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Spar Bus. Serv.'s, Inc. vs. Olson, 135 Nev. Adv. Opn. No. 40 (2019)

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Summary

As a matter of first impression, the Court found that the 45-day service requirement for review of administrative decisions is not a jurisdictional requirement because the statute allows for extension based on good cause. However, in the present case, appellant did not show good cause for late service. Thus, the Court affirmed the lower court's dismissal of the petition.

Background

A former employee of Spar Business Services ("Spar") filed an unemployment claim in 2006, which began an investigation by Nevada's Department of Employment, Training and Rehabilitation's Employment Security Division ("ESD") into whether the employee and others like him were considered employees or independent contractors. Spar filed numerous administrative appeals, and ultimately, ESD determined the claimants were employees, requiring Spar to pay contributions to the ESD.

Spar filed a timely appeal to the district court, but failed to serve the petition for judicial review on the ESD within the 45-day requirement set by NRS 233B.130(5). The district court granted a dismissal of the petition based on the untimely service, given that Spar had not shown good cause for late service.

Discussion

The Court reviews whether NRS 233B.130(5) is a jurisdictional requirement de novo, as it relies upon interpretation of statutory construction.² As for the consideration of good cause for an extension of the service deadline, the Court reviews for abuse of discretion.³

Service within 45 days of a timely filed petition is not a jurisdictional requirement

When petitioning for judicial review of administrative decisions, as is the case here, petitioners are required to abide by Nevada's Administrative Procedures Act ("NAPA"), codified as NRS Chapter 233B. Injured parties may petition judicial review of an administrative decision from a district court, so long as they comply with NRS 233B's jurisdictional requirements. NRS 233B130.5 states, "petitions for judicial review must be served upon the agency and every party within 45 days after the filing of the petition, *unless, upon a showing of good cause, the district court extends the time for such service.*"⁴ Such express discretionary language, the Court finds, does not lead to the conclusion that the service requirement within NRS 233B is a jurisdictional requirement.

¹ By Misha Ray.

² *Washoe Cty. v. Otto*, 128 Nev. 424, 431, 282 P.3d 719, 724 (2012) (applying de novo review when construing a statute and when determining subject matter jurisdiction).

³ See *Heat & Frost Insulators & Allied Workers Local 16 v. Labor Comm'r*, 134 Nev. 1, 5, 408 P.3d 156, 160 (2018).

⁴ NEV. REV. STAT. § 233B130(5)(2015) (emphasis added).

While some sections within NRS 233B have been found to require strict compliance due to the absence of plain language granting the court to excuse noncompliance, the Court finds NRS 233B.130(5) provides express discretion to the court in finding of good cause for service deadline extensions, and therefore, is not a jurisdictional requirement.⁵

Good cause consideration

Spar argues the district court abused its discretion in not considering good cause for extending the 45-day service requirement set by NRS 233B.130(5) for petitions of judicial review. Spar argues, 1) it mistakenly relied on the 120-day service period set by NRCP 4(i), and 2) it was waiting to serve ESD with the petition until out-of-state counsel was granted pro hac vice status. Because of this, Spar argues, the district court should have found good cause existed for late service.⁶

The Court finds neither argument persuasive. The district court did consider these arguments, and found that both arguments are contradicted by the record. Both the local and out-of-state attorneys for Spar previously and correctly complied with the service requirements for judicial review petitions on Spar's behalf, which challenges the argument regarding a mistake was made between service requirement in NRCP 4(i) and NRS 233B.130(5). Additionally, the motion to grant Spar's out-of-state counsel pro hac vice status was filed *after* the service in question here, thus weakening the argument that the service was delayed based on out-of-state counsel's status.

The Court finds the district court did not abuse its discretion in finding good cause did not exist for late service in this case.

Conclusion

Because NRS 233B.130(5) allows for the district court to extend notice requirements for good cause, the 45-day service deadline is not a jurisdictional requirement. However, here, the district court did not abuse its discretion in dismissing the petition as the appellant did not show good cause for an extension. Affirmed.

⁵ Heat & Frost, 134 Nev. at 4-5, 408 P.3d at 159-60 (finding NRS 233B.130(2) to require strict compliance, and therefore, is a jurisdictional requirement).

⁶ NRCP 4(i) was amended as NRCP 4(e) in 2019. ADKT No. 522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018).