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Pawlik v. Deng, 134 Nev. Adv. Op. 11 (Mar. 1, 2018) (en banc)

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PROPERTY: STATUTORY CONSTRUCTION

Summary

The Court held NRS 271.595 creates two redemption periods; one of two years and one of 60-days. The 60-day notice and redemption period must follow the two-year period and cannot run concurrently.

Background

Shyan-Fenn Deng and Linda Hsiang-Yu Chiang Deng (the Dengs) are trustees of their revocable trust. The Dengs defaulted on real property held in the trust which subsequently entered delinquency. Pawlik then purchased the property on January 27, 2014 at a sale under NFRS Chapter 271. Almost two years later, on January 7, 2016, Pawlik began serving the Dengs with his intent to apply for a deed and the upcoming, two year, expiration period on January 27, 2016. Then, only 47 days after the expiration of the two-year redemption period but 67 days after he began attempting service, Pawlik on March 14, 2016, applied to the Las Vegas City Treasurer for a deed. The Treasurer refused, the Dengs paid their delinquency in full on April 6, 2016, and this suit ensued.

Pawlik filed a complaint to quiet title and a writ of mandamus to which the Dengs replied with a motion to dismiss. The district court granted the motion and Pawlik appealed the order to the Nevada Supreme Court which now affirms.

The statute created two separate redemption periods for residential properties; one 60-day period that begins after notice that the certificate of sale holder is demanding a deed, and another two-year period that begins after the certificate of sale. The Court determined that the ambiguous language of NRS 271.595 created an issue as to whether the two redemption periods could run concurrently or one after another.

Discussion

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

The lower court concluded that the 60-day redemption notice is an additional time period and must begin at the end of the two-year redemption period. Because of this, Pawlik had provided premature and ineffective notice. Thus, the Dengs were able to redeem their property because they had paid on April 6, 2016 which was less than two years and 60 days from the certificate of sale date.

Here, the Court held that the statute as a whole contained ambiguity. The Court found that NRS 271.595(3) was unambiguous and when read plainly was a mandate to the Treasurer to execute a deed upon the certificate holder fulfilling the requirements of the statute. The Court admitted that based on provision (3) alone, it seems clear that a certificate holder needed only to notify the owners of the property at any time after obtaining the certificate of sale.² NRS

¹ By Will T. Carter.

² NEV. REV. STAT. § 271.595(3) (2017).

271.595(3) states that, “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.”³

Therefore, the certificate holder would notify them of the intent to demand the deed at the end of the redemption period of two years. As stated in NRS 271.595(1): “Any property sold for an assessment . . . is subject to redemption by the former owner . . . at any time within two years . . . after the date of the certificate of sale.”⁴ However, ambiguity is created by provision (4) of the statute because this provision creates an additional redemption period. NRS 271.595(4) states: “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.”⁵ This provision when read with the previous sections of the statute creates unclear language as whether the end of two redemption periods allow entitlement to the certificate holder of a deed. Thus, the question the lower court and this Court decided was whether these two redemption periods may run together or not.

The Court held it was a reasonable interpretation that the entire 60-day notice period could take place at any time during the 2-year period. This would make a certificate holder immediately eligible for the deed at the end of the two-year redemption period following the certificate of sale. However, the Court reasoned that the only way a certificate holder would be entitled to a deed following the end of the 60-day redemption period would be if the two-year redemption period was over as well. Any period constraining a certificate holder to a smaller amount of time, such as the 60-day period, would only make sense in the statute if the longer period had also finished. Therefore, a reasonable interpretation would *also* find that subsection (4) could only follow subsection (1). Thus, the Court found the Cheng’s interpretation of the statute reasonable as well.

Because both interpretations were reasonable, the Court looked beyond the statute to resolve the ambiguity relying first on relevant case law highlighting proper statutory interpretation. “[A] statute should not be read in a manner that renders a part of a statute meaningless.”⁶ And the meaning of words must parallel the context and spirit of the law itself.⁷

Next, the Court also looked to the statute as a whole, and NRS Chapter 271 requires provisions to be interpreted broadly.⁸ Additionally, the Court looked to the legislative history of the statute to “construe[] the statute in a manner that conform[ed] to reason and public policy.”⁹ The Court held that NRS 271.595 was based on similar state statutes from Idaho and Wyoming and contained language almost exact to Wyoming state law. The Wyoming statute distinguished between the two periods as lengths of time that could not run concurrently to one another, which here, agreed with the lower court’s interpretation the NRS 271.595. Finally, the Court looked to similar statutory language in Nevada which held two redemption periods were to run one after the other creating additional time for the last known owner of property.¹⁰

³ *Id.*

⁴ NEV. REV. STAT. § 271.595(1) (2017).

⁵ NEV. REV. STAT. § 271.595(4) (2017).

⁶ *V & S Ry. L.L.C. v. White Pine Cty.*, 125 Nev. 233, 239, 211 P.3d 879, 882 (2009).

⁷ *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007).

⁸ NEV. REV. STAT. § 271.020 (2017).

⁹ *Zohar v. Zbiegien*, 130 Nev. 733, 737, 334 P.3d 402, 405 (2014).

¹⁰ *Casazza v. A-Allstate Abstract Co.*, 102 Nev. 340, 346, 721 P.2d 386, 390 (1986).

NRS 271.595 requires strict compliance

The Court, after it had determined the lower court had not erred, turned to Pawlik's argument that his compliance, though not strict, was substantial and as such, the Treasurer's deed should have automatically followed the two-year and 60-day period. The Court held that this argument failed. If Pawlik had correctly followed the timing set forth in the statute then, after the two-year redemption period, he would have begun his attempts to serve the Dengs with notice. Then, after the two-year period and following the end of the 60-day period, he would have been entitled to a deed, and the Treasurer would have been compelled to issue it. Because he provided premature notice, he was not entitled the deed at all, and the Treasurer was never compelled to issue one.

A statute may contain mandatory or directory provisions or both.¹¹ A provision is mandatory when a specific time and manner to perform an act is stated. A provision is directory when it provides who must act and how but does not specify notice. Here, the Court ultimately found that the requirements of NRS 271.595 are mandatory; that they require notice and specific performance. Therefore, the Treasurer was right in requiring strict compliance from Pawlik, and because he failed to comply with the statute, his notice was ineffective and argument unpersuasive.

Conclusion

The Court in an en banc ruling affirmed the lower courts grant of motion to dismiss. It held that NRS 271.595(3) and (4) create an additional period of redemption to follow the two-year found in NRS 271.595(1). Additionally, the Court held that NRS 271.595 requires strict compliance with the requirements set forth in the statute.

Dissent

The Court in a three-judge dissent argued that there is not ambiguity in the language on which to place the majority ruling. If a statute is clear on its face, then the Court will look no further than the statute itself.¹² The dissent argued that the statute on its face creates a two-year redemption period, and the Deng's argument of an additional 60-day redemption period misreads the statute altogether.

The purpose of the 60-day period is to measure the time before the Treasurer is compelled to issue a deed and to, "alert the former owner that the purchaser will seek a deed." This period is not meant to create additional time for the previous owner and the, "Deng's argument ignores the function and purpose of the notice provision in the statutory scheme."

Because neither NRS 271.595(3) or (4) of the statute require the 60-day period to begin on a certain date or in conjunction with another part of the statute the majority fail to show ambiguity where within the statute at all. Notice could be given and the 60-day period could start before the two-year period had run, or after. The dissent asserts that it simply is a time period with a separate purpose of providing at least 60-days of notice. "It would be absurd to conclude that the 60-day notice given during the two-year statutory redemption period shorts the redemption period, and it is equally absurd to conclude that the 60-day period is a mandatory extension of the statutory redemption period."

¹¹ Markowitz v. Saxon Special Servicing, 129 Nev. 660, 664, 310 P.3d 569, 571(2013).

¹² Washoe Med. Ctr. v. Second Judicial Dist. Court, 122 Nev. 1298, 1302, 148 P.3d 790, 792-93 (2006).

The dissent concluded that because neither the majority or lower court explain how the 60-day period can only commence subsequent to the two-year period it would reverse the district court's order. NRS 271.595(1) contains plain language crating a two-year redemption peioer and because the Deng's did not redeem during that period their motion to dismiss fails.