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Summary of Brass v. State, 129 Nev. Adv. Op. 53

Katelyn J. Cantu
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CRIMINAL PROCEDURE—SUBSTITUTION OF PARTIES WHEN A PARTY DIES
PENDING A CRIMINAL APPEAL

Summary

The Court considered whether an attorney may file a substantive motion on a deceased client's behalf in a criminal case when a personal representative has not been substituted as a party to the appeal.

Disposition/Outcome

The Court denied the motion, finding that counsel lacked the authority to act on the deceased client's behalf.

Facts and Procedural History

Ronnie Brass was convicted of conspiracy to commit first-degree kidnapping and first-degree murder with the use of a deadly weapon. Mr. Brass timely appealed, but he died before his appeal was decided. Counsel suggested Mr. Brass's death upon the record almost one year prior to the date of the opinion, but no party had been properly substituted as Mr. Brass's personal representative.

Discussion

Justice Douglas delivered the opinion of the Court, sitting as a seven-justice panel with Chief Justice Pickering and Justices Gibbons, Hardesty, Parraguirre, Cherry, and Saitta, who concurred.

First, the Court addressed the issue of whether an attorney may file a substantive motion on a deceased client's behalf in a criminal case when a personal representative has not been substituted as a party to the appeal. Generally, "counsel cannot act on a deceased client's behalf."² If a party dies, "the [action] cannot proceed until someone is substituted for the decedent."³ Accordingly, because a personal representative had not been substituted as a party to the appeal, the Court concluded counsel lacked the authority to act on the deceased client's behalf.

Second, the Court addressed the time frame for substitution under NRAP 43(a)(1). Although NRAP 43(a)(1) allows for the substitution of a personal representative for a deceased party while an appeal is pending, it does not establish a limitation on the time for filing a substitution motion. However, because NRCP 25(a), which governs the substitution of parties when a party dies in a *civil* case, requires that a substitution motion be filed within 90 days of the decedent's death being suggested upon the record, the Court concluded that a motion under NRAP 43 must also

¹ By Katelyn J Cantu.

² *Fariss v. Lynchburg Foundry*, 769 F.2d 958, 962 (4th Cir. 1985).

³ *Walker v. Burkham*, 68 Nev. 250, 253-54, 229 P.2d 158, 160 (1951).

be filed within 90 days of the decedent's death being suggested upon the record. In both cases, if the substitution is not timely filed, then the action will be dismissed as to the deceased party.

Nevertheless, the Court, *in this instance only*, extended the time for filing the substitution motion until 90 days after the opinion was filed because the Court's process caused the delay in filing the motion for substitution.

Conclusion

The Court DENIED counsel's motion for abatement, finding that the motion was not properly before the Court.