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Corp. Bishop, LDS v. Seventh Jud. Dist. Ct., 132 Nev. Adv. Op. 6 (Jan. 28, 2016)

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DENIAL OF WRIT: STATUTORY INTERPRETATION CASE

Summary

The Court determined that a State Engineer did not improperly apply NRS § 533.3705(1) retroactively or constitute a retroactive application for two reasons: (1) the statute unambiguously applies to only approved applications; and (2) the applications at issue were approved almost five years after the statute took effect. Thus, the Court denied petitioner's request for extraordinary writ attempting to bar the State Engineer from applying NRS § 533.3705(1) to the disputed water permit applications.

Background

In 1989, the Southern Nevada Water Authority, or SNWA, filed several water permit applications with the State Engineer to appropriate water. In 2007, the State Engineer ruled on SNWA's 1989 application—rejecting some appropriations and approving others subject to incremental development via pumping, other restrictions, and continued monitoring. The parties sought judicial review and the lower court found no error. But after a subsequent successful appeal to the Court, the State Engineer was ordered to republish SNWA's applications.²

In late 2011, several entities including petitioner Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, CPB, again opposed SNWA's applications after the Court's order of republishing. In March of 2012, the State Engineer again denied some applications and granted others, this time invoking NRS § 533.3705(1). Under NRS § 533.3705(1), the State Engineer subjected the approved applications to three stages of incremental monitoring. CPB petitioned the decision and the lower court rejected its argument that the State Engineer improperly applied NRS § 533.3705(1) retroactively. Despite this, the district court reversed and remanded the State Engineer's ruling on other grounds. CPB appealed and asked the Court for extraordinary writ barring the State Engineer from applying NRS § 533.3705(1) to SNWA's applications.

Discussion

The Court's discretionary intervention is warranted to address the writ

Extraordinary writ relief is solely within the Court's discretion. The Court determined it would address CPB's petition for three reasons³: (1) The writ petition presents a narrow legal issue; (2) hundreds of parties contested SNWA's applications and securing water for the most populous part of Nevada has major public policy implications; and (3) the Court's intervention

¹ By Mackenzie Warren.

² Great Basin Water Network v. Taylor, 126 Nev. 187, 190, 234 P.3d 912, 914 (2010).

³ Int'l Game Tech., Inc. v. Second Jud. Dist. Ct., 122 Nev. 132, 142–43, 127 P.3d 1088, 1096 (2006).

will promote judicial economy to resolve proper application of a statute at the center of litigation spanning twenty-five years.

The State Engineer did not apply NRS § 533.3705(1) retroactively

The Court reviews questions of statutory interpretation and retroactivity *de novo*. Statutory language is assigned its plain meaning if it is clear and unambiguous.⁴ The Court concluded the State Engineer did not apply NRS § 533.3705(1)⁵ retroactively because the state unambiguously applies to only approved applications and the disputed SNWA applications were approved nearly five years after the statute took effect. NRS § 533.3705(1) was enacted in 2007 and the State Engineer did not approve the applications until 2012.

NRS § 533.3705(1) only applies to approved applications

The Court rejected CPB's argument that the State Engineer attempted to delay the permit process with incremental development in contravention of the 1989 version of NRS § 533.3705, which required applications' acceptance or rejection within one year. Hence, the Court concluded NRS § 533.3705(1) plainly requires the State Engineer to approve total appropriation before incremental development can be imposed. NRS § 533.3705(1) only allows incremental developments on water projects "[upon] approval of an application." Thus, application approval triggers incremental development, which after reading the statute's plain language, no reasonable person could reach a different conclusion.⁶

Applying NRS § 533.3705(1) here does not constitute a retroactive application

The Court determined a statute is retroactively applied when it takes away or hampers a vested right, creates a new obligation, or imposes a new constraint, in assessing past transactions or considerations.⁷ Here, the State Engineer applied NRS § 533.3705(1) prospectively to applications approved in 2012. NRS § 533.3705(1) was enacted in 2007 and unambiguously applied only after an application is approved. The Court ruled the material date was the application's approval year of 2012—not the filing year of 1989. Furthermore, these applications were approved five years after NRS § 533.3705(1) took effect. Thus, the State Engineer did not apply NRS § 533.3705(1) retroactively and CPB is not entitled to relief. The Court denied its petition.

Conclusion

Petitioner's argument that NRS § 533.3705(1) was retroactively applied would contradict the statute's plain meaning and unambiguous definition. The State Engineer did not retroactively apply NRS § 533.3705(1) because the application approval in 2012 clearly preceded the statute's

⁴ D.R. Horton, Inc. v. Eighth Jud. Dist. Ct., 123 Nev. 468, 476, 168 P.3d 731, 737 (2007).

⁵ NEV. REV. STAT. § 533.3705(1) (2007).

⁶ See Webster's Third New International Dictionary (2002) (defining "upon" as "immediately following on," "very soon after," "on the occasion of," or "at the time of"); D.R. Horton Inc., 123 Nev. at 476.

⁷ Pub. Emps.' Benefits Program v. Las Vegas Metro. Police Dep't., 124 Nev. 138, 155, 179 P.3d 542, 553-54 (2008).

2007 enactment. The Court denied CPB's petition for extraordinary writ challenging a district court order of judicial review.