

Scholarly Commons @ UNLV Law

Nevada Supreme Court Summaries

Law Journals

7-9-2020

State, Dep't of Corr. v. DeRosa, 136 Nev. Adv. Op. 37 (July 9, 2020)

Victor Kang

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

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

Petition for Judicial Review: Personal service and alternative means of service

Summary

The Court found that a petition for judicial review of a final judgment in an administrative proceeding does not have to be personally served to all parties involved. The Court determined that a petition for judicial review is best viewed as a post-complaint filing and thus a more relaxed standard of service by mail will suffice.

Background

The Nevada Department of Corrections (NDOC) fired respondent Patricia DeRosa. DeRosa then requested a hearing and the hearing officer reversed the firing and reinstated the respondent back to her employment with NDOC. NDOC then filed a petition for judicial review of this decision with the district court and served DeRosa's attorney by mail in accordance with NRCP 5(b).

Four months after the filing of the petition, DeRosa moved to dismiss the petition for lack of proper service. She claimed that the relevant statute, NRS 233B.130(5), required petitions for judicial review to be personally served on all parties and that NDOC failed to comply with this when it only mailed her attorney. NDOC filed its opposition by arguing that personal service is unnecessary in a petition for judicial review and that service by mail is sufficient. Alternatively, it asked the court to grant an extension to the 45-day service deadline, which had long passed, so that it could personally serve DeRosa. The district court ruled that personal service is necessary under NRS 233B.130(5) and denied NDOC's request for an extension because it failed to show good cause. NDOC appealed the district court's decision.

¹ By Victor Kang.

Discussion

NRS 233B.130 allows for judicial review of an administrative agency's decisions and rulings and requires service of the petition for judicial review.² However, it does not specify a method of service.³ The Court therefore had to determine whether NRCP 4.2(a), which requires personal service of a complaint that starts a civil action, or NRCP 5(b), which allows service by mail on any post-complaint filings, should apply in this scenario.⁴ Because this analysis entailed statutory interpretations and thus involved a question of law, the Court applied the de novo standard of review.

NRS 233B.130(5) provides that a "petition for judicial review... must be served upon" all parties involved but does not specify a method of service.⁵ Therefore, the Court had to decide whether NRCP 4.2(a) requirement of personal service applied or NRCP 5(b) permission of service by mail sufficed.⁶ This necessarily entailed an analysis of whether a petition for judicial review is categorized as a complaint that starts a civil action or as a post-complaint filing.

The Court held that a petition for judicial review is best understood as a post-complaint filing because the parties are already aware of the underlying matter in the proceeding. The whole purpose of personal service is to make sure the defendant is properly aware that a suit has been brought against him and that he has an opportunity to defend himself. A petition for judicial review is a post-complaint filing that involves a continuing legal proceeding and the parties involved are already aware of the issues. Thus, personal service is unnecessary and the more flexible standard of service by mail as outlined by NRCP 5(b) is sufficient in this context.

Conclusion

The Court held that NDOC complied with NRS 233B.130(5) by mailing DeRosa's attorney with service. It therefore reversed and remanded the district court's finding that NDOC had to personally serve DeRosa.

² NEV. REV. STAT. § 233B.130 (2005).

³ *Id.*

⁴ Nev. Rules Civ. Proc. R. 4.2(a) (1953); Nev. Rules Civ. Proc. R. 5(b) (1953).

⁵ NEV. REV. STAT. § 233B.130(5) (2005).

⁶ Nev. Rules Civ. Proc. R. 4.2(a) (1953); Nev. Rules Civ. Proc. R. 5(b) (1953).