

SUPREME COURT OF NEVADA

DeMartini v. City of Reno; Heinz Ranch Land Company, LLC

DeMartini · No. No. 82331 · Decided March 3, 2022

SUMMARY

The Nevada Supreme Court held that Michael DeMartini lacked standing to seek judicial review of the Reno City Council's decision affirming a conditional approval of a tentative subdivision map. Because DeMartini did not show that his personal or property rights were adversely and substantially affected, the court affirmed the district court's standing determination. The court vacated the district court's ruling on the merits because those issues were not reached.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Cadish, J.; Herndon, J.
JURISDICTION	Nevada
DECIDED	March 3, 2022
DOCKET	No. 82331
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from a district court order denying a petition for judicial review of a municipal land-use decision.
STANDARD OF REVIEW	Standing is a question of law reviewed de novo.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential status is not expressly stated in the document text.
PARTIES	Michael DeMartini v. City of Reno, Heinz Ranch Land Company, LLC

TOPICS

judicial review of agency action zoning municipal law ordinances appellate procedure

PRACTICE AREAS

municipal law land use administrative law real estate

QUESTIONS PRESENTED

1. Whether DeMartini had standing to seek judicial review of the Reno City Council's decision under the Reno Municipal Code's definition of an aggrieved person.
2. Whether the district court's merits ruling should stand when DeMartini lacked standing to pursue judicial review.

HOLDINGS

1. DeMartini lacked standing because he failed to show that his personal right or property right was adversely and substantially affected by the City Council's decision.
2. The district court's decision on the merits was vacated because DeMartini's lack of standing meant that the court did not reach the merits of his petition.

KEY QUOTATIONS

“Standing is a question of law reviewed *de novo*.” (2)

FACTUAL BACKGROUND

DeMartini challenged the Reno City Council's affirmance of a planning commission decision conditionally approving Heinz Ranch's tentative map for a planned unit development. He asserted that the development would affect his property and water rights, including concerns that Heinz Ranch would exclude him from its sewer line and take 1,000 acre-feet of his water rights. He did not identify the location of his property relative to the affected area or explain how the challenged decision would adversely affect his rights.

PROCEDURAL HISTORY

The Reno City Council affirmed the planning commission's conditional approval of Heinz Ranch's tentative map for Phase 1A of the StoneGate planned unit development. DeMartini petitioned for judicial review, but the district court concluded that he lacked standing and denied the petition in part on that basis. The Nevada Supreme Court affirmed the standing determination and vacated the district court's merits ruling because the merits were not reached in light of the lack of standing.

DISPOSITION

other

CASES CITED

- Arguello v. Sunset Station, Inc., 127 Nev. 365, 368, 252 P.3d 206, 208 (2011)
- Kay v. Nunez, 122 Nev. 1100, 1106-07, 146 P.3d 801, 806 (2006)
- City of N. Las Vegas v. Eighth Judicial Dist. Court, 122 Nev. 1197, 1206-07, 147 P.3d 1109, 1115-16 (2006)
- Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF NEVADA MICHAEL D EMARTINI, No. 82331 Appellant, vs. CITY OF RENO; AND HEINZ RANCH FILED LAND COMPANY, LLC, Respondents. ORDER AFFIRMING IN PART AND VACATING IN PART This is an appeal from a district court order denying a petition for judicial review of a municipal land use decision.

Second Judicial District Court, Washoe County; Scott N. Freeman, Judge. The district court found that appellant lacked standing and denied the petition in part on that basis. "Standing is a question of law reviewed de novo." *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011).

In the context of an appeal of a planning commission's decision, a person who (i) has appealed such a decision to the governing body, and (ii) is "aggrieved by the governing body's decision has standing to seek judicial review. NRS 278.3195(4); see NRS 278.3195(1)(a) (stating that "each governing body shall adopt an ordinance that any person who is aggrieved by a decision of the planning commission may appeal the decision to the governing body"); *Kay v. Nunez*, 122 Nev. 1100, 1106, 146 P.3d 801, 806 (2006).

Appellant Michael DeMartini asserts that he has standing to seek judicial review of a decision of the Reno City Council—to affirm the planning commission's conditional grant of Heinz Ranch's request for a tentative map in connection with Phase 1A of its StoneGate Somme Caw OF NEVADA (0) t947A agRAP 2 2-06s7-s- planned unit development—because he is aggrieved by it within the meaning of NRS 278.3195(4).

NRS 278.3195 only defines the term "aggrieved" for counties with populations over 700,000. NRS 278.3195(1). But, as appellant concedes, the population of Washoe County, where the Reno City Council sits, is below that threshold. Instead of NRS 278.3195(1), the Reno Municipal Code ("RMC") applies and provides that an "aggrieved person is one whose personal right or right of property is adversely and substantially affected by the action of a discretionary body."

RMC 18.24.203.230 (2019) (now codified at RMC 18.09 art. 4 (eff. Jan. 13, 2021)); see also *City of N. Las Vegas v. Eighth Judicial Dist. Court*, 122 Nev. 1197, 1206, 147 P.3d 1109, 1115 (2006) (noting that the amendment to NRS 278.3195 "was not intended to preclude ordinances from... addressing who may appeal from a planning commission decision").

Here, appellant has not shown that his personal right or right of property is adversely and substantially affected by the City Council's decision, and so he does not have standing. He argues that the City Council's affirmance of the conditional approval of the tentative map will impact his property and water rights. But he does not explain where exactly his property is in relation to the affected area, nor does he express how he will be impacted or his rights impaired by the decision.

And while appellant previously stated that Heinz Ranch is planning to exclude him from its sewer line and take 1,000 acre feet of his water rights, he does not cogently relate these concerns about

future issues to the specific decision by the City Council that he challenges. See *Edwards v. Emperor's Garden Rest.*, 122 SUPREME COURT OF NEVADA 2 Ith 1947A Mam Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that it is appellant's duty to cogently argue in support of his appellate concerns).

Appellant attempts to avoid this result by asserting that he is necessarily aggrieved for the purposes of judicial review because the City Council already found that he is aggrieved, relying on *Kay v. Nunez*, 122 Nev. 1100, 146 P.3d 801 (2006). But *Kay v. Nunez* only decided that, in counties over a specific population threshold, the same statutory definition of "aggrieved" applies both when a person appeals to the governing body and when that person ultimately files a petition for judicial review.

Id. at 1107, 146 P.3d at 806. This does not mean that a court ruling on a petition for judicial review is categorically bound by the governing body's determination of whether a person is aggrieved. Cf. *City of N. Las Vegas*, 122 Nev. at 1207, 147 P.3d at 1116 (observing that while the North Las Vegas City Council has discretion to determine if an appellant meets the aggrievement standard, given appellant's insufficient affidavit, the City Council erred in finding her aggrieved).

Kay could not have so held, because NRS 278.3195 describes two separate determinations: under subsection one, the governing body determines if the appellant is aggrieved by the decision of a specified entity, such as the planning commission; and under subsection four, the district court determines if the petitioner is aggrieved by the decision of the governing body.

Applying this law, the district court appropriately found that appellant is not aggrieved. Accordingly, we affirm its decision as to appellant's lack of standing, and we vacate its decision on the merits of appellant's petition, which we do not reach given appellant's lack of standing to assert those issues. SUPREME COURT OF NEVADA 3 (0) I947A Accordingly, we ORDER the district court's judgment AFFIRMED IN PART AND VACATED IN PART.

Cadish J. Herndon cc: Hon. Scott N. Freeman, District Judge Lansford W. Levitt, Settlement Judge Simons Hall Johnston PC/Reno McDonald Carano LLP/Reno Reno City Attorney Washoe District Court Clerk SUPREME COURT OF NEVADA 4 i0) t94TA c4041>