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Anthony v. Miller, 136 Nev. Adv. Op. 25 (June 10, 2021).

Kristin Wilde

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BALLOT ISSUE – THE STATUTORY INTERPRETATION OF NRS. 293.465

Summary

NRS. 293.465 provides that a new election shall be ordered when voters' opportunity to participate in an election is prevented by some event. After an election has occurred and voters have had the opportunity to exercise their right to participate in the given election, any election challenges must be brought pursuant to NRS. 293.407-.435.

Background

In the November 3, 2020 general election for the Clark County Commission District C seat, Appellant Stavros Anthony ran and lost by a margin of 15 votes to respondent Ross Miller. The Clark County Registrar of Voters reported 139 unexplained discrepancies between the number of voters who signed in and the number of total votes counted to the Clark County Board of Commissioners. Additionally, the Registrar reported that he could not verify that the unexplained discrepancies did not affect the outcome of the District C seat election because the number of unexplained discrepancies exceeded the margin of victory. Thus, the Board initially concluded that the returns of the District C seat election could not be verified and that a new special election would be held for the District C seat. However, the Registrar later informed the Board that while the cause of the 139 discrepancies were not identified, unexplainable discrepancies occur in every election and can be caused by a number of reasons. As a result, the Board voted to certify the returns of the District C seat election.

Anthony contested the election results and sought remedial measures from both the Board and the district court. Anthony applied to the Board for a new election pursuant to NRS 293.465, arguing that the statute required that a new election must be held when the accuracy of the vote count is questioned due to unexplained discrepancies. Additionally, Anthony sought declaratory and injunctive relief and a writ of mandamus from the district court requiring the Board to hold a new election pursuant to NRS 293.465. In response, Miller contended that NRS 293.465 did not apply, arguing that the statute only applies when an election is prevented from taking place, which did not happen in the District C seat election. Miller argued that Anthony could only challenge the result of the election pursuant to NRS 293.410.

The district court agreed with Miller, finding that Anthony could not challenge the election results pursuant to NRS 293.465 because the election was not prevented within the meaning of statute. The district court found that NRS 293.465 could only be used to contest election results when the election is "prevented from occurring, for instance due to a natural disaster, or, an accident suffered by the vehicle transmitting the ballots, or some similar incident." Thus, the district court concluded that because the election had actually taken place, NRS 293.365 did not apply and a new election could not be granted. Anthony appealed.

¹ By Kristin Wilde.

Discussion

The court reviewed the district court's finding de novo because this case presented a statutory interpretation issue. The court explained that plain meaning of the statutory language is given effect when the language is clear and unambiguous. However, when another reasonable interpretation may be found, the court instructed that they would look to policy and other statutes in order to avoid nullifying the intended operation of the statute. Here, the plain language of NRS 293.465 states that when "an election is prevented...by reason of loss or destruction of the ballots intended for that precinct, or by any other cause...the board of county commissioners shall order a new election."²

Anthony complains that the district court interpreted the NRS 293.465 language "prevented" by "any other cause" too narrowly, arguing that an election is effectively prevented when unexplainable discrepancies in the voting count prevent the will of voters from being known. Anthony cites to *LaPorta v. Broadbent*³, in which the court concluded that liberal interpretation should be given to election statutes to ensure that errors in election conduct do not overcome the will of voters.

Unpersuaded, the court found Anthony's reading of *LaPorta* too broad as the relied upon statement explained the need for a new election when ballots were unavailable to voters. The court concluded that the same proposition could not be applied whenever the accuracy of the election results are questioned due to errors in election conduct. Moreover, the court concluded that Anthony's proposed interpretation of NRS 293.465 would conflict with the election-contest framework set forth in NRS Chapter 293. Specifically, NRS 293.407 – 293.435 provides a strict timeline in which challenges to an election shall be made to the district court, whereas Anthony's interpretation of NRS 293.465 would give the Board the authority to decide election contests. Thus, the court found that Anthony could not seek relief pursuant to NRS 293.465 but must bring any challenge to the election results pursuant to the NRS 293.407 – 293.435 requirements.

Conclusion

The court concluded that according to the statutory interpretation of NRS 293.465, an election is not prevented in circumstances in which the accuracy of the election results are questioned due to errors in election conduct. As such, such election challenges must be brought forth pursuant to the procedural guidelines set forth in NRS 293.407 – 293.435.

² NEV. REV. STAT. § 293.465.

³ *LaPorta v. Broadbent*, 530 P.2d 1401, 1406 (1975).