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12-30-2010

### Summary of Personhood Nevada v. Bristol, 126 Nev. Adv. Op. No. 56

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*Nevada Law Journal*

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#### Recommended Citation

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## ADMINISTRATIVE LAW

### **Summary**

The Court considered an appeal from a First Judicial District Court order that found a proposed initiative violated NRS 295.009's single-subject rule and prohibited its placement on the 2010 general election ballot.

### **Disposition/Outcome**

The Court dismissed the appeal as moot because it could afford no relief as the deadline for submitting ballot initiative signatures had passed. Additionally, the Court adopted the Restatement (Second) of Judgments and concluded that in subsequent litigation no court was to give preclusive effect to the district court's order.

### **Factual and Procedural History**

Prior to the November 2010 general election, appellant Personhood Nevada, an advocacy group, filed a ballot initiative with the Secretary of the State that proposed amending Article 1 of the Nevada Constitution. Thereafter, in district court, respondents, made up of interested persons and registered voters, sought declaratory and injunctive relief claiming the initiative included more than one subject and included a misleading and insufficient description of effects. The district court prohibited the Secretary of the State from placing the initiative on the November 2010 general election ballot because it found the appellant's proposed amendment violated NRS 295.009's single-subject rule as the initiative was "too general and vague" to identify a single subject.<sup>2</sup> The proposed initiative also did not properly inform the petition signers and voters of the initiative's various consequences.

The appellants appealed the injunctive order to the Nevada Supreme Court, but the Court was unable to review the matter until after the June 15, 2010 deadline for submitting proposed initiatives had passed.<sup>3</sup> The Court directed appellants to show cause why the Court should not dismiss the appeal as moot. The respondents filed a motion to dismiss the appeal, and the appellants opposed the motion while also filing a reply to the show cause order. The November 2010 general election concluded after the parties filed the supplemental briefs.

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<sup>1</sup> By Ryan Henry.

<sup>2</sup> NEV. REV. STAT. § 295.009 (2007) states that "Each petition for initiative or referendum must: (a) Embrace but one subject and matters necessarily connected therewith and pertaining thereto."; NEV. REV. STAT. § 295.061 (2007) allows a challenge to the description of a petition in the First Judicial Court by filing a complaint no later than 15 days after the petition is placed on file with the Secretary of the State.

<sup>3</sup> See NEV. CONST. art. 19, § 2(4), 3(2); *We the People Nev. v. Sec'y of State*, 124 Nev. 874, 192 P.3d 1166 (2008).

## Discussion

### *The appeal is moot*

Justice Hardesty began by noting that the Court's duty is not to put forth advisory opinions, but instead, resolve actual controversies through enforceable judgments.<sup>4</sup> A case may present a live controversy in the beginning, but subsequent events may make the case moot, as there must be a controversy present in all stages of the preceding.<sup>5</sup> The appeal was moot because the appellants failed to submit sufficient signatures to meet the June 15 submission deadline, which made the initiative ineligible for consideration in the 2010 election, regardless of any Court decision with respect to the injunction.

The Court may consider an appeal regarding a matter capable of repetition and of widespread importance, even when an appeal is moot.<sup>6</sup> The facts of this case, specific to a particular initiative, did not necessitate review, and the exception of the mootness doctrine did not apply. The district court must expedite challenges to an initiative,<sup>7</sup> and the Nevada Supreme Court typically resolves ballot-related cases before they are moot. The Court dismissed the appeal, and noted other jurisdictions have done the same in similar circumstances.<sup>8</sup>

### *Vacatur is not necessary*

Judgments generally do not have preclusive effects on parties who lose their appeal through no fault of their own.<sup>9</sup> Justice Hardesty discussed two ways to apply this principle. The federal court approach applies preclusion principles unless the party asks the appellate court to reverse or vacate the judgment.<sup>10</sup> In contrast, the Restatement (Second) of Judgments supports an approach where as soon as a court renders an appeal moot, issue preclusion principles do not apply.<sup>11</sup> Such an approach avoids setting a procedural trap for an uninformed party.<sup>12</sup>

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<sup>4</sup> NCAA v. Univ. of Nev., 97 Nev. 56, 57, 624 P.2d 10, 10 (1981).

<sup>5</sup> See *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997); *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 476-78 (1990); *Univ. Sys. v. Nevadans for Sound Gov't.*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004); *Wedekind v. Bell*, 26 Nev. 395, 413-15, 69 P. 612, 613-14 (1902).

<sup>6</sup> *Traffic Control Serv. v. United Rentals*, 120 Nev. 168, 171-72, 87 P.3d 1054, 1057 (2004).

<sup>7</sup> NEV. REV. STAT. § 295.061(1) (2007) states that "The court shall set the matter for hearing not later than 15 days after the complaint is filed and shall give priority to such a complaint over all criminal proceedings."

<sup>8</sup> See *Ulmer v. Alaska Rest. & Beverage Ass'n*, 33 P.3d 773 (Alaska 2001); *Asher v. Carnahan*, 268 S.W.3d 427 (Mo. Ct. App. 2008); *Kerr v. Bradbury*, 131 P.3d 737 (Or. 2006).

<sup>9</sup> See 47 AM. JUR. 2D *Judgements* § 531 (2006).

<sup>10</sup> See *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18 (1984).

<sup>11</sup> RESTATEMENT (SECOND) OF JUDGMENTS § 28(1) cmt. a (1982) states "There is a need for an analogous exception to the rule of preclusion when the determination of an issue is plainly essential to the judgment but the party who lost on that issue is, for some other reason, disabled as a matter of law from obtaining review by appeal or, where appeal does not lie, by injunction, extraordinary writ, or statutory review procedure. Such cases can arise, for example, because the controversy has become moot, or because the law does not allow review of the particular category of judgments."

<sup>12</sup> *Id.* at reporter's note.

The Court adopted the Restatement (Second) of Judgments approach by holding that when a court dismisses an appeal as moot through no fault of the appellant, courts may not give preclusive effect to the matter in future litigation. A matter of law had precluded the Court's review. Accordingly, the Court denied the appellant's motion to set aside the district court order based on balancing hardship or finality considerations because it would have no preclusive effect.

### **Conclusion**

The Court dismissed the case as moot because it could afford no relief from the district court's injunctive order. The November 2010 general election had already passed and so had the deadline for submitting ballot initiative signatures. Additionally, the Court adopted the Restatement (Second) of Judgments and found no court was to give preclusive effect to the matter in future litigation.