

ARKANSAS COURT OF APPEALS

DIVISION I

No. CV-17-966

BILLY K. ROBERTS, KELLY L.
ROBERTS, HOLIDAY ISLAND
DEVELOPMENT CORPORATION,
and TABLE ROCK LANDING
OWNERS ASSOCIATION
APPELLANTS

V.

HOLIDAY ISLAND SUBURBAN
IMPROVEMENT DISTRICT #1
APPELLEE

Opinion Delivered September 5, 2018

APPEAL FROM THE CARROLL
COUNTY CIRCUIT COURT,
WESTERN DISTRICT
[NO. 08WCV-15-90]

HONORABLE SCOTT JACKSON,
JUDGE

REVERSED AND REMANDED

PHILLIP T. WHITEAKER, Judge

Appellants Billy K. Roberts, Kelly L. Roberts, Holiday Island Development Corporation, and Table Rock Landing Owners Association (TRL) filed a declaratory judgment action in the Carroll County Circuit Court against the appellee Holiday Island Suburban Improvement District #1 (HISID), seeking a determination of their rights as timeshare owners in the election of HISID commissioners. The circuit court found that the timeshare owners were not property owners as contemplated by Arkansas Code Annotated section 14-92-201(3)(Repl. 1998) and therefore were not entitled to receive individual notice of upcoming elections for commissioners or to receive individual ballots to vote in the

election. Instead, the circuit court found each unit was entitled to only one vote in the election of HISID commissioners. The court further found that HISID's added requirements that an owner be current in his or her assessments in order to be nominated for commissioner or to receive a ballot were reasonable, related to the business of the HISID, and not invalid. Appellants appeal, arguing that the circuit court erred in interpreting the relevant statutes. We agree; therefore, we reverse and remand for entry of an order consistent with this opinion.

I. *Facts*

Holiday Island is a planned community along Table Rock Lake, located in Carroll County. In July 1970, Carroll County formed the appellee HISID to acquire, construct, operate, and maintain public improvements within the boundaries of Holiday Island. Holiday Island consists of, among other things, roughly 5000 platted lots. It also includes twenty-eight separate timeshare units, each divided into fifty-one individual fractional-ownership interests, for a total of 1428 potential timeshare interests. Appellants Billy K. Roberts, Kelly L. Roberts, and Holiday Island Development Corporation are owners of timeshare interests in property located within the HISID. As timeshare owners, they each received separate deeds evidencing their timeshare-ownership interests, which were then recorded in the Carroll County land records. Appellant TRL manages the timeshare units on behalf of all the owners of timeshare property, including the Robertses and Holiday Island Development Corporation, and represents their interests. As manager, TRL receives the annual property-tax bill for the timeshare units from the county collector. TRL also receives HISID assessments for each

timeshare unit. TRL then collects payments from the individual timeshare owners, including the Robertses and Holiday Island Development Corporation, based on their proportional shares and remits those payments to HISID and the county collector.

In September 2015, HISID sent notice announcing an October 19, 2015 deadline for commissioner nominations and a December 1, 2015 date for commissioner elections. HISID sent the notice only to certain property owners in HISID. More specifically, HISID did not mail the notice to the individual owners of the timeshare units (unless the timeshare owner owned an additional and separate lot within the district). In the notice, HISID set forth the requisite qualifications for commissioner and the requirements for the eligibility to vote in the upcoming commissioner elections. HISID specified that a nominee for the position of commissioner must be a resident property owner current on his or her HISID assessments. As for voting rights, HISID stated that each individual property owner would have one vote, regardless of the number of properties owned; that a property owned by a trust would receive two votes; and that, in the case of multiple ownership of a single lot, only the first two names listed on the deed would be eligible to vote. HISID then specified the procedures for obtaining an absentee ballot.

On November 20, 2015, TRL, as an agent for the timeshare owners, requested 56 absentee ballots (representing two votes for each of the 28 timeshare units) from HISID. HISID denied the request. HISID informed TRL that no absentee ballots would be provided for the individual timeshare owners, and only one absentee ballot would be provided to TRL on behalf of all timeshare owners.

II. *Procedural History*

Appellants filed a declaratory-judgment action against HISID alleging that HISID's notice and balloting procedures for the election of its commissioners violate Arkansas law and requesting that HISID be ordered to conduct its elections in a manner that conforms to Arkansas law. They also sought a temporary restraining order (TRO). The circuit court denied the request for a TRO.

On the merits of the declaratory-judgment action, the parties submitted stipulated facts in lieu of a trial. Thus, the court decided the issues based on the pleadings, the stipulated facts, and the arguments of counsel.

Appellants essentially asserted three arguments. First, they argued that HISID had violated their statutory right to notice. They argued that timeshare owners are "property owners" under the statute governing the election of commissioners. As such, HISID was required to provide notice to each timeshare owner under Arkansas Code Annotated section 14-92-240(c)(1)(C) and failed to do so.

Second, appellants argued that HISID had violated their right to vote under the statute. Appellants argued that each timeshare owner was entitled to vote in the election of commissioners and that the statute was subject to only two possible interpretations of how this vote should occur: (1) TRL had the right to vote the collective interest of the timeshare owners with each timeshare unit being entitled to 2 votes, for a total of 56 votes; or (2) each individual timeshare owner (all 1428 of them) had the right to vote. With regard to the position that all 1428 timeshare owners had an individual right to vote, appellants referenced

an attorney general opinion that supported this conclusion. Thus, they concluded that HISID had failed to provide absentee ballots to each timeshare owner as provided by statute and had improperly restricted their voting rights to one collective vote.

Third, appellants argued that HISID improperly imposed additional requirements for commissioner nominations and elections. They contended that HISID lacked statutory authority to require that nominees and voters be current on their HISID assessments and utility bills or to limit eligible voters to the first two names on the deed in the case of multiple ownership.

With regard to appellants' notice arguments, HISID asserted that notification to the timeshare owners was not required nor feasible. HISID argued that timeshare owners are not "property owners" entitled to notice. It further noted that there is no public record of contact information for timeshare owners; therefore, HISID lacked the ability to obtain or verify the addresses of the timeshare owners.

In response to the appellants' arguments on the statutory right to vote, HISID argued that the statute endowed voting rights only on property owners. According to HISID, land and real property is defined under the statute as all property subject to taxation. HISID argued that timeshare owners are neither assessed nor taxed individually; therefore, the timeshare owners and the timeshare association were not property owners as contemplated by the statute. HISID further argued that appellants' position results in an absurdity—the district is made up of approximately 5000 lots, and under appellants' theory, the timeshare owners, who collectively own less than 10 lots and have only one-week-a-year interests in those lots, would

command nearly 1/3 of the votes in the election. HISID further argued that the attorney general opinion cited by appellants contradicts a previous attorney general opinion, which focused on the taxable nature of the property in determining whether voting rights attached.

Finally, HISID argued that it is authorized to place additional requirements on the qualifications of commissioner nominees and its voters pursuant to Arkansas Code Annotated section 14-92-210 as an action “useful to carry out the purposes of this subchapter” and as a rule or regulation “for the transaction of the district’s business.” Moreover, HISID took the position that nothing in the statute prohibits the enacting of those restrictions.

After hearing the arguments of counsel, the circuit court entered an order. The court held that timeshare owners were not property owners as contemplated by Arkansas Code Annotated section 14-92-201(3). Thus, the court ruled that the individual timeshare owners were not entitled to receive individual notice of upcoming elections for commissioner, and they were not entitled to receive individual ballots to vote in the election. With regard to voting rights under the statute, the court found the statute to be “confusing and ambiguous.” The court noted the legislature’s apparent use of two separate rules to govern different elections; attributed the two separate rules to a drafting error; and interpreted the statute to apply the same set of rules to both elections. The court then held that each property in the district was entitled to receive up to two votes if the property was jointly owned. Although it had previously found that the individual timeshare owners were not entitled to receive ballots to vote, the court found that the 28 timeshare units were subject to taxation and constituted real property as that term was defined by the statute. As such, the court concluded

that TRL was a single entity, and as a result, each unit was entitled to only one vote in the election for successor commissioners. The court further found that HISID's requirement that an owner be current in his or her assessments in order to be nominated for commissioner or to receive a ballot was reasonable, was related to the business of HISID, and was therefore not invalid.

This appeal followed.

III. *Standard of Review*

This appeal involves the interpretation of Arkansas Code Annotated section 14-92-240. We use a de novo standard of review when deciding the question of the correct application and interpretation of an Arkansas statute because it is a question of law. *Broussard v. St. Edward Mercy Health Sys., Inc.*, 2012 Ark. 14, 386 S.W.3d 385. In statutory-construction matters, we give effect to the intent of the General Assembly as the basic rule. *Nolan v. Little*, 359 Ark. 161, 165, 196 S.W.3d 1, 3 (2004). In determining the meaning of a statute, we construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id.* This court construes the statute so that no word is left void, superfluous, or insignificant, and meaning and effect are given to every word in the statute if possible. *Id.*

We do not resort to rules of statutory construction when the language of a statute is plain and unambiguous and conveys a clear and definite meaning. *Id.* However, this court will not give statutes a literal interpretation if it leads to absurd consequences that are contrary to legislative intent. *Id.* This court takes pains to reconcile statutory provisions to make them consistent, harmonious, and sensible. *Id.*

However, when the meaning is not clear, we look to “the subject matter, the object to be accomplished, the purpose to the [sic] served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject.” *Walther v. FLIS Enters., Inc.*, 2018 Ark. 64, 540 S.W.3d 264. A statute is ambiguous only when it is open to two or more constructions or when it is of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain as to its meaning. *Crayton v. State*, 2018 Ark. App. 110, at 4, 543 S.W.3d 544, 546–47.

With these standards in mind, we will now consider the interpretation of Arkansas Code Annotated section 14-92-240.

IV. *Analysis*

Arkansas Code Annotated section 14-92-240 subsections (a) and (b) set forth the process by which a suburban improvement district may change the method of selecting a board of commissioners from appointment to election. Subsections (c) and (d) set forth the process by which commissioners shall be nominated and elected once the initial change to an election method has been made. Subsection (e) simply states that any notice required under the section shall be given by first class mail.

We have three issues before us on appeal:

1. Is HISID required to provide notice to each timeshare owner?
2. Are timeshare owners “property owners” who are eligible to vote in HISID elections? If so, how many votes are they entitled to?

3. Are HISID's additional requirements to qualify as a nominee for commissioner or to vote invalid?

These issues relate to the process involved in the nomination and election of successor commissioners. Thus, subsection (c) of the statute is the focus of our analysis in this appeal.

It provides as follows:

(c)(1)(A) Not more than sixty (60) days nor less than thirty (30) days after the measure is approved, the quorum court member who conducted the election under subsection (b) of this section shall hold a meeting to accept nominations for the new commissioners. Nominations for commissioners shall be made by property owners.

(B) The commissioners shall be elected, from among those nominated, at a subsequent public meeting to be held not less than thirty (30) days after the meeting to nominate commissioners.

(C) Notice of the meetings shall be mailed to each property owner at least thirty (30) days prior to the meeting to nominate commissioners.

(D) The notice shall include the following information:

(i) The time, place, and date of the meetings to nominate and elect a new board of commissioners;

(ii) How to request an absentee ballot; and

(iii) The qualifications for voting in the election.

(2) Each property owner in attendance at the meeting to nominate shall be entitled to nominate one (1) district resident property owner. Each property owner shall be entitled to one (1) vote for each position of commissioner to be filled. A property owner may cast his or her vote in person at the meeting conducted to elect commissioners or may vote by an absentee ballot. Absentee ballots must be received prior to the meeting held to elect commissioners. Any absentee ballot may be requested by any property owner.

(3)(A) A meeting shall be held annually to nominate successor members, and a subsequent meeting shall be held to elect successor members.

(B) The annual meetings shall be conducted by the board.

(C) The same notice requirements as for the initial meetings for nomination and election of commissioners shall apply to the annual meetings for nomination and election of commissioners.

(4) The cost of the election held to select commissioners under this subsection shall be borne by the district.

By its plain language, this subsection provides that “property owners” are entitled to nominate candidates for commissioner and are entitled to one vote for each position of commissioner to be filled. The question and the point of analysis then becomes who are “property owners” for purposes of the statute. More pointedly, are timeshare owners “property owners” for purposes of the statute?

We first note that the term “property owner” is not expressly defined by the statute. The statute does, however, define “land” or “real property” as “all property subject to taxation for the purposes of this subchapter.” Is a timeshare estate property subject to taxation under the statute? We conclude that it is.

A time-share estate is an estate in real property and has the character and incidents of an estate in fee simple at common law; it also constitutes a separate estate or interest in property, except for real property tax purposes. Ark. Code Ann. § 18-14-104(a), (c) (Repl. 2015). So, a timeshare owner technically “owns” property. Each timeshare owner is issued a deed in his or her name, which is then recorded. While the timeshare owners do not receive an individual tax bill or an individual assessment, the property itself is assessed real property taxes by the assessor and improvement-district assessments by HISID, which are then paid by the timeshare owners through TRL—in other words, a timeshare owner owns property

subject to taxation. Thus, under a plain reading of the statute, a timeshare owner satisfies the definition of a “property owner” entitled to notice.

Because a timeshare owner satisfies the definition of a “property owner” under the statute, timeshare owners are entitled to individual notice of commissioner elections and are also entitled to the right to vote. How many votes are they entitled to? The statute clearly and unambiguously states that “[e]ach *property owner* shall be entitled to *one (1) vote* for each position of commissioner to be filled.” Ark. Code Ann. § 14-92-240(c)(2) (emphasis added). Thus, when we apply our rules of statutory construction, it is clear that each timeshare owner is a property owner and that each is entitled to one vote for each position of commissioner to be filled.

HISID argues that this interpretation reaches an absurd result. They assert that there are potentially 51 “owners” of each individual timeshare unit—resulting in 1428 possible “owners” on fewer than 10 lots. HISID takes the position that this outcome clearly dilutes the voting rights of other individual property owners and urges this court not to give the statute a literal interpretation that leads to such an absurd result. It is true that this court generally will not give statutes a literal interpretation if it leads to absurd consequences that are contrary to legislative intent. *Nolan*, 359 Ark. at 165, 196 S.W.3d at 3. Here, however, the language of the statute is clear and unambiguous. We have looked at the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject and cannot ascertain that anything other than this result was contemplated by the legislature. In fact, in this same legislation, the

legislature created a different process for effectuating a change from appointment to election of commissioners. In section 14-92-240(b)(4), the legislature provided that “[t]wo (2) votes shall be awarded for each property. The interests of the time-share owners shall be voted by the time-share owners’ association on the same basis.” The fact that the legislature set up one procedure in subsection (b) of the statute and then set up a completely different procedure in the very next subsection strongly suggests that the legislature did not intend for the elections to be carried out the same way.

Accordingly, we do not find that this interpretation is contrary to legislative intent. We conclude that the legislature intended timeshare owners to have “some” voice in the election of commissioners. There is no doubt that the timeshare owners have an interest in the improvement for which the district was formed and that they are assessed a fee, albeit indirectly, for that improvement. It would be fundamentally unfair to prevent them from having a voice in its administration. Moreover, if the legislature did not intend for them to have any voice, the legislature would not have given them a voice in whether the commissioners were elected or appointed. As a result, we are unable to say that this result was contrary to the legislative intent. Thus, we hold that the individual timeshare owners have a right to cast a ballot in commissioner elections, one vote for each position of commissioner to be filled.

Appellants next challenge HISID’s regulations that require additional qualifications for the nomination and election of commissioners. More specifically, appellants challenge HISID’s requirement that nominees and voters not be delinquent in their assessments or utility bills and

limits eligible voters to the first two names on the deed in the case of multiple ownership and requires that past-due assessments be paid before the close of business the day preceding the election. We agree these additional requirements are invalid.¹

The legislature detailed the power and the authority given to the board in section 14-92-210:

In addition to, and not by way of limitation of the powers prescribed in § 14-92-220,^[2] the board of commissioners of a suburban improvement district shall have the powers to:

- (1) Make and execute all contracts, leases, conveyances, and other instruments of the district;
- (2) Join with any other political subdivision, municipality, district, or governmental agency, either state or federal, in the acquisition, construction, maintenance, operation, and financing of any of the facilities, works, or operations authorized by this subchapter or as to the performance of any of its functions;
- (3) Establish rules and regulations for the transaction of the district's business and for the services, use, and right to use of its facilities or services, or both, or to effectuate any purpose of this subchapter;
- (4) Do all things incidental or auxiliary to the exercise of the express powers granted by this subchapter; and
- (5) Perform all actions useful to carry out the purposes of this subchapter, unlimited by any express provision of it.

¹We note that HISID may have created other regulations relating to the nominations and elections of commissioners. For example, it appears that trusts are given two votes pursuant to current HISID regulations. We have not been specifically asked to make a determination regarding the validity of these other requirements and therefore decline to do so.

²This deals with the authority of the board to hire and fire employees, sell, buy, or lease equipment, and accept gifts.

While paragraphs 3 through 5 are somewhat generic in their wording, Arkansas Code Annotated section 14-92-240(c) explicitly sets out the qualifications of commissioners and voters under the statute and unambiguously provides for the number of votes each property owner may cast in the elections. Nothing in the plain wording of section 14-92-210 gives the district the authority to alter those requirements. Therefore, we must conclude that HISID acted outside its authority in enacting these regulations.

Reversed and remanded.

GRUBER, C.J., and VIRDEN, J., agree.

RMP, LLP, by: *Timothy C. Hutchinson* and *Larry McCredy*, for appellants.

Bishop Law Firm, by: *Matt Bishop*, for appellee.