10-2-2023

Valley Health Sys., LLC v. Murray, 533 P.3d 1040 (Aug. 17, 2023)

Keegan Davis

Valley Health Sys., LLC v. Murray, 533 P.3d 1040 (Aug. 17, 2023)[1]

THE GOVERNOR AND CHIEF JUSTICE HAVE COMPLEMENTARY REPLACEMENT POWERS OF DISQUALIFIED JUSTICES

Summary

Appellant Valley Health Sys., LLC, d/b/a Centennial Hills Hospital (Centennial Hills) filed an emergency objection and motion in response to Chief Justice Stiglich's decision to assign Senior Justices Cherry and Silver to its case in place of disqualified Justices Cadish and Lee. Centennial Hills argued that the operative rule for disqualified justices grants the Governor total authority to designate a judge from a lower Nevada court to temporarily serve on the Supreme Court.[2] In its motion, Centennial Hills asked the Court to vacate its senior assignments and let Governor Lombardo appoint two judges in their stead. In a 4-1 decision[3], the Supreme Court ruled that the Chief Justice's assignment of senior justices was permissible under Article 6, Section 19(1)(c) of the Nevada Constitution; more broadly, the Court ruled that the Governor and Chief Justice have complementary powers to assign replacements for disqualified justices.

Background

A 2019 jury trial between the parties in dispute resulted in a wrongful death judgment for Respondent Dwayne Murray.[4] Centennial Hills appealed this judgment in ongoing litigation which raised an issue of first impression in Nevada jurisprudence, requiring an en banc court.[5] With the disqualifications of Justices Cadish and Lee, the Court needed two judges to fill the temporary vacancies. In response, Chief Justice Stiglich assigned Senior (retired) Justices Cherry[6] and Silver[7] to serve in the places of the disqualified justices.[8] Centennial Hills took issue with the Chief Justice's assignments, arguing that Article 6, Section 4(2) of the Nevada Constitution gives the governor "sole authority to designate substitute justices in cases of disqualification."[9] Oral argument was vacated pending the outcome of Centennial Hills' objection and motion.[10] Mr. Murray filed a response in support of the chief justice's senior assignments.[11]

Discussion

Nevada Constitution Article VI § 4(2)

Since its ratification in 1920, Section 4(2) vests power in the governor to select a judge from a lower Nevada court to sit on the Supreme Court when a justice is disqualified from ruling

---

[1] By Keegan Davis, Junior Staffer – NLJ Vol. 24.
[2] NEV. CONST. art. VI, § 4(2) (Westlaw 2023).
[3] The emergency objection and motion were heard before Chief Justice Stiglich, Justice Parraguirre, Justice Pickering, Justice Herndon, and Justice Bell. Chief Justice Stiglich delivered the opinion of the Court, and Justice Pickering delivered a concurring and dissenting opinion.
[4] Valley Health Sys., LLC v. Murray, 533 P.3d 1040, 1041-42 (Nev. 2023).
[5] *Id.* at 1042.
[6] Senior Justice Michael Cherry, Nevada Supreme Court Seat C, served from 2007-2019.
[7] Senior Justice Abbi Silver, Nevada Supreme Court Seat F, served from 2019-2022.
[8] *Valley Health Sys.*, 533 P.3d at 1042.
[9] *Id.*
[10] *Id.* n. 3.
[11] *Id.* at 1042. ("[T]he chief justice's authority to temporarily assign senior justices under section 19(1) is 'concurrent, complementary, and compatible' with the governor's authority under section 4(2)").

in a case. Based on this section's wording the governor may appoint state judges seated on the district courts or the court of appeals. Since § 4(2)'s adoption, governors were known to "routinely [designate] district judges to replace…justices who were 'disqualified.'"[12] The Court remarks in its discussion that while the governor has the ability and discretion to seat judges in cases of disqualification, s/he does not have the power to bring senior justices out of retirement to hear a case.[13] Only the chief justice can "recall" senior justices under Section 19(1).[14]

Nevada Constitution, Article VI § 19(1)

Section 19(1) serves two distinct purposes for the judiciary: (1) recognize judicial administration in Nevada and (2) highlight judicial officer assignments and recalls. Stated plainly, the Chief Justice of Nevada is the "administrative head" of the state court system, and in her/his capacity, can assign district court judges to "specialized" service[15] and recall senior judges and justices to "appropriate temporary duty."[16] For the purpose of this case, this analysis focuses on the latter half of subsection two. Supreme Court Rule ("SCR") 10.6 defines "senior" officers as eligible to serve "at or below the level of the court in which he or she was serving at the time of retirement or leaving office."[17] Within the SCR, senior officers of the court must "consent" to being called for temporary service, meaning that the chief justice can invite, but not compel, former judges and justices to serve.[18]

The Court continued its analysis by citing the multiple occasions – and cases – where the chief justice assigned temporary roles to senior justices. It is even noted that the Court often used the chief justice's power to recall judges in tandem with the governor's ability to designate roles on the high court to district court judges.[19] Evolved constitutional considerations are also indicative of the Court's power to assign senior justices to their former roles under SCR 243. With the passage of Ballot Question 6 in Nevada's 1976 election, Section 19 was ratified and with it, the practice of senior recall that restores "all the judicial powers and duties [to senior justices/judges] while serving under the assignment of a regularly elected and qualified justice or judge."[20]

Examining the Relationship Between Sections 19(1) and 4(2)

In its substantive argument, Centennial Hills cited *Piroozi* as evidence that when a general and specific statute conflict, the specific one prevails.[21] Here, Centennial Hills argued that the verbiage of Subsection 4(2) specifically grants the governor power to appoint replacement justices in disqualification cases due to the "specific" nature of the text.[22] The Court

---

[12] *Id.* at 1042.
[13] *Id.*
[14] *Id.* at 1043.
[15] NEV. CONST. art. VI, § 19(1)(b) (Westlaw 2023).
[16] *Id.* at § 19(1)(c).
[17] Nev. Sup. Ct. Rules § 10.6 (2016).
[18] *Id.*
[19] *Valley Health Sys.*, 533 P.3d at 1045.
[20] *Id.* at 1043 (*quoting* SCR 243(4)).
[21] Piroozi v. Eighth Jud. Dist. Ct., 363 P.3d 1168, 1172 (Nev. 2015).
[22] *Valley Health Sys.*, 533 P.3d at 1042.

disagreed with this argument by directly responding that "nothing in section 4(2) gives the governor *sole* power to select substitutes."[23] Furthermore, pursuant to *We the People*, the Court must adhere to the notion of "harmonizing" provisions in the Constitution; in cases where provisions cannot be reconciled, the court reviews history and legislative intent.[24,25] Using both analyses, the Court rendered its decision.

Under a *We the People* analysis, the Court found that sections 4(2) and 19(1) aim to fix a similar issue, but do so in "complementary" ways that do not conflict.[26] In the case of § 4(2), the governor can appoint lower court judges but cannot recall senior justices; conversely, § 19(1) prohibits the chief justice from elevating lower court judges but does allow her/him to recall senior justices. The Court next noted that viewing § 19(1) through Centennial Hills' lens would have the consequence of prohibiting the chief justice to recall senior justices. To this point, the Court cited history and precedent as key criteria supporting the status quo "dual" system laid out in Internal Operating Procedure ("IOP") 1(g)(4).[27]

Conclusion

On the grounds that the chief justice has the ability to recall a senior justice under Article 6, Section 19(1)'s complementary power, the Court overruled Centennial Hills' objection and denied its motion to designate a lower court judge under Section 4(2). In cases moving forward, the Court will defer to both the executive's and judiciary's adherence to their Article 6 duties in cases of justice disqualification.

Dissent

Justice Pickering concurred with the majority on its finding that the chief justice and governor had "complementary" powers for disqualified justices, but dissented on the basis that the current disparity between sections 4(2) and 19(1) may open the door to judicial impropriety.[28] She noted that in many other states an "apolitical and mechanical" appointment system has been adopted that prevent the impression of wrongdoing or inconsistent results from the judiciary.[29] Finally, Justice Pickering noted that IOP 1(e) and 1(g)(2) – outlining en banc procedure – do not necessitate that seven justices need to be seated for an en banc hearing to occur. Rather, she argued that under the aforementioned IOP, the hearing could have proceeded with five justices which would not pose a tie-breaking issue.[30]

---

[23] *Id.* at 1045.
[24] We the People Nev. ex rel. Angle v. Miller, 192 P.3d 1166, 1171 (Nev. 2008).
[25] *Valley Health Sys.*, 533 P.3d at 1044.
[26] *Id.* at 1045.
[27] *Id.*
[28] *Id.* at 1047.
[29] *Id.* at 1049.
[30] *Id.* at 1050.