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Summary of Cramer v. Nev. Dep't of Motor Vehicles, 126 Nev. Adv. Op. No. 38

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EVIDENCE – ADMISSIBILITY OF EXPERT WITNESS AFFIDAVITS

Summary

The Court considers two appeals concerning NRS 50.320, which permits the use of an affidavit to prove a person's blood-alcohol content in certain proceedings, including driver's license revocation hearings, by a person who has been previously qualified to testify as an expert witness by a district court.

Disposition/Outcome

In *Cramer v. State Department of Motor Vehicles*, the Court concludes that an administrative hearing officer lacks discretion to admit expert witness testimony when the affiant has not been qualified by a district court or the affidavit fails to state the district court in which the affiant was permitted to testify.

In *State, Department of Motor Vehicles v. Joseph*, the Court rejects the notion that the district court qualification requirement in NRS 50.320 can be satisfied by way of a stipulation entered into by parties in a separate, unrelated district court case.

Factual and Procedural History

Cramer Appeal

Following a September 2007 car accident, Metro police officers arrested Joshua Cramer ("Cramer") for driving under the influence ("DUI"). Cramer's blood sample was taken and analyzed by a Metro forensic scientist ("Stypa"). The Nevada DMV revoked Cramer's license and Cramer requested an administrative hearing. Evidence of Cramer's blood-alcohol level was considered at the hearing via Stypa's affidavit. Cramer challenged the admissibility of the affidavit under NRS 50.320, arguing that Stypa was not qualified to testify as an expert in district court. The administrative law judge ("A.L.J.") admitted the affidavit anyway, finding that NRS 50.320 grants an A.L.J. discretion in admitting affidavits from proposed experts.

Cramer petitioned the district court for judicial review, but his petition was summarily denied. The district court found the evidence supported the A.L.J.'s decision. Cramer appealed to the Nevada Supreme Court.

Joseph Appeal

Claudette Joseph ("Joseph") was arrested in September 2007 for DUI. Suffecool, a Quest Diagnostics employee, measured Joseph's blood-alcohol concentration. The Nevada DMV

¹ By Justin Shiroff.

revoked Joseph's license, and she requested an administrative hearing. At Joseph's hearing, the DMV presented Suffecool's affidavit about Joseph's BAC. The affidavit also stated that Suffecool was qualified as an expert in the testing of blood to determine the presence of alcohol by the Eighth Judicial District Court. Joseph challenged the affidavit's admissibility under NRS 50.320 because Suffecool qualified as an expert in an unrelated criminal case where both parties stipulated to her qualifications without providing any evaluation of her background or experience. The A.L.J. admitted the affidavit nonetheless, concluding the stipulation as proper expert qualification under 50.320. Joseph's license revocation was ultimately affirmed by the A.L.J. because of Suffecool's affidavit.

Joseph filed a petition for judicial review. After reviewing the record, the district court determined that a stipulation only works as qualification of an expert witness when it is clear through the record that the witness's qualifications are present in the record. The district court granted Joseph's petition for judicial review because Suffecool's qualifications were not evident from the record in either case relied upon by the DMV. The DMV appealed to the Nevada Supreme Court.

Discussion

Standard of Review

Administrative decisions are reviewed by the Court under an abuse of discretion standard.² The Court reviews de novo questions of law, including statutory interpretation.³ The Court will not go beyond plain language to determine legislative intent of a facially clear statute.⁴

NRS 50.320 and Prior Qualification of a Witness as an Expert in District Court

NRS 50.320 allows for an affidavit to be admitted in certain proceedings if a district court previously qualified the affiant to testify as an expert witness about an individual's blood-alcohol content.⁵ The Court first examined the *Cramer* appeal. The Court held that a plain reading of NRS 50.320 does not grant discretionary authority to a hearing officer to admit an affidavit from a proposed expert who has not been qualified by a district court to offer expert testimony. The Court wrote that without the opportunity to examine a witness regarding their qualifications, the admission of an affidavit from a proposed but unqualified expert would violate the plain meaning of NRS 50.320 and potentially lead to absurd results, such as a driver's license revocation based

² *Weaver v. Nev. Dep't of Motor Vehicles*, 121 Nev. 494, 498, 117 P.3d 193, 196 (2005).

³ *Nev. Dep't of Motor Vehicles v. Taylor-Caldwell*, 126 Nev. ___, ___, 229 P.3d 471, 472 (Nev. 2010).

⁴ *Id.*

⁵ NEV. REV. STAT. § 50.320 (2007) (The court notes that the Legislature amended 50.320 in 2009, but that both appeals in this case were subject to the 2007 version of the statute).

on a “layperson’s affidavit.”⁶ The Court concluded that there was no reason to interpret NRS 50.320 more broadly than the plain language would allow.

The Court then examined the DMV’s position and found it inconsistent with Nevada’s standards for admission of an opinion by an expert witness under NRS 50.275. The Court found no evidence that Stypa previously qualified as an expert in district court. Due to the explicit limitations the Court found in NRS 50.320, the Court concluded that it was an abuse of discretion for the A.L.J. to admit Stypa’s affidavit to prove Cramer’s blood-alcohol concentration.

Expert Qualification by Stipulation does not Satisfy NRS 50.320

The Court examined the *Joseph* appeal by first considering Suffecool’s qualification to testify as an expert under NRS 50.320. The general rule in Nevada is that stipulations are not binding against individuals who were not party to the proceeding and did not participate in the stipulation.⁷ The Court, relying on the rationale behind the hearsay rules, determined that NRS 50.320 precludes the admission of an affidavit from a person “previously qualified to testify as an expert witness by stipulation in a case involving different parties.”⁸ Since Joseph was not a party to the prior case relied upon by the DMV to prove Suffecool’s expert qualification, she was not bound by the stipulation. This rendered the affidavit inadmissible, and the A.L.J. abused their discretion by admitting the affidavit. The Court affirmed the district court’s findings.

Conclusion

Under NRS 50.320, a person seeking to submit an affidavit must be qualified by a district court as an expert. Administrative hearing officers do not have discretion under the statute to admit affidavits from persons without this qualification. A person’s expert qualifications may be stipulated to under NRS 50.320, but the stipulation must be agreed to by the parties involved. NRS 50.320 precludes admission of affidavits from persons whose expertise was stipulated to in a separate, unrelated district court case.

⁶ Cramer v. Nev. Dep’t of Motor Vehicles, 126 Nev. Adv. Op. No. 61 at 9 (Oct. 7, 2010).

⁷ Lincoln Lumber Co. v. Lancaster, 618 N.W.2d 676, 683 (Neb. 2000).

⁸ Cramer, 126 Nev. Adv. Op. No. 61 at 12.