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Office of the Attorney General v. Justice Court (Escalante), 133 Nev. Adv. Op. 12 (Apr. 6, 2017)

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WRIT OF MANDAMUS: NOTICE TO THE ATTORNEY GENERAL OF
CONSTITUTIONAL CHALLENGES TO NEVADA STATUTES IN CRIMINAL
PROCEEDINGS

Summary

The Court determined that NRS 30.130, which concerns the Attorney General's right to be notified and an opportunity to be heard in constitutional challenges to Nevada statutes, does not apply to criminal proceedings. Instead, NRS 30.130 only refers to a proceeding for declaratory relief, which is treated as a civil action.

Background

In 2015, Maria Escalante and Ramiro Funez were cited for trespass under NRS 207.200(1)(a) at the Red Rock Casino Resort & Spa.² Escalante and Funez moved to dismiss the trespass charges by arguing that NRS 207.200(1)(a) is unconstitutionally vague. The Attorney General (AG) was not notified of that constitutional challenge. The justice court ruled on the Escalante and Funez' constitutional challenge, and agreed that the trespass statute was void for vagueness. The justice court then granted the motion to dismiss in part, and ordered defense counsel to provide a copy of its order to the AG.

After receiving the justice court's order, the AG filed a motion to place on calendar and argued that under NRS 30.130 the AG was entitled to notice of the constitutional challenge to the trespass statute and an opportunity to be heard in the challenge. The justice court denied the AG's motion and held that NRS 30.130 has no applicability to the criminal trespass proceedings because NRS 30.130 only applies to declaratory relief actions, which are treated as civil proceedings. The AG then filed a writ of mandamus to the Nevada Supreme Court to reconsider the justice court's order.

Discussion

Consideration of the AG's writ petition

The Court considered the AG's writ of mandamus because it concerned an important legal issue that the Court needed to clarify in the interest of guidance to Nevada's lower courts.

NRS 30.130 does not require notice to the AG of constitutional challenges to Nevada statutes in criminal proceedings

The AG argued that NRS 30.130 requires that a court provide it with notice of any constitutional challenge to any statute in any proceeding.³ The Court ruled against the AG,

¹ By Kristopher J. Kalkowski.

² NEV. REV. STAT. § 207.200(1)(a) (2015).

³ *City of Reno v. Saibini*, 83 Nev. 315, 429 P.2d 559 (1967).

however, because the plain language of the statute states that the AG is only entitled to notice and an opportunity to appear in declaratory relief actions.⁴ The Court supported that decision by looking to the overall statutory scheme of NRS Chapter 30, which shows that NRS 30.010 to 30.160 involves the Uniform Declaratory Judgment Act (UDJA)—an Act that only applies to declaratory relief in civil actions.⁵ In addition, the Court pointed to Nevada state court decisions, as well as Ohio and Texas state court decisions, to further explain that the UDJA only applies to civil proceedings, and that no Nevada court has ever applied NRS 30.130 to criminal proceedings.⁶ Thus, the justice court’s decision was correct; the AG has no right to be notified of any constitutional challenges to statutes that arise in criminal proceedings.

Conclusion

The Court denied the AG’s petition for writ of mandamus, which argued that the AG is entitled to notice of constitutional challenges to statutes in criminal proceedings under NRS 30.130. Moreover, NRS 30.130 only applies in actions for declaratory relief—a civil proceeding.

⁴ NEV. REV. STAT. § 30.130 (2015) (“when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration . . . [A]nd if the statute . . . is alleged to be unconstitutional . . . the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard.”).

⁵ *See, e.g.*, NEV. REV. STAT. §§ 30.040; 30.060 & 30.110.

⁶ *See, e.g.*, *State v. Kinstle*, 985 N.E.2d 184, 191 n.6 (Ohio Ct. App. 2012) (holding that the defendant was not required to provide the AG with notice of his constitutional challenge because it was raised in a criminal proceeding, not a declaratory relief action); *Ex parte Williams*, 786 S.W.2d 781, 782 (Tex. Grim. App. 1990) (“The [UDJA] is purely a creature of civil law. It has no application in criminal proceedings. Moreover, we are aware of no authority that requires a defendant who is asserting a statute is unconstitutional to serve the [AG].”); *see also* *Moldon v. County of Clark*, 124 Nev. 507, 188 P.3d 76 (2008) (The Court’s observation indicated that NRS 30.130 only applies to actions for declaratory relief.).