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Clark Cty. Office of the Coroner/Med. Exam'r v. Las Vegas Review-Journal, 134 Nev. Adv. Op. No. 24. (April 12, 2018) (en banc)

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CIVIL APPEAL: STAY ENFORCEMENT

Summary

Under NRCP 62(d) and NRCP 62(e), state and local government appellants are generally entitled to a stay of a money judgment pending appeal, without needing to post a supersedeas bond or other security as a matter of right.

Background

After the Las Vegas Review-Journal prevailed on its public records request to obtain certain autopsy reports, Clark County Office of the Coroner/Medical Examiner moved to stay enforcement of the attorney fees and costs judgment award. The district court denied the motion. The Clark County Office of the Coroner/Medical Examiner appealed. Under NRCP 62(d), an appellant may obtain a stay of money judgment pending appeal upon posting a supersedeas bond.² Under NRCP 62(e), when a state or local government appeals and the judgment is stayed, no bond is required.³ The Nevada Supreme Court held that NRCP 62(d) must be read in conjunction with NRCP 62(e), therefore the Coroner's Office was entitled to a stay of the money judgment without bond or other security as a matter of right.

Discussion

The Court has addressed the application of NRCP 62(d) and 62(e) twice before. In *Public Service Commission v. First Judicial District Court*, the Court held that a stay did not automatically arise simply because the state entity filed a notice of appeal.⁴ In *Nelson v. Heer*, the Court recognized that NRCP 62(d) is substantially based on its federal counterpart, and most federal courts recognize FRCP 62(d) allows an appellant to obtain a stay pending appeal as of right upon posting a supersedeas bond for the full amount.⁵ However, although the court had considered the application of NRCP 62(d) and (e) previously, both cases did not specifically address whether a state agency is entitled to a stay from a money judgment for attorney fees and costs without bond under NRCP 62(d) in conjunction with NRCP 62(e). The Court looked to federal cases that analyzed the equivalent federal rules.

Many federal district courts concluded that FRCP 62(d) and (e) must be read "in tandem," such that the right to an automatic stay upon posting bond under (d) and the exception to the bond requirement for government agencies under (e) meant that the governmental agency "is entitled to a stay as a matter of right without posting a supersedeas bond."⁶ There are a few federal district

¹ By Tamara Cannella.

² NEV. R. CIV. P. 62(d).

³ NEV. R. CIV. P. 62(e).

⁴ Pub. Serv. Comm'n v. First Jud. Dist. Ct., 94 Nev. 42, 574 P.2d 272 (1978).

⁵ Nelson v. Heer, 121 Nev. 832, 122 P.3d 1252, 1253 (2005).

⁶ Hoban v. Washington Metropolitan Area Transit Authority, 841 F.2d 1157, 1159 (D.C. Cir. 1988) (citing 7 J. MOORE & J. LUCAS, MOORE'S FEDERAL PRACTICE ¶ 62.07, at 62-36 (2d ed. 1985)).

courts that disagree, holding that (d) and (e) should be read separately⁷ and interpreting the conjunctive “and” found in FRCP 62(e) as requiring the government to obtain a stay under a different subsection or authority before the bond requirement is waived.⁸ However, the Court disagreed with this interpretation, noting that the “and” means simply that the government is not entitled to a stay only upon filing a notice of appeal, but instead must move for a stay in the district court.⁹

Conclusion

The Court concluded that NRCP 62(d) must be read together with NRCP 62(e). Upon motion, state and local government agencies are generally entitled to a stay of money judgment pending appeal, without needing to post other security such as a supersedeas bond.

CHERRY, J., concurring in part and dissenting in part:

Justice Cherry disagreed with the majority’s determination that NRCP 62(e) suggests a stay must be granted as a matter of right. The only right discussed in (e) is the waiver of any bond requirement.

⁷ *In re Westwood Plaza Apartments*, 150 B.R. 163, 165–68 (Bankr. E.D. Tex. 1993).

⁸ *Id.*; *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 750 F.Supp. 67, 72–76 (E.D.N.Y. 1990).

⁹ *Nelson*, 121 Nev. at 834 n.4, 122 P.2d at 1253 n.4; *Pub. Serv. Comm’n*, 94 Nev. at 44, 574 P.2d at 274.