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Summary of Liberty Mut. v. Thomasson, 130 Nev. Adv. Op. 409

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ADMINISTRATIVE LAW:
JURISDICTIONAL RESIDENCY REQUIREMENTS FOR JUDICIAL REVIEW

Summary

The Court determined two issues: (1) whether NRS 233B.130(2)(b) is a mandatory jurisdictional requirement, and (2) whether Liberty Mutual is a resident of Washoe County to grant the Second Judicial District Court jurisdiction to consider its petition for judicial review.

Disposition

NRS 233B.130(2)(b) is both mandatory and jurisdictional. Further, because a corporation's place of residence for the purposes of NRS 233B.130(2)(b) is that which is listed as the principal place of business in its articles of incorporation, a foreign corporation cannot have a fixed residence in any Nevada county.

Factual and Procedural History

Carson City Senior Citizens Center employed Thomasson to deliver meals to the elderly. In May 2010, Thomasson injured his knee when he slipped down a flight of stairs on a delivery. Liberty Mutual denied Thomasson's workers' compensation claim for the injury, arguing that the injury occurred outside the scope of Thomasson's employment. Upon administrative appeal, the denial was reversed. Then, Liberty Mutual filed a petition for judicial review in the Second Judicial District Court in Washoe County. Thomasson filed a motion to dismiss Liberty Mutual's petition, claiming that it did not comply with NRS 233B.130(2)(b). The district court treated the motion to dismiss as a motion to transfer venue, and ordered that the case be transferred to the First Judicial District Court in Carson City.

Discussion

NRS 233B.130(2)(b) is mandatory and jurisdictional

The Court reviews de novo the issue of statutory interpretation. Nevada's Administrative Procedure Act (APA) provides the procedure for the judicial review of agency decisions. Specifically, a portion of the APA, codified at NRS 233B.130(2), provides:

Petitions for judicial review *must*:

(a) Name as respondents the agency and all parties of record to the administrative proceeding;

(b) Be instituted by filing a petition in the district court in and for Carson City, *in and for the county in which the aggrieved party resides* or in and for the county where the agency proceeding occurred; and

¹ By Erica Nannini.

² NEV. REV. STAT. § 233B.130(2)(b) (2011) (emphasis added).

(c) Be filed within 30 days after service of the final decision of the agency.”²

To interpret the statute, the Court applied the rationale from *Washoe Cnty. v. Otto*,³ where the Court interpreted the word “must” to impose a mandatory jurisdictional requirement, as opposed to a venue requirement. Further, the Court reviewed *Crane v. Cont'l Tel. Co. of Cal.*,⁴ which held that a petitioner must adhere to the APA’s procedures when seeking judicial review of an administrative decision. Failure to adhere to the requirements is grounds for dismissal.

Liberty Mutual is not a resident of Washoe County under NRS 233B.130(2)(b)

In order for its petition for judicial review to comply with NRS 233B.130(2)(b), Liberty Mutual must be a resident of Washoe County. Despite Liberty Mutual’s office in Reno, the district court correctly determined that Liberty Mutual was not a resident. The Court held, looking to the dictionary definition of “residence,” legislative intent, *Flournoy v. McKinnon Ford Sales*,⁵ and NRS Chapter 13, that a corporation’s place of residence for the purposes of NRS 233B.130(2)(b) is that which is listed as the principal place of business in its articles of incorporation. The Court concluded that “a foreign corporation cannot have a fixed residence in any Nevada county,” so Liberty Mutual improperly sought review in Washoe County.

The court did note, however, that foreign corporations are not necessarily precluded from judicial review. Even though they are not considered residents of any Nevada county for purposes of NRS 233B.130(2)(b), they may still seek judicial review of agency decisions in other locations, like Carson City, or the county where the agency proceeding occurred.

Conclusion

NRS 233B.130(2)(b) is both mandatory and jurisdictional. Because Liberty Mutual is not a resident of Washoe County and its petition did not satisfy the jurisdictional burden, the Second Judicial District Court lacked jurisdiction. The Court vacated the district court’s order transferring venue and ordered the district court to dismiss the petition.

² NEV. REV. STAT. § 233B.130(2)(b) (2011) (emphasis added).

³ 128 Nev. ____, ____, 282 P.3d 719, 724 (2012).

⁴ 105 Nev. 399, 401, 775 P.2d 705, 706 (1989).

⁵ 90 Nev. 119, 122, 520 P.2d 600, 602 (1974).