

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

Fall 10-2019

State, Bd. of Architecture v. Dist. Ct., 135 Nev. Adv. Op. 49

Melissa Yeghiazarian

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Civil Procedure Commons](#)

Recommended Citation

Yeghiazarian, Melissa, "State, Bd. of Architecture v. Dist. Ct., 135 Nev. Adv. Op. 49" (2019). *Nevada Supreme Court Summaries*. 1266.

<https://scholars.law.unlv.edu/nvscs/1266>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

JUDICIAL REVIEW: FINAL DECISIONS AND PREMATURELY FILED PETITIONS

Summary

The Court had two holdings in this case. First, a final decision for purposes of judicial review must contain a detailed finding of facts and conclusions of law by an administrative agency. Second, when a petition for judicial review is filed prematurely, it does not vest jurisdiction in the district court.

Background

Dennis Rusk, the real party in interest, was licensed as an architect in Nevada. In 2011, The Nevada State Board of Architecture, Interior Design and Residential Design (“Board”) held a hearing regarding Rusk’s designs. Rusk had two complaints alleging that his designs did not include the necessary fire/life safety elements. The Board found Rusk to be in violation of Nevada law and Rusk was ordered to pay a fine as well as the Board’s fees and costs. In addition, Rusk’s registration as an architect was placed on probation until he completed certain courses. Rusk petitioned The District Court of Nevada for judicial review of the Board’s decision. The court affirmed the decision. Rusk then appealed to The Supreme Court of Nevada, but the Court dismissed the appeal for failure of timely filing.²

In light of new evidence, Rusk moved to vacate the Board’s decision in 2016. The district court granted Rusk’s petition for judicial review and remanded that the Board reconsider its previous decision in light of the new-found evidence. Per the court’s instructions, the Board held a hearing regarding Rusk on October 25, 2017. The Board unanimously voted to uphold Rusk’s original discipline and deny him relief. The Board did not discuss specific facts or laws to support their decision but stated a written order would be drafted. On November 9, 2017, Rusk petitioned for judicial review on the Board’s decision before a written order was filed. Shortly after, on December 1, 2017, the Board issued its written order. On January 9, 2018, the Board moved to dismiss Rusk’s petition because Rusk did not supplement his petition after the Board filed their order. The district court denied the Board’s motion to dismiss stating that the Board’s decision during the October 25 hearing was sufficient enough for Rusk to petition for judicial review. The Board then petitioned the Nevada Supreme Court for a writ of prohibition challenging the district court’s order that denied their motion to dismiss.

Discussion

The Board argued that NRS 233B.130(2)(d) stated a mandatory jurisdictional requirement and that the district court did not have jurisdiction to consider Rusk’s petition because it was not filed in 30-days.³ A writ of prohibition may be issued when a district court acts without/in excess

¹ By Melissa Yeghiazarian.

² *Rusk v. Nev. State Bd. Of Architecture, Interior Design & Residential Design*, Docket No. 61844 (Order Dismissing Appeal, July 30, 2013).

³ NEV. REV. STAT. 233B.130(2)(d) (2015).

of its jurisdiction and the petitioner lacks a plain, speedy, and adequate remedy at law.⁴ A district court may consider a petition for judicial review if it is a matter of first impression; this case presents an issue of first impression.

An administrative agency's order must contain detailed findings of fact and conclusions of law to constitute a final decision for purposes of judicial review.

The court needs to determine if the Board's October 25 hearing constituted as a final decision under NRS Chapter 233B.⁵ NRS 233B.125 provides that a final decision: (1) must be in writing or stated in the record, (2) must include findings of fact and conclusions of law, (3) must be based upon a preponderance of evidence, and (4) must be accompanied by a concise and explicit statement of the facts.⁶ During the hearing, the Board did not state facts or law to support their conclusion about Rusk. Therefore, the October 25 hearing did not constitute a final decision. However, the Board filed a written order on December 1 that contained their finding of facts and conclusions of law for their decisions. The written order, then, is considered a final decision by the court. NRS 233B.130(2)(d) requires a petition to be filed after service of an administrative agency's final decision.⁷ The period that Rusk had to file a petition for judicial review began after the December 1 written order was drafted instead of after October 25 hearing. The court finds that Rusk's petition was filed too early.

A prematurely filed petition for judicial review does not vest jurisdiction in the district court.

NRS 233B.130(2) governs whether petitions for judicial review filed prematurely should be considered. Petitions for judicial review must: (1) name the agency and all parties of record, (2) must be filed in district court, county where petitioner resides, or county where agency proceeding took place, (3) must be served on the Attorney General, and (4) must be filed within 30 days after service of final decision.⁸ Rusk's petition was filed 22 before the Board issued their written order. A petition filed early does not satisfy the requirements under NRS 233B.130(2). Rusk's petition for judicial review did not vest jurisdiction in district court because it was filed prematurely.

Conclusion

Given that the district court lacked jurisdiction over Rusk's petition, the Court granted the Board's petition for relief. A writ of prohibition will be issued to the Board ordering the district court to grant the Board's motion to dismiss Rusk's petition for lack of jurisdiction. The court vacated the stay that it previously imposed on October 12, 2018.

⁴ NEV. REV. STAT. 34.320 (1911); NEV. REV. STAT. 34.330 (2013).

⁵ NEV. REV. STAT. 233B.130(2)(d) (2015); NEV. REV. STAT. 233B.125 (2015)

⁶ NEV. REV. STAT. 233B.125 (2015).

⁷ NEV. REV. STAT. 233B.130(2)(d) (2015).

⁸ NEV. REV. STAT. 233B.130(2) (2015).