PAUL PAWLIK, Appellant, *v.* SHYANG-FENN DENG and LINDA HSIANG-YU CHIANG DENG, Trustees of the SHYANG-FENN AND LINDA HSIANG-YU CHIANG DENG REVOCABLE TRUST DATED AUGUST 18, 2006; VANETTA APPLEYARD, Treasurer of the City of Las Vegas; and the CITY OF LAS VEGAS, a Political Subdivision, Respondents.

No. 71055

March 1, 2018 412 P.3d 68

Appeal from a district court order granting a motion to dismiss and denying a petition for a writ of mandamus in an action to quiet title. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Affirmed.

Hardesty, J., with whom Pickering and Stiglich, JJ., agreed, dissented.

Walsh, Baker & Rosevear P.C. and *James M. Walsh*, Reno, for Appellant.

Black & LoBello and *Steven J. Mack*, Las Vegas, for Respondents Shyang-Fenn Deng and Linda Hsiang-Yu Chiang Deng, Trustees of the Shyang-Fenn and Linda Hsiang-Yu Chiang Deng Revocable Trust Dated August 18, 2006.

Bradford R. Jerbic, City Attorney, and *John A. Curtas*, Deputy City Attorney, Las Vegas, for Respondents Vanetta Appleyard, Treasurer of the City of Las Vegas, and the City of Las Vegas.

Before the Supreme Court, En Banc.

OPINION

By the Court, Gibbons, J.:

In this appeal we are asked to interpret NRS 271.595, a statute governing redemption of property sold for default on city tax assessments. The issue is how to interpret two distinct redemption periods in NRS 271.595: one that creates a clear redemption period of two years for residential properties, and a second that creates an ambiguous 60-day redemption window after notice that the certificate of sale holder will demand a deed for the property. The parties dispute whether the 60-day period begins at the end of the first two-year redemption period, or whether the 60-day period may run concur-

rently at the end of the two-year period. The district court read NRS 271.595 as creating two distinct redemption periods that cannot overlap and dismissed appellant Paul Pawlik's quiet title action and petition for a writ of mandamus. We agree with the district court, and, to protect the redemption rights of former owners, we hold that NRS 271.595 creates two consecutive redemption periods.

FACTS AND PROCEDURAL HISTORY

Respondents Shyang-Fenn Deng and Linda Hsiang-Yu Chiang Deng, as trustees of their revocable trust (the Dengs), defaulted on special assessments on their Las Vegas residential real property, which entered delinquency. As a result, the property underwent a duly noticed and authorized sale, under NRS Chapter 271. On January 27, 2014, Pawlik (or his predecessor-in-interest) purchased the real property at the sale and was issued a sales certificate. Under NRS 271.595(1), the Dengs were then entitled to a two-year redemption period from that date.[1] On January 7, 2016, Pawlik began attempting to serve the Dengs with notice of the upcoming expiration of the redemption period and Pawlik's intent to apply for a deed pursuant to NRS 271.595(3).

On March 14, 2016, 47 days after the Dengs' two-year redemption period expired and 67 days after Pawlik began attempting service, Pawlik applied to respondent the Las Vegas City Treasurer for issuance of a deed to the property. The Treasurer refused to issue the deed to Pawlik, and the Dengs later redeemed on April 6, 2016, by making full payment to the City of Las Vegas. Pawlik subsequently filed a complaint to quiet title and applied for a writ of mandamus in the district court compelling the Treasurer to issue the deed. In turn, the Dengs filed a motion to dismiss. The district court granted the Dengs' motion to dismiss and denied Pawlik's petition for a writ of mandamus, interpreting NRS 271.595 to require that the 60-day notice and additional redemption period begin after the end of the

[1]NRS 271.595 states in relevant part:

> 1. Any property sold for an assessment . . . is subject to redemption by the former owner . . . (a) If there was a permanent residential dwelling unit . . . on the property at the time [of] sale . . . , at any time within 2 years . . . after the date of the certificate of sale . . . .
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> . . . .
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> 3. If no redemption is made within the [2-year] period of redemption . . . the treasurer shall, on demand of the purchaser . . . execute . . . a deed to the property. No deed may be executed until the holder of the certificate of sale has notified the owners of the property that he or she holds the certificate, and will demand a deed therefor. The notice must be given by personal service upon the owner. However, if an owner is not a resident of the State or cannot be found within the State after diligent search, the notice may be given by publication. . . .
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> 4. If redemption is not made within 60 days after the date of service, or the date of the first publication of the notice, as the case may be, the holder of the certificate of sale is entitled to a deed. . . .

two-year redemption period. Because Pawlik had attempted service on the Dengs prior to the end of the two-year redemption period and because this provided the Dengs with less than two years and 60 days of redemption, the district court found Pawlik had provided the Dengs with premature and ineffective notice. Accordingly, the Dengs were allowed to redeem their property. Pawlik now appeals that order.

DISCUSSION

NRS 271.595(3) creates an additional 60-day notice and redemption period

This court reviews questions of statutory interpretation de novo. *Pankopf v. Peterson*, 124 Nev. 43, 46, 175 P.3d 910, 912 (2008); *City of Las Vegas v. Eighth Judicial Dist. Court*, 124 Nev. 540, 544, 188 P.3d 55, 58 (2008) ("Even in the context of a writ proceeding, we review questions of statutory interpretation de novo."). "When the language of a statute is clear on its face, this court will not go beyond the statute's plain language." *J.E. Dunn Nw., Inc. v. Corus Constr. Venture, LLC*, 127 Nev. 72, 79, 249 P.3d 501, 505 (2011) (internal quotations and alterations omitted). However, if the statutory language is subject to two or more reasonable interpretations, the statute is ambiguous, and we then look beyond the statute to the legislative history and interpret the statute in a reasonable manner "in light of the policy and the spirit of the law." *Id.* (internal quotations omitted); *see Pankopf*, 124 Nev. at 46, 175 P.3d at 912.

Pawlik argues the district court's interpretation of NRS 271.595 is incorrect because the statute contains no language mandating that the 60-day notice period begin only after the two-year redemption period expires. In response, the Dengs argue Pawlik's interpretation would allow a certificate holder to completely overlap the 60-day period with the two-year period, thus rendering the additional 60-day redemption period meaningless. However, Pawlik counters that attaching the 60-day period to the end of the two-year period causes "at least 26 mandatory months to exist in a statute that contemplates 24 months of redemption period."

NRS 271.595(3) states "[i]f no redemption is made within the period of redemption as determined pursuant to subsection 1, the treasurer shall, on demand of the purchaser or the purchaser's assigns, . . . execute to the purchaser or the purchaser's assigns a deed to the property." This provision is plainly a mandate to the treasurer to execute a deed once the certificate holder has fulfilled the requirements of NRS 271.595. Additionally, "[n]o deed may be executed until the holder of the certificate of sale has notified the owners of the property that he or she holds the certificate, and will demand a deed therefor." This plainly mandates that the owners of the property must be notified prior to execution of the deed and the treasurer may not act until that notice has been given. Based on this provision

alone, it would appear that a certificate holder could notify the owners at any time subsequent to obtaining the certificate of sale that he intends to demand the deed at the expiration of the redemption period set forth in subsection 1.

However, NRS 271.595(4) further states as follows:

> If redemption is not made within 60 days after the date of service, or the date of the first publication of the notice as the case may be, the holder of the certificate of sale is entitled to a deed.

This provision creates ambiguity. As Pawlik argues, it is a reasonable interpretation of this statute that the entire notice period could take place during the redemption period prescribed in subsection 1, thus making the property owner automatically eligible for a deed at the end of that prescribed redemption period. However, the Dengs are also correct that this interpretation ignores portions of NRS 271.595(4) as they relate to the rest of the statute. Under the other provisions of NRS 271.595, the holder of the certificate of sale is *not* entitled to a deed after giving 60 days of notice, rather he must wait the remainder of the period outlined in subsection 1. Thus, the only way the certificate holder would be entitled to a deed at the end of a 60-day notice period is if the redemption period prescribed in subsection 1 had already expired. Additionally, under the other provisions of NRS 271.595, owners are given the full period outlined in subsection 1 to redeem, not 60 days. The only way property owners seeking redemption would be limited to a 60-day window is if that 60-day window exists outside the window prescribed in subsection 1. Therefore, it is also a reasonable interpretation of NRS 271.595 that the 60-day notice and redemption period outlined in subsection 4 must occur after the end of the redemption period outlined in subsection 1.

Thus, when viewing NRS 271.595 as a whole, both parties' interpretations of subsection 4 are reasonable, and so we look beyond NRS 271.595 to resolve this ambiguity. In doing so, we recognize that "[a] statute must be construed as to give meaning to all of [its] parts and language . . . [and] a statute should not be read in a manner that renders a part of a statute meaningless." *V & S Ry. LLC v. White Pine Cty.*, 125 Nev. 233, 239, 211 P.3d 879, 882 (2009) (internal quotations omitted) (citations omitted) (quoting *Harris Assocs. v. Clark Cty. Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003)).

We determine the meaning of a statute's words by "examining the context and the spirit of the law" by looking to "the statute's multiple legislative provisions as a whole." *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007). NRS Chapter 271 states in relevant part that its provisions should be "broadly construed" and that the "notices herein provided are reasonably calculated to inform each interested person of his or her legally protected rights."

NRS 271.020(5)-(6). NRS 271.595 carves out a redemption period for the former owners of the property who have become delinquent on city tax assessments. The statute outlines a number of hurdles the certificate holder must overcome to divest the former owners of their power of redemption and rights to the property. While the certificate holder does indeed have a right to an eventual deed upon compliance with NRS 271.595, the overriding interest of the statute is to create a process designed to protect the redemption rights of the former owner. Thus, NRS 271.595 should be "broadly construed" so that "notices . . . are reasonably calculated to inform [the former owners of their] legally protected rights."

Beyond the statutory context, when interpreting ambiguous statutes, this court also "look[s] to the statute's legislative history and construe[s] the statute in a manner that conforms to reason and public policy." *Zohar v. Zbiegien*, 130 Nev. 733, 737, 334 P.3d 402, 405 (2014) (internal quotations omitted). The legislative minutes for the 1969 adoption of NRS 271.595 indicate the statute was based on similar Idaho and Wyoming statutes. *Meeting on S.B. 74 Before the Committee on Federal, State and Local Governments*, 169 Leg., 55th Sess. (Nev. 1969) (Minutes of the Meeting—March 6, 1969) ("The remedy of summary sale is based on existing Idaho and Wyoming statutes and only applies when the municipal treasurer is collecting assessment."). The relevant Wyoming statute mirrors NRS 271.595's language almost verbatim, and Wyoming has expressly identified the 60-day period as an additional redemption period as well as a notice period. Wyo. Stat. Ann. 1977 § 15-6-418 (1965); *Collier v. Hilltop Nat'l Bank*, 920 P.2d 1241, 1243 (Wyo. 1996) ("In addition to this two year redemption period, it also provides owners with a *final sixty day window within which they can redeem their property*." (emphasis added)).

Further, the Nevada Legislature has contemplated an additional redemption window in another similar, but distinguishable, municipal redemption statute. "[U]nder NRS 361.603, if a local government wishes to purchase property *which was not redeemed during the two-year redemption period*, notice must first be given to the last known owner of the property. The owner is *then given an additional 90 days in which to redeem the property* by paying the delinquent taxes, plus penalties, interest and costs." *Casazza v. A-Allstate Abstract Co.*, 102 Nev. 340, 346, 721 P.2d 386, 390 (1986) (interpreting NRS 361.585 and NRS 361.603 together) (emphases added); *see* NRS 361.603(3) ("The last known owner may, within 90 days after the notice, redeem the property by paying to the treasurer the amount of the delinquent taxes, plus penalties, interest and costs."). NRS 361.603 and NRS 361.585 thus demonstrate some evidence of the Legislature's intent to create a second chance redemption window in certain circumstances.

Considering the legislative history and the context of the statute, the district court's interpretation of NRS 271.595 is the most reasonable.[2] *See Stockmeier v. Psychological Review Panel*, 122 Nev. 534, 540, 542, 135 P.3d 807, 810, 812 (2006) (explaining that this court's statutory interpretation should reach a reasonable result). We have long recognized the importance of a former owner's right to redeem and have held that such a right "will not be taken away except upon strict compliance with steps necessary to divest it." *Robinson v. Durston*, 83 Nev. 337, 355, 432 P.2d 75, 86 (1967). Thus, we hold the district court did not err in its interpretation and NRS 271.595(3) and (4) create a 60-day notice and redemption period, notice of which may only be given and which may only begin after the end of the redemption period described in NRS 271.595(1).

Applying this holding to this case, Pawlik (or his predecessor-in-interest) purchased the real property at a January 27, 2014, sale and the Dengs' initial two-year redemption period ran until January 26, 2016. NRS 271.595(1)(a). After the end of that two-year redemption period, Pawlik was permitted to serve the Dengs with a 60-day notice that he was the holder of the certificate of sale and that he would demand a deed from the City Treasurer. NRS 271.595(3). The Dengs were then entitled to redeem within that 60-day notice period. NRS 271.595(4). Upon expiration of that 60-day notice and redemption period, Pawlik would have been entitled to a deed and the City Treasurer would have been compelled to issue it. NRS 271.595(3)-(4). Pawlik, however, began his attempts to serve the Dengs with notice on January 7, 2016, and finished his attempts before the expiration of the two-year redemption period on January 26, 2017. He then requested a deed from the Treasurer on March 14, 2016, less than 60 days after the Dengs' two-year redemption period expired. Thus, under NRS 271.595, Pawlik provid-

[2]This court and another Nevada district court have arguably interpreted NRS 271.595 to mean the 60-day period is an additional redemption period; however, neither case hinged on the issue. *Las Vegas Paving Corp. v. RBC Real Estate Fin., Inc.*, Nos. 60599, 60822, *3 (Order of Reversal and Remand, Sept. 21, 2015) ("NRS 271.595(3) requires the treasurer to provide a deed to the purchaser at the tax sale, but only after *notice of a demand* for the deed has been given by the holder of the certificate of the tax sale to the owners of the property. Further, if redemption is not made within 60 days after the date of service of the notice required in NRS 271.595(3), the deed may issue." (emphasis added)); *see also Weiner v. Kramer*, No. 15A715904 (Decision and Order, Eighth Judicial Dist. Court, Sept. 16, 2015) (wherein certificate holders were issued a certificate of sale on July 24, 2012, but deed was not recorded until February 27, 2015, after "60 days lapsed with no redemption under NRS [Chapter] 271"). This court's interpretation of the notice as "notice of a demand" rather than notice of the intent to demand indicates that notice would occur after the two-year window, once the certificate holder is capable of demanding a deed from the treasurer. Additionally, the district court order clearly reads the 60-day period as an additional redemption period.

ed premature notice to the Dengs and was not entitled to a deed at the time of his application.

While not in strict compliance with our interpretation of NRS 271.595, Pawlik argues that he substantially complied with NRS 271.595 and that the notice he provided was sufficient to start the 60-day period running at the end of the initial two-year period. Thus, he argues the Treasurer's issuance of the deed should have been automatically compelled upon expiration of the two-year and 60-day period. We find this argument unpersuasive.

NRS 271.595 requires strict compliance

As we have explained, "[a] [statute] may contain both mandatory and directory provisions." *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 664, 310 P.3d 569, 571 (2013) (citing *Leven*, 123 Nev. at 408 n.31, 168 P.3d at 718 n.31; *see also Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 696, 290 P.3d 249, 254 (2012)). A statute's provisions are mandatory "when its language states a specific time and manner for performance." *Id.* at 664, 310 P.3d at 572 (internal quotation omitted). "Time and manner refers to when performance must take place and the way in which the deadline must be met." *Id.* In contrast, directory provisions are those governing "form and content," which "dictate who must take action and what information that party is required to provide" and "do not implicate notice." *Id.* at 664-65, 310 P.3d at 572 (internal quotations omitted). An additional consideration is that "the right to redeem . . . will not be taken away except upon strict compliance with steps necessary to divest it." *Robinson*, 83 Nev. at 355, 432 P.2d at 86.

In this case, we interpret NRS 271.595(3) and (4) to require a 60-day notice and redemption period occurring after the initial redemption period in NRS 271.595(1). NRS 271.595(3) and (4) require certain notice and provide a specific time and manner of performance to complete that notice and inform the City Treasurer of its completion. Further, NRS 271.595(3) and (4) operate to divest a former owner of his or her right to redeem. Thus, we hold that NRS 271.595, implicating both notice *and* redemption, contains mandatory provisions.

"[I]n determining whether strict or substantial compliance is required, [we] examine . . . policy and equity considerations" in addition to the statute's provisions. *Leven*, 123 Nev. at 406-07, 168 P.3d at 717. In the context of relevant notice, we have held that substantial compliance may be appropriate when providing notice of mechanics' liens or notice of default. *Las Vegas Plywood & Lumber, Inc. v. D & D Enters.*, 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982) (holding substantial compliance is appropriate under NRS 108.227); *see also Schleining v. Cap One, Inc.*, 130 Nev. 323, 330, 326 P.3d 4, 8 (2014) (holding substantial compliance is appropriate under

NRS 107.095). However, we have not applied the same analysis to notice under NRS Chapter 271, and we decline to do so now.

The assessments here, imposed by the city after making improvements benefiting the homeowner, are somewhat analogous to a mechanic's lien under NRS Chapter 108 in that they secure payment for those improvements. *See In re Fontainebleau Las Vegas Holdings, LLC*, 128 Nev. 556, 574-75, 289 P.3d 1199, 1210 (2012). The policy rationale behind NRS Chapter 271 is to facilitate the city's ability to levy taxes for necessary improvements brought on by population growth. NRS 271.020(1)-(4). The statutes within the chapter are to be construed broadly "for the accomplishment of [that] purpose[ ]." NRS 271.020(5). However, that purpose is served whether the city receives payment through the former homeowner or the certificate holder. Thus, the purpose of NRS Chapter 271, protecting the city's right to repayment, is still served by protecting the rights of the former homeowner through strict compliance with NRS 271.595. Here, the City of Las Vegas suffered no injury by requiring strict compliance from Pawlik, as it eventually received full payment through the Dengs' redemption. Thus, while this court has held "mechanic's lien statutes are remedial in character and should be liberally construed," the remedial nature of NRS 271.595 is limited and the substantial compliance analysis inapposite where the City of Las Vegas itself denied Pawlik's application and is joined in this matter as a respondent. *See In re Fontainebleau Las Vegas Holdings*, 128 Nev. at 574-75, 289 P.3d at 1210.

Additionally, our analysis in *Schleining*, wherein we applied substantial compliance to notice under NRS 107.095, was primarily driven by the fact that the language "substantially comply" was located elsewhere within the chapter and showed "the Legislature specifically envisioned that the purposes behind NRS 107.080's notice and timing requirements could be achieved even if these requirements were not strictly adhered to." 130 Nev. at 330, 326 P.3d at 8. No such express language exists within NRS Chapter 271, and we decline to insert it. Furthermore, the notice here concerns a relatively obscure assessment levied by the city, not a loan default or a mechanic's lien levied by a private party. Additionally, rather than the first notice of a default or perfection of a lien, NRS 271.595 governs the final notice required to completely divest a former owner of any right to redeem his or her property.

Here, no legislative intent or policy considerations compel us to divert from the interpretation that the requirements in NRS 271.595 implicate notice, are mandatory, and require strict performance.[3] Pawlik attempted to give premature notice prior to the expiration of

[3]Accordingly we need not address appellant's arguments that respondents were not prejudiced by early notice.

the two-year redemption period in NRS 271.595(1)(a). Thus, Pawlik failed to strictly comply with NRS 271.595, and his attempted notice was ineffective to trigger the second 60-day redemption period.

CONCLUSION

We hold that NRS 271.595(3) and (4) create a 60-day notice and redemption period that must occur after the redemption period described in NRS 271.595(1) and that NRS 271.595 mandates strict compliance. Accordingly, Pawlik's notice did not comply with the statutory provisions, and we affirm the district court's order.

Douglas, C.J., and Cherry and Parraguirre, JJ., concur.

Hardesty, J., with whom Pickering and Stiglich, JJ., agree, dissenting:

I respectfully dissent to the majority's interpretation of NRS 271.595. Contrary to the plain language of NRS 271.595 and the statutory scheme found in NRS 271.540 to 271.630, the Dengs argue, and the majority accepts, that two additional months are added to the two-year redemption period following a Municipal Treasurer's sale for defaulted tax assessments. I disagree.

"When a statute is clear on its face, we will not look beyond the statute's plain language." *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1302, 148 P.3d 790, 792-93 (2006).

NRS 271.595 states, in relevant part:

> 1. Any property sold for an assessment . . . is subject to redemption by the former owner . . . :
>
> (a) If there was a permanent residential dwelling unit or any other significant permanent improvement on the property at the time the sale was held . . . at any time *within 2 years . . . after the date of the certificate of sale* . . . .
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> . . . .
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> 3. *If no redemption is made within the period of redemption as determined pursuant to subsection 1, the treasurer shall*, on demand of the purchaser or the purchaser's assigns, and the surrender to the treasurer of the certificate of sale, *execute to the purchaser or the purchaser's assigns a deed to the property. No deed may be executed until* the holder of the certificate of sale has notified the owners of the property *that he or she holds* the certificate, and *will demand* a deed therefor. The notice must be given by personal service upon the owner. However, if an owner is not a resident of the State or cannot be found within the State after diligent search, the notice may be given by publication. . . .
>
> 4. If redemption is not made within 60 days after the date of service, or the date of the first publication of the notice, as

> the case may be, the holder of the certificate of sale is entitled to a deed.

(Emphasis added.)

The plain language of NRS 271.595(1)(a) creates a two-year redemption period for the former owner to redeem the property. And, NRS 271.595(3) mandates the Treasurer to issue a deed to the certificate holder "[i]f no redemption is made within the period of redemption as determined pursuant *to subsection 1* . . . ." (Emphasis added.)

The Dengs argue that the notice provision in subsection 4 provides the owner an additional 60 days to redeem the property. While NRS 271.595(3) and NRS 271.595(4) require the certificate holder to provide notice to the owner that he or she holds the certificate and will seek a deed, nothing in those subsections requires that notice be given after the two-year redemption period expires. Instead, the notice assures that the owner is informed that the certificate holder possesses the certificate and intends to seek a deed to the property. *See* NRS 271.020(6) (stating that notices provided in NRS Chapter 271 "are reasonably calculated to inform each interested person of his or her legally protected rights"). The Dengs' argument ignores the function and purpose of the notice provision in the statutory scheme, which is to alert the former owner that the purchaser will seek a deed. The 60-day period measures the time that must elapse before the Treasurer is compelled to issue the deed and recognizes the obvious—if redemption has already occurred, no deed issues. But, nothing in that process allows for an extra two months to redeem the property.

The majority maintains that NRS 271.595 is ambiguous. But to be ambiguous, each party must provide a reasonable interpretation of the statute. *See Irving v. Irving*, 122 Nev. 494, 496, 134 P.3d 718, 720 (2006). "Where alternative interpretations of a statute are possible, the one producing a reasonable result should be favored." *G & H Assocs. v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 272, 934 P.2d 229, 233 (1997) (internal quotation marks omitted).

However, neither party argues that the statute is ambiguous. Instead, the Dengs argue that subsection 4's "clear language" is susceptible to only one interpretation and allowing the 60-day notice to be given within the two-year redemption period renders the 60-day notice requirement meaningless. Pawlik argues that interpreting the statute to require that notice be given after the two-year period expires effectively creates a two-year and sixty-day redemption period, which is contrary to the express language in NRS 271.595(1)(a). But the fundamental defect in the parties' and majority's interpretations is reading NRS 271.595 to require that notice be given at a certain time in conjunction with the two-year redemption period.

Neither subsection 3 nor 4 states when the notice must be given, only that the notice be given before the Treasurer must issue a deed to the certificate holder. Thus, notice could be given during the two-year redemption period specified in subsection 1(a), or it could be given after that period expires. If the notice is given during the two-year period specified in subsection 1(a), the 60-day notice period may overlap the two-year redemption period, and the deed may not be issued if redemption occurs within that overlapping time. However, any length of time beyond the two-year redemption period that remains for the 60-day notice requirement to run does not extend the time of redemption; rather, it delays the issuance of the deed until the 60 days expires. It would be absurd to conclude that the 60-day notice given during the two-year statutory redemption period shortens the redemption period, and it is equally absurd to conclude that the 60-day period is a mandatory extension of the statutory redemption period. Whether the owner may redeem within the 60 days after service of the notice is governed by the length of the redemption period, not the length of the notice after service. Therefore, if notice is given after the redemption period, it simply delays the issuance of the deed but does not add time to the redemption period because that period has already expired.

"Statutory provisions should, whenever possible, be read in harmony provided that doing so does not violate the ascertained spirit and intent of the legislature." *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 892, 784 P.2d 974, 978 (1989). The statutory framework makes clear that NRS 271.595 creates a two-year redemption period. First, NRS 271.570, which governs the requirements for the certificate of sale, mandates that the certificate of sale state "that the purchaser is entitled to a deed *upon the expiration of the applicable period of redemption as determined pursuant to subsection 1 of* NRS 271.595, unless redemption is made." (Emphasis added.) If the 60-day period in NRS 271.595(4) was meant to be a second redemption period, NRS 271.570's express reference to NRS 271.595(1) would be illogical. Second, NRS 271.575 twice refers to the "period of redemption as determined pursuant to subsection 1 of NRS 271.595." Thus, the specific references to the single redemption period in subsection 1 of NRS 271.595 throughout the statutory framework demonstrate that the notice provision in subsection 4 is not an additional redemption period.

The only reasonable interpretation of the statute is the one that gives full effect to the plain language of all of the provisions of the statute, by recognizing that an owner has two years to redeem his or her property from the date of the certificate of sale; a certificate holder must serve notice to the owner that he or she has the certificate and intends to seek a deed; and the Treasurer must issue a deed if the property has not been redeemed 60 days before the expiration

of the notice. Had the Legislature intended a different redemption period, it would have created that time period in subsection 1(a). *See McGrath v. State Dep't of Pub. Safety*, 123 Nev. 120, 123, 159 P.3d 239, 241 (2007) ("[W]e presume that the Legislature intended to use words in their usual and natural meaning."). Indeed, as the majority points out, the Legislature knows how to create an additional redemption period, as it has expressly done so in a municipal redemption statute. *Cf.* NRS 361.603(3) ("The last known owner may, within 90 days after the notice, redeem the property by paying to the treasurer the amount of the delinquent taxes, plus penalties, interest and costs."). Notably, the Legislature did not do so in NRS Chapter 271.

Finally, the district court concluded, and the majority agrees, that Pawlik's notice of intent to seek the deed was premature and ineffective because he began his attempts to serve notice prior to the expiration of the two-year redemption period. However, this determination is contrary to the plain language of NRS 271.595. As noted earlier, there is nothing in NRS 271.595(3) or NRS 271.595(4) that states when the 60-day notice must be given. Further, subsection 4 of NRS 271.595 expressly provides that "[i]f redemption is not made within 60 days after the date of service, *or the date of the first publication of the notice*, . . . the holder of the certificate of sale is entitled to a deed." (Emphasis added.) The district court's invalidation of the service of the 60-day notice in this case runs contrary to the plain language of subsection 4. In this case, Pawlik first published his notice of intent to seek the deed on January 13, 2016. Thus, under NRS 271.595(4), the 60-day period began running on that date and concluded on March 13, 2016. However, the Dengs did not redeem until April 6, 2016. Even if NRS 271.595 creates two consecutive redemption periods, neither the district court nor the majority explain how the notice was ineffective or how they determine that the 60-day period can only commence after the two-year redemption period expires. Accordingly, I conclude that the district court erred in finding Pawlik's notice ineffective because nothing in NRS 271.595(3) or (4) requires the 60-day notice to be given after the two-year redemption period expires.

Because NRS 271.595(1)(a)'s plain language creates a statutory two-year period of redemption, and the Dengs failed to redeem the property within that period, I would reverse the district court's order dismissing Pawlik's quiet title action.

RYAN ANDREWS, Appellant, *v.*
THE STATE OF NEVADA, Respondent.

No. 71214

March 1, 2018 412 P.3d 37

Appeal from a judgment of conviction, pursuant to a jury verdict, of trafficking in a controlled substance and unlawful sale of a controlled substance at or near a public park. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Affirmed in part, reversed in part, and remanded.

Stiglich, J., dissented.

Jeremy T. Bosler, Public Defender, and *John Reese Petty*, Chief Deputy Public Defender, Washoe County, for Appellant.

Adam Paul Laxalt, Attorney General, Carson City; *Terrence P. McCarthy*, District Attorney, and *Marilee Cate*, Deputy District Attorney, Washoe County, for Respondent.

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

OPINION

By the Court, Parraguirre, J.:

Unless otherwise authorized by statute, NRS 453.3385 prohibits a person from knowingly or intentionally selling or possessing schedule I controlled substances and imposes different penalties depending on the quantity of controlled substance involved. In this appeal, we are asked to determine whether the simultaneous possession of different schedule I controlled substances constitutes separate offenses under NRS 453.3385 or whether the weight of the controlled substances must be aggregated to form a single offense. We conclude that NRS 453.3385 creates a separate offense for each schedule I controlled substance simultaneously possessed by a person. We therefore affirm in part, reverse in part, and remand.

I.

Appellant Ryan Andrews sold heroin and methamphetamine to a confidential informant inside his apartment. Thereafter, the police obtained a search warrant for Andrews' apartment, where they discovered two bags of heroin totaling 9.445 grams and three bags of methamphetamine totaling 9.532 grams. Respondent State of Nevada charged Andrews with two counts of trafficking in a controlled

substance and one count of unlawful sale of a controlled substance at or near a public park. In regard to the two trafficking counts, the State charged Andrews with possessing (1) 4 grams or more, but less than 14 grams, of a schedule I controlled substance in violation of NRS 453.3385(1); and (2) 14 grams or more, but less than 28 grams, of a schedule I controlled substance in violation of NRS 453.3385(2).[1]

Andrews filed a motion to strike both of the trafficking counts, arguing that NRS 453.3385 did not allow the State to charge him with "an aggregate of completely separate controlled substances," and that the State could not charge him for having a mixture of heroin and meth because the drugs were not mixed into one bag. The district court denied Andrews' motion, holding that the weight of different schedule I drugs simultaneously possessed by a defendant may be aggregated under NRS 453.3385.

Although the district court denied Andrews' motion, the State offered to combine both of the trafficking charges into just one count, and Andrews' counsel agreed. Thereafter, the State filed an amended information, which removed the trafficking charge under NRS 453.3385(1), but retained the trafficking charge under NRS 453.3385(2) and the charge of unlawful sale of a controlled substance at or near a public park. Ultimately, a jury convicted Andrews of the two remaining counts, and the district court entered a judgment of conviction. Andrews now appeals the judgment of conviction.

II.

Andrews argues that different schedule I controlled substances may not be aggregated together, and therefore, because he had less than 14 grams of heroin and less than 14 grams of meth, he should have been charged with two counts of trafficking in a controlled substance in violation of NRS 453.3385(1). Specifically, Andrews argues that the unit of prosecution for NRS 453.3385 is the possession of each schedule I controlled substance. Conversely, the State argues that the weight of any schedule I controlled substances simultaneously possessed by a defendant must be aggregated under NRS 453.3385. Thus, the State argues that the unit of prosecution for NRS 453.3385 is each instance of simultaneously possessing schedule I controlled substances. We agree with Andrews.

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[1]NRS 453.3385 was amended in 2015, and thus, NRS 453.3385(1) and (2) are now NRS 453.3385(1)(a) and (1)(b), respectively. 2015 Nev. Stat., ch. 506, § 6, at 3088-89. The amendments became effective July 1, 2015. However, the amendments do not affect our analysis in this matter, and we will address the version of the statute as it existed at the time the police discovered and seized the drugs in Andrews' apartment in June 2015.

A.

"[D]etermining the appropriate unit of prosecution presents an issue of statutory interpretation and substantive law" that this court reviews de novo. *Castaneda v. State*, 132 Nev. 434, 437, 373 P.3d 108, 110 (2016) (internal quotation marks omitted). When interpreting a statute, this court begins with the statute's text. *Id.*

NRS 453.3385 (2013) reads, in relevant part, as follows:

> [A] person who knowingly or intentionally sells, manufactures, delivers or brings into this State or who is knowingly or intentionally in actual or constructive possession of . . . *any controlled substance which is listed in schedule I*, except marijuana, *or any mixture which contains any such controlled substance*, shall be punished . . . if the quantity involved:
>
> 1. Is 4 grams or more, but less than 14 grams, for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years and by a fine of not more than $50,000.
>
> 2. Is 14 grams or more, but less than 28 grams, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years and by a fine of not more than $100,000.
>
> 3. Is 28 grams or more, for a category A felony by imprisonment in the state prison . . . [f]or life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or . . . [f]or a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served, and by a fine of not more than $500,000.

(Emphases added.)

The State argues that NRS 453.3385 is ambiguous with regard to the unit of prosecution pursuant to this court's analysis in *Castaneda v. State*, 132 Nev. 434, 373 P.3d 108 (2016), and that this court should look to the statute's "legislative history and construe the statute in a manner that is consistent with reason and public policy." *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011). For the reasons set forth below, we agree with the State that the statute is ambiguous.

In *Castaneda*, this court addressed the appropriate unit of prosecution for NRS 200.730, which prohibits a person from knowingly and willfully possessing "*any film, photograph or other visual presentation* depicting a person under the age of 16 years as the subject of a sexual portrayal or engaging in . . . sexual conduct." 132 Nev. at 437, 373 P.3d at 110 (internal quotation marks omitted). In that case, the parties disputed whether the statute authorized a separate con-

viction for each image possessed or whether the simultaneous possession of multiple images constituted a single offense. *Id.* at 437-38, 373 P.3d at 110-11. This court first examined the plain language of the statute and concluded that "[t]he word 'any' has multiple, conflicting definitions, including (1) one; (2) one, some, or all regardless of quantity; (3) great, unmeasured, or unlimited in amount; (4) one or more; and (5) all." *Id.* at 438, 373 P.3d at 111 (internal quotation marks omitted). After finding NRS 200.730's plain text ambiguous with regard to the appropriate unit of prosecution, this court examined other legitimate tools of statutory interpretation. *Id.* at 439, 373 P.3d at 111. This court then concluded that other means of statutory interpretation failed to resolve the ambiguities within NRS 200.730's plain text and ultimately held that the rule of lenity required "any" to be construed in the accused's favor such that the charges under NRS 200.730 could not be brought on a per-image basis. *Id.* at 438-43, 373 P.3d at 111-14.

Here, NRS 453.3385's use of the word "any" presents the same ambiguities recognized by this court in *Castaneda.* Thus, although the statute criminalizes the possession of a single schedule I controlled substance, it is unclear whether the simultaneous possession of each additional schedule I controlled substance "gives rise to a separate prosecutable offense."[2] *Castaneda*, 132 Nev. at 438, 373 P.3d at 111. However, this does not end our analysis regarding NRS 453.3385's unit of prosecution. Specifically, *Castaneda* does not broadly hold that a statute's use of the word "any" mandates that simultaneous acts of proscribed conduct can only result in one charge and conviction under the statute. Rather, this court narrowly tailored its holding in *Castaneda* such that the rule of lenity was applied to interpret NRS 200.730's unit of prosecution favorably for the appellant after this court had concluded that other tools of statutory interpretation failed to resolve the ambiguities within NRS 200.730's plain text. *Id.* at 443, 373 P.3d at 114.

Because we conclude that NRS 453.3385's plain text is ambiguous with respect to the appropriate unit of prosecution, "we turn to other legitimate tools of statutory interpretation, including related statutes, relevant legislative history, and prior judicial interpretations of related or comparable statutes by this or other courts." *Id*. at 439, 373 P.3d at 111. In doing so, we must determine whether other tools of statutory interpretation are able to resolve the ambiguities within

[2]We note that the phrase, "any mixture which contains any such controlled substance" in NRS 453.3385 applies when a drug is found in a diluted state, not when multiple, distinct schedule I drugs are found in separate bags. *See Sheriff, Humboldt Cty. v. Lang*, 104 Nev. 539, 542-43, 763 P.2d 56, 58-59 (1988) (holding that diluted substances pose a greater harm to society than uncut or pure substances due to the increased number of persons who will partake in the substance, and thus, the entire weight of a mixture should be considered for the purposes of NRS 453.3395, the schedule II equivalent of NRS 453.3385).

NRS 453.3385's plain text; otherwise, we must invoke the rule of lenity consistent with this court's holding in *Castaneda*. As discussed below, we conclude that the Legislature intended to create a separate offense for each controlled substance simultaneously possessed by a person under NRS 453.3385, and thus, unlike *Castaneda*, the rule of lenity does not apply here.

1.

An examination of other statutes within Nevada's Uniform Controlled Substances Act (UCSA), codified as NRS 453.011 *et seq.*, sheds some light as to NRS 453.3385's appropriate unit of prosecution. Most of the statutes establishing offenses in the UCSA refer to controlled substances in the singular. *See, e.g.*, NRS 453.321, .322, .331, .332, .3325, .3335, .334, .336 (referencing "*a* controlled substance," "*the* controlled substance," or "*an* imitation controlled substance" (emphases added)). However, at least four statutes do employ the term "any" when referencing controlled substances. *See* NRS 453.337, .338, .3385, .3395.

More importantly, at least two statutes directly refer to NRS 453.3385, and in doing so, these statutes refer to controlled substances in the singular. In particular, NRS 453.3383 states that, "[f]or the purposes of NRS 453.3385 . . . the weight of *the controlled substance* as represented by the person selling or delivering it is determinative if the weight as represented is greater than the actual weight of *the controlled substance*." (Emphases added.) Likewise, NRS 453.3405 states that "the adjudication of guilt and imposition of sentence of a person found guilty of trafficking in *a controlled substance* in violation of NRS 453.3385 . . . must not be suspended . . . until the person has actually served the mandatory minimum term of imprisonment." (Emphasis added.)

Accordingly, these statutes indicate that a violation under NRS 453.3385 concerns a single controlled substance and that the weight of a single controlled substance is the relevant inquiry for purposes of NRS 453.3385. *See* NRS 453.013 (providing that the UCSA should be interpreted so "as to effectuate its general purpose and *to make uniform the law with respect to the subject of such sections among those states which enact it*" (emphasis added)).

2.

The State argues that the legislative history and purpose of NRS 453.3385 indicate that different controlled substances may be aggregated together. In particular, the State argues that defining the unit of prosecution by the type of controlled substance does not deter the large-scale distribution of controlled substances and simply encourages drug traffickers to diversify their products. We disagree.

NRS 453.3385's legislative history does not discuss, directly or indirectly, the applicable unit of prosecution; however, it provides that the primary purpose of the statute was to curb the heavy trafficking of controlled substances. *See, e.g.*, Hearing on S.B. 7 Before the Assembly Judiciary Comm., 62d Leg., at 28-34 (Nev., Mar. 10, 1983) (Senator William Raggio, sponsor of the bill, stated that the bill greatly enhanced existing penalties for heavy trafficking of controlled substances, and that the purpose of the severe penalties was to incentivize those convicted under the law to reveal the "'higher ups'" who usually avoid prosecution). Moreover, this court has looked to the legislative intent behind similar trafficking statutes and concluded that the purpose of such statutes is "to deter large-scale distribution of controlled substances, thus decreasing the number of persons potentially harmed by drug use." *Lang*, 104 Nev. at 542, 763 P.2d at 58.

In light of this legislative history, we conclude that Andrews' interpretation of NRS 453.3385 as creating a separate offense for the possession of each controlled substance furthers the legislative intent of deterring large-scale drug trafficking by imposing harsher penalties for those who possess large quantities of different controlled substances. For example, under Andrews' interpretation, a person possessing 30 grams of five different schedule I controlled substances may be subject to five counts of violating NRS 453.3385(3). Conversely, under the same factual scenario, the State's interpretation does less to further the legislative intent of deterring large-scale trafficking as it may result in only one count of violating NRS 453.3385(3) since the weight of the drugs must be aggregated together.

3.

Finally, we conclude that caselaw from other jurisdictions generally supports Andrews' interpretation of NRS 453.3385. In particular, we find *Cunningham v. State*, 567 A.2d 126 (Md. 1989), instructive on this issue.

In *Cunningham*, the Maryland Court of Appeals interpreted the appropriate unit of prosecution under the relevant statutes of the Maryland Controlled Dangerous Substances Act and held that the statutes "authorize a separate conviction and punishment for the possession . . . of each controlled dangerous substance covered by the Act, even when there is a simultaneous possession of more than one such substance." 567 A.2d at 129. In doing so, the court explained as follows:

> The article "a" and the word "any" have the same meaning in this context. In the definition section, "controlled dangerous substance" means "any" drug, substance, or immediate precursor in Schedules I through V. We perceive this language

> to be deliberate, and to demonstrate the intention of the legislature to regulate each controlled dangerous substance, and to authorize a separate conviction for the possession of each substance.

Id. (citation omitted).

The *Cunningham* court then cites to cases from other states that have interpreted state statutes similar to the UCSA and have also held that "there may be separate convictions and punishment for simultaneous possession of two or more" controlled substances. *Id.* at 130. Moreover, of those cited cases, the following have reached the same conclusion notwithstanding their respective state statutes' use of the word "any": *Tabb v. State*, 297 S.E.2d 227, 230 (Ga. 1982) (concluding that statute prohibiting the "possess[ion] with intent to distribute *any controlled substance*" was ambiguous, but interpreted to require multiple offenses because "*each drug within a given schedule was placed there because it, individually, is dangerous and warranted control*" (alteration in original) (internal quotation marks omitted)); *State v. Williams*, 542 S.W.2d 3, 5 (Mo. Ct. App. 1976) (concluding that statute prohibiting the possession of "*any* controlled or counterfeit substance" required separate offenses (internal quotation marks omitted)); *State v. Meadors*, 580 P.2d 903, 907 (Mont. 1978) (concluding that statute prohibiting the possession of "any dangerous drug" required separate offenses because the legislature specifically stated what types of drugs were prohibited and what the different penalties were depending on the type and amount of the drug involved (internal quotation marks omitted)); and *Melby v. State*, 234 N.W.2d 634, 640-41 (Wis. 1975) (concluding that statute prohibiting the possession of "any dangerous drug" made it a separate offense for each drug because the illegality of each drug must be determined independently without regard to the others (internal quotation marks omitted)). *Id.*

III.

Although NRS 453.3385's plain text is ambiguous with respect to the appropriate unit of prosecution, we nonetheless hold that, in applying other tools of statutory interpretation, the Legislature intended to create a separate offense for each controlled substance simultaneously possessed by a person. We further hold that the weights of different controlled substances may not be aggregated together to form a single offense under NRS 453.3385. Accordingly, we affirm Andrews' conviction for the unlawful sale of a controlled substance at or near a public park, reverse Andrews' conviction under NRS 453.3385(2), and remand for further proceedings consistent with this opinion.

Hardesty, J., concurs.

STIGLICH, J., dissenting:

I agree with Parts I and IIA of the majority opinion. As we held in *Castaneda*, the term "any" within a statute like NRS 453.3385 is ambiguous, so we must look to other sources to determine what the Legislature intended to be the unit of prosecution. 132 Nev. 434, 439, 373 P.3d 108, 111 (2016).

I disagree, however, with Part IIA(1)-(3), in which the majority interprets the legislative history of NRS 453.3385 to support its position that different schedule I drugs may not be aggregated. To the extent the majority concludes that the Legislature intended NRS 453.3385 to incentivize low-level drug traffickers to reveal "higher ups" in criminal drug syndicates, I believe this intent is furthered by allowing the aggregation of different schedule I drugs. A low-level dealer like Andrews, who diversifies his contraband, is as likely as a single-substance trafficker to have information that could assist law enforcement. I am unconvinced by the majority's hypothetical of the trafficker in possession of five schedule I substances, each in excess of 30 grams. A single violation of NRS 453.3385(3)[1] is already punishable with life imprisonment, so subjecting that trafficker to an additional four counts is unlikely to affect his behavior.

More importantly—as the majority recognizes—this court has already determined the legislative intent behind Nevada's trafficking statutes. In *Sheriff v. Lang*, this court noted that "[t]he legislature enacted NRS 453.3395 to deter large-scale distribution of controlled substances, thus decreasing the number of persons potentially harmed by drug use." 104 Nev. 539, 542, 763 P.2d 56, 58 (1988). While the present case concerns NRS 453.3385 (schedule I trafficking) rather than NRS 453.3395 (schedule II trafficking) as in *Lang*, both statutes derive from the same bill, share the same legislative history, and were enacted for the same purpose. That purpose—as we determined in *Lang*—was to "decreas[e] the number of persons potentially harmed by drug use." 104 Nev. at 542, 763 P.2d at 58.

In light of that purpose, the State's position is sound. Trafficking in 9 grams of heroin and 9 grams of methamphetamine harms just as many people as trafficking in 18 grams of either drug alone.[2] That is why NRS 453.3385 tethers the level of punishment to the weight of contraband: more substance leads to more harm, and more harm justifies harsher punishment. Our Legislature did not distin-

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[1]As noted in the majority opinion, *ante* at 96 n.1, we apply NRS 453.3385 as it was written at the time of Andrews' offense, prior to amendments enacted in 2015.

[2]Indeed, a trafficker who diversifies his illegal contraband potentially poses a greater threat to public health, because diversification exposes potential buyers to new and potentially more addictive substances. It also increases the likelihood that buyers will combine drugs, possibly leading to "synergistic lethal effects." Trujillo, Smith & Guaderrama, *Powerful Behavioral Interactions Between Methamphetamine and Morphine*, 99 Pharmacology Biochem. Behav., 451, 457 (2011).

guish between different schedule I drugs—with the exception of marijuana—so neither should we. Moreover, I see no logical reason to differentiate possession of two schedule I substances mixed within one bag from possession of the same substances within separate bags. It seems absurd to subject the former but not the latter to NRS 453.3385's heightened punishments.

The primary case the majority cites to support its position—*Cunningham v. State*—is factually and legally distinguishable from this case. 567 A.2d 126 (Md. 1989). The defendant in *Cunningham* possessed substances listed in separate schedules under Maryland law. *Id*. at 131. I agree that substances from different schedules cannot be aggregated, but that is not the issue in this case. Furthermore, Maryland's statutes are easily distinguishable from NRS 453.3385 in that they do not proscribe higher punishments based on the quantity of drugs involved, nor do they base punishment according to schedule. *Id*. at 128. Indeed, in deciding that possession of heroin and cocaine merited two separate convictions, the Maryland court noted: "Had the legislature tied the scheme of punishments directly to the five schedules, we might have found th[e] argument [that the unit of prosecution is based upon the schedules] to have more force." *Id*. at 131.

Tying "the scheme of punishments directly to the five schedules" is precisely what our Nevada trafficking statutes do. *See* NRS 453.3385 (schedule I); 453.3395 (schedule II).[3] This schedule-based punishment scheme evinces the Legislature's intent to allow the weights of different schedule I substances to be aggregated. *See State v. Delfino*, 490 N.E.2d 884, 888 (Ohio 1986) ("[P]ossession of a substance or substances in Schedule I or II, with the exception of marijuana, is a single and separate offense."); *cf. United States v. Martin*, 302 F. Supp. 498, 501 (W.D. Penn. 1969) ("[E]ach specific narcotic drug cannot be the basis for a separate count."), *aff'd*, 428 F.2d 1140 (3d Cir. 1970); *State v. Williams*, 530 A.2d 627, 630 (Conn. App. Ct. 1987) ("[T]here is no indication that the legislature intended to authorize multiple punishment for the simultaneous possession of more than one narcotic."); *State v. Butler*, 271 A.2d 17, 18 (N.J. Super. Ct. App. Div. 1970) ("This single act of possession, which occurred at one time and in one place, cannot be the basis for multiple offenses.").

For the foregoing reasons, I believe that NRS 453.3385 does allow the weight of different schedule I substances to be aggregated when calculating "the quantity involved." Therefore, I dissent.

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[3]The Nevada Legislature has not enacted statutes to punish the trafficking of substances listed in schedules III-V.

THE STATE OF NEVADA, Petitioner, *v.* THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for THE COUNTY OF CLARK; and THE HONORABLE JENNIFER P. TOGLIATTI, District Judge, Respondents, and JEFFREY LYNN BAKER, Real Party in Interest.

No. 71621

March 1, 2018 412 P.3d 18

Original petition for a writ of mandamus challenging a district court order denying a pretrial motion to admit testimonial evidence in a criminal prosecution.

Petition granted.

Adam Paul Laxalt, Attorney General, Carson City; *Steven B. Wolfson*, District Attorney, and *Dena I. Rinetti* and *Ryan J. MacDonald*, Deputy District Attorneys, Clark County, for Petitioner.

Philip J. Kohn, Public Defender, and *Mike Feliciano*, Deputy Public Defender, Clark County, for Real Party in Interest.

Before the Supreme Court, En Banc.

OPINION

By the Court, Stiglich, J.:

At issue in this petition is a defendant's Sixth Amendment right to confront a witness who testifies against him. In *Chavez v. State*, we held that when a witness testifies against a defendant at a preliminary hearing but subsequently becomes unavailable to testify at trial, the witness's prior testimony is admissible at trial so long as the defendant had "an adequate opportunity" to cross-examine the witness at the preliminary hearing. 125 Nev. 328, 337, 213 P.3d 476, 482 (2009). The question presented in this petition is whether a defendant had "an adequate opportunity" to cross-examine a witness when, immediately after the State's direct examination at the preliminary hearing, the defendant waived his right to continue the preliminary hearing. We answer in the affirmative because the Confrontation Clause guarantees an *opportunity* to cross-examine; it does not bestow upon defendants a sword to strike adverse testimony that the defendant declined to contest.

FACTS AND PROCEDURAL HISTORY

Real party in interest Jeffrey Baker stands accused of one count of sexually motivated coercion and eight counts of lewdness with a child under the age of 14. At the preliminary hearing, Baker's cousin, C.J., testified in detail regarding two instances in which Baker attempted to engage her in sexual activity. The first instance occurred when C.J. was 11 years old; the second when she was 13. Baker was well into his 20s on both occasions.

During the preliminary hearing, when C.J. finished testifying, the justice court said, "All right. Cross." Instead of beginning cross-examination, Baker's attorney asked for the court's indulgence as he conferred off the record with the prosecutor. He then announced: "Today pursuant to negotiations, Mr. Baker will unconditionally waive his preliminary hearing. In district court he'll plead guilty to one count of attempt[ed] lewdness with a minor." After canvassing Baker, the justice court accepted his unconditional waiver of the remainder of the preliminary hearing.

At the district court arraignment two weeks later, Baker presented his signed guilty plea agreement. The court questioned Baker as to whether he understood the consequences of pleading guilty; he indicated that he did. Then the court asked if Baker was pleading guilty because he in fact attempted to commit a lewd act upon C.J. Baker equivocated before answering in the negative: "It's not true." The court rejected Baker's guilty plea and ordered the State to prepare an amended information reinstating the original charges.

One week later, C.J. committed suicide. The State moved to admit at trial the transcript of C.J.'s testimony at the preliminary hearing. The district court denied the motion, finding that Baker did not have an adequate opportunity to cross-examine C.J. at the preliminary hearing. The State challenges that order in the present writ petition.

DISCUSSION

We exercise our discretion to consider the State's petition

"[B]ecause a writ of mandamus is an extraordinary remedy, the decision to entertain a petition for the writ lies within our discretion." *Gonzalez v. Eighth Judicial Dist. Court*, 129 Nev. 215, 217, 298 P.3d 448, 449-50 (2013). "A writ of mandamus is available to compel the performance of an act that the law requires . . . or to control a manifest abuse or arbitrary or capricious exercise of discretion." *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931, 267 P.3d 777, 779 (2011). The writ is appropriate when "there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170. Because the State cannot appeal a final

judgment in a criminal case, *see* NRS 177.015(3), the State has no remedy in law to challenge the district court's evidentiary ruling. *See Armstrong*, 127 Nev. at 931, 267 P.3d at 780. We therefore exercise our discretion to consider the State's petition.

The Confrontation Clause does not prohibit the admission of C.J.'s testimony

The State argues that the district court arbitrarily and capriciously exercised its discretion when it denied the State's motion to admit C.J.'s testimony from the preliminary hearing. For the reasons set forth below, we agree.

The Confrontation Clause of the Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. In accordance with that right, prior testimony from a witness unavailable at trial is admissible only if the defendant had "a prior opportunity for cross-examination." *Crawford v. Washington*, 541 U.S. 36, 68 (2004).

In *Chavez v. State*, we held "that a preliminary hearing can afford a defendant an adequate opportunity to confront witnesses against him pursuant to *Crawford*." 125 Nev. 328, 337, 213 P.3d 476, 482 (2009). "The adequacy of the opportunity to confront will be decided on a case-by-case basis, turning upon the discovery available to the defendant at the time and the manner in which the magistrate judge allows the cross-examination to proceed." *Id*. Applying that test to the facts in *Chavez*, in which a victim of sexual assaults died after testifying at a preliminary hearing but before trial, we noted that "nearly all the discovery was complete" at the time of the hearing, "and the magistrate judge allowed Chavez unrestricted opportunity to confront [the witness] on all the pertinent issues." *Id*. at 341, 213 P.3d at 485-86. We therefore concluded that admitting the witness's testimony at trial did not violate Chavez's Confrontation Clause rights. *See id*. at 341-42, 213 P.3d at 486.

The tragic facts of this case are similar to those in *Chavez*. When C.J. testified against Baker at the preliminary hearing, discovery was nearly complete. Baker had transcripts of C.J.'s statements to law enforcement, a copy of the Declaration of Arrest, the crime report, the victim's mother's handwritten voluntary statement, and the detective's case report. In sum, the discovery was sufficient for Baker to have cross-examined C.J. *See Estes v. State*, 122 Nev. 1123, 1140, 146 P.3d 1114, 1126 (2006) ("As [the defendant] obtained the police report during discovery, he had the opportunity to cross-examine [the victim] on the report's contents . . . .").

The sole relevant difference between this case and *Chavez* is that Baker chose not to cross-examine the witness who testified against him at the preliminary hearing. He was not *denied* an opportunity

to do so; there is nothing in the record to suggest that the court impeded or discouraged cross-examination. We see no reason to differentiate between a defendant who cross-examines a witness at the preliminary hearing—like the defendant in *Chavez*—and a defendant, like Baker, who chooses not to. "[T]he Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Chavez*, 125 Nev. at 338, 213 P.3d at 483 (internal quotation marks omitted); *see also Hinojos-Mendoza v. People*, 169 P.3d 662, 668 (Colo. 2007) ("[W]here a defendant chooses not to take advantage of the opportunity to cross-examine a witness, the defendant has not been denied his constitutional right to confrontation."); *Clark v. State*, 808 N.E.2d 1183, 1189-90 (Ind. 2004) ("[A]lthough the accused must have an opportunity to cross-examine the witness during the face-to-face confrontation, the opportunity does not have to be seized or successful . . . ." (internal quotation marks omitted)); *State v. Nelson*, 725 P.2d 1353, 1357 (Utah 1986) ("It is the opportunity to cross-examine that is guaranteed by the state and federal constitutions, not whether that opportunity is exercised.").

We recognize that this court has previously indicated that three conditions must be met before testimony from a preliminary hearing may be used at a criminal trial: "first, that the defendant was represented by counsel at the preliminary hearing; second, that counsel cross-examined the witness; third, that the witness is shown to be actually unavailable at the time of trial." *Hernandez v. State*, 124 Nev. 639, 645, 188 P.3d 1126, 1130 (2008) (quoting *Drummond v. State*, 86 Nev. 4, 7, 462 P.2d 1012, 1014 (1970)); *see also Grant v. State*, 117 Nev. 427, 432, 24 P.3d 761, 764 (2001); *Funches v. State*, 113 Nev. 916, 920, 944 P.2d 775, 777-78 (1997); *Aesoph v. State*, 102 Nev. 316, 320, 721 P.2d 379, 381-82 (1986). All of these cases derive from *Drummond*, in which we tried to reconcile dicta from two United States Supreme Court cases decided in the 1960s. 86 Nev. at 7, 462 P.2d at 1014. But neither *Drummond* nor the cases cited above addressed the issue of whether an opportunity to cross-examine suffices when no actual cross-examination occurred. *See Grant*, 117 Nev. at 432 n.5, 24 P.3d at 764 n.5 ("[W]hether mere opportunity is sufficient has not been addressed since in most cases, the witness was actually cross-examined."). Therefore, because those cases did not turn on whether an opportunity to cross-examine is sufficient for confrontation purposes, statements addressing that issue are noncontrolling dicta. *See Armenta-Carpio v. State*, 129 Nev. 531, 535, 306 P.3d 395, 398 (2013) (declining to apply the doctrine of stare decisis to statements from a prior opinion that "went beyond answering the limited question that was before the court"). We see no reason to adhere to that

dicta when the Supreme Court has since clarified that prior testimony from a witness unavailable at trial is admissible as long as the defendant had "a prior *opportunity* for cross-examination."[1] *Crawford*, 541 U.S. at 68 (emphasis added).

Our holding today is a straightforward application of *Chavez*: when deciding whether a preliminary hearing afforded a defendant "an adequate opportunity to confront witnesses against him," key factors include the amount of discovery available to the defendant at the time of the hearing and the extent to which the "judge allowed the defendant a thorough opportunity to cross-examine the witness." *Chavez*, 125 Nev. at 337, 339, 213 P.3d at 482, 484. Today we hold that, when a defendant declines an opportunity to cross-examine a witness at a preliminary hearing, the defendant was not denied "a thorough opportunity to cross-examine." *Id.* at 339, 213 P.3d at 484. Because the justice court offered Baker an opportunity to cross-examine C.J., and Baker possessed all discovery relevant to her testimony, Baker had "an adequate opportunity to confront" C.J. at the preliminary hearing such that admitting her testimony at trial does not violate his Sixth Amendment rights. *Id.* at 342, 213 P.3d at 486. In denying the State's motion to admit C.J.'s testimony on Sixth Amendment grounds, the district court misapplied *Chavez* and, in so doing, manifestly abused its discretion. *See Armstrong*, 127 Nev. at 931-32, 267 P.3d at 780.

CONCLUSION

The Confrontation Clause guarantees defendants an opportunity to cross-examine witnesses who testify against them. It does not give defendants a sword to strike adverse testimony that the defendant chose not to contest. Baker received ample discovery at the time of the preliminary hearing, and he was not denied an opportunity to cross-examine C.J. Accordingly, we grant the petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order denying the State's motion to admit C.J.'s testimony and enter an order consistent with this opinion.[2]

Douglas, C.J., and Cherry, Gibbons, Pickering, Hardesty, and Parraguirre, JJ., concur.

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[1]We do not disturb the remaining two conditions set forth in *Drummond*. The first condition—that the defendant be represented by counsel at the preliminary hearing—is consistent with *Chavez* in that an unrepresented defendant is unlikely to have had "an adequate opportunity to confront witnesses against him." 125 Nev. at 337, 213 P.3d at 482. The third condition—that the witness be unavailable at the time of trial—is mandated by statute. NRS 51.325(1).

[2]Having resolved this writ petition, we lift the stay entered on December 1, 2016.

CHAD ZENOR, Appellant, *v.* THE STATE OF NEVADA, DEPARTMENT OF TRANSPORTATION, Respondent.

No. 71790

March 1, 2018 412 P.3d 28

Appeal from a district court order denying a post-judgment motion for attorney fees and costs in an employment matter. First Judicial District Court, Carson City; James E. Wilson, Judge.

Affirmed.

Oshinski & Forsberg, Ltd., and *Mark Forsberg*, Carson City, for Appellant.

Adam Paul Laxalt, Attorney General, and *Dominika J. Batten*, Deputy Attorney General, Carson City, for Respondent.

Before the Supreme Court, Pickering, Gibbons and Hardesty, JJ.

OPINION

By the Court, Gibbons, J.:

In *State, Department of Human Resources v. Fowler*, we held that attorney fees were not available under NRS 18.010(2)(a) in a petition for judicial review of an agency determination that did not include monetary recovery. 109 Nev. 782, 786, 858 P.2d 375, 377 (1993). In this appeal, we are asked whether attorney fees are also prohibited under NRS 18.010(2)(b) in petitions for judicial review of an agency determination. We hold that NRS 233B.130(6), which states that the provisions of NRS Chapter 233B provide the exclusive means of judicial action in a petition for judicial review, prohibits an award of attorney fees under NRS 18.010(2)(b) in petitions for judicial review.

FACTS AND PROCEDURAL HISTORY

Appellant Chad Zenor was employed by respondent Nevada Department of Transportation (NDOT) when he injured his wrist on the job. Eleven months after the injury, Zenor underwent an examination and received an evaluation signed by his treating physician, Dr. Huene, who determined Zenor was not yet capable of performing his pre-injury job duties. Approximately two months later, Dr. Huene again examined Zenor and determined he could fully use his wrist with a brace as needed. Less than one month after that, Dr. Huene released Zenor "without limitations." Zenor and his wife delivered the full release to NDOT that same day.

Despite the full release, NDOT commenced vocational rehabilitation and separation proceedings against Zenor, ultimately separating him from employment for medical reasons. Zenor appealed and an administrative hearing officer reversed the separation. NDOT petitioned for judicial review and the district court affirmed. Zenor proceeded to file a motion for attorney fees under NRS 18.010(2)(b) on the ground that NDOT unreasonably brought its petition to harass him. The district court denied the motion, holding that NRS 233B.130 prohibited attorney fees in a judicial action of a final agency decision.

DISCUSSION

Standard of review

This court normally reviews an award or denial of attorney fees under NRS 18.010(2)(b) for an abuse of discretion. *Mack-Manley v. Manley*, 122 Nev. 849, 860, 138 P.3d 525, 532-33 (2006). However, the district court "may not award attorney's fees unless authorized by statute, rule or contract." *Fowler*, 109 Nev. at 784, 858 P.2d at 376 (citing *Nev. Bd. of Osteopathic Med. v. Graham*, 98 Nev. 174, 175, 643 P.2d 1222, 1223 (1982)). Further, issues of statutory interpretation are questions of law reviewed de novo. *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1028 (2006).

NRS 233B.130 prohibits attorney fees in petitions for judicial review of agency determinations

NRS 233B.130(6) dictates that the provisions of NRS Chapter 233B "are the exclusive means of judicial review of, or judicial action concerning, a final decision in a contested case involving an agency to which this chapter applies." We noted in *Fowler* that "NRS 233B.130 does not contain any specific language authorizing the award of attorney's fees in actions involving petitions for judicial review of agency action." 109 Nev. at 785, 858 P.2d at 377. Here, the district court interpreted *Fowler* to mean that NRS 233B.130 precluded attorney fees in such matters. We conclude that the district court was correct in its interpretation.

This court has "repeatedly refused to imply provisions not expressly included in the legislative scheme." *State Indus. Ins. Sys. v. Wrenn*, 104 Nev. 536, 539, 762 P.2d 884, 886 (1988). For example, in *Wrenn*, this court declined to award attorney fees because "the legislature has not expressly authorized an award of attorney's fees in worker's compensation cases. . . . [And] we decline to allow a claimant recovery of attorney's fees in a worker's compensation case absent express statutory authorization." *Id.*; *Rand Props., LLC v. Filippini*, Docket No. 66933, *11 (Order of Reversal and Re-

mand, April 21, 2016) (declining to award attorney fees under NRS 533.190(1) and NRS 533.240(3), in part, because "attorney fees are not mentioned anywhere in the statute").

"[I]t is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done." *McKay v. Bd. of Cty. Comm'rs of Douglas Cty.*, 103 Nev. 490, 492, 746 P.2d 124, 125 (1987). Here, the Legislature expressly stated that the provisions of NRS Chapter 233B "are the *exclusive means* of judicial review of, or judicial action" when courts review agency determinations. NRS 233B.130(6) (emphasis added). That the Legislature intentionally omitted attorney fees from NRS Chapter 233B is supported by the fact that the Legislature expressly authorized fees and costs in similar statutes—specifically for frivolous petitions of hearing officer decisions involving industrial injuries. *See* NRS 616C.385. Thus, while *Fowler* did not expressly state that NRS 233B.130 prohibited attorney fees in petitions for judicial review of agency determinations, we now clarify that it does.[1]

CONCLUSION

We hold that, consistent with *Fowler*, NRS 233B.130 prohibits attorney fees in petitions for judicial review of agency determinations. Accordingly, Zenor is not entitled to an award of attorney fees under NRS 18.010(2)(b), and we affirm the decision of the district court.

Pickering and Hardesty, JJ., concur.

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[1]Based on this holding, we need not consider the parties remaining arguments.

THE STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS DIVISION, Appellant, *v.* DOLLAR LOAN CENTER, LLC, a Domestic Limited Liability Company, Respondent.

No. 70002

March 1, 2018 412 P.3d 30

Appeal from a district court order in a proceeding under NRS 29.010. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Reversed and remanded.

Pickering, J., dissented.

Adam Paul Laxalt, Attorney General, *Lawrence J.C. VanDyke*, Solicitor General, *William J. McKean*, Chief Deputy Attorney General, *David J. Pope*, Senior Deputy Attorney General, and *Rickisha L. Hightower-Singletary* and *Vivienne Rakowsky*, Deputy Attorneys General, Carson City, for Appellant.

Holland & Hart LLP and *Patrick John Reilly* and *Erica C. Smit*, Las Vegas, for Respondent.

Before the Supreme Court, En Banc.

OPINION

By the Court, Hardesty, J.:

In this appeal, we must determine whether a payday loan licensee can sue to collect on the recovery of a loan made for the purpose of refinancing prior loans under NRS 604A.480(2). We conclude that NRS 604A.480(2)(f) bars a licensee from bringing any type of enforcement action on a refinancing loan made under NRS 604A.480(2). Because the district court erred in concluding that NRS 604A.480 does not prohibit certain payday loan licensees from filing suit against borrowers who default on the loans, we reverse.

I.

Responding to a so-called "debt treadmill," the 2005 Legislature enacted Assembly Bill (A.B.) 384, later codified as NRS Chapter 604A, to regulate the payday loan industry. *See* A.B. 384, 73d Leg. (Nev. 2005); 2005 Nev. Stat., ch. 414, at 1683.

Included in the statutory scheme is the regulation of deferred deposit loans and high-interest loans. *Id*. Deferred deposit loans are

those in which the borrower provides a check or authorization for the electronic transfer of funds on a future date in exchange for a loan. NRS 604A.050. A high-interest loan is a loan that charges an annual interest rate greater than 40 percent. NRS 604A.0703. Both deferred deposit and high-interest loans generally have an original loan term limited to 35 days. NRS 604A.408. If a borrower cannot repay the loan within 35 days, NRS 604A.480 is implicated. When the Legislature passed A.B. 384, it included a provision which allowed for a refinancing agreement with a 60-day extension beyond the term of the original loan. NRS 604A.480(1); *see* 2005 Nev. Stat., ch. 414, at 1683.

Under subsection 1 of NRS 604A.480, a licensee must not "establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding loan . . . beyond 60 days after the expiration of the initial loan period." Further, the licensee must "not add any unpaid interest or other charges accrued during the original term of the outstanding loan or any extension of the outstanding loan to the principal amount of the new deferred deposit loan or high-interest loan." *Id*. However, under NRS 604A.480(2), certain new deferred deposit or high-interest loans are exempt from subsection 1's restrictions.

NRS 604A.480(2) allows a licensee to offer a new loan to satisfy an outstanding loan for a period of not less than 150 days and at an interest rate of less than 200 percent. NRS 604A.480(2)(a)(1), (3). However, the licensee must follow all of the specific requirements in NRS 604A.480(2) for the new loan to be exempted from the provisions of subsection 1. The requirement at issue in this appeal is NRS 604A.480(2)(f), which permits a loan to be made under subsection 2 so long as the licensee "[d]oes not commence any civil action or process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof."

Over the years, NRS 604A.480(2)(f) has been interpreted by appellant Nevada Department of Business and Industry, Financial Institutions Division (the FID); the Office of the Attorney General; and the Legislative Counsel Bureau (LCB). In December 2009, the FID issued a declaratory order and advisory opinion regarding mandatory disclosures for loans made pursuant to NRS 604A.480(2). State, Dep't of Bus. & Indus., Fin. Inst. Div., Declaratory Order and Advisory Opinion Regarding Mandatory Disclosures for Loans Made Pursuant to NRS 604A.480 (2009). In that opinion, the FID stated that "civil action and alternative dispute resolution are specifically prohibited in loans made pursuant to NRS 604A.480." *Id*. at 5. The FID also determined that a "consumer should not feel that he is subject to civil action when, in fact such actions are prohibited by law." *Id*. at 6.

Similarly, in October 2012, the Office of the Attorney General responded to a request for an opinion on whether the language in NRS 604A.480(2)(f) applies only to actions to collect on the outstanding loan, or also to the new loan being used to pay the balance of an outstanding loan. 2012-06 Op. Att'y Gen. 1 (2012). Referencing both the FID opinion and the legislative history and public policy behind NRS Chapter 604A, *id*. at 1-3, the Attorney General concluded that NRS 604A.480(2)(f) "applies to both an outstanding loan as well as a new loan" used to pay off the outstanding loan, *id*. at 4.

However, in July 2011, the LCB issued an opinion that the restrictions and requirements in subsection 2 "are not affirmative prohibitions against a licensee." Letter from Brenda J. Erdoes, Legislative Counsel, to Assemblyman Marcus Conklin (July 26, 2011) (discussing the provisions of NRS 604A.480). The LCB further determined that subsection 2(f) does not prohibit licensees from "commencing any civil action or process of alternative dispute resolution against a customer who subsequently defaults" on a new loan made under NRS 604A.480(2). *Id*.

Respondent Dollar Loan Center (DLC) sought judicial interpretation of NRS 604A.480(2)(f) by filing a declaratory relief action against FID in the district court. The parties thereafter agreed to convert the controversy into a proceeding under NRS 29.010.[1]

After the district court concluded that NRS 604A.480(2) "contains no prohibition of any kind against a licensee, but are merely the conditions precedent that must be satisfied for a licensee to be exempt from" NRS 604A.480(1)'s requirements, FID filed this appeal.

II.

The parties in this appeal disagree as to whether: (1) NRS 604A.480(2)(f) bars a licensee that provides a loan under NRS 604A.480(2) from bringing any type of enforcement action on that refinanced loan when the debtor defaults; or (2) the provision operates as a condition precedent to making a refinancing loan under that statute, and therefore, does not bar a subsequent action to enforce the refinanced loan. We are presented with the narrow question of whether a licensee can sue to collect on the recovery of a loan under NRS 604A.480(2) made for the purpose of refinancing prior loans.

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[1]NRS 29.010 states that

> [p]arties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which should have jurisdiction if an action had been brought. But it must appear, by affidavit, that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon, as if an action were pending.

A.

This court reviews questions of statutory construction de novo. *Pub. Emps.' Ret. Sys. of Nev. v. Reno Newspapers, Inc.*, 129 Nev. 833, 836, 313 P.3d 221, 223 (2013). "[S]tatutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained." *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 40, 175 P.3d 906, 908 (2008) (internal quotation marks omitted). Furthermore, statutory interpretation must "not render any part of the statute meaningless," or "produce absurd or unreasonable results." *Orion Portfolio Servs. 2, LLC v. Cty. of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010).

B.

The Legislature enacted laws in 2005 governing deferred deposit and high-interest loans, codified as NRS Chapter 604A. *See* A.B. 384, 73d Leg. (Nev. 2005); 2005 Nev. Stat., ch. 414, at 1683. The policy purpose of NRS Chapter 604A was to stop the "debt treadmill" where a borrower is unable to repay a loan and often takes out a larger loan to cover the principal, interest, and fees from the unpaid original loan. *See, e.g.*, Hearing on A.B. 384 Before the Senate Comm. on Commerce & Labor, 73d Leg. (Nev., May 6, 2005). We, therefore, view the refinancing provisions of NRS 604A.480 as having a protective purpose requiring a liberal construction to effectuate its intended benefits. *See Cote H.*, 124 Nev. at 40, 175 P.3d at 908.

NRS 604A.408(1) provides a maximum term of 35 days for an original deferred deposit or a high-interest loan. When a borrower cannot pay the loan in full within 35 days, "the repayment, renewal, refinancing or consolidation" of an outstanding loan may not be extended beyond 90 days. NRS 604A.408(3). Thereafter, under NRS 604A.480, the borrower may take out a new deferred deposit or high-interest loan and use the proceeds of that loan to repay or refinance the balance of an outstanding loan. NRS 604A.480 offers two loan options for when a licensee and borrower enter into an agreement to use a new loan to satisfy an existing loan. The first option, under subsection 1, restricts the term of the new loan to 60 days and prohibits the licensee from "add[ing] any unpaid interest or other charges accrued during the original term of the outstanding loan . . . to the principal amount of the new deferred deposit loan or high-interest loan." The second option, under subsection 2, exempts the new loan from subsection 1's restrictions where the licensee meets certain requirements, including the requirement relevant to this appeal—that the licensee "[d]oes not commence any civil action or process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof," NRS 604A.480(2)(f).

We conclude that the plain language of NRS 604A.480(2) expressly permits a licensee to offer a new deferred deposit or high-

interest loan that is not subject to the sixty-day restriction or principal-adjustment prohibition of subsection 1. However, when the licensee does so, the licensee is subject to all of the statute's limitations, including NRS 604A.480(2)(f), which bars a licensee from pursuing "any civil action or process of alternative dispute resolution *on a defaulted loan or any extension or repayment plan thereof*." (Emphasis added.)

NRS 604A.065 defines "'[e]xtension'" as "any extension or rollover of a loan beyond the date on which the loan is required to be paid in full under the original terms of the loan agreement." Based on a plain reading, we conclude that this statutory definition applies to extensions of the original loan. And, construing the statutes as a whole, we further conclude that, if a licensee issues a new deferred deposit loan or a new high-interest loan to a borrower in order to pay the balance of an outstanding loan on terms set forth in NRS 604A.480(2)(a),[2] the licensee foregoes the right to file a civil action or institute alternative dispute resolution proceedings on that new loan pursuant to NRS 604A.480(2)(f). *See Banegas v. State Indus. Ins. Sys.*, 117 Nev. 222, 229, 19 P.3d 245, 250 (2001) ("[W]ords within a statute must not be read in isolation, and statutes must be construed to give meaning to all of their parts and language within the context of the purpose of the legislation.").

C.

DLC argues that the plain meaning of NRS 604A.480(2) allows for a civil action on the original loan being refinanced or on a new subsection 2 loan because the conditions in subsections 2(a)-(f) serve as conditions precedent for a licensee to offer an extension or repayment loan for a longer term. In making this argument, DLC contends that subsection 2(f) applies to the original loan on which the licensee has not previously sued. We disagree. Such an interpretation would be contrary to the legislative purpose of the statute and would create absurd results as it would incentivize licensees to perpetuate the "debt treadmill" by making additional loans under subsection 2 with a longer term and a much higher interest rate, which the licensee could ultimately enforce by a civil action. *See Orion Portfolio*, 126 Nev. at 403, 245 P.3d at 531 (stating that statutes should be interpreted so as not to "produce absurd or unreasonable results"). The bar against future civil action on loans made under subsection 2(f) puts an end to the debt treadmill.

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[2]The terms of a new loan under subsection 2 may include an interest rate of "less than 200 percent" and a repayment term of "not less than 150 days." NRS 604A.480(2)(a).

We thus reverse the district court's order and remand this matter to the district court to enter a judgment consistent with this opinion.

Douglas, C.J., and Cherry, Gibbons, Parraguirre, and Stiglich, JJ., concur.

Pickering, J., dissenting:

I would affirm the district court's decision, which correctly analyzes NRS 604A.480 according to its text and established rules of statutory interpretation.

NRS Chapter 604A regulates the payday and title lending industry. With certain exceptions, Nevada law generally prohibits a lender who is subject to Chapter 604A from issuing a new loan to pay off an existing deferred deposit or high-interest loan. NRS 604A.430(1). Two of those exceptions are set forth in NRS 604A.480, the statute at issue in this appeal.

NRS 604A.480 reads in full as follows:

> 1. Except as otherwise provided in subsection 2, *if a customer agrees in writing to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding loan by using the proceeds of a new deferred deposit loan or high-interest loan to pay the balance of the outstanding loan, the licensee shall not establish or extend the period beyond 60 days after the expiration of the initial loan period.* The licensee shall not add any unpaid interest or other charges accrued during the original term of the outstanding loan or any extension of the outstanding loan to the principal amount of the new deferred deposit loan or high-interest loan.
>
> 2. *This section does not apply to a new deferred deposit loan or high-interest loan if the licensee*:
>
> (a) Makes the new deferred deposit loan or high-interest loan to a customer pursuant to a loan agreement which, under its original terms:
>
> (1) Charges an annual percentage rate of less than 200 percent;
>
> (2) Requires the customer to make a payment on the loan at least once every 30 days;
>
> (3) Requires the loan to be paid in full in not less than 150 days; and
>
> (4) Provides that interest does not accrue on the loan at the annual percentage rate set forth in the loan agreement after the date of maturity of the loan;
>
> (b) Performs a credit check of the customer with a major consumer reporting agency before making the loan;

> (c) Reports information relating to the loan experience of the customer to a major consumer reporting agency;
>
> (d) Gives the customer the right to rescind the new deferred deposit loan or high-interest loan within 5 days after the loan is made without charging the customer any fee for rescinding the loan;
>
> (e) Participates in good faith with a counseling agency that is:
>
> (1) Accredited by the Council on Accreditation of Services for Families and Children, Inc., or its successor organization; and
>
> (2) A member of the National Foundation for Credit Counseling, or its successor organization; and
>
> (f) Does not commence any civil action or process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof.

(emphasis added).

The district court read NRS 604A.480 as permitting two types of arrangements by which a Chapter 604A lender can extend or make a new loan to pay off an existing deferred deposit or high-interest loan. First, the lender can enter into a Subsection 1 agreement by which the "customer agrees in writing to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding loan by using the proceeds of a new deferred deposit loan or high-interest loan to pay the balance of the outstanding loan." If the customer agrees to such an action on an outstanding loan, then what the district court referred to as the "Subsection 1 Prohibitions" apply. The Subsection 1 Prohibitions provide that, as part of an agreement entered into under NRS 604A.480(1), the lender "shall not" (i) "establish or extend the period beyond 60 days after the expiration of the initial loan period" or (ii) "add any unpaid interest or other charges accrued during the original term of the outstanding loan or any extension of the outstanding loan to the principal amount of the new deferred deposit loan or high-interest loan."

Second, the lender and consumer can agree to a new loan that meets the requirements of Subsection 2 of NRS 604A.480. Subsection 2 creates an alternative to a Subsection 1 agreement that avoids the Subsection 1 Prohibitions but imposes additional, different conditions. Under Subsection 2, a lender can offer its borrower a new loan to pay off an outstanding loan—including one as to which the lender and borrower have entered into a failed extension or renewal plan under Subsection 1—without being subject to Subsection 1's single-shot sixty-day limitation or rule against adding unpaid interest from the original loan to the principal of the new loan. *See also* NRS 604A.430(1)(c) (permitting a $50 fee to be charged for preparing documents in connection with an NRS 604A.480(2) loan). But,

to issue a new loan to pay off an existing loan under Subsection 2, the lender must comply with all the conditions precedent listed in the six lettered subparagraphs of Subsection 2. NRS 604A.480(2) ("This section does not apply to a new deferred deposit loan or high-interest loan *if* the licensee . . . .") (emphasis added). Each of the lettered subparagraphs is phrased in the present tense, as of the date the lender "[m]akes the new deferred deposit loan or high-interest loan," NRS 604A.480(2)(a), including the condition precedent that the lender "[d]oes not commence any civil action or process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof." NRS 604A.480(2)(f). Consistent with its structure and verb tense, the district court concluded:

> Subsection 2 contains no prohibition of any kind against a licensee [NRS Chapter 604A licensed lender], but are merely the conditions precedent that must be satisfied for a licensee [lender] to be exempt from the Subsection 1 Prohibitions. *NRS 604A.480 therefore contains no prohibition against a licensee from initiating civil suits or alternate dispute resolution proceedings against a debtor that is in default. Rather, NRS 604A.480 only provides that a licensee cannot be exempt from the requirements set forth in NRS 604A.480(1) "if" the licensee has already commenced any civil action or process of alternative dispute resolution against a debtor*.

(emphasis added).

The majority takes a different tack. In its view, the purpose of NRS Chapter 604A is to prevent the consumer debt treadmill. Consistent with that perceived purpose, it reads Subsection 2 to require, not just that the lender not have strong-armed the customer-in-default by suing him on the defaulted loan (or any extension or repayment plan thereof) before making the new loan, but that the lender agree, in making the Subsection 2 loan, *never* to sue on the debt, old or new. But this reading cannot be squared with the text of NRS 604A.480(2) and the verb tenses it employs. Even more fundamentally, it cannot be squared with NRS 604A.415, which authorizes lenders to resort to civil actions to collect loans made under NRS Chapter 604A with no exception for NRS 604A.480(2) loans. Nor does it make common sense: What lender will make a new loan to pay off an existing loan knowing that, in doing so, the loan being made cannot be collected upon default? Is such an arrangement even a loan?

I agree with the district court, which read NRS 604A.480(2) to require, as one of its several conditions precedent, that the lender not have sued on the defaulted loan being paid off with the proceeds of the NRS 604A.480(2) loan being made. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory lan-

guage at issue, as well as the language and design of the statute as a whole.") (Kennedy, J.). This reading is consistent with the statute's text, gives effect to all its terms, and makes practical sense. As I would affirm, not reverse, I respectfully dissent.