CHANTEL PEPPER, Individually and as Personal Representative of the ESTATE OF ERIC PEPPER; and TRAVIS AKKERMAN, Appellants, *v.* C.R. ENGLAND, a Utah Corporation; and TESFAYE ALAMIN, Individually, a Resident of Clark County, Nevada, Respondents.

No. 84009

May 4, 2023 528 P.3d 587

Appeal from a district court order dismissing a complaint for forum non conveniens. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Reversed and remanded.

Matthew L. Sharp, Ltd., and *Matthew L. Sharp*, Reno; *The Cowden Law Firm, PLLC*, and *George Cowden, IV*, Tyler, Texas, for Appellants.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, and *Michael P. Lowry*, Las Vegas, for Respondents.

Before the Supreme Court, Herndon, Lee, and Parraguirre, JJ.

OPINION

By the Court, Herndon, J.:

In this appeal, we consider whether a district court abused its discretion by dismissing a complaint for forum non conveniens. In dismissing the complaint, the district court granted a motion that did not include a supporting affidavit, and it treated a Texan plaintiff as a foreign plaintiff, thereby affording her choice of a Nevada forum less deference. We hold the district court abused its discretion by granting the motion because the moving parties did not include a supporting affidavit and therefore failed to meet their evidentiary burden. Accordingly, we reverse and remand for proceedings consistent with this opinion.

Although not affecting our disposition here, we take this opportunity to address a second issue because it presents an unresolved question in Nevada law and is likely to arise on remand—what level of deference is owed to a plaintiff who resides in a sister state and selects Nevada as a forum? Generally, a non-U.S.-resident (foreign) plaintiff's choice of a Nevada forum is afforded less deference because a plaintiff's residence is a proxy for convenience—a foreign plaintiff does not live in Nevada, so there generally is no reason to presume that her choice of a Nevada forum is convenient. We hold, as did the district court, that a sister-state-resident plaintiff is

"foreign" for the purposes of forum non conveniens because this rationale applies to her.

BACKGROUND AND FACTS

Respondent C.R. England, Inc., is a trucking company incorporated and headquartered in Utah. C.R. England hired respondent Tesfaye Alamin, a Nevada resident, to drive its semitrucks. According to the complaint, Alamin was driving in Texas en route to Colorado when he parked his semitruck and trailer in the left lane of a snow-covered two-lane highway. Meanwhile, Eric Pepper, a Texas resident, and his passenger were driving on the same highway, miles behind Alamin's semitruck. As Pepper approached the parked semitruck, a bend in the highway obstructed his view, and he collided with the semitruck. Pepper sustained a head injury and died a few days later.

Pepper's widow, appellant Chantel Pepper, in her individual capacity and on behalf of Eric Pepper's estate, and Eric's son, appellant Travis Akkerman (collectively Pepper), filed a wrongful death lawsuit in Nevada district court against C.R. England and Alamin. Alamin moved to dismiss for forum non conveniens, arguing that Texas was the more appropriate forum. His motion, which C.R. England joined, did not include any supporting attachments or exhibits.

After a hearing on the motion to dismiss, the district court granted the motion. In its analysis, the district court treated Pepper as "foreign" and found that the case lacked a bona fide connection to Nevada. Accordingly, the district court afforded Pepper's choice of a Nevada forum less deference. Pepper appealed.

DISCUSSION

Pepper makes three arguments. First, she argues the district court erred by dismissing for forum non conveniens because C.R. England and Alamin failed to attach a supporting affidavit and made only general allegations of inconvenience and thus did not meet their evidentiary burden. Second, she argues that she is not a "foreign" plaintiff, so her choice of a Nevada forum should not have received less deference on that basis. "Foreign," in her view, refers only to non-U.S.-resident plaintiffs, not sister-state-resident plaintiffs. Third, even if she were considered foreign under a forum non conveniens analysis, Pepper argues, her choice of a Nevada forum should still receive great deference because her suit has bona fide connections to Nevada.

NRS 13.050 codifies the doctrine of forum non conveniens. *Mountain View Recreation, Inc. v. Imperial Commercial Cooking Equip. Co.*, 129 Nev. 413, 419, 305 P.3d 881, 884 (2013). It provides that a "court may, on motion or stipulation, change the place of

the proceeding . . . [w]hen the convenience of the witnesses and the ends of justice would be promoted by the change." NRS 13.050(2)(c). In *Provincial Government of Marinduque v. Placer Dome, Inc.*, this court set forth several factors that a district court must weigh in considering whether to dismiss for forum non conveniens. 131 Nev. 296, 300-01, 350 P.3d 392, 396 (2015). First, the "court must . . . determine the level of deference owed to the plaintiff's forum choice." *Id*. at 300, 350 P.3d at 396. Second, the court "must determine whether an adequate alternative forum exists." *Id*. at 301, 350 P.3d at 396 (internal quotation marks omitted). And third, "[i]f an adequate alternative forum does exist, the court must then weigh public and private interest factors to determine whether dismissal is warranted." *Id*. The court "should *also* consider whether failure to apply the doctrine would subject the defendant to harassment, oppression, vexatiousness or inconvenience." *Id.* at 305, 350 P.3d at 398 (internal quotation marks omitted). Dismissal is appropriate only in "exceptional circumstances" where the factors strongly weigh in favor of another forum. *Id.* at 301, 350 P.3d at 396.

Standard of review

We review a district court's balancing of the *Placer Dome* factors for an abuse of discretion. *Id.* at 300, 350 P.3d at 395-96. A district court abuses its discretion by relying on insufficient evidence, *see Mountain View Recreation*, 129 Nev. at 420, 305 P.3d at 885, "by relying on an erroneous view of the law, by relying on clearly erroneous assessment of the evidence, or by striking an unreasonable balance of relevant factors," *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1224 (9th Cir. 2011) (internal quotation marks omitted). Applying the wrong level of deference to a plaintiff's choice of forum is an abuse of discretion. *Id.* at 1229.

C.R. England and Alamin did not meet their evidentiary burden, as they failed to support their motion to dismiss for forum non conveniens with an affidavit

Pepper argues that Nevada law requires a moving party to submit affidavits in support of a motion to dismiss for forum non conveniens.[1] C.R. England and Alamin counter that affidavits are sufficient but not necessary to support dismissal for forum non conveniens.

In *Mountain View Recreation v. Imperial Commercial Cooking Equipment Co.*, we held that a district court abused its discretion in dismissing for forum non conveniens where there was insufficient evidence in the record to support such a finding. 129 Nev.

[1]In light of our disposition, we do not address Pepper's remaining argument that C.R. England and Alamin did not meet their evidentiary burden by making only general allegations of convenience.

at 420, 305 P.3d at 885. In doing so, we held that "[a] motion for change of venue based on forum non conveniens *must* be supported by affidavits" to enable the district court to assess whether there are exceptional circumstances favoring dismissal. *Id.* at 419, 305 P.3d at 885 (emphasis added). *Mountain View Recreation*'s requirement is clear—an affidavit is required before a complaint is dismissed for forum non conveniens. Because C.R. England and Alamin omitted a supporting affidavit, the district court abused its discretion in dismissing Pepper's complaint. Nonetheless, we consider whether the district court should categorize Pepper as a foreign plaintiff because it is an unresolved question of Nevada law likely to arise on remand.

Sister-state-resident plaintiffs are "foreign"

Pepper argues that she is not a "foreign" plaintiff, so her choice of a Nevada forum should not receive less deference on that basis. "Foreign," in her view, refers only to non-U.S.-resident plaintiffs, not sister-state-resident plaintiffs.

In applying the first *Placer Dome* factor, "[g]enerally, a plaintiff's choice of forum is entitled to great deference, but a foreign plaintiff's choice of a United States forum is entitled to less deference." *Placer Dome*, 131 Nev. at 301, 350 P.3d at 396 (citing *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 71 (2d Cir. 2003)). A foreign plaintiff's choice of forum in the United States is "entitled to substantial deference only where the case has bona fide connections to and convenience favors the chosen forum." *Id.*

In *Placer Dome*, a local government in the Philippines filed suit in Nevada district court against Placer Dome, Inc., a Canadian corporation, which owned subsidiaries operating in Nevada. *Id.* at 299-300, 350 P.3d at 395. We held that the district court properly determined that the Philippine government was "foreign" and entitled to less deference because its decision to sue in Nevada to obtain personal jurisdiction over Placer Dome was not a "bona fide" connection, given that whether personal jurisdiction over Placer Dome existed in Nevada was unclear. *See id.* at 301-02, 350 P.3d at 395-96. Likewise, the Second Circuit Court of Appeals case we relied on, *Pollux Holding Ltd. v. Chase Manhattan Bank*, afforded foreign corporate plaintiffs' (both plaintiff corporations were incorporated in Liberia with their principal place of business in Greece) choice of a United States forum less deference. 329 F.3d at 68, 74.

To determine whether a sister-state-resident plaintiff should be treated like a Nevada resident or like a foreign plaintiff for the purposes of forum non conveniens, we turn to the rationale behind this rule. As the Second Circuit explained in *Pollux*, a plaintiff's residence is a proxy for convenience. *Id.* at 71, 73-74. If a plaintiff files suit where she resides, a court reasonably can conclude that forum is convenient. *Id*. at 71 (citing *Koster v. (Am.) Lumbermens Mut.*

Cas. Co., 330 U.S. 518, 519, 524 (1947) (discussing plaintiff's suit in his home district)). In contrast, when a foreign plaintiff sues in the United States, it is less reasonable to assume that choice was made for convenience. *Id.* In that case, the plaintiff may be forum shopping or selecting the forum for other strategic reasons, rather than selecting the most convenient forum. *Id.* Even without allegations of forum shopping, a court has no reason to assume a U.S. forum would be more convenient for a foreign plaintiff, absent other considerations. *Id.*

We conclude that the rationale behind affording less deference to a foreign plaintiff's choice of a Nevada forum applies with equal force to a sister-state-resident plaintiff. *See Fennell v. Ill. Cent. R.R. Co.*, 987 N.E.2d 355, 362 (Ill. 2012) (holding that because a plaintiff did not reside in Illinois and the cause of action did not arise in Illinois, the plaintiff's choice of an Illinois forum was entitled to less deference "for this reason alone"). If a foreign plaintiff sues in Nevada, we do not presume that choice was made for convenience because the plaintiff does not live in Nevada. This justification holds true for a sister-state-resident plaintiff—there is no reason to presume that she chose Nevada as a forum for convenience because she does not live in Nevada. Accordingly, we hold that a sister-state-resident plaintiff should be treated as "foreign" for the purposes of a forum non conveniens analysis and thus be afforded less deference in her choice of forum, unless she proves that Nevada is a convenient forum by showing bona fide connections to Nevada. However, we do not resolve whether this case has bona fide connections to Nevada, given that we conclude C.R. England and Alamin did not meet their evidentiary burden.

CONCLUSION

In summary, a sister-state-resident plaintiff is "foreign" for the purposes of a forum non conveniens analysis. A foreign plaintiff's, including a sister-state-resident plaintiff's, choice of a Nevada forum is entitled to less deference unless she can show the case has bona fide connections to this state. Here, Pepper is a Texan, so her choice of a Nevada forum is entitled to less deference unless this case has a bona fide connection to this state. But we do not consider whether a bona fide connection exists in this case because the underlying motion to dismiss for forum non conveniens lacked a supporting affidavit. The district court therefore abused its discretion in granting the motion. Accordingly, we reverse the judgment of the district court and remand for proceedings consistent with this opinion.

Lee and Parraguirre, JJ., concur.

CLARK COUNTY ASSOCIATION OF SCHOOL ADMINISTRATORS AND PROFESSIONAL-TECHNICAL EMPLOYEES, Appellant, *v.* CLARK COUNTY SCHOOL DISTRICT; EDUCATION SUPPORT EMPLOYEES ASSOCIATION; and CLARK COUNTY EDUCATION ASSOCIATION, Respondents.

No. 83481

May 11, 2023 529 P.3d 163

Appeal from a district court order denying a petition for a writ of prohibition or, in the alternative, a writ of mandamus. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

Affirmed.

Brownstein Hyatt Farber Schreck, LLP, and *Christopher M. Humes* and *Patrick John Reilly*, Las Vegas, for Appellant.

Dyer Lawrence, LLP, and *Francis C. Flaherty* and *Sue S. Matuska*, Carson City, for Respondent Education Support Employees Association.

Law Office of Daniel Marks and *Adam Levine* and *Daniel Marks*, Las Vegas, for Respondent Clark County Education Association.

Marquis Aurbach Chtd. and *Jackie V. Nichols* and *Craig R. Anderson*, Las Vegas, for Respondent Clark County School District.

Before the Supreme Court, En Banc.[1]

OPINION

By the Court, Stiglich, C.J.:

This is an appeal from a district court order denying appellant's writ petition and granting respondents' motions to dismiss. Below, appellant school administrators' union filed a petition for extraordinary writ relief, alleging that respondent school district had violated NRS 388G.610 by implementing a policy under which certain teachers were unilaterally assigned to local school precincts without each respective precinct's consent. The district court determined that appellant failed to show that writ relief was warranted because appellant did not demonstrate that any assignment was inconsistent with statutory requirements.

[1]The Honorable Patricia Lee, Justice, and the Honorable Linda Marie Bell, Justice, did not participate in the decision in this matter.

We affirm the district court's order denying writ relief. Under NRS 388G.610, a local school precinct's authority to select teachers for itself parallels that which the superintendent of a large school district previously enjoyed. Because the school district's authority was subject to collective bargaining, the local school precinct's authority is likewise limited, meaning its selection decisions, too, must comply with collectively bargained-for terms. As the complained-of policy was implemented to ensure compliance with collective bargaining agreements and allowed for as much selection authority as the school district held, it did not run afoul of NRS 388G.610. We therefore conclude that the district court did not err in interpreting NRS 388G.310 in this way and denying writ relief.

BACKGROUND

In 2015, the Legislature created an advisory committee tasked with developing a plan and providing recommendations to reorganize respondent Clark County School District (CCSD) into local school precincts. The advisory committee made recommendations, giving rise to Assembly Bill 469 during the 2017 legislative session. The Legislature passed the bill, which was codified as NRS 388G.500 to NRS 388G.810.

NRS 388G.500 sets forth the legislative findings and declaration with regard to the new statutes. Specifically, the Legislature found that "large school districts are prone to develop large, complex and potentially inefficient, cumbersome and unresponsive bureaucracies" that rely too heavily on a centralized decision-making model. NRS 388G.500(1)(a). It explained that a different approach—one that is site-based at the local school precinct, rather than centralized—encourages more innovative decision-making better tailored to the specific needs and concerns of local schools. *See* NRS 388G.500(1). To that end, NRS 388G.610(2) requires the superintendent of large school districts to transfer certain authority and responsibilities to local school precincts (individual schools), including the authority to select teachers, administrators other than the principal, and other staff. NRS 388G.610(2). Another statute, NRS 388G.700(2), provides that the local school precinct's principal "shall select staff for the local school precinct . . . from a list provided by the superintendent."

After issues arose in the statutes' implementation, appellant Clark County Association of School Administrators and Professional-Technical Employees (CCASAPE) petitioned the district court for a writ of prohibition or mandamus, alleging that CCSD had instituted a policy of assigning teachers to local school precincts without the consent—and often over the objections—of local principals in violation of NRS 388G.610(2) and NRS 388G.700(2). CCSD allegedly instituted this so-called "teacher lottery" (whereby principals were

required to fill vacancies with CCSD teachers who had not already been selected by a local precinct before hiring substitutes for those positions) because the local precincts refused to select available, but assertedly problematic, teachers for openings, leaving a number of CCSD teachers without positions. Apparently, when only one district teacher was qualified and available to fill a particular open position, the principal was required to accept that teacher for the position, ostensibly removing from the principal any choice in who was selected. CCASAPE asserted that one of the teachers so-assigned to a school had several unsatisfactory reviews, which included admonishments that he not degrade students, put his hands on students, or push or grab students. Another of the so-assigned teachers had allegedly hit a student with a stack of papers and demonstrated tendencies to slam her fists on her desk and scream at students.

In its petition, CCASAPE identified five examples of local school principals being forced to select CCSD teachers, or in one case a school counselor, over their preferred candidates, each of whom was listed in CCSD's online applicant pool. According to CCASAPE, this policy violated NRS Chapter 388G's provisions vesting in local administrators the power to make staffing decisions. CCASAPE requested that the district court (1) declare the teacher lottery an illegal practice; (2) order CCSD to undo each instance where it unilaterally assigned a teacher to a local school precinct; and (3) order CCSD to cease placing teachers, administrators, or staff without a local school precinct's consent. Shortly after the lawsuit was filed, in December 2020, CCSD ceased the policy under which teachers were unilaterally assigned to local school precincts.

CCSD, along with respondents Education Support Employees Association and Clark County Education Association, both of which intervened below, each opposed CCASAPE's petition by way of motions to dismiss, arguing among other things that CCASAPE's claims were more appropriately asserted in a declaratory relief action, especially as they concern the integration of a number of interrelated statutes that give CCSD the right to hire teachers, the local precincts the right to select from those hires, and CCSD the mandate to collectively bargain for the hires' transfers and assignments, from which bargained-for agreements the teacher lottery had sprung.

The district court issued an order denying CCASAPE's writ petition and granting respondents' motions to dismiss. The court ruled that the writ petition was not moot even though CCSD has discarded the teacher lottery because maintaining the teachers placed by way of the teacher lottery was an asserted ongoing harm.[2] The court concluded that CCSD's policy did not violate NRS 388G.610(2)(a)

[2]On appeal, the parties do not argue that the district court erred in concluding that this matter was not moot.

because, under the policy, CCSD provided local principals with a list of available teachers, from which they were required to select teachers to staff their schools pursuant to NRS 388G.700(2). This appeal followed.

DISCUSSION

Standard of review

"A district court's decision to grant or deny a writ petition is reviewed by this court under an abuse of discretion standard." *DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000). We review statutory interpretation de novo. *N. Nev. Homes, LLC v. GL Constr., Inc.*, 134 Nev. 498, 500, 422 P.3d 1234, 1236 (2018).

Although its petition failed on the merits, CCASAPE did not procedurally err by pursuing extraordinary writ relief

Respondents argue, as a threshold matter, that the district court correctly dismissed CCASAPE's petition because CCASAPE sought the wrong remedy—a writ of mandamus or prohibition—when it should have sought declaratory and injunctive relief. A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, *see* NRS 34.160, or to control an arbitrary or capricious exercise of discretion. *DR Partners*, 116 Nev. at 620, 6 P.3d at 468. A writ of prohibition may be granted to curb the jurisdictional excesses of an entity or person exercising judicial functions. NRS 34.320. Either writ will issue only "where there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; NRS 34.330.

CCASAPE's petition sought to compel the school board's compliance with NRS 388G.610 and therefore fell squarely within the purview of mandamus relief. CCASAPE filed its petition immediately after the teacher lottery was implemented and explained that the COVID-19 pandemic caused a drop in student enrollment, a situation that CCASAPE alleged would imminently cause more teachers to be unilaterally reassigned by CCSD. Respondents are correct that CCASAPE could have achieved part of the relief it sought by pursuing a declaratory judgment respecting the proper interpretation of NRS 388G.610. But a declaratory judgment would not have afforded CCASAPE the order compelling immediate compliance with the law that it sought. "Where a declaratory judgment . . . would not be a complete remedy unless coupled with a mandatory injunction, the availability of declaratory judgment is not an appropriate basis to deny an otherwise justifiable writ of mandamus." 55 C.J.S. *Mandamus* § 23, at 44 (2021) (footnote omitted); *see Falcke v. Douglas County*, 116 Nev. 583, 586, 3 P.3d 661, 662 (2000) (entertaining petition for writ relief over defense objec-

tion that a declaratory judgment action afforded the petitioner an adequate remedy "where circumstances reveal urgency or strong necessity" and/or "an important issue of law needs clarification"). CCASAPE adequately demonstrated the lack of "a plain, speedy and adequate remedy in the ordinary course of law" and, from a procedural perspective, qualified its petition for consideration of extraordinary writ relief.

The district court did not err in interpreting NRS 388G.610

CCASAPE argues that NRS 388G.610 does not permit CCSD to assign a teacher to a school. It argues that the statute's transfer of authority goes in only one direction—from the school board to the local school precinct—and that the authority to select teachers does not return to the school district, even if a local school precinct intends to use a short-term substitute when a district teacher is available. CCASAPE also points to language in A.B. 469 (the 2017 bill that gave rise to NRS 388G.610) stating that the statutes' provisions were to prevail over any other conflicting law. To the extent that NRS 388G.610 conflicts with NRS 288.150(2)(u)—which subjects policies related to the transfer and reassignment of teachers to collective bargaining—CCASAPE argues that NRS 388G.610's provisions must prevail.

CCSD counters that, under NRS 388G.610(3), it remains responsible for negotiating employment terms for its teachers, indicating that NRS 388G.610(2)'s transfer-of-authority language remains subject to collective bargaining. To that end, CCSD argues it lacks the ability to "transfer" to local school precincts more authority to select their teachers than CCSD itself enjoys (i.e., the selection of teachers is subject to existing collective bargaining agreements). CCSD further argues that NRS 388G.700(2) requires local school precincts to select teachers from a list provided by the school district. Therefore, CCSD concludes, the Legislature did not intend a local school precinct's authority to select its teachers to be unfettered.

"When a statute is clear and unambiguous, this court gives effect to the plain and ordinary meaning of the words and does not resort to the rules of construction." *Orion Portfolio Servs. 2, LLC v. County of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. 397, 402, 245 P.3d 527, 531 (2010). NRS 388G.610(2) provides that the superintendent "shall transfer to each local school precinct the authority to . . . [s]elect for the local school precinct the: (1) [t]eachers; (2) [a]dministrators other than the principal; and (3) [o]ther staff who work under the direct supervision of the principal." The local principal makes these staff selections from "a list provided by the [school district] superintendent." NRS 388G.700(2).

NRS 388G.610(3) provides that CCSD remains responsible for "paying for and carrying out all other responsibilities necessary for

the operation of the local school precincts . . . which have not been transferred to the local school precincts." One of the responsibilities stated is negotiating, among other things, the "conditions of employment of administrators, teachers and other staff necessary for the operation of the local school precinct." NRS 388G.610(3)(a). Elsewhere, NRS 288.150(2)(u) subjects "the policies for the transfer and reassignment of teachers" to mandatory collective bargaining.

Here, NRS 388G.610(2) is clear and unambiguous. It expressly states that a school's authority to select its teachers is "transfer[red]" from CCSD's superintendent. NRS 388G.610(2). As a verb, "transfer" means "to pass . . . from one to another, [especially] to change over the possession *or control* of." *Transfer*, *Black's Law Dictionary* (11th ed. 2019) (emphasis added). CCSD's own authority to select teachers for a local school is limited by the policies for the transfer and reassignment of teachers negotiated pursuant to NRS 288.150(2)(u). And the Legislature expressly left to CCSD the responsibility to negotiate employment terms. *See* NRS 388G.610(3)(a). Accordingly, the Legislature's use of "transfer" in NRS 388G.610(2) means that a school's authority to select teachers is likewise limited. In other words, CCSD cannot "pass control of" a greater authority to select teachers than it possesses, such that local schools' authority to select teachers cannot circumvent the terms of existing collective bargaining agreements.

To this end, it appears, NRS 388G.700(2) provides that the principal of a school "shall select staff for the local school precinct . . . from a list provided by the superintendent." And while CCASAPE avers that "a list" indicates that CCSD must provide a single list from which a school may select teachers, the plain language of the statute does not support this conclusion. Courts have long recognized that, as indefinite articles, "a" and "an" do not necessarily imply the singular. *See, e.g.*, *Nat'l Union Bank of Bos. v. Copeland*, 4 N.E. 794, 795-96 (Mass. 1886) ("[T]he particle 'a' is not necessarily a singular term. It is often used in the sense of 'any,' and is then applied to more than one individual object."); *Deutsch v. Mortg. Sec. Co.*, 123 S.E. 793, 795 (W.V. 1924) ("The indefinite article 'a' may sometimes mean one, where only one is intended, or it may mean one of a number, depending upon context."). Indeed, many courts construe "a" or "an" to mean "any." *See, e.g.*, *Lindley v. Murphy*, 56 N.E.2d 832, 838 (Ill. 1944) ("The article 'a' is generally not used in a singular sense unless such an intention is clear from the language of the statute."); *BP Am. Prod. Co. v. Madsen*, 53 P.3d 1088, 1091-92 (Wyo. 2002) ("Other courts agree that, in construing statutes, the definite article 'the' is a word of limitation as opposed to the indefinite or generalizing force of 'a' or 'an.'"). Here, there is no clear intention from the Legislature that its use of "a" meant a singular list.

In sum, the plain language of NRS 388G.610(2) provides for a local school precinct to enjoy only the authority to select teachers for itself that CCSD itself previously enjoyed. Because CCSD's authority is subject to its existing collective bargaining agreements, the authority transferred to local school precincts is likewise limited. The plain language of the relevant statutes does not indicate an intention by the Legislature for NRS 388G.610(2) to interfere with CCSD's collective bargaining responsibilities.[3] Accordingly, the district court did not err in interpreting NRS 388G.610 as generally allowing for the policy challenged here.[4]

CONCLUSION

In reorganizing large school districts into local school precincts, the Legislature required superintendents of large school districts to transfer the authority to select teachers and staff to local school precincts. This authority, however, remains subject to collective bargaining, a responsibility the Legislature expressly left to large school districts. The district court properly rejected CCASAPE's interpretation of NRS 388G.610. Accordingly, we affirm the district court's order denying and dismissing CCASAPE's writ petition.

Cadish, Pickering, Herndon, and Parraguirre, JJ., concur.

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[3]We note that NRS 288.150 provides only two carve outs whereby the transfer or reassignment of teachers is not subject to mandatory collective bargaining. NRS 288.150(9) provides that the board of trustees overseeing a school designated as a turnaround school, or the principal of such school, "may take any action authorized pursuant to NRS 388G.400, including . . . [r]eassigning any member of the staff." And NRS 288.150(11) allows for a school district's board of trustees to "use a substantiated report of the abuse or neglect of a child or a violation of" certain statutes to, among other things, act "concerning the assignment, discipline, or termination of an employee." But NRS 288.150 provides no corresponding carve out for NRS 388G.610. The lack of such a carve out indicates that the Legislature intended NRS 388G.610 to be subject to NRS 288.150.

[4]CCASAPE argues reversal is warranted based on certain factual findings made by the district court that CCASAPE argues are unsupported by the record or by which the district court drew inferences in favor of the nonmoving parties. However, we conclude that the district court did not err in its interpretation of the relevant statutes. Accordingly, CCASAPE has not demonstrated that it was prejudiced by the district court's alleged errors. *See* NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.").

EVAN S. WISHENGRAD AND BETH WISHENGRAD, INDIVIDUALLY AND AS TRUSTEES OF THE EVAN & BETH WISHENGRAD REVOCABLE LIVING TRUST DATED MAY 25, 2004, APPELLANTS, *v.* CARRINGTON MORTGAGE SERVICES; AND CARRINGTON FORECLOSURE SERVICES, LLC, RESPONDENTS.

No. 83176

May 18, 2023 529 P.3d 880

Appeal from district court orders granting summary judgment and a motion to dismiss in a home foreclosure dispute. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

Affirmed.

[Rehearing denied June 30, 2023]

[En banc reconsideration denied August 8, 2023]

The Law Offices of Timothy Elson and *Timothy P. Elson*, Las Vegas, for Appellants.

Akerman LLP and *Ariel E. Stern*, *Natalie L. Winslow*, and *Scott R. Lachman*, Las Vegas, for Respondents.

Before the Supreme Court, HERNDON, LEE, and PARRAGUIRRE, JJ.

OPINION

By the Court, PARRAGUIRRE, J.:

In this opinion, we clarify the extent to which a home equity line of credit agreement (HELOC) with a defined maturity date and closed draw period may be classified as a "negotiable instrument" pursuant to NRS 104.3104(1), as well as a "promissory note" under NRS 104.3104(5). We also address whether a property held in the name of its residents' trust is "owner-occupied" for purposes of NRS 107.015(6) and NRS 40.437(12)(c). In this case, these are threshold legal questions that inform whether a loan servicer and trustee were entitled to foreclose upon the borrowers' home due to the borrowers' failure to repay the funds provided to them under the terms of the HELOC.

We conclude that the district court correctly determined that the borrowers' HELOC is both a negotiable instrument and a promissory note, entitling the loan servicer and trustee to enforce the document under NRS Chapter 104 due to the borrowers' default. The district court erred, however, in finding that the borrowers' property, held in the name of their trust, is not owner-occupied and thus not subject to the statutory requirements pertaining to foreclo-

sures affecting owner-occupied housing. Although the district court erred, we conclude that this error was harmless because the loan servicer and trustee demonstrated that they were entitled to both nonjudicial and judicial foreclosure even if the property is deemed owner-occupied housing. The record demonstrates that the loan servicer provided the borrowers with the information that would have otherwise been required under NRS 40.437 during the nonjudicial phase of the foreclosure and the borrowers, therefore, suffered no prejudice. In addition, the loan servicer and trustee demonstrated that the borrowers' claims against them were without merit. We therefore affirm the district court's orders granting summary judgment and dismissal in favor of the loan servicer and trustee.

FACTS AND PROCEDURAL HISTORY

In February 2007, appellants Evan S. Wishengrad and Beth Wishengrad obtained a HELOC through Bank of America, N.A. (BANA) in the principal amount of $495,000. The parties memorialized the HELOC's terms in a document referred to as the "Maximizer Agreement."

To secure repayment of the HELOC, the Wishengrads executed a deed of trust against their Las Vegas home. Unlike the Maximizer Agreement, the deed of trust was executed in the Wishengrads' capacity as trustees of the Evan & Beth Wishengrad Revocable Living Trust Dated May 23, 2004 (the Trust). Although the home is held in the name of the Trust, the Wishengrads have always resided at the home.

Subsequently, the Wishengrads withdrew the entire amount of funds available under the Maximizer Agreement and failed to pay it back. The Wishengrads last made a payment on the loan on February 14, 2013. The Wishengrads currently owe $525,973.77 in principal balance, interest, and additional late fees, escrow advances, and unpaid expenses.

BANA assigned the deed of trust to Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust A (Wilmington). Carrington Mortgage Services, LLC (Carrington Mortgage) is Wilmington's loan servicer and attorney-in-fact for the Wishengrads' loan. Carrington Mortgage designated Carrington Foreclosure Services, LLC (Carrington Foreclosure) as trustee under the deed of trust in a substitution of trustee document recorded in April 2018.

In June 2017, after four years without payment under the Maximizer Agreement, Carrington Mortgage notified the Wishengrads that they were in default and facing foreclosure. Roughly one year later, in June 2018, Carrington Foreclosure mailed the Wishengrads a notice of default pursuant to NRS Chapter 107. Home

Means Nevada, Inc., issued a foreclosure certificate on October 12, 2018. Carrington Foreclosure recorded a notice of trustee's sale on October 19, 2018, and mailed the notice to the Wishengrads five days later.

The Wishengrads sued Carrington Mortgage and Carrington Foreclosure (collectively Carrington) in November 2018. In their complaint, the Wishengrads asserted claims for declaratory relief/permanent injunction, intentional infliction of emotional distress (IIED), violation of NRS 107.028(7), and slander of title. After the district court dismissed the IIED and slander of title claims, Carrington answered and counterclaimed for judicial foreclosure in September 2019. The district court granted summary judgment to Carrington, concluding that Carrington is entitled to both judicial and nonjudicial foreclosure on the property. The Wishengrads now appeal this order, also challenging the court's dismissal of their IIED and slander of title claims.

DISCUSSION

The Wishengrads' appeal rests heavily on their threshold arguments that (1) the Maximizer Agreement is not a negotiable instrument; (2) the Maximizer Agreement is not a promissory note; and (3) the home, although held under the Trust, is owner-occupied. The Wishengrads contend that if any of these three arguments are meritorious, then Carrington is not entitled to foreclose for various reasons discussed below.

In addressing these arguments, we affirm the district court's finding that the Maximizer Agreement is both a negotiable instrument and a promissory note. Accordingly, the relevant statutes of limitation associated with the prosecution of these instruments would apply here. While we also hold that the district court erred by finding that the home was not owner-occupied, this error was harmless, as Carrington complied with the applicable statutory requirements to foreclose on the property.

Standard of review

"This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "Summary judgment is appropriate . . . when the pleadings and other evidence on file demonstrate that no genuine issue [of] any material fact [exists] and the moving party is entitled to . . . judgment as a matter of law." *Id.* (internal quotation marks omitted). "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Id.*

The Maximizer Agreement is a negotiable instrument

The district court treated the Maximizer Agreement as a negotiable instrument governed by Article 3 of the Uniform Commercial Code (UCC)—codified in Nevada at NRS 104.3101 to NRS 104.3605. NRS 104.3104(1) defines "negotiable instrument" as follows:

> Except as otherwise provided in subsections 3 and 4, "negotiable instrument" means an *unconditional promise or order to pay a fixed amount of money*, with or without interest or other charges described in the promise or order, if it:
>
> (a) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
>
> (b) Is payable on demand or at a definite time; and
>
> (c) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain:
>
> (1) An undertaking or power to give, maintain or protect collateral to secure payment;
>
> (2) An authorization or power to the holder to confess judgment or realize on or dispose of collateral; or
>
> (3) A waiver of the benefit of any law intended for the advantage or protection of an obligor.

(Emphasis added.)

The Wishengrads argue that the Maximizer Agreement is not a negotiable instrument because the agreement is essentially a revolving line of credit—akin to a credit card—rather than an unconditional promise to pay a fixed amount of money. They cite to paragraph 1 of the Maximizer Agreement, which states: "Your account is a revolving credit arrangement in which we make loans to you by advancing funds ('Advances') at your direction, allowing you to repay those Advances and take additional Advances, subject to the terms of this Agreement." Based on this language, the Wishengrads imply that they were only obligated to pay the "total of all Advances"—an uncertain amount—rather than a fixed sum.

We are not persuaded that the Maximizer Agreement is a revolving credit arrangement. Instead, we are convinced by the analysis in *Webster Bank NA v. Mutka*, where the Arizona Court of Appeals rejected the borrower's argument that his HELOC was akin to a credit card account and that the statute of limitations began to accrue upon his first missed payment and thus barred the lender from suing for recovery. 481 P.3d 1173 (Ariz. Ct. App. 2021). As the *Mutka* court explained,

> The differences between a credit card account and a HELOC are more significant, however, than the similarities as they

> pertain to the statute of limitations. . . . [The borrower's] line of credit agreement specified a *maturity date* on which the entire debt would become due. Although the ultimate amount [the borrower] would borrow was not known until the end of the initial fifteen-year draw period, after that date, *the amount of the principal indebtedness would be fixed*, and the loan agreement set out a *repayment schedule*.

Id. at 1175 (emphases added) (footnote omitted).

Here, the Maximizer Agreement is substantially similar to the HELOC at issue in *Mutka*. *Cf. id.* at 1174. The Maximizer Agreement, executed on February 7, 2007, provided for a 10-year (120 month) "draw period" during which the Wishengrads could withdraw Advances up to the $495,000 limit. The Maximizer Agreement required the Wishengrads to make monthly minimum payments during the draw period, although the exact amount depended upon which repayment option the Wishengrads selected. The draw period would be followed by a 15-year "repayment period" (February 7, 2017-February 7, 2032) during which the Wishengrads would be required to pay down the outstanding balance on a monthly basis. The minimum payment due each month would be 1/180th of the outstanding loan balance, plus interest and other unpaid charges or late fees. All outstanding indebtedness would become due and payable upon the specified maturity date (February 7, 2032). Moreover, the Maximizer Agreement contained an acceleration clause, whereby the lender could seek repayment of the entire outstanding account balance in one payment if the Wishengrads failed to make a minimum payment or breached any other repayment terms. Carrington expressly accelerated the loan upon filing a counterclaim for judicial foreclosure in September 2019, as the Wishengrads stopped making payments in 2013.

Accordingly, like in *Mutka*, the ultimate sum that the Wishengrads would borrow during the draw period was unknown, but at the close of the draw period in February 2017, that sum would become a fixed debt with principal due upon the maturity date in 15 years.[1] *Cf. id*. at 1175. *Mutka*'s reasoning persuades us that a HELOC with a closed draw period and specified maturity date, like the Maximizer Agreement, is an unconditional promise to pay a fixed amount of money pursuant to NRS 104.3104(1), rather than a revolving line of credit. As the remaining elements in NRS 104.3104(1)(a)-(c) are

[1]The Maximizer Agreement was also secured by the deed of trust, giving BANA and its successors in interest the incentive to accelerate the debt immediately by exercising a right to foreclosure in the event of default. This was true of the agreement at issue in *Mutka* as well, but is generally untrue of credit card debt. *Mutka*, 481 P.3d at 1175 ("Mutka's HELOC also was secured by real property, giving Webster Bank an additional incentive to collect on its debt through foreclosure.").

easily met by the Maximizer Agreement,[2] we further hold that the agreement is a negotiable instrument pursuant to NRS Chapter 104. On this basis, we conclude that the district court did not err in finding that Carrington, on behalf of Wilmington, was entitled to enforce the Maximizer Agreement under NRS Chapter 104.[3] And contrary to the Wishengrads' position, the Maximizer Agreement is not subject to the notice requirements of NRS 106.300 to NRS 106.400 because it is not an encumbrance to secure future advances. *See generally* NRS 106.300-.400.[4]

Finally, Carrington's judicial foreclosure counterclaim is not time-barred under *Mutka*'s application of the statute of limitations to HELOCs. *Mutka* holds, and we agree, that the statute of limitations for debt owed under HELOC agreements with a defined maturity date begins to run—as to unpaid mature installments—upon the installment's due date, or—as to unmatured future installments—upon the date the lender exercises the optional acceleration clause. 481 P.3d at 1174. Given that Carrington counterclaimed for judicial foreclosure in 2019,[5] the action was timely under NRS 104.3118(1).[6]

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[2]The Maximizer Agreement is endorsed in blank and thus payable to bearer under NRS Chapter 104. NRS 104.3104(1)(a); *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 522-23, 286 P.3d 249, 261 (2012). It is payable either on demand or at a definite time. NRS 104.3104(1)(b). It does not contain promises in addition to the payment of money. NRS 104.3104(1)(c).

[3]Given that the Maximizer Agreement is payable to bearer under NRS Chapter 104, *see* note 2, *supra*, the person in possession of the Maximizer Agreement is entitled to payment. *See* NRS 104.3109(1)(a). As the record indicates that Carrington possesses the original Maximizer Agreement on behalf of Wilmington, Carrington is entitled to enforce it. *See Edelstein*, 128 Nev. at 524, 286 P.3d at 261-62 (holding that "where an agent of a secured party has physical possession of the note, the secured party has taken actual possession").

[4]Nor did the Maximizer Agreement expressly invoke NRS 106.300 to NRS 106.400. *See In re Resort at Summerlin Litigation*, 122 Nev. 177, 183, 127 P.3d 1076, 1080 (2006) ("NRS 106.350 clearly states that if a party desires to opt-in to the safe harbor provisions of NRS 106.300 to NRS 106.400, that party must expressly state that it is governed by the statutory scheme. Therefore, parties that do not make this express notation are not governed by the statutory scheme.").

[5]We are not persuaded that Carrington's counterclaims are otherwise preserved by NRS 106.240, as that provision is instructive on when a lien, created by a deed of trust, expires, rather than explicitly setting forth a statute of limitation. Nonetheless, the record does not suggest that Carrington's lien expired prior to the expiration period set forth in NRS 106.240.

[6]NRS 104.3118(1) states that "an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within 6 years after the due date or dates stated in the note or, if a due date is accelerated, within 6 years after the accelerated due date." Thus, under NRS 104.3118(1) and *Mutka*, the limitations period for claims regarding the Wishengrads' unmatured and unpaid principal balance ($397,355.42) would accrue in 2025, six years after Carrington exercised the acceleration clause under the Maximizer Agreement. Claims regarding the Wishengrads' matured but unpaid interest installments

The Maximizer Agreement is a promissory note

The district court also treated the Maximizer Agreement as a promissory note. Under NRS 104.3104(5), "[a negotiable] instrument is a 'note' if it is a promise." As discussed above, the Maximizer Agreement contains a promise to pay a fixed amount of money. Therefore, we hold that the Maximizer Agreement is a promissory note pursuant to NRS 104.3104(5). For the same reasons explained above, we reject the Wishengrads' argument that the Maximizer Agreement was not a promissory note because it did not require a certain or fixed amount. *See, e.g.*, *Or.-Wash. Plywood Co. v. Comm'r of Internal Revenue*, 219 F.2d 883, 887 (9th Cir. 1955) (a promissory note is "[a] written promise to pay a certain sum of money, at a future time unconditionally" (quoting *Journal Publ'g Co. v. Comm'r of Internal Revenue*, 3 T.C. 518, 523 (1944))). To the contrary, the amount that the Wishengrads withdrew under the agreement, which would become due upon maturity, would indeed be certain and fixed upon the close of the draw period on February 7, 2017.

The home is owner-occupied

The district court determined that the home was not owner-occupied and that, therefore, Carrington was not required to attach certain documents required by NRS 40.437 to proceed with judicial foreclosure. NRS 40.437 adopts the definition of "owner-occupied" contained in NRS 107.015. *See* NRS 40.437(12)(c). NRS 107.015 defines "[o]wner occupied housing" as "housing that is occupied by an owner as the owner's primary residence." NRS 107.015(6). The district court held that the home is not owner-occupied because it "is in the name of the Wishengrad Trust, not the Wishengrads" and "the Trust does not live in it."

We agree with the Wishengrads that the district court erred in so holding, as the court's conclusion is inconsistent with the law pertaining to trusts. The United States Supreme Court has clarified that "[t]raditionally, a trust was not considered a distinct legal entity, but a fiduciary relationship between multiple people" and that a trust "was not a thing that could be haled into court; legal proceedings involving the trust were brought by or against the trustees in their own name." *Americold Realty Tr. v. Conagra Foods, Inc.*, 577 U.S. 378, 383 (2016) (internal quotation marks omitted). In another case, the United States Court of Appeals for the Seventh Circuit explained that, with respect to property ownership, "[a] trustee has title to the assets of the trust, but the beneficiaries are the real owners because they are entitled to the income or other benefits that the assets of the trust yield, minus only the trustee's reasonable fee for managing

due between September 2013 and September 2019 were also timely. We take no position with respect to unpaid interest installments that are potentially time-barred.

the assets." *Wellpoint, Inc. v. Comm'r of Internal Revenue*, 599 F.3d 641, 648 (7th Cir. 2010); *see also Hatcher v. S. Baptist Theological Seminary*, 632 S.W.2d 251, 252 (Ky. 1982) ("[W]hen property is held in trust the trustee holds the legal title and the beneficiary or beneficiaries are considered to be owners of the equitable title.").

Accordingly, the Trust at issue in this case is most accurately described as a fiduciary relationship between the settlors, trustees, and beneficiaries—all of whom are the Wishengrads—rather than a thing capable of residing in the home. The Wishengrads thus hold legal title to the home as trustees and are the equitable owners of the home as Trust beneficiaries. In turn, because the Wishengrads are owners of the home and occupy the home as their primary residence, the home is "owner-occupied" pursuant to NRS 107.015(6) and NRS 40.437(12)(c).

While the district court erred in finding otherwise, this error was harmless. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that "[a]n error is harmless when it does not affect a party's substantial rights" and harmless error does not warrant reversal). First, although NRS 40.437 applies,[7] Carrington substantially complied with the statute's notice provisions by providing the Wishengrads with the requisite documentation during nonjudicial foreclosure proceedings,[8] thereby adequately apprising the Wishengrads of their counseling and mediation options upon foreclosure. *See Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 476, 255 P.3d 1275, 1278-79 (2011) ("Where the purpose of the notice requirements is fulfilled, but not necessarily in a manner technically compliant with all of the terms of the statute, this Court has found such substantial compliance to satisfy the statute." (internal quotation marks omitted)). Consequently, the Wishengrads were not prejudiced by Carrington's failure to strictly comply with NRS 40.437. *See Schleining v. Cap One, Inc.*, 130 Nev. 323, 330, 326 P.3d 4, 8 (2014) (finding in the context of notice requirements

[7]The district court further erred in finding that NRS 40.437 did not apply because Carrington did not "commence" the action. *See* NRS 40.437(1) ("An action pursuant to NRS 40.430 affecting owner-occupied housing that is *commenced* in a court of competent jurisdiction is subject to the provisions of this section." (emphasis added)). Carrington initiated the claim for judicial foreclosure pursuant to NRS 40.430, albeit as a counterclaim.

[8]During nonjudicial foreclosure, Carrington provided contact information for the Wishengrads to negotiate a loan modification, *cf.* NRS 40.437(2)(a)(1), contact information for Nevada HUD-approved housing counseling agencies, *cf.* NRS 40.437(2)(a)(2), a Home Means Nevada mediation notice, *cf.* NRS 40.437(2)(a)(3), and a form upon which the Wishengrads could elect to enter or waive mediation, *cf.* NRS 40.437(2)(a)(4). While Carrington seemingly did not comply with NRS 40.437(2)(b), which would have required submission of a copy of the counterclaim to Home Means Nevada, Inc., Carrington persuasively argues that this action would have been meaningless because Home Means Nevada had already permitted nonjudicial foreclosure proceedings under NRS Chapter 107.

that "substantial compliance is sufficient where actual notice occurs and there is no prejudice to the party entitled to notice"). Accordingly, albeit for different reasons, we conclude that the district court correctly determined that Carrington was entitled to judicial foreclosure.[9] *Cf. Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (recognizing that this court may affirm the district court where it "reached the correct result, even if for the wrong reason").

Second, we agree with the Wishengrads that nonjudicial foreclosure was subject to NRS 107.085, which imposes heightened requirements upon trustees seeking to exercise the power of sale on a deed of trust concerning owner-occupied housing. NRS 107.085(1)(b). However, we disagree with the Wishengrads that Carrington failed to comply with NRS 107.085. The Wishengrads argue that NRS 107.085 requires that a copy of a promissory note be included in a foreclosure notice and that the Maximizer Agreement cannot satisfy this requirement because it is not a promissory note.[10] But because the Maximizer Agreement *is* a promissory note and Carrington included a copy of the Maximizer Agreement with the notice of default, NRS 107.085 is satisfied.

In sum, even though foreclosure on the home was subject to NRS 40.437 or NRS 107.085 as an owner-occupied property, the district court's error in failing to apply these statutes was ultimately harmless. *See Wyeth*, 126 Nev. at 465, 244 P.3d at 778.

CONCLUSION

We agree with the district court that the Maximizer Agreement was both a negotiable instrument and a promissory note, but we conclude that the court erred in finding that the home was not owner-occupied. To the extent the court erred, however, the error was harmless. We conclude that the Wishengrads' remaining arguments on appeal are without merit.[11] Accordingly, the district court correctly granted summary judgment to Carrington because the

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[9]We note that, while NRS 40.437 generally requires strict compliance, substantial compliance with NRS 40.437 was appropriate under these facts.

[10]*See* NRS 107.085(3)(b) (A notice of foreclosure must be "[i]n substantially the following form, with the applicable telephone numbers and mailing addresses provided on the notice and, except as otherwise provided in subsection 4, a copy of the *promissory note* attached to the notice." (emphasis added)); NRS 107.085(4) ("The trustee shall cause all social security numbers to be redacted from the copy of the *promissory note* before it is attached to the notice pursuant to [NRS 107.085(3)(b)]." (emphasis added)).

[11]The deed of trust was properly assigned to Carrington, such that Carrington had standing to enforce it. Further, Carrington was not required to produce original or certified copies of the loan documents in order to foreclose. Summary judgment in favor of Carrington with respect to the Wishengrads' affirmative claims for declaratory and injunctive relief, and for violation of NRS 107.028(7), was also proper.

record indicates that Carrington is entitled to judicial foreclosure or, alternatively, to nonjudicial foreclosure as a matter of law. Finally, we are not persuaded that the district court erred in dismissing the Wishengrads' affirmative claims for IIED and slander of title. We thus affirm the district court.

HERNDON and LEE, JJ., concur.

ROBERT A. CONRAD, an Individual, dba THISISRENO.COM, Appellant, *v.* RENO POLICE DEPARTMENT, a Governmental Subdivision of the City of Reno, Respondent.

No. 84389

June 15, 2023 530 P.3d 851

Appeal from a district court order granting in part and denying in part a petition for a writ of mandamus in a public records dispute. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Affirmed in part, reversed in part, and remanded.

[Rehearing denied October 5, 2023]

Luke A. Busby, Reno, for Appellant.

Karl S. Hall, City Attorney, and *Robert F. Bony* and *Mark W. Dunagan*, Deputy City Attorneys, Reno, for Respondent.

Before the Supreme Court, En Banc.

OPINION

By the Court, Bell, J.:

Appellant Dr. Robert Conrad owns and operates ThisIsReno.com, an online news website. In 2021, Conrad filed a petition for a writ of mandamus pursuant to the Nevada Public Records Act (NPRA), challenging the failure of the Reno Police Department (RPD) to disclose certain records. At issue here, RPD refused to disclose an investigative report to Conrad, and RPD redacted officers' faces before disclosing body-worn camera footage. The district court denied Conrad's petition with regard to both issues. Conrad appeals that decision, arguing that the district court erred in finding that the investigative report and the officers' faces as they appeared in RPD's body-worn camera footage were confidential. We reverse in part, regarding the investigative report, and remand for the district court to conduct a more individualized determination based on the content of the full report, either through in camera review or by other means deemed appropriate by the district court judge. We affirm the district court's decision regarding the redactions to the body-worn camera footage.

FACTS AND PROCEDURAL HISTORY

ThisIsReno.com serves as "a community-focused online news source for the greater Reno, Nevada[,] area," according to Dr.

Robert Conrad who owns and operates the website. In that capacity, Conrad made a number of public records requests to the Reno Police Department in 2020. The requests at issue on appeal involve the investigation of a Washoe County Sheriff's Office sergeant and the sweep of a homeless encampment by RPD. In response to Conrad's requests, RPD refused to disclose the investigative report regarding the sergeant. RPD did provide body-worn camera footage of the sweep of the homeless encampment, but it redacted the faces of the officers.

The investigative report

RPD began investigating former Sergeant Dennis Carry in 2018, after the sergeant's wife reached out to the Washoe County Sheriff's Office expressing concerns about Carry's erratic behavior. The investigation ultimately led to Carry's arrest in 2021. At that time, Detective Sergeant Trenton Johnson of RPD completed a declaration in support of Carry's arrest, which was filed in the Reno Justice Court. Johnson's declaration contained information derived from the full investigative report.

In 2020, prior to Carry's arrest, Conrad filed a public records request with RPD for the full investigative report on Carry. RPD refused to disclose the report because Carry was still under investigation. In its response to Conrad, RPD cited *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990). After Carry's arrest, RPD continued to deny Conrad's subsequent requests. In doing so, RPD restated its initial reasoning and added that disclosure of the entire investigative report would compromise Carry's right to receive a fair trial, reveal RPD's confidential investigative techniques, and disclose the identity of witnesses. In each correspondence RPD sent to Conrad refusing to disclose the report, RPD cited *Bradshaw* and other cases from this court.

The body-worn camera footage

On June 3, 2020, RPD conducted a sweep of a homeless encampment under a Reno highway overpass. Conrad arrived at the scene to report after receiving a tip that RPD Officer Ryan Gott would be at the sweep. Conrad believed that Officer Gott previously posted denigrating comments online about an advocate for homeless rights. RPD reportedly refused to allow Conrad access into the encampment. The next day, Conrad submitted a public records request to RPD for Officer Gott's body-worn camera footage.

In response to the request, RPD provided Conrad with a compact disc containing the body-worn camera footage taken by Officer Gott at the sweep. The footage provided shows the faces of homeless

individuals and the name badge of at least one officer; however, the faces of the officers were blurred out.

Petition for writ of mandamus

In 2021, Conrad filed a petition for a writ of mandamus before the district court in Washoe County. The petition sought disclosure of various materials under the Nevada Public Records Act (NPRA), including the Carry report and the unredacted Gott video. Conrad claimed that RPD had both improperly denied and failed to timely respond to Conrad's public records requests. The district court granted part of Conrad's petition with regard to certain NPRA violations not at issue here, but it denied Conrad's petition as to the Carry report and the unredacted Gott video.

With regard to the Carry report, RPD asserted that the investigative report was confidential under *Bradshaw.* RPD also provided an affidavit from Sergeant Johnson. Sergeant Johnson attested that the full investigative file contained more information than he had included in the declaration to the Reno Justice Court. According to him, the full investigative report contained, but was "not limited to, relevant emails, reports, documents, witness statements, interviews of witnesses and other involved parties." Sergeant Johnson opined that release of this information to the public during Carry's ongoing prosecution could impede the remainder of the investigation, increase the likelihood of prejudicing a jury, taint the original testimony of certain witnesses, and stymie potential efforts by Carry's defense counsel to suppress any evidence contained within the investigative file. Sergeant Johnson's one-and-one-half-page affidavit provided no specific detail and no information regarding why redaction would be ineffective.

After a hearing, the district court denied Conrad's petition with respect to the disclosure of the full investigative report. The district court found that the *Bradshaw* balancing test favored nondisclosure of the Carry investigative report because (1) the criminal proceeding against Carry was ongoing, implicating Carry's ability to receive a fair trial; (2) the report contained confidential sources; and (3) the report contained investigative techniques. The district court based these findings on Sergeant Johnson's affidavit. The district court did not review the investigative report in camera or take other evidence regarding the content of the report, even though counsel for RPD suggested during the hearing that in camera review might be appropriate.

With regard to the Gott body-worn camera video, RPD argued that the officers' faces as they appear in body-worn camera footage were confidential under NRS 289.025(1) as photographs in the possession of a law enforcement agency. RPD also claimed a nontrivial

privacy interest in "avoiding public disparagement, ridicule, and harassment" that outweighed the public's interest in disclosure of the full body-worn camera footage.

The district court denied Conrad's request for the unredacted video footage. The court found that while body-worn camera footage constitutes a public record under NRS 289.830(2), an officer's photograph is confidential under NRS 289.025(1). The district court applied this protection to the faces of officers in the body-worn camera footage, reasoning that

> [p]etitioner provided this Court with 49 pages of screen grabs from BWC [body-worn camera footage] (exhibits 4-7). . . . The result of these screengrabs are clearly photos of an officer that would be subject to protection under NRS 289.025(1). . . . [T]hat an officer shall not receive the protection of NRS 289.025(1) for BWC but would be able to receive such protections once a screengrab was made would produce illogical results.

The district court also reasoned that "a video is merely a compilation of photos" and is therefore subject to the confidentiality provisions that certain photographs receive under NRS 289.025(1).

DISCUSSION

The Nevada Public Records Act, codified as NRS Chapter 239, governs public access to government records. Under the NPRA, "unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person." NRS 239.010(1). "The purpose of this chapter is to foster democratic principles . . . ." NRS 239.001(1). Consequently, "[t]he provisions of this chapter must be construed liberally to carry out this important purpose." NRS 239.001(2). Further, "[a]ny exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly." NRS 239.001(3).

If a governmental entity wishes to prevent the disclosure of a record in the entity's custody, the NPRA charges the entity with the "burden of proving by a preponderance of the evidence that the public book or record, or a part thereof, is confidential." NRS 239.0113(2). As this court has explained,

> [u]nder the NPRA, government-generated records are presumptively open to public inspection. This presumption may be rebutted either by an explicit statutory provision making a particular type of record confidential or, . . . by a "broad balancing of the interests involved," where the government must

> prove that "its interest in nondisclosure clearly outweighs the public's interest in access."

Las Vegas Metro. Police Dep't v. Las Vegas Review-Journal, 136 Nev. 733, 735, 478 P.3d 383, 386 (2020) (quoting *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011)) (internal citations omitted).

The district court abused its discretion by denying Conrad's petition with respect to the Carry investigative report without individualized findings regarding the redacted material

We consider here whether the district court properly denied disclosure of the investigative report under the balancing of interests tests. Generally, "[w]e review a district court's order denying a petition for a writ of mandamus for an abuse of discretion." *Republican Att'ys Gen. Ass'n v. Las Vegas Metro. Police Dep't (RAGA)*, 136 Nev. 28, 30, 458 P.3d 328, 331 (2020). Further, specifically, when a district court conducts a balancing of interests to determine whether limitations on disclosure should apply to materials requested under the NPRA, "we review [that] portion of the order for an abuse of discretion." *Clark Cty. Sch. Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 704-05, 429 P.3d 313, 318 (2018).

In *RAGA*, this court determined that the district court abused its discretion in denying a petition made under the NPRA because it had failed to "conduct an individualized exercise of discretion" regarding each requested record. 136 Nev. at 37, 458 P.3d at 335 (internal quotation marks omitted). Specifically, the district court in that case abused its discretion because it had failed to view every record at issue "or make any specific findings as to whether these records contain[ed] confidential . . . information." *Id. RAGA* requires district courts to consider each record on an individual basis and make findings regarding claims of confidentiality. *Id.* at 37, 458 P.3d at 335. *RAGA* did not create a bright-line rule mandating in camera review of records in every NPRA dispute, nor do we here. Under the circumstances at hand, however, the district court had insufficient information to properly balance the concerns.

Additionally, the burden of proving that a record is confidential lies with the governmental entity arguing against disclosure. NRS 239.0113(2). The government may not avoid a lawful public records request by simply providing a blanket statement of factors. *See generally Bradshaw*, 106 Nev. 630, 798 P.2d 144 (concluding that a balancing test must be used to determine whether public policy considerations outweigh privacy and/or security concerns). A substantial body of caselaw has been developed since *Bradshaw* concerning the balancing test that courts must conduct during peti-

tions regarding NPRA requests. *Gibbons*, 127 Nev. at 878-79, 266 P.3d at 626-27 (providing an overview of NPRA jurisprudence). And we recently held in *Las Vegas Review-Journal, Inc. v. Las Vegas Metropolitan Police Department*, 139 Nev. 69, 80-81, 526 P.3d 724, 735-36 (2023), that the 2007 amendments to the NPRA require courts to apply the balancing test in *Bradshaw* to favor the public's interest in access over the governmental entity's interest in nondisclosure when weighing the respective interests.

Placing the burden on the entity is a logical requirement. Often, as here, the entity arguing against disclosure has exclusive custody over the records it seeks to withhold, thus limiting the other party's ability to dispute any conclusions regarding the contents of the documents. *Gibbons*, 127 Nev. at 882, 266 P.3d at 629 (explaining that the burden of proof under the NPRA is on the government entity).

Before the district court, RPD provided only Sergeant Johnson's affidavit as evidence. The affidavit does little more than assert conclusions about the effect of disclosing the full investigative report. These generalized assertions do not explain why the records are confidential or why the records could not be redacted.

The district court here did not err in relying on *Bradshaw*, but the district court abused its discretion in determining that the balancing test weighed in favor of RPD without making sufficiently specific findings regarding the material in question.

The district court correctly denied Conrad's petition with respect to the body-worn camera footage

The next issue before us is whether law enforcement agencies may redact images of officer faces from body-worn camera recordings. This court reviews issues of statutory interpretation de novo. *Young v. Nev. Gaming Control Bd.*, 136 Nev. 584, 586, 473 P.3d 1034, 1036 (2020). "When reviewing de novo, [this court] will interpret a statute or regulation by its plain meaning unless the statute or regulation is ambiguous, the plain meaning would provide an absurd result, or the interpretation clearly was not intended." *Id.* (internal quotation marks and citations omitted).

The language of the two statutory provisions involved here is unambiguous. NRS 289.830(1) requires peace officers "who routinely interact with the public to wear a portable event recording device while on duty." The statute further provides that

> [a]ny record made by a portable event recording device pursuant to this section is a public record which may be:
>
> (a) Requested only on a per incident basis; and
>
> (b) Available for inspection only at the location where the record is held if the record contains confidential information that may not otherwise be redacted.

NRS 289.830(2). At the same time, NRS 289.025(1) provides that "the home address and any photograph of a peace officer in the possession of a law enforcement agency are not public information and are confidential."

Any record produced from body-worn camera footage is subject to both the NPRA and any confidentiality provisions limiting public disclosure. *RAGA*, 136 Nev. at 34, 458 P.3d at 333 (clarifying that "as a public record, bodycam footage is subject to the NPRA. The NPRA, however, expressly yields to confidentiality provisions."); *see also* NRS 239.010(1) (clarifying that the NPRA makes records public "unless otherwise declared by law to be confidential"). Reading the term "photograph" in context supports the conclusion that an officer's face as it appears in body-worn camera footage is confidential under NRS 289.025(1). *See Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 138, 206 P.3d 572, 576 (2009) (explaining that the court "read[s] statutes within a statutory scheme harmoniously with one another"). NRS 289.025(1) protects photographs of officers and their home addresses from disclosure. The common element between these two records is not a technical one; they are both forms of personal identification.

Further, NRS 289.025(1)'s provision making photographs of a peace officer in the possession of law enforcement confidential is more specific than NRS 289.830(2)'s provision making "[a]ny record" open to public inspection. Therefore, NRS 289.025(1) governs. *See Szydel v. Markman*, 121 Nev. 453, 457, 117 P.3d 200, 202-03 (2005) ("When two statutes are clear and unambiguous but conflict with each other when applied to a specific factual situation . . . we will attempt to read the statutory provisions in harmony, provided that this interpretation does not violate legislative intent.").

The plain language of the two statutes does not conflict and in fact creates a harmonious scheme in which records derived from body-worn camera footage are public records subject to other statutory confidentiality provisions. *See Clark Cty. Office of Coroner/Medical Examiner v. Las Vegas Review-Journal*, 136 Nev. 44, 48, 458 P.3d 1048, 1052 (2020) (explaining that "this court will interpret a rule or statute in harmony with other rules or statutes") (internal quotation marks omitted).

We conclude the district court did not err in interpreting NRS 289.025(1) as limiting NRS 289.830(2). RPD appropriately redacted body camera footage to protect the confidential nature of the information pursuant to statute.

CONCLUSION

We reverse the district court's order insofar as it found that the Carry investigative report is confidential under *Bradshaw* and

remand for the court to conduct an individualized determination based on the content of the full report, either through in camera review or by other means deemed appropriate by the district court judge. We affirm the district court's order to the extent that it found that redacting officers' faces in body-worn camera footage is appropriate and denied relief related thereto, as the images are confidential under NRS 289.025(1).

Stiglich, C.J., and Cadish, Pickering, Herndon, Lee, and Parraguirre, JJ., concur.

FEDERAL HOUSING FINANCE AGENCY; FEDERAL NATIONAL MORTGAGE ASSOCIATION; AND FEDERAL HOME LOAN MORTGAGE CORPORATION, APPELLANTS, *v.* SATICOY BAY LLC, RESPONDENT.

No. 84370

July 6, 2023 531 P.3d 1232

Certified question under NRAP 5 concerning jurisdiction over series LLCs. United States Court of Appeals for the Ninth Circuit; M. Margaret McKeown and William A. Fletcher, Circuit Judges, and Richard D. Bennett, District Judge.[1]

Certified question answered.

Arnold & Porter Kaye Scholer LLP and *Michael A.F. Johnson* and *Dirk Phillips*, Washington, D.C., for Appellant Federal Housing Finance Agency.

Fennemore Craig, P.C., and *Leslie Bryan Hart* and *John D. Tennert, III*, Reno, for Appellants Federal Home Loan Mortgage Corporation and Federal Housing Finance Agency.

Snell & Wilmer L.L.P. and *Kelly H. Dove*, Las Vegas, for Appellant Federal National Mortgage Association.

Roger P. Croteau & Associates, Ltd., and *Roger P. Croteau* and *Timothy E. Rhoda*, Las Vegas, for Respondent.

Before the Supreme Court, EN BANC.

OPINION

By the Court, BELL, J.:

This case comes to us as a certified question under NRAP 5 from the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit certified the following question to this court:

> Under Nevada law, must a series LLC created pursuant to Nev. Rev. Stat. § 86.296 be sued in its own name for a court to obtain jurisdiction over it, or may the master LLC under which the series is created be sued instead?

We conclude a series LLC created pursuant to NRS 86.296 must be sued in its own name for the court to obtain jurisdiction over it,

[1]The Honorable Richard D. Bennett, United States District Judge for the District of Maryland, sitting by designation.

provided the series LLC has observed the corporate formalities provided for in NRS 86.296(3).

BACKGROUND

We accept the facts of the underlying case as stated in the certification order. *See In re Fontainebleau Las Vegas Holdings, LLC*, 127 Nev. 941, 956, 267 P.3d 786, 795 (2011). Appellants Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac), over which Appellant Federal Housing Finance Agency (FHFA) acts as conservator (collectively FHFA), purchased mortgage loans secured by residential real property. When the original mortgagors failed to pay the homeowner association assessments affiliated with the secured properties, the homeowner associations foreclosed on their superpriority liens on the properties. The properties were sold to Respondent Saticoy Bay LLC.

Saticoy (the master LLC) operates numerous series LLCs pursuant to NRS 86.296. Saticoy's series LLCs are generally named Saticoy Bay LLC Series <street address>. The master Saticoy LLC or individual series LLCs purchased the properties in question at HOA foreclosure sales. Saticoy maintains it currently owns only one of the subject properties and the remaining properties are owned by series LLCs.

Because the FHFA must consent to any foreclosure of its property, *see* 12 U.S.C. § 4617(j)(3); *Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l Mortg. Ass'n*, 134 Nev. 270, 272-74, 417 P.3d 363, 367-68 (2018) (holding that 12 U.S.C. § 4617(j)(3), the federal foreclosure bar, prevents an unconsented-to HOA foreclosure sale from extinguishing a deed of trust when the subject loan is owned by Freddie Mac or Fannie Mae), the FHFA sued Saticoy in the United States District Court for the District of Nevada for quiet title based on a lack of consent to the foreclosure. The FHFA named the master LLC, Saticoy, as defendant but did not name any of the series LLCs as defendants.

The FHFA moved for summary judgment based on the federal foreclosure bar. Saticoy opposed, arguing the federal district court lacked jurisdiction to decide the matter because the FHFA failed to name the series LLCs as defendants. The district court granted the FHFA's summary judgment motion. In doing so, the district court rejected Saticoy's argument that the FHFA needed to name the series LLCs as defendants. Because NRS 86.296(2) provides a series LLC "may" sue or be sued in its own name, the district court reasoned FHFA was not required to name individual series LLCs as defendants.

Saticoy appealed to the Ninth Circuit. Before resolving the appeal, the Ninth Circuit certified the above-quoted question to this

court, noting the only question on appeal concerns Nevada law and there is no controlling precedent.

DISCUSSION

"In 2005, Nevada amended NRS 86.296 to allow for the creation of 'Series LLCs,' a relatively new form of corporate entity that exists only in certain states." *A Cab, LLC v. Murray*, 137 Nev. 805, 821, 501 P.3d 961, 976 (2021). In 2017, the Legislature further amended NRS 86.296(2) to "expand[ ] the powers of a series [LLC]." Hearing on A.B. 123 Before the Assemb. Judiciary Comm., 79th Leg. (Nev., Apr. 14, 2017) (statement of Diane C. Thornton, Comm. Policy Analyst). The Legislature allowed for a series to:

> (a) Have separate powers, rights or duties with respect to specified property or obligations of the company or profits and losses associated with specified property or obligations;
>
> (b) Have a separate business purpose or investment objective;
>
> (c) Sue and be sued, complain and defend, in its own name;
>
> (d) Make contracts in its own name;
>
> (e) Purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or an interest in it, wherever situated; and
>
> (f) Sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

NRS 86.296(2).

Interpreting the provisions of NRS Chapter 86, this court noted NRS 86.296(2) "provides a list of optional, but not mandatory, attributes for a Series LLC." *A Cab*, 137 Nev. at 822, 501 P.3d at 977. The FHFA contends this language from *A Cab* and the statutory language from NRS 86.296(2) demonstrate naming a series LLC as a party is always optional. We disagree.

In interpreting a statute, this court looks to the statute's plain language. *Smith v. Zilverberg*, 137 Nev. 65, 72, 481 P.3d 1222, 1230 (2021). If the statute's language is clear and unambiguous, this court enforces the statute as written. *Id*. "[T]his court will interpret a rule or statute in harmony with other rules and statutes." *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 418, 132 P.3d 1022, 1028 (2006).

Here, the plain language of NRS 86.296(2) does not allow a party to sue a master LLC in lieu of a series LLC at the party's discretion. Rather, the word "may" allows the series LLC to determine whether it will be sued in its own capacity by following the corporate formalities outlined in NRS 86.296(3).

Requiring a series LLC to be named as a party aligns with other statutes within NRS Chapter 86. NRS 86.281 notes the "general

powers" concerning LLCs. In language identical to NRS 86.296, the statute provides that "[a] limited-liability company . . . or any series thereof . . . may . . . [s]ue and be sued, complain and defend, in its name." NRS 86.281(1).

The FHFA's interpretation that a series LLC is not a legal entity separate from the master LLC ignores several relevant provisions of NRS Chapter 86. First, NRS 86.1255 defines a series LLC as a "limited-liability company." This coincides with NRS 86.296(2), which provides "[a] series [LLC] may be created as a limited-liability company." Second, the operating agreement of a series LLC "may provide that any member associated with the series has voting rights that differ from other members or series, or no voting rights at all." NRS 86.296(2). Third, if a series LLC follows certain corporate formalities, "[t]he debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series are enforceable *against the assets of that series only*, and not against the assets of the company generally or any other series." NRS 86.296(3) (emphasis added). When these statutory provisions are met, series LLCs are treated as entities separate from the master LLC for purposes of suing and being sued.

Both the FHFA and Saticoy point to other states' statutes that include express language indicating whether a series LLC is a separate entity. Nevada has no such equivalent. Consequently, this court must rely upon the plain language of the statute, which defines a series LLC as a "limited-liability company." NRS 86.1255; *see* NRS 86.281 (noting that both the master LLC and the series LLC "may exercise the powers and privileges granted" by NRS Chapter 86); *see also Zilverberg*, 137 Nev. at 72, 481 P.3d at 1230 (noting that this court looks to the plain language of the statute and enforces the statute as written).

This court's prior jurisprudence has also recognized a series LLC as a separate legal entity from the master entity. In *A Cab*, this court emphasized the separate legal nature of series LLCs that follow the corporate formalities outlined in NRS 86.296(3). 137 Nev. at 824, 501 P.3d at 978 ("Series entities under the umbrella of a Series LLC either exist or not based on their compliance with NRS 86.296."). This court went on to state "[t]he only way to assess the existence of the individual series entities for the purpose of judgment collection is through examining the operating agreements." *Id.*

Finally, under Nevada law, a master LLC may have different members and different voting rights than the series LLC. The master LLC may not be legally responsible for the acts of the series LLC. Logic dictates if a series LLC has observed corporate formalities, the series should be the named entity in a lawsuit against the series LLC.

CONCLUSION

We answer the certified question as follows: A series LLC created pursuant to NRS 86.296 must be sued in its own name for the court to obtain jurisdiction over it, provided the series LLC has observed the corporate formalities provided for in NRS 86.296(3).

Stiglich, C.J., and Cadish, Pickering, Herndon, Lee, and Parraguirre, JJ., concur.