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Summary of Washoe County v. Otto, 128 Nev. Advanced Opinion No. 40

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CIVIL PROCEDURE – REQUIREMENT TO NAME ALL PARTIES OF RECORD

Summary

The Court considered an appeal from a district court’s order dismissing a petition for judicial review of a State Board of Equalization tax decision pursuant to the Nevada Administrative Procedure Act (APA).

Disposition/Outcome

The Court conclude that an appellant describing rather than naming parties failed to meet NRS 233B.130(2)(a)’s requirement to name as respondents all parties of record to the administrative proceeding.² The APA grants the district court special statutory jurisdiction to review an administrative decision. Parties must strictly comply with the APA naming requirement in order to invoke the district court’s jurisdiction. Petitions that fail to name each party of record to the underlying administrative proceedings are jurisdictionally defective and must be dismissed. Upon failing to invoke the district court’s jurisdiction by naming the proper parties within the statutory time limit, the appellant may not later amend the petition to cure the jurisdictional defect.

Factual and Procedural History

In March 2006, the Washoe County Board of Equalization rolled back the property tax values of 300 taxpayers because the tax values were assessed improperly. To equalize taxable valuation within the county, 8,700 other taxpayers in the same area received roll backs too. The Washoe County Assessor administratively appealed to the State Board of Equalization.

Pending litigation prevented the State Board from hearing the appeal until June 10, 2009. The State Board provided notice to the Assessor as the named appellant and the Board of Equalization as the respondent only. Neither Washoe County nor the property taxpayers were named as parties to the proceedings. The County moved to intervene with the State Board, arguing it had a substantial interest in the outcome. Taxpayers objected to their exclusion as parties and sought an emergency stay, arguing that they were improperly excluded as respondents. Furthermore, they argued that the record was deficient as it lacked information regarding 300 individual taxpayers who first obtained rollbacks.

At the hearing, counsel to the taxpayers argued, and counsel to the Assessor and the County agreed, that the taxpayers should be named as proper respondents. The confusion as to the taxpayers’ status as respondents coupled with the fact that a majority of taxpayers present wanted to continue the case led the State Board to continue the hearing. The State Bar re-noticed the appeal for July 20, 2009, stating that any taxpayer could appear or be represented by counsel. The State Board provided an agenda for the hearing and attached an “Exhibit A” naming the

¹ By Emily Navasca

² NEV. REV. STAT. § 233B.035 130(2)(a) (2007).

taxpayers as respondents to the proceeding. The Exhibit also listed the names of the taxpayers affected by the Board's decision and which of those taxpayers had counsel.

At the July 20th hearing the County moved to intervene, arguing that any equalization decision could impact its fiscal health. The State Board denied the motion, as intervention would not affect the County's right as an aggrieved party to petition for judicial review of its decision. The Assessor objected to the taxpayers' involvement in the proceedings as (1) The Village League to Save Incline Assets, Inc., lacked standing;³ (2) any taxpayer not represented by counsel, absent from the State Board proceedings without an excuse, or represented by Village League should not be recognized as a party; and (3) none of the 300 taxpayers who previously obtained rollbacks should be recognized as parties. The State Board disagreed and found that the taxpayers had standing, regardless of whether they had counsel. It also voted to include both the 8,700 taxpayers and 300 taxpayers who had previously obtained rollbacks. In regards to the substantive issues, the State Board upheld the County Board's equalization determination that rolled back the 8700 taxpayers.

The State Board issued its written decision on October 9, 2009. The decision specified that "Certain Taxpayers" had appeared in the matter through counsel and referenced "Exhibit A," mirroring "Exhibit A" to the State Board's agenda. Pursuant to NRS 233B.130(2)(c), petitions for judicial review must be filed within 30 days of the State Board's decision.⁴ On November 6, 2009, the County filed its petition, naming "Certain Taxpayers (Unidentified)" in the caption. Within the body of the petition the County described respondents as "unidentified 'certain taxpayers' who were named as parties to the matter before the State Board"

Charles E. Otto and V Park, LLC (collectively, Otto), two taxpayers listed in "Exhibit A," moved to dismiss Washoe County's petition for judicial review. Otto argued that the County lacked standing under NRS 233B.130 to bring the petition, as it was not a "party of record" to the State Board's proceeding, and the County did not name all the parties of record, naming only "Certain Taxpayers (Unidentified)." In its opposition the County argued it had standing and it did not know which taxpayers to name, as the taxpayers' counsel did not identify which taxpayers she represented.

In January 2010, the district court denied the motion to dismiss, on the grounds that the County had standing to petition as technical derelictions do not generally preclude a party's right to review, and it would not dismiss the matter simply due to the County's failure to name all affected taxpayers. The district court ordered the County to name all of the affected taxpayers and serve them within 30 days, referencing the list included in "Exhibit A" of the State Board's decision.

In February 2010, the County filed its amended petition, changing the caption from "Certain Taxpayers (Unidentified)" to "Certain Taxpayers." The County served by mail each of the taxpayers listed in "Exhibit A," but did not attach "Exhibit A" to its amended petition or name any taxpayer individually anywhere in the filing. The County reused its description of respondents from its original petition to define "certain taxpayers."

Otto moved to dismiss the amended petition for lack of subject matter jurisdiction pursuant to NRCP 12(b)(1). Otto argued that the County failed to follow the court order to name

³ Village League v. State, Bd. of Equalization, 124 Nev. 1079, 1084 & n.7, 194 P.3d 1254, 1258 & 11.7 (2008) (The State Board had previously permitted Village League to argue on behalf of the 8,700 taxpayers).

⁴ NEV. REV. STAT. § 233B.035 130(2)(c) (2007).

individual taxpayers. In its opposition, the County argued that it used the same the characterization the State Board used in referring to them as “certain taxpayers.” The district court granted the motion to dismiss, finding that the County failed to comply with the order, and the County appealed.

Discussion

Justice Hardesty wrote for the Court, sitting en banc. Justice Pickering voluntarily recused herself from the decision. Pursuant to the APA, the Court reviewed the administrative decision de novo. “Courts only have an appellate function over official administrative agencies acts when statutory provisions provide for judicial review.”⁵ When such provisions contain specific procedures, those procedures are controlling.⁶ Thus, for the County to invoke the district court’s jurisdiction to consider a petition for judicial review, it must strictly adhere to the APA’s procedural requirements set forth in NRS 233B.130(2). According to the language of the provision, the naming requirement is mandatory and jurisdictional. That statute provides that “Petitions for judicial review must: (a) Name as respondents the agency and all parties of record to the administrative proceeding.”⁷ Thus, a district court lacks jurisdiction to consider a petition if this requirement is not satisfied. Under NRS 233B.130(2), petitions “must” name all parties of record. The word must generally imposes a mandatory requirement.⁸ The Court has also held that the filing requirements in NRS 233B.130(2)(c) are “mandatory and jurisdictional.”⁹

The Court concluded that the County failed to comply with NRS 233B.130(2)(a)’s naming requirement as the taxpayers were “parties of record,” such that the County was required to name them as respondents. Although the APA does not describe the term “party of record,” NRS 233B.035 defines “[p]arty” as “each person . . . named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any contested case.”¹⁰ Here, the State Board admitted all 9,000 as parties and named the taxpayers as parties in its prehearing agenda and in its post-hearing written decision.¹¹ The Court dismissed the County’s argument that the taxpayers were improperly afforded party status by the State Board despite a failure to notify them of the State Board proceedings. Failure to provide the taxpayers with proper notice does not affect the taxpayers’ recognized party-of-record status and does not excuse the County from complying with NRS 233B.130(2)(a).

The County failed to identify any individual taxpayer in its entire petition, merely describing “certain taxpayers (unidentified)” in the body of the petition as “unidentified ‘certain taxpayers’ who were named as parties to the matter before the State Board” Therefore, the district court lacked jurisdiction to consider the County’s original petition.¹² Since the County filed its amended petition after the APA’s statutory deadline, the Court did not address whether

⁵ *Crane v. Continental Telephone*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989).

⁶ *Id. see also Fitzpatrick v. State, Dep’t of Commerce*, 107 Nev. 486, 488, 818 P.2d 1004, 1005 (1991) (applying this reasoning to the APA).

⁷ NEV. REV. STAT. § 233B.035 130(2) (2007).

⁸ *See Pasillas v. HSBC Bank USA*, 127 Nev. Adv. Op. 39, 255 P.3d 1281, 1285 (2011).

⁹ *Civil Serv. Comm’n v. Dist. Ct.*, 118 Nev. 186, 189, 42 P.3d 268, 271 (2002).

¹⁰ NEV. REV. STAT. § 233B.035 (2007).

¹¹ *See Checker Cab v. State, Taxicab Authority*, 97 Nev. 5, 10, 621 P.2d 496, 498 (1981)

¹² *See Kuentler V. Kansas Dept. of Revenue*, 197 P.3d 874, 879 (Kan. Ct. App. 2008).

the amended petition complied with naming requirements. The Court did note that merely removing 'unidentified' from the caption did not equate to naming the taxpayer parties of record. While the district court lacked jurisdiction to permit the County to amend its petition, its dismissal of the amended petition was correct.

Conclusion

A description of a party that does not name anyone fails to comply with NRS 233B.130(2)(a)'s mandatory requirement to name all parties of record in a petition for judicial review.