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Summary of Harris Assoc. v. Clark County Sch. Dist.

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Harris Assoc. v. Clark County Sch. Dist., 81 P.3d 532 (Nev. 2003)¹

CONTRACT, ARBITRATION, RIGHT TO JURY TRIAL

Summary

Appeal from a judgment by the Eighth Judicial District Court, State of Nevada, denying the appellant's motion to compel arbitration.

Disposition/Outcome

Reversed. Nevada Revised Statute (NRS) 338.150(1) mandates arbitration as a means to resolve disputes arising in public works construction projects. The Nevada Legislature also waived the Respondent's right to a trial by jury because the Respondent is a political subdivision of the State of Nevada.

Factual and Procedural History

In 1998, the Clark County School District (CCSD) contracted with Harris Associates (Harris) to construct an addition at Basic High School. However, several disputes arose between the CCSD and Harris. Harris submitted claims for additional compensation, which the CCSD rejected. Harris then sent the CCSD a written request to arbitrate their dispute, in accordance with Provision 4.5.1 of their contract. The section provided:

Any controversy . . . arising out of or related to the Contract, or the breach thereof shall be settled by arbitration, unless the Owner, at it's [sic] sole option, within twenty (20) days of receiving a request for arbitration rejects arbitration by notifying the Contractor by certified mail, return receipt requested.

However, the CCSD rejected arbitration. Harris filed a claim for declaratory relief in the Eighth Judicial District Court to compel arbitration, pursuant to Provision 4.5.1 and NRS 338.150(1). At the time the parties entered into their contract, NRS 338.150(1) provided:

Any agency of this state and any political subdivision, municipal corporation or district and any public officer or person charged with the drafting of specifications for the construction, alteration or repair of public works, shall include in the specifications a clause permitting arbitration of a dispute arising between the agency and a contractor if the dispute cannot otherwise be settled.²

The CCSD argued that NRS 338.150(1) merely requires public works contracts include a clause to allow arbitration for dispute resolution, but does not require arbitration. Judge Stephen

¹ By Beth Rosenblum

² The Nevada Legislature amended NRS 338.150(1) during the 2003 legislative session. 2003 Nev. Stat., ch. 401, § 30, at 2438. The amendments took effect on July 1, 2003. *Id.* § 47, at 2450. However, the amendments did not alter the substantive affect of the provisions at issue in this case.

L. Huffaker of the Eighth Judicial District Court agreed and denied Harris' motion to compel arbitration. Harris appealed the decision of the district court.

The Nevada Supreme Court, *per curiam*, determined that NRS 338.150(1) was ambiguous. However, the legislative history of NRS 338.150(1) indicated that the Legislature intended the statute to mandate arbitration. Moreover, by enacting NRS 338.150(1), the Nevada Legislature waived the CCSD's right to a trial by jury because the CCSD is a political subdivision of the state.³ Therefore, NRS 338.150(1) does not violate the right to a trial by jury pursuant to the Nevada Constitution and Nevada Rule of Civil Procedure (NRCP) 38(a).

Discussion

I. Interpretation of NRS 338.150(1)

The Nevada Supreme Court reviews issues of statutory construction *de novo*.⁴ When "the words in a statute have a definite and ordinary meaning," the court does not "look beyond the plain language unless it is clear that this meaning was not intended."⁵ However, if a statute is ambiguous, the drafter's intent "becomes the controlling factor in statutory construction."⁶ The court also interprets ambiguous statutes in accordance with public policy.⁷ Additionally, the court reads "each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation."⁸

In 1971, the Nevada Legislature changed the language of NRS 338.150(1) from "may include in the specifications a clause permitting arbitration" to "shall include in the specifications a clause permitting arbitration."⁹ The Legislature also added NRS 338.150(3), which exempts the department of transportation from the arbitration clause requirement.¹⁰

Changing "may" to "shall" clearly indicates the Legislature intended arbitration to be mandatory. Moreover, if the Legislature intended the contract provision to merely give other state subdivisions the option to arbitrate at their discretion, it would not need to exempt any department.

Testimony from those appearing before the Legislature in support of the amendment to NRS 338.150(1) in 1971 also indicates that the Legislature intended arbitration to be compulsory. One contractor told the Assembly Committee on Judiciary that the State Planning Board's failure to use standard arbitration clauses and specifications costs contractors money, and compulsory arbitration would keep some contractors from filing for bankruptcy protection.¹¹ Another contractor testified that "there wasn't a contractor in the state that has not gotten burned by this section as it is now."¹²

³ See NRS 386.010(2).

⁴ *State, Bus. & Indus. v. Granite Constr.*, 40 P.3d 423, 425 (Nev. 2002).

⁵ *State v. Quinn*, 30 P.3d 1117, 1120 (Nev. 2001).

⁶ *Harvey v Dist. Ct.*, 32 P.3d 1263, 1274 (Nev. 2001).

⁷ *McKay v. Bd. of Supervisors*, 730 P.2d 438, 442 (Nev. 1986).

⁸ *Coast Hotels v. State, Labor Comm'n*, 34 P.3d 546, 550 (Nev. 2001).

⁹ 1971 Nev. Stat., ch. 345, § 1, at 621.

¹⁰ *Id.*; see also Hearing on S.B. 471 Before the Senate Judiciary Comm., 56th Leg., at 2 (Nev., March 24, 1971).

¹¹ Hearing on S.B. 471 Before the Senate Judiciary Comm., 56th Leg., at 4 (Nev., March 23, 1971) (testimony of Mr. Oakes, Manager, Associated General Contractors).

¹² *Id.* (testimony of Mr. Tom Donnels, Owner, Walker-Boudwin Constr. Co.).

Since the Legislature passed the proposed amendments, it must have accepted the proponents' comments. It is reasonable to conclude that the Legislature would not enact a statute that makes dispute resolution more efficient, and simultaneously grant the disputants the authority to circumvent the process.

Right to Trial by Jury

Article 1, Section 3 of the Nevada Constitution provides "The right of trial by Jury shall be secured to all and remain inviolate forever; but a Jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law" ¹³ Further, NRCP 38(a) states, "The right of trial by jury as declared by the Constitution of the State or as given by a statute of the State shall be preserved to the parties inviolate." ¹⁴

The Nevada Supreme Court's previous ruling in *Williams v. Williams* does not support the Respondent's argument that NRS 338.150(1) violates its right to a jury trial. ¹⁵ In *Williams*, the court held NRS 38.215 an unconstitutional infringement of the right to a jury trial. ¹⁶ NRS 38.215 imposed compulsory arbitration on private parties pursuing certain types of automobile claims, and limited the right to obtain a jury trial after arbitration. NRS 338.150(1) is distinguishable from that statutory scheme because it does not compel two private parties to arbitrate their claims. Petitioner Harris, a private party, waived its right to jury trial. By enacting NRS 338.150(1), the Legislature consented on behalf of the subdivisions of the state to waive the right to a jury trial in certain disputes. Thus, the CCSD waived its right to a jury trial, and it cannot enforce the right of its opponent.

The North Dakota Supreme Court made a similar determination in *Hjelle v. Sornsin Const. Co.* ¹⁷ The *Hjelle* court considered whether a statute mandating arbitration in controversies involving highway construction projects violated the highway commissioner's and private parties' constitutional right to a jury trial. ¹⁸ The court determined that disputes between private parties are distinguishable from suits between private parties and the state. ¹⁹ The Legislature consented on behalf of the State and its agent, the highway commissioner, to mandatory arbitration. ²⁰ Because the private party did not raise its right to a jury trial, the court stated that the highway commissioner could not assert the right for its opponent. ²¹

Accordingly, NRS 338.150(1) did not violate the CCSD's right to a jury trial under either the Nevada Constitution or NRCP 38(a).

Conclusion

The Nevada Supreme Court's decision follows the goals of compulsory arbitration statutes to reduce congestion in courts and delays in hearing civil cases. Arbitration is also a more cost effective method of resolving disputes concerning public works projects, saving the

¹³ NEV. CONST. art. 1, § 3.

¹⁴ NEV. R. CIV. P. 38(a).

¹⁵ 877 P.2d 1081 (Nev. 1994).

¹⁶ *Id.* at 1083.

¹⁷ 171 N.W.2d 431 (N.D. 1969).

¹⁸ *Id.* at 434; N.D. CENT. CODE § 24-02-26 (1970) (amended 1995).

¹⁹ *Id.* at 436-37.

²⁰ *Id.* at 436.

²¹ *Id.* at 435.

State and its taxpayers money. However, this decision does not address the converse situation: when private parties to a public works construction project do not wish to waive their right to a jury trial. Under these circumstances, NRS 338.150(1) should not apply to compel arbitration pursuant to the Nevada Supreme Court's decision in *Williams*.