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CONSTITUTIONAL LAW - PROVISIONS ESTABLISHING CORONER'S INQUEST
REGARDING OFFICER-INVOLVED DEATHS

Summary

In an appeal from the district court upholding all but one provision regarding the establishment of a coroner's inquest of officer-involved deaths, the Court determined whether Clark County, Nevada, Code of Ordinances (CCCO), Title 2, Chapter 2.12 violates due process rights and whether the ordinance intrudes upon the Legislature's exclusive authority.

Disposition/Outcome

Provisions requiring a justice of the peace serve as presiding officer in the coroner's inquest proceedings regarding officer-involved deaths intrudes on the Legislature's exclusive authority over the jurisdiction of justices of the peace. The offending provision cannot be severed. Such a severance would require the entire inquest scheme regarding officer-involved deaths to be struck down because there is no provision for anyone other than a justice of the peace to serve as presiding officer in such proceedings.

Factual and Procedural History

Nevada Highway Patrol Officers responded to an incident that resulted in a man's death, causing inquest proceedings to begin. However, the Clark County Board of Commissioners amended the coroner's inquest ordinance before the inquest proceedings began for the officers. The Nevada Highway Patrol Officers (Appellants) filed separate complaints in the district court seeking declaratory and injunctive relief challenging the validity of the amended ordinance based on asserted constitutional violations, which were later consolidated. Appellants filed motions and applications for both a temporary restraining order and a preliminary injunction against the inquest proceedings.

The district court granted a temporary restraining order, and prohibited the inquest proceedings until court ruled on the injunction. The district court entered judgment upholding all but one of the Clark County Code sections at issue. The Nevada Highway Patrol Officers appealed.

Coroner's Inquest

The board of county commissioners for any county in Nevada is authorized under NRS 244.163 to create a county coroner's office. Clark County set forth coroner's duties for inquests by enacting the Clark County, Nevada, Code of Ordinances (CCCO), Title 2, Chapter 2.12. When an officer-involved death occurs, the coroner calls an inquest and a

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presiding officer is selected.² An officer-involved death occurs when an officer, while acting in his or her official capacity, uses force that may contribute to the death of a person. Additionally, an officer-involved death may occur when the officer actively takes some role in causing a vehicular accident that leads to a person's death³ and when circumstances support reasonable grounds to suspect the death was unnatural.⁴ The chief judge from the township where the death occurred shall appoint a qualified magistrate⁵ as the presiding officer.⁶ "The presiding officer shall preside over the inquest and shall insure that the inquest is conducted as an investigatory and fact finding proceeding and not an adversarial proceeding."⁷

Discussion

The Nevada Supreme Court heard the case en banc, and Hardesty wrote the opinion. Appellants argue due process rights in the Nevada Constitution will be violated if they are forced to participate in the inquest under the current procedures set forth. Appellants further contend that the Clark County Board of County Commissioners (CCBCC), by designating justices of the peace to perform duties, intrude upon the Nevada Constitution's express delegation of authority to the Legislature to establish the jurisdiction of the justices of the peace.

The Court used a de novo standard of review. In the absence of any factual dispute, this court reviews a district court's decision to grant or deny declaratory and injunctive relief de novo.⁸ In addition, the Court reviews de novo determinations of whether a statute is constitutional.⁹

The Clark County Coroner's Inquest proceeding does not infringe upon due process guarantees

The language is similar between the due process clause contained in the United States and Nevada Constitutions,¹⁰ permitting the court to look to federal precedent for guidance in determining violations of the due process clause of the Nevada Constitution.¹¹ Due process evaluations are done on a case-by-case basis based on the facts at issue,¹² and the level of due process provided depends on the effect the proceeding will have on a constitutionally protected interest.¹³

² CLARK COUNTY, NEV., CODE OF ORDINANCES § 2.12.080(c).

³ CLARK COUNTY, NEV., CODE OF ORDINANCES § 2.12.010(p).

⁴ CLARK COUNTY, NEV., CODE OF ORDINANCES § 2.12.010(c).

⁵ CLARK COUNTY, NEV., CODE OF ORDINANCES § 2.12.010(l) (defining a qualified magistrate as a justice of the peace from any jurisdiction within Clark County who is an attorney duly licensed to practice law in Nevada).

⁶ CLARK COUNTY, NEV., CODE OF ORDINANCES § 2.12.020(e).

⁷ CLARK COUNTY, NEV., CODE OF ORDINANCES § 2.12.080(m).

⁸ *Nevadans for Nev. v. Beers*, 122 Nev. 930, 942, 142 P.3d 339, 347 (2006).

⁹ *Flamingo Paradise Gaming v. Att'y Gen.*, 125 Nev. 502, 509, 217 P.3d 546, 551 (2009).

¹⁰ *Rodriguez v. Dist. Ct.*, 120 Nev. 798, 808 n.22, 102 P.3d 41, 48 n.22 (2004).

¹¹ NEV. CONST. art. 1, § 8(5).

¹² *Weaver v. State, Dep't of Motor Vehicles*, 121 Nev. 494, 502, 117 P.3d 193, 199 (2005).

¹³ *Hannah v. Larche*, 363 U.S. 420, 442 (1960).

Appellants assert inquest proceedings impliedly put their liberty and property interests at stake because the proceedings involve determining the foundation for a criminal prosecution. Respondents disagree, stating the reason for the inquest is merely to find facts that may subsequently be used in later actions.

Federal Precedent

Three federal court decisions address similar concerns as those raised by the appellants. First, in *Hannah v. Larche*,¹⁴ the Court held due process rights do not attached in the context of an investigatory proceeding. Registrars of voters and private citizens were called to appear before a commission investigating alleged voting deprivations in Louisiana.¹⁵ The Court considered the procedures possibly causing irreparable harm to those being investigated. These included procedures that subjected them to public disgrace or shame, the possibility of losing their jobs, and potential criminal prosecution.¹⁶ The Court determined that “even if such collateral consequences were to flow from the Commission’s investigations, they would not be the result of any affirmative determinations made by the Commission, and they would not affect the legitimacy of the Commission’s investigative function.”¹⁷ The Court concluded that due process rights were not violated because the commission’s procedures were purely investigative and fact-finding.¹⁸

Second, in *Jenkins v. McKeithen*,¹⁹ the Court held due process rights attach in the context of an adjudicatory proceeding. The Court applied the test in *Hannah* to determine whether an investigative commission’s procedures violated the Due Process Clause of the Fourteenth Amendment.²⁰ The commission was to investigate and make findings of fact regarding violations or possible violations of criminal laws and to supplement and assist the district attorneys and other law enforcement personnel.²¹ The commission was required to report any findings and make recommendations for future actions where it had probable cause to believe a violation of a criminal law occurred.²² The commission “very clearly exercises an accusatory function; it is empowered to be used and allegedly is used to find named individuals guilty of violating the criminal laws.”²³ The Court held due process “requires the Commission to afford a person being investigated the right to confront and cross-examine the witnesses against him, subject only to traditional limitations on those rights.”²⁴

¹⁴ 363 U.S. 420 (1960).

¹⁵ *Id.* at 421–22.

¹⁶ *Id.* at 442–43.

¹⁷ *Id.* at 443.

¹⁸ *Id.* at 451.

¹⁹ 395 U.S. 411 (1969).

²⁰ *Id.* at 416–17.

²¹ *Id.* at 414–15.

²² *Id.* at 417.

²³ *Id.* at 427–28.

²⁴ *Id.* at 429.

Third, in *Aponte v. Calderon*,²⁵ the First Circuit discussed *Hannah* and *Jenkins* in determining whether due process rights are implicated in a particular proceeding. A commission was created by executive order to address issues related to the use of public resources and government corruption, empowered to conduct investigations, make factual findings, and issue recommendations against individuals.²⁶ However, the commission could not initiate or file civil, criminal, or administrative charges or make determinations regarding criminal liability or probable cause.²⁷ The court concluded that without an adjudication of legal rights, due process rights were not triggered and therefore did not apply to the commission, even though the possibility existed that the investigations could lead to criminal prosecutions.²⁸

Clark County Coroner's Inquest

In the present case, the provisions fail to provide a clear statement of purpose. The Court determined, based on the wording of the provisions,²⁹ that the proceedings only serve a fact-finding and investigatory function because there is no adjudication or determination of any legal rights.

This makes the inquest proceedings more like the commission in *Hannah*, being purely investigative and fact find. Unlike the statutes in *Jenkins*, the inquest panel is not authorized to make any recommendations to the district attorneys or any other law enforcement body,³⁰ nor is the resulting interrogatory allowed to address questions of fault or guilt.³¹ Thus, under *Hannah*, *Jenkins*, and *Aponte*, the inquest process does not trigger due process protections.

Justice of the peace participation in the inquest process violates the Nevada Constitution

The Nevada Constitution expressly provides that only the Legislature has the authority to determine the jurisdictional limits of the justices of the peace.³² NRS 259.010(2) plainly provides that in counties with appointed coroners, NRS 259.050 does not apply. Reading NRS 250.010(2) and NRS 259.050(4) together, it is clear that justices of the peace are only authorized to participate in inquest proceedings in counties where a county coroner is not appointed.

²⁵ 284 F.3d 184 (1st Cir. 2002).

²⁶ *Id.* at 187.

²⁷ *Id.*

²⁸ *Id.* at 193–95.

²⁹ CLARK COUNTY, NEV., CODE OF ORDINANCES § 2.12.080(m)(7) (the presiding officer “shall deal only with questions of fact and shall not deal with questions of fault or guilt”); CLARK COUNTY, NEV., CODE OF ORDINANCES § 2.12.140(a) (final interrogatories will “deal only with questions of fact and shall not deal with questions of fault or guilt”).

³⁰ *See generally* CLARK COUNTY, NEV., CODE OF ORDINANCES § 2.12.080 (setting forth the duties and procedures for the inquest).

³¹ CLARK COUNTY, NEV., CODE OF ORDINANCES § 2.12.080(m)(7); CLARK COUNTY, NEV., CODE OF ORDINANCES § 2.12.140(a).

³² NEV. CONST. art. 6, § 8 (the Legislature “shall fix by law . . . the limits of [justices of the peace’s] civil and criminal jurisdiction”); NEV. REV. STAT. § 4.370(1) (2007) (justice courts are courts of limited jurisdiction and have only the authority granted to them by statute).

Clark County has an appointed coroner, and therefore NRS 259.050(4) does not apply. Thus, justices of the peace are not authorized to participate in Clark County inquest proceedings.³³ The Court considered whether the non-constitutional portion of the code can be severed under the Court test.³⁴ However, the code provides no alternative to justices of the peace serving as presiding officers. Striking down only CCCO § 2.12.010(l) would render the entire inquest scheme ineffective because the proceedings cannot go forward without a presiding officer. Therefore, the remaining portions, standing alone, cannot be given legal effect and, as a result, the entire inquest scheme must be struck down.

Conclusion

The provisions setting forth the inquest procedures for officer-involved deaths do not implicate appellant's due process rights. However, as far as the provisions requiring the presiding officer be a justice of the peace, these provisions unconstitutionally intrude upon the Legislature's exclusive constitutional authority to determine the jurisdiction of justices of the peace. Furthermore, because no exceptions exist to allow anyone other than a justice of the peace to serve as presiding officer, the entire inquest scheme for officer-involved deaths is unconstitutional. Therefore the Court reverses the district court's decision and vacates the stay of the coroner's inquest proceedings.

³³ Nothing in NEV. REV. STAT. § 244.163 (2007) can be construed to authorize justices of the peace participating in inquest proceedings in counties with appointed coroners.

³⁴ *Flamingo Paradise Gaming*, 125 Nev. at 514–18, 217 P.3d at 555–57 (a statute is severable only “if the remaining portion of the statute, standing alone, can be given legal effect, and if the Legislature intended for the remainder of the statute to stay in effect when part of the statute is severed”).