principal place of business. On the other hand, "residence" is also defined as "[t]he place where a corporation or other enterprise does business or is registered to do business," *Black's Law Dictionary* 1423 (9th ed. 2009), which appears consistent with Liberty Mutual's proffered interpretation. We conclude that both definitions are reasonable, and thus the term "resides" as used in NRS 233B.130(2)(b) is ambiguous. Accordingly, we consult other sources, including cases interpreting similar language in analogous statutory provisions, to determine the Legislature's intent. *See State Farm Mut. Auto. Ins. Co.*, 116 Nev. at 294, 995 P.2d at 485 (stating that this court may look to analogous statutory provisions in interpreting an ambiguous statute).

Though we have concluded that this is a jurisdictional issue and not one of venue, it is nonetheless the venue statutes that act as a guide to defining a corporate residence, as the term "resides" as used in NRS 233B.130(2)(b) has never been defined. This court has previously addressed where a corporation's residence is for purpose of serving process upon the company. *Flournoy v. McKinnon Ford Sales*, 90 Nev. 119, 122, 520 P.2d 600, 602 (1974) (agreeing with other courts that "the designation in the articles of incorporation of the principal place of business [is] conclusive" as to the corporation's place of residence, reasoning that uniformity was needed as a way to fix a corporation's location of residence so all interested parties would know where to serve process). We conclude that the logic of *Flournoy* is applicable here and hold that, for purposes of NRS 233B.130(2)(b), a corporation's place of residence is that which is listed as the principal place of business in its articles of incorporation. *Cf. In re Nevada State Eng'r Ruling No. 5823*, 128 Nev. at 244-45, 277 P.3d at 457 (noting that although

judicial review under NRS 533.450(1) is in the nature of an appeal, NRS Chapter 13's application to the place of trial does not defeat its application on judicial review as well).

Further, under NRS Chapter 13, a foreign corporation does not have a fixed residence in any particular county. *See* NRS 13.040; *W. Pac. R.R. Co. v. Krom*, 102 Nev. 40, 43, 714 P.2d 182, 184 (1986) (explaining that merely doing business in Nevada does not fix a foreign corporation's residence in any particular county for venue purposes (citing *Byers v. Graton*, 82 Nev. 92, 95, 411 P.2d 480, 481 (1966))). In adopting the application of the term "residence" as used in NRS Chapter 13 in interpreting "reside" as used in NRS 233B.130(2)(b), we conclude that a foreign corporation cannot have a fixed residence in any Nevada county, and thus Washoe County was not the proper county for Liberty Mutual to seek judicial review even if it had a satellite office there.

We note, however, that while a foreign corporation cannot have fixed residency in a particular Nevada county for purposes of NRS 233B.130(2)(b), this does not necessarily preclude judicial review because the statute allows an aggrieved party to seek judicial review of an agency decision in other locations, namely Carson City or the county where the agency proceeding occurred (which is Carson City in this case). Thus, our interpretation of "resides" for purposes of this statute would not have left Liberty Mutual without remedy.

It is undisputed that Liberty Mutual is a foreign corporation headquartered in Boston. Adopting the meaning of "residence" under NRS Chapter 13 and *Flournoy*, we conclude that Liberty Mutual has not complied with NRS 233B.130(2)(b)'s mandatory jurisdictional requirement of filing its petition for judicial review in either Carson City, the county in which it resides, or the county in which the administrative proceedings took place. Furthermore, the 30-day period for filing such a petition in the proper county has passed, and thus the petition cannot be amended to correct the error. NRS 233B.130(2)(c); *Otto*, 128 Nev. at 434-35, 282 P.3d at 727. Accordingly, we vacate the district court's order transferring venue and remand this matter to the district court with directions to dismiss the petition for judicial review for lack of jurisdiction.

HARDESTY and CHERRY, JJ., concur.

DTJ DESIGN, INC., APPELLANT, *v.* FIRST REPUBLIC BANK, A NEVADA CORPORATION, RESPONDENT.

No. 57165

February 13, 2014 318 P.3d 709

Appeal from a district court summary judgment, certified as final under NRCP 54(b), in a lien foreclosure action. Eighth Judicial District Court, Clark County; Timothy C. Williams.

Foreign architectural firm brought action against mortgagee for lien priority and unjust enrichment regarding mechanic's lien on property subject to deed of trust. The district court granted summary judgment in favor of mortgagee. Firm appealed. The supreme court, PARRAGUIRRE, J., held that: (1) foreign architectural firm's failure to comply with statutory registration requirements precluded lien foreclosure action, and (2) registration requirement applied to corporations.

Affirmed.

Martin & Allison, Ltd., and *Noah G. Allison* and *Debra L. Pieruschka*, Las Vegas, for Appellant.

Gerrard Cox & Larsen and *Douglas D. Gerrard* and *Gary C. Milne*, Henderson, for Respondent.

1. APPEAL AND ERROR.
   The supreme court reviews orders granting summary judgment de novo.
2. JUDGMENT.
   Summary judgment is appropriate if, when viewed in the light most favorable to the nonmoving party, the record reveals there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.
3. LICENSES.
   Foreign architectural firm's failure to register with the State Board of Architecture, as required by statute, precluded firm from bringing mechanic's lien foreclosure action, when firm employed a registered architect, but statute expressly provided that business organizations were required to allege and prove that they had registered with the Board in order to maintain any action for collecting compensation for their services. NRS 623.349(2).
4. CORPORATIONS AND BUSINESS ORGANIZATIONS; LICENSES.
   Statutory requirement that architects register with the State Board of Architecture applied to corporations, and therefore applied to foreign architectural firm, when statute expressly set forth registration requirements applicable to corporations. NRS 623.349.

Before the Court EN BANC.

OPINION

By the Court, PARRAGUIRRE, J.:

In this appeal, we address the registration requirements set forth in NRS 623.349(2) in the context of a foreign architectural firm's ability to bring or maintain an action in Nevada. We conclude that regardless of whether a foreign firm employs a registered architect, NRS 623.349(2) and NRS 623.357 mandate that the firm be registered in Nevada in order to maintain an action on the firm's behalf. Accordingly, we affirm the district court's judgment.

FACTS AND PROCEDURAL HISTORY

Appellant Downing, Thorpe & James Design, Inc. (DTJ), is an architectural firm incorporated in Colorado. Thomas W. Thorpe is a professional architect and one of DTJ's three founding principals. In 1998, Thorpe sought reciprocity to practice in Nevada and submitted two applications to the State Board of Architecture (the Board). First, he submitted an "Application for Architect Registration," which would allow him to practice individually as a foreign architect. Second, Thorpe submitted an "Application for Registration of a Business and Firm Name Approval," which would allow DTJ to practice as a foreign corporation. Although the Board approved Thorpe's individual application for registration, there is no evidence that the Board ever received or approved DTJ's application to practice as a foreign corporation in Nevada.

In 2004, DTJ contracted with a Nevada developer to provide architectural services for a Las Vegas subdivision owned by Prima Condominiums, LLC (Prima). Prima obtained a $14 million loan from respondent First Republic Bank in exchange for a promissory note secured by a deed of trust on one of the subdivision's units, the Bergamo building. As additional security, First Republic demanded an assignment of all construction documents associated with the Bergamo building, including DTJ's architectural drawings. DTJ consented to the assignment in exchange for $350,000 of the loan proceeds. The parties agreed that in the event of foreclosure, First Republic's access to DTJ's plans was conditioned upon DTJ being paid in full for services completed to date. Prima subsequently defaulted on its payments.

In July 2008, DTJ recorded a notice of mechanic's lien against the property for unpaid services to date. In December 2008, First Republic foreclosed and purchased the property at a trustee's sale. DTJ then brought an action against First Republic for lien priority and unjust enrichment. The district court bifurcated the trial into two phases: lien priority (phase one) and lien valuation (phase two). After a hearing on phase one, the district court concluded that DTJ

was a valid claimant with lien priority over First Republic's deed of trust.

Prior to phase two, First Republic moved for summary judgment, arguing that NRS 623.357 prohibited DTJ from maintaining its lien foreclosure action because DTJ had not properly registered as a foreign corporation under NRS 623.349(2) or satisfied the state's foreign corporation statutory filing requirements under NRS 80.010(1). First Republic also argued that DTJ's unjust enrichment claim lacked legal basis. The district court concluded that because DTJ had failed to comply with Nevada's statutory registration and filing provisions, DTJ was barred from maintaining an action against First Republic. The district court further concluded that there was no legal basis for DTJ's unjust enrichment claim, and it granted First Republic's motion for summary judgment. DTJ now brings this appeal.

DISCUSSION

Standard of review

[Headnotes 1, 2]

This court reviews orders granting summary judgment de novo. *Day v. Zubel*, 112 Nev. 972, 977, 922 P.2d 536, 539 (1996). Summary judgment is appropriate if, when viewed in the light most favorable to the nonmoving party, the record reveals there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).

The district court properly concluded that DTJ was barred from maintaining its action against First Republic

[Headnote 3]

The district court concluded that DTJ failed to comply with the requirements of both NRS 623.349(2) and NRS 80.010(1). Noncompliance with either provision would preclude DTJ from bringing or maintaining an action in Nevada, and we begin by addressing the district court's application of NRS 623.349(2).

[Headnote 4]

The practice of architecture in Nevada is governed by the provisions of NRS Chapter 623. NRS 623.357 provides that "[n]o person [or] firm . . . may bring or maintain any action . . . for the collection of compensation" for architectural services without first "alleging and proving that such plaintiff was duly registered under this chapter at all times during the performance of such act or contract." Accordingly, DTJ was required to plead and prove that it was properly registered pursuant to NRS Chapter 623 as part of its prima facie case seeking compensation for its architectural services.

With regard to the registration process, NRS 623.349 provides:

> 1. *Architects* . . . may join or form a partnership, corporation, limited-liability company or other business organization or association with registrants and licensees outside of their field of practice, *or with persons who are not registered or licensed*, if control and *two-thirds ownership of the business organization or association is held by persons registered or licensed in this State* pursuant to the applicable provisions of this chapter . . . .
>
> 2. If a partnership, *corporation* . . . or other form of business organization or association wishes to practice pursuant to the provisions of this section, it must:
>
> (a) Demonstrate to the Board that it is in *compliance with all provisions* of this section.
>
> (b) Pay the fee for a certificate of registration pursuant to NRS 623.310.
>
> (c) Qualify to do business in this State.

(Emphases added.)

On appeal, DTJ argues that the district court's application of NRS 623.349(2) was flawed because the statutory registration requirement applies only to natural persons and a corporation is incapable of registration. *See* NRS 623.190 (defining applicant as "[a]ny person who is at least 21 years of age . . . and who meets the requirements for education and practical training established by the Board"). We disagree, as NRS 623.349(2) expressly sets forth registration requirements applicable to corporations, and NRS Chapter 623's provisions otherwise apply to registrants as people and businesses, interchangeably. *See, e.g.*, NRS 623.357 ("No person, firm, . . . or other organization may bring or maintain any action" in Nevada without proof of registration); NRS 623.350(2) (referring to "a business organization or association which holds a certificate issued pursuant to NRS 623.349"). Thus, we conclude that NRS 623.349's registration requirements apply to foreign architectural firms.

Next, DTJ contends that NRS 623.349(2) does not preclude an unregistered *firm* from foreclosing on a lien for work that was performed by a registered *architect*.[1] This argument is unpersuasive.

NRS 623.349(1) allows registered *architects* to partner with unregistered architects and form a business organization to practice in Nevada, so long as the registered architects satisfy a two-thirds ownership requirement. In order for a foreign *business* to operate as

[1]DTJ also argues that NRS 623.349(2) impermissibly conflicts with NRS 108.243, which allows a mechanic's lien to be assigned "in the same manner as any other chose in action." Because DTJ failed to raise this argument in district court, we will not consider it on appeal. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

a separate entity in Nevada, it must satisfy the requirements found in NRS 623.349 by demonstrating to the Board that registered architects within the firm satisfy the two-thirds ownership provision under NRS 623.349(1), and that the business is qualified to do business in this state and has paid the requisite registration fee under NRS 623.349(2)(a)-(c). *See also* NRS 623.349(2)(d) and (e) (corporation and partnership requirements).

Here, the record shows that despite Thorpe's registration status, DTJ itself had not complied with NRS 623.349(2)'s provisions. Moreover, the Board's executive testified that it never received DTJ's application and that even if it had, the Board would have denied DTJ's request because Thorpe did not satisfy the two-thirds ownership requirement under NRS 623.349(1). Thus, Thorpe's individual status has no bearing on whether DTJ, a separate entity, may bring or maintain an action for compensation for its services.

Also, to the extent that DTJ argues that Thorpe should individually be able to foreclose on the lien as a registered architect, we disagree. The record shows that DTJ, not Thorpe, entered into the development contract, which was signed by Steven James as DTJ's principal-in-charge. James is not registered in Nevada, and Thorpe testified that he did not become coprincipal on the project with James until nearly a year after the development contract was signed.

Because NRS 623.357 expressly provides that business organizations must allege and prove that they have registered with the Board in order to maintain any action for collecting compensation for their services, we conclude that the burden was on DTJ to prove its registration status and that First Republic was not required to plead DTJ's failure to register as an affirmative defense. *Cf.* NRCP 9(a). Further, because the record shows that DTJ failed to comply with the provisions set forth in NRS 623.349(2), we conclude that NRS 623.357 prohibits DTJ from bringing or maintaining an action in Nevada for compensation for its architectural services and summary judgment in First Republic's favor was proper based solely on this ground.

In reaching this conclusion, we decline to revisit the district court's finding that DTJ similarly failed to satisfy the foreign corporation filing requirements of NRS 80.010(1). We further decline to revisit the district court's dismissal of DTJ's unjust enrichment claim for lack of a legal basis. Although the parties and the district court only addressed whether there was a legal basis for DTJ's unjust enrichment claim, we conclude that this claim is also barred by NRS 623.357 due to DTJ's failure to prove its registration status.

This conclusion is not altered by our holding in *Loomis v. Lange Financial Corp.*, 109 Nev. 1121, 1128, 865 P.2d 1161, 1165 (1993) (citing *Nev. Equities v. Willard Pease Drilling*, 84 Nev. 300, 303, 440 P.2d 122, 123 (1968)), which recognized a substantial com-

pliance exception in addressing the viability of an unlicensed contractor's equitable causes of action in a contract claim. Although DTJ may have attempted to register in 1998, there is nothing in the record to suggest that the application was ever received or approved, nor does the record show that DTJ ever attempted to remediate the situation. Rather, DTJ has been involved with at least four similar development projects over the past 15 years, despite its noncompliance with NRS 623.349. Accordingly, we conclude that the district court's dismissal was proper. *Id.*; *see also Interstate Commercial Bldg. Servs., Inc. v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 23 F. Supp. 2d 1166, 1175 (D. Nev. 1998) (discussing the substantial compliance exception for an unlicensed contractor's equitable claims); *Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 403, 632 P.2d 1155, 1158 (1981) ("If a decision below is correct, it will not be disturbed on appeal even though the lower court relied upon wrong reasons.").

GIBBONS, C.J., and PICKERING, HARDESTY, DOUGLAS, CHERRY, and SAITTA, JJ., concur.