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Whitfield v. Nev. State Pers. Comm'n, 137 Nev. Adv. Op. 34 (July 29, 2021)¹

JUDICIAL REVIEW: NAMING ALL RESPONDENTS

Summary

NRS 233B.130(2)(a)'s plain meaning requires strict compliance of naming all respondents in the caption of a petition for judicial review.² In the present case, Michael Whitfield filed a petition for judicial review, which the district court dismissed per *Otto* for failing to name all respondents in the caption.³ Whitfield appealed the decision citing *Prevost*, stating that failure to name each respondent did not automatically fail the requirements of NRS 233B.130(2)(a).⁴ The Supreme Court of Nevada affirmed the decision of the district court and overruled *Prevost*.⁵

FACTS AND PROCEDURAL HISTORY

Michael Whitfield, an employee with the Nevada Department of Corrections (NDOC) was required by NDOC to both carry a firearm and maintain Peace Officer Standards and Training (POST) certification, which required biannual firearm qualifications. In August 2017, Whitfield got a domestic violence restraining order against him, which made it illegal for Whitfield to have a firearm (for a three-year period), including for NDOC. NDOC gave Whitfield five months to resolve the issue and get back his ability to carry a firearm. Whitfield did not get the order removed nor modified and was thus dismissed from his job for failing the POST requirement. Whitfield timely filed a petition for judicial review and correctly served both the petition and summons, but did not name any respondents in either the caption or body of the petition. NDOC moved to dismiss, arguing NDOC, the Commission, the hearing officer and the Nevada Department of

¹ Nazo Demirdjian.

² NEV. REV. STAT. § 233B.130(2)(a) (2015).

³ Washoe Cnty. v. Otto, 128 Nev. 424, 282 P.3d 719 (2012).

⁴ *Prevost v. State, Dep't of Admin.*, 134 Nev. 326, 418 P.3d 675 (2018); NEV. REV. STAT. § 233B.130(2)(a) (2015).

⁵ *Prevost*, 134 Nev. at 328, 418 P.3d at 676-77.

Administration were not named and that the 30-day petition window had passed. Whitfield filed an amended petition four days later naming the respondents NDOC had mentioned and cited *Prevost* in stating failure to name a respondent did not mean the Court loses subject matter jurisdiction.⁶ Additionally, Whitfield argued the amendment met NCRP 15, making NDOC's motion a moot point.⁷ The District Court granted NDOC's motion to dismiss holding that NRS 233B.130 was not satisfied since no respondent was named and the amended petition had failed the 30-Day window set up under NRS 233B.130(2)(d).⁸

DISCUSSION

Where legislation provides for judicial review by statute, courts have appellate jurisdiction over administrative agencies' acts.⁹ In this instance, Nevada's Administrative Productive Act (APA) controls judicial review for administrative decision. *Otto* held NRS 233B.130's plain language demanded strict compliance.¹⁰ While the Court acknowledged stare decisis in *Prevost*, it likewise cited *Lloyd* in ruling impractical decisions should not stand simply because of stare decision.¹¹ Thus, the Court overruled *Prevost*.¹²

NRS 233B.130(2)(a) required every part of the record to be named as a respondent in the petition

Whitfield argued that his petition met all the requirements set out in NRS 233B.130(2)(a) and *Prevost* since all parties were named in the petition's body.¹³ The Court responded by citing *Otto*, and stating that only a legislative act can create jurisdiction if an administrative agency has

⁶ *Id.*

⁷ Nev. R. Civ. P. 15.

⁸ NEV. REV. STAT. § 233B.130 (2015); NEV. REV. STAT. § 233B.130(2)(d) (2015).

⁹ Washoe Cnty. v. Otto, 128 Nev. 424, 431, 282 P.3d 719, 724 (2012).

¹⁰ *Id.*

¹¹ State v. Lloyd, 129 Nev. 739, 750, 312 P.3d 467, 474 (2013)

¹² Prevost v. State, Dep't of Admin., 134 Nev. 326, 328, 418 P.3d 675, 676-77 (2018).

¹³ NEV. REV. STAT. § 233B.130(2)(d) (2015); *Id.*

appellate jurisdiction.¹⁴ Any failure of statutory requirements means courts have no jurisdiction. *Otto* required strict compliance.¹⁵ The Court also entertained Whitfield’s argument per *Prevost*, but then stated that the decision was wrong and overturned it for being “unworkable.”¹⁶

Because Whitfield failed to invoke the district court’s jurisdiction, he could not amend his petition.

Whitfield argued that NRS 233B.130(2)(d) related to a window to file—not to amend—a petition. Without an amendment window, NRCP 15 timing requirements allowed him to amend.¹⁷ However, the Court argued that NRS 233.130(2)(d)’s deadline is a moot point when district court’s jurisdiction was not invoked, such as here where Whitfield failed to name the respondents.¹⁸ Additionally, the Court held that under NRCP 81(a), the Nevada Rules of Civil Procedure did not apply when in conflict with the APA—as is the case here.¹⁹ Finally, the Court determined that NRS 233B.130(2)(d) lacking express language allowing an extension of time meant no such time is allowed.²⁰ Otherwise, it would have been explicitly expressed.

CONCLUSION

The Supreme Court of Nevada affirmed the district court’s granting of NDOC’s motion to dismiss. The Court found that NRS 223B.130(2)(a)’s language was clear in requiring all respondents be named in the caption of a petition for judicial review, reaffirming *Otto* and overruling *Prevost*.²¹

¹⁴ *Otto*, 128 Nev. at 431, 282 P.3d at 724.

¹⁵ *Id.*

¹⁶ *Prevost v. State, Dep’t of Admin.*, 134 Nev. 326, 418 P.3d 676-77 (2018).

¹⁷ NEV. REV. STAT. § 233B.130(2)(d) (2015); Nev. R. Civ. P. 15.

¹⁸ NEV. REV. STAT. § 233B.130(2)(d) (2015).

¹⁹ Nev. R. Civ. P. 81(a).

²⁰ NEV. REV. STAT. § 233B.130(2)(d) (2015); Cf. *Bopp v. Lino*, 110 Nev, 1246, 1252, 885 P.2d 559, 563 (1994) (applying the maxim *expressio unius est exclusio alterius*—that the inclusion of one thing implies the exclusion of another—when interpreting a statute).

²¹ NEV. REV. STAT. § 233B.130(2)(d) (2015); *Washoe Cnty. v. Otto*, 128 Nev. 424, 282 P.3d 719 (2012); *Prevost v. State, Dep’t of Admin.*, 134 Nev. 326, 418 P.3d 676-77 (2018).

DISSENT

Judge Pickering dissented, with Judge Parraguirre concurring with the dissent. Judge Pickering argued that Whitfield’s petition named his employer and the agency that reviewed his termination, thus satisfying the statute. Judge Pickering uses the Merriam-Webster’s Collegiate Dictionary to synonymize “name as” with “identify,” and Black’s Law Dictionary to define “respondent” and show that Whitfield identified the respondents—which is what NRS 233B.130(2)(a) requires.²² Judge Pickering further argued that the majority’s explanation that the statute requires naming respondents in the caption is against the plain language, which the majority brings up to justify their holding. Likewise, he argued that overruling *Prevost* would defeat the plain language of the statute which the dissent reproduces.²³

Next, Judge Pickering said that a harsh requirement of naming respondents in the caption—meaning the term “respondent” should appear next to the respondents—created a pitfall for laypersons. Citing *Cooksey*, Judge Pickering contended that the intent of the wording is more important, meaning the use of the “word” respondent is not as important as the intent of naming said respondents.²⁴ Additionally, Judge Pickering said the majority erred in failing to respect *stare decisis* and thus upholding *Prevost*.²⁵ He disagreed that *Otto* (the case the majority references) and *Prevost* (the case the majority overrules) were at odds because *Otto* fully failed to name respondents whereas *Prevost* only did so in the body.²⁶ *Otto* failed the statute in either way, whereas *Prevost* failed if the caption requirement was enforced.²⁷

²² NEV. REV. STAT. § 233B.130(2)(a) (2015).

²³ *Prevost*, 134 Nev. at 328, 418 P.3d at 676-77.

²⁴ *Cooksey v. Cargill Meat Sols. Corp.*, 831 N.W.2d 94, 104 (Iowa 2013).

²⁵ *Prevost*, 134 Nev. at 328, 418 P.3d at 676-77.

²⁶ *Id.*; *Washoe Cnty. v. Otto*, 128 Nev. 424, 282 P.3d 719 (2012).

²⁷ *Prevost*, 134 Nev. at 328, 418 P.3d at 676-77; *Otto*, 128 Nev. at 434, 282 P.3d at 726 (2012).

Finally, the dissent cited several cases to demonstrate that the majority opinion makes Nevada unique in terms of APAs.²⁸

²⁸ See *Hopper v. Indus. Comm'n*, 558 P.2d 927, 932 (Ariz. Ct. App. 1976); *D.C. Dep't of Admin. Servs. V. Int'l Bhd. Of Police Officers, Local 445, Serv. Emps. Int'l Union, AFL-CIO*, 680 A.2d 434, 438 (D.C. 1996); *Cooksey* 831 N.W.2d at 104 (Iowa 2013); *Associated Grocers Co. of St. Louis, Mo. v. Crowe*, 389 S.W.2d 395, 399 (Mo. Ct. App. 1965); *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit Cty.*, 958 P.2d 962, 969 (Wash. 1998); *Fisher v. Mayfield*, 505 N.E.2d 975, 976 (Ohio 1987).