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Endo Health Solutions, Inc. v. Dist. Ct. (City of Reno), 137 Nev. Adv. Op. 39 (Jul. 29,2021).

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TORTS: THE MODERN APPLICATION OF DILLON’S RULE

Summary

This is an appeal regarding a district court’s denial of a motion to dismiss. Endo Health Solutions filed a motion to dismiss claiming that the City of Reno is barred from bringing the underlying action under Dillon’s Rule. The district court in the underlying action ruled (a) Dillon’s Rule only limits a city’s nonlitigious activities and (b) even if Dillon’s Rule does apply to a city’s litigious activities, the underlying lawsuit falls within the “matter of local concern” exception to Dillon’s Rule. The Nevada Supreme Court exercised their discretion to entertain Endo Health Solution’s writ of mandamus petition. First, the Court found that Dillon’s Rule does limit a city’s ability to bring lawsuits. The Court reasoned that interpreting Dillon’s Rule’s imposed limitations as only including cities’ nonlitigious activities would grant cities, “an unfettered power to sue”. The Court further reasoned that the legislature created specific statutes highlighting when a city can bring a civil lawsuit, and that interpreting Dillon’s Rule as not including lawsuits in its limitations would render these statutes obsolete. Second, the Court ruled that the district court in this case did not appropriately rule on the “matter of local concern” issue. The Court found that the district court relied on their own definition of “matter of local concern”, as opposed to the pertinent statute (N.R.S 268.003).² Due to this, the Court granted the issue in part and issued a writ of mandamus directing the district court to apply the N.R.S 268.003 definition of “matter of local concern”.

¹ Michael Goutsaliouk.

² NEV. REV. STAT. § 268.003 (2015).

Background

The City of Reno filed suit against Endo Health Solutions “to recover . . . damages as result of the opioid epidemic”. The City asserted various tort claims against Endo Health Solutions. In the City’s Prayer for relief, they sought “to stop [d]efendants’ promotion and marketing of opioids for inappropriate uses in Nevada, currently and in the future.” Endo Health Solutions claimed the underlying action was barred under Dillon’s Rule and moved to dismiss it. The district court ruled that (a) Dillon’s Rule only limits a city’s nonlitigious activities and (b) even if Dillon’s Rule does apply, the underlying lawsuit falls within the “matter of local concern” exception to Dillon’s Rule.

Discussion

The Court’s decision to exercise their discretion to entertain the writ petition

The Court noted that although it generally refuses to entertain writ petitions that challenge orders denying motions to dismiss, the Court may decide to entertain them if the underlying action is, “an important issue of law [that] needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition.”³ Here, the Court noted that this case presents an important issue of first impression as there are currently cases being litigated that are very similar in nature to the underlying action in this case.

Nevada’s modification of the traditional Dillon’s Rule as it applies towards incorporated cities

First, the Court noted that for many years Nevada courts have applied the common law principle known as Dillon’s Rule. Dillon’s Rule defines and limits local government’s powers to those (1) expressly granted by the Nevada Constitution, statute, or city charter (2) necessarily or fairly implied by the express powers; or (3) necessary for the accomplishment of the declared

³ City of Mesquite v. Eighth Judicial Dist. Court, 445 P. 3d 1244, 1248 (2019).

objects and purposes of the city that are indispensable, not merely convenient. Next, the Court noted that in 2015 the Nevada Legislature enacted legislation that modified the application of Dillon’s Rule to incorporated cities.⁴ The enacted legislation partially codified the traditional Dillon’s Rule; however, it also modified the traditional rule to allow cities to have greater authority to address matters of legal concern.⁵

The traditional rule was modified in two key respects. The Legislature granted incorporated cities all other powers necessary or proper to address matters of local concern to all for the effective operation of city government.⁶ The legislation established a presumption in favor of cities’ powers.⁷

The modified Dillon’s Rule applies to a city’s ability to bring lawsuits

The Court noted that NRS 268.0035 makes it clear that an incorporated city has “[a]ll other power necessary or proper to address matters of local concern.” The Court proceeded to provide the Black Law’s Dictionary’s definition of power.⁸ The Court then noted that this definition of “power” is broad enough to encompass lawsuits because lawsuits can alter rights, liabilities, and other legal relationships.

The Court then looked at the surrounding statutes within NRS Chapter 268. The Court noted that the legislature enumerated specific instances where a city may bring a lawsuit.⁹ The Court then found that not including lawsuits in the limitations of Dillon’s Rule would give cities an unfettered power to sue, making civil lawsuit statutes under NRS Chapter 268 superfluous.

⁴ NEV. REV. STAT. § 268.001 (2015).

⁵ See NEV. REV. STAT. § 268.001(6) (2015); NEV. REV. STAT. § 268.0035(1) (2015).

⁶ NEV. REV. STAT. § 268.003 5(1)(c) (2015).

⁷ *Id.*

⁸ *Power*, Black’s Law Dictionary (10th ed. 2014).

⁹ See NEV. REV. STAT 268.408(2) (2015); NEV. REV. STAT 268.4126(1) (2015).

Further, the Court declined to interpret NRS 268.0035(3) as the only limitation on the City's power to litigate. The Court found that while NRS 268.0035(3) places certain limitations on a city, it does not say that a city may exercise any powers as long as they are not directly limited by NRS 268.0035(3).

The subject matter of the City's lawsuit may constitute a matter of local concern

The Court looked at whether the City is able to bring lawsuits through an express power granted to it or an implied power granted to it from the Nevada Constitution, a statute, or a city charter. Here, the Court found that the City was unable to point to any express power or implied power that grants it the authority bring the underlying lawsuit.

The Court then looked at whether the City's lawsuit falls within the NRS 268.003(1) definition of a "matter of local concern." The Court noted that while the district court did find that the City's lawsuit falls under the definition of "matter of local concern," the district court used their own definition of "matter of local concern." The Court found that the district court was erroneous in using their own definition of "matter of local concern." The Court noted that the district court was required to strictly apply the statutory definition of "matter of local concern" as provided in NRS 286.003.

Conclusion

The Court granted the petition in part because the district court misapplied the definition of "matter of local concern." The Court instructed the underlying district court to apply the statutory definition of "matter of local concern" as provided in NRS 268.003.