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Summary of Mesagate Homeowners' Association v. City of Fernley, 124 Nev. Adv. Op. No. 91

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Mesagate Homeowners' Association v. City of Fernley, 124 Nev. Adv. Op. No. 91 (Oct. 30, 2008)[1]

PROPERTY LAW – WRIT OF MANDAMUS

Summary

Appeal from a district court order denying a petition for a writ of mandamus challenging the respondent's issuance of a building permit for a water treatment plant.

Disposition/Outcome

Affirmed the district court's order denying the writ of mandamus on the grounds that the matter is not justiciable.

Factual and Procedural History

The Environmental Protection Agency mandated that Respondent, the City of Fernley ("City"), reduce the arsenic concentration in its drinking water by July 2009. In response, the City planned to build a water treatment facility abutting Appellant's property. Finding that the finished plans complied with all applicable codes, the City issued an Approval Notice-Design Review letter in July 2007. The approval was subject to thirty-seven additional conditions. After receiving a building permit, the City's Public Works Department began construction on October 4, 2007.

Appellants, Mesagate Homeowners' Association and four individuals with property abutting the plant ("Mesagate"), opposed the plant's construction on the grounds that it would increase hazardous traffic and airborne carcinogens and lead to a decline in property values. One month after the City granted the building permit, the Appellant filed a petition for a writ of mandamus in district court alleging the City had violated both statutes and building codes while obtaining the building permit for the plant. Specifically, Mesagate alleged that the City failed to comply with City Development Code § 44.020 requiring a sixty-foot right-of-way and did not meet the thirty-seven conditions stipulated in the Approval letter.

In rendering its decision, the district court focused on Mesagate's harm. Although the court presumed that the plant would have a negative effect on Mesagate's property values, the court denied the writ of mandamus. If found that the harm to the City's citizens if the writ was granted would be much greater than the harm Mesagate if the writ was denied.

Mesagate filed a timely appeal.

Discussion

On appeal, Mesagate argued that the district court erred in denying its petition for a writ of mandamus. Specifically, it argued the court should have granted the petition because of

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several building code violations. The City argued that the district court erred because the matter is not justiciable. In particular, the City alleges that Mesagate does not have a legally recognizable interest in the litigation. Alternatively, Mesagate did not exhaust its administrative remedies.

First, the court found that Mesagate had a legally recognizable interest in challenging the building permit.[2] The court based its ruling on *Hantges v. City of Henderson*[3] which held that nonproperty-owning citizens had standing to question "the validity of an agency's findings or determinations in connection with a redevelopment plan" under NRS Chapter 279. In *Hantges*, the court found that NRS § 279.609 implicitly recognized the plaintiff's right to bring a petition for a writ of mandamus by imposing limits on the availability of actions questioning the validity of redevelopment plans. Like in *Hantges*, the chapter of the NRS that governs this dispute also places restrictions on actions, including an allegedly unlawful building permit. Under NRS § 278.0235 there are time limits on actions "with respect to any final action, decision or order of any governing body, commission or board authorized by NRS § 278.010 to 278.630." The court held that because NRS Chapter 278 specifically contemplates actions such as Mesagate's, the chapter implicitly recognizes a legal interest.

Second, the court found the issue nonjusticiable because Mesagate had failed to exhaust its administrative remedies before filing the petition. Under NRS § 278.0235, Mesagate may only challenge *final* actions, decisions, or orders. NRS § 278.0235 creates a right of review only after a decision has been challenged and reviewed by the governing board's internal appellate procedure.[4] Thus, the court found that there is no final action until after the governing body has reviewed and rejected an appeal. The Fernley Development Code adopted a provision of the International Building Code establishing a Board of Appeals to hear appeals made by building officials.[5] Here, by failing to challenge the permit with the Board of Appeals, Mesagate failed to exhaust its administrative remedies.

Conclusion

The Court affirmed the district court's denial of Mesagate's petition for a writ of mandamus on the grounds that the matter was not justiciable, therefore, review was improper.

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[2] Here, a legally recognized interest requires that a party have a beneficial interest in obtaining a writ of relief. A 'beneficial interest' is a "direct and substantial interest that falls within the zone of interests to be protected by the legal duty asserted." Mesagate HOA v. City of Fernley, No. 50994 at *7-8 (Nev. Oct. 30, 2008) (quoting Sec'y of State v. NV State Legislature, 120 Nev. 456, 461, 93 P.3d 746, 749 (2004)).

[3] Hantges v. City of Henderson, 121 Nev. 319, 113 P.3d 848 (Nev. 2005).

[4] NEV. REV. STAT. § 278.3195(4) (2007) provides that "[a]ny person who (a) [h]as appealed a decision to the governing body in accordance with an ordinance adopted pursuant to [NRS 278.3195(1)]; and (b) [i]s aggrieved by the decision of the governing body, may appeal that decision to the district court." In passing this statute, the legislation overturned the court's prior decision in League to Save Lake Tahoe v. Tahoe R.P.A., 93 Nev. 270, 563 P.2d 582 (1977) (concluding that the actual issuance of a special use permit could constitute a final action if agency review does not occur because the agency does not reach a decision).

[5] INT'L BLDG. CODE § 112.1 (2003).