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City of Henderson v. Dist. Ct. (Solid State Props., LLC), 137 Nev. Adv. Op. 26 (June 24, 2021).

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CIVIL LAW: Petition for Judicial Review Within an Existing Civil Action

SUMMARY

The Court first reviewed a petition for writ of mandamus in a civil action regarding a zoning decision. The Court clarified the process and standard of review for a petition for judicial review and an ordinary civil action. The Court concluded a petition for judicial review cannot be filed within an ongoing civil action. The Court granted the City’s petition with instructions for the court clerk to issue a writ of mandamus to the district court to strike the petition for judicial review.

BACKGROUND

The original civil action was between Solid State Properties, LLC (“Solid State”) and the City of Henderson (“City”). Solid State owns property adjacent to property owned by Eastgate, LLC (“Eastgate”) in Henderson, Nevada. Eastgate’s property is zoned as commercial property and Eastgate sought a conditional use permit (CUP) from the City to lease its property to a charter school. The City granted Eastgate the CUP, but with several provisions meant to control the traffic that occurred twice a day at the school. Because the provisions of the CUP were not enforced, tensions arose between Solid State and Eastgate, leading Solid State to sue the City.

Solid State filed an action in district court, seeking damages, injunctive relief, and attorney fees. The Henderson City Council later held proceedings to review and adopt the CUP with amendments. Solid State proceeded to file an “Amended Petition for Judicial Review” (“Amended Petition”) in the existing civil action, pursuant to NRS 278.3195(4). The City moved to strike the Amended Petition, arguing that 1) it was improper to file a new action within an existing matter, 2) the two actions could not be properly reviewed in the same court, and 3) that Solid State failed to comply with several court procedural rules. The district court denied the City’s motion to strike the Amended Petition, essentially allowing the Amended Petition to go forward in the existing civil action. The City proceeded to file a petition for a writ of mandamus, grounded on the basis that the district court improperly denied the City’s motion to strike the Amended Petition and arguing that writ relief is appropriate.

DISCUSSION

The Court first reviewed whether writ relief is appropriate in this action. Though “judicial economy and judicial administration militate against the utilization of mandamus petitions to review orders denying motions to dismiss,”² the Court “may exercise its discretion...when an important issue of law needs clarification.”³ Because this is an issue of first impression, the Court concluded that the writ petition is appropriate and the Court would clarify Nevada law on the issue of whether a party may file a petition for judicial review in an existing civil action. The Court also iterated the standard of review for writ petitions. Questions of law are reviewed de novo, “even in

¹ By Dianna Saucedo-Chirinos.

² *State ex re. Dep’t of Transp. v. Thompson*, 99 Nev. 358, 362, 662 P.2d 1338, 1340 (1983).

³ *Int’l Game Tech., Inc. v. Second Judicial Dist. Ct.*, 122 Nev. 132, 142, 127 P.3d 1088, 1096 (2006).

the context of writ petitions.”⁴ Because the City’s petition presents a question of law, the Court reviewed the district court’s decision de novo.

Next, the Court explained the statutes and rules that govern a petition for judicial review in a land action. NRS 278.3195(4) allows a person to file a petition for judicial review in district court after they have been aggrieved by “the decision of the governing body” in a land use decision.⁵ A petition for judicial review starts a new action and must be filed within 25 days after the “final action, decision or order with the clerk or secretary of the governing body, commission or board.”⁶ The Eighth Judicial District Court’s procedural rules governing petitions for judicial review require the petitioner to file and serve a memorandum of points and authorities and the respondent to file their memorandum of points and authorities in opposition.⁷ Additionally, the filings must meet the requirements under NRAP 28. The Court determined that the Amended Petition was not an amended pleading and did not comply with the requirements for a petition for judicial review pursuant to EDCR 5.208 and NRCP 15.

The Court next determined that under *Kay v. Nunez*, a petition for judicial review is the proper remedy to seek review of a city’s zoning decision,⁸ but *Kay* left open the issue of whether the judicial review petition could be combined with an ongoing civil suit. The Court explained the role of the district court in a civil action and distinguished it from the district court’s role in a petition for judicial review, clarifying that judicial review petitions require the district court to function in a “quasi-appellate role.” Finally, the Court looked to other jurisdictions for guidance on the issue of whether the judicial review petition and civil action could be combined. The Court reviewed persuasive authority from the Idaho Supreme Court, the Arizona Supreme Court, and the Tennessee Court of Appeals. These jurisdictions treat these filings as separate actions that cannot be combined because of the appellate nature of one action and trial court nature of the other.⁹ The Court adopted this approach and held that petitions for judicial review of land use decisions cannot be joined together with civil actions challenging those same land use decisions. The Court emphasized the importance of avoiding “hybrid proceedings” in the district courts.

CONCLUSION

The Court held that petitions for judicial review of land use decisions pursuant to NRS 278.3195 cannot be joined with existing civil actions. The Court further clarified that [generally] a petition for judicial review cannot be combined with a related civil action because these are two separate actions that require different standards of review from the lower court. The Court also concluded that allowing both a petition for judicial review and civil action to be combined would create a confusing record for appellate review of either decision. The Court granted the City’s petition and directed the clerk to issue a writ of mandamus to the lower court to strike Solid State’s Amended Petition from this docket. Finally, the Court preserved the ability to transfer Solid State’s Amended Petition to a new docket if deemed warranted.

⁴ *Helfstein v. Eighth Judicial Dist. Ct.*, 131 Nev. 909, 913, 362 P.3d 91, 94 (2015).

⁵ NEV. REV. STAT. 278.3195(4) (2011).

⁶ NEV. REV. STAT. 278.0235 (2019).

⁷ EDCR 2.15(a).

⁸ *Kay v. Nunez*, 122 Nev. 1100, 1105–06, 146 P.3d 801, 805 (2006).

⁹ *Cobbley v. City of Challis*, 139 P.3d 732, 735 (Idaho 2006); *Euclid Ave. Tr. V. City of Boise*, 193 P.3d 853, 856 (Idaho 2008); *Madsen v. Fendler* 626 P.2d 1096–98 (Ariz. 1981); *Goodwin v. Metro Bd. Of Health*, 656 S.W.2d 383, 386 (Tenn. Ct. App. 1983).