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Recommended Citation

Dietz, Aika, "Jorin v. State, Emp't Sec. Div., 139 Nev. Adv. Op. 29 (Sep. 07, 2023)" (2023). *Nevada Supreme Court Summaries*. 1591.

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Jorrin v. State, Emp't Sec. Div., 139 Nev. Adv. Op. 29 (Sep. 07, 2023)¹

NRCP 6(d)'S THREE-DAY MAILING RULE DOES NOT EXTEND THE NRS 612.530(1) FILING DEADLINE, OVERRULING *KAME V. EMPLOYMENT SECURITY DEPARTMENT*.

Summary

Under NRS 612.530(1), parties have 11 days after the NESD Board of Review's decision is finalized to request judicial review. NRCP 6(d) provides a three-day extension for parties to act after they are served by mail. While the Court once interpreted NRCP 6(d) to extend NRS 612.530(1)'s deadline², the Court found that the statute's clear language does not allow for an extension because it focuses on the date the decision is finalized, not the decision's service date. The Supreme Court of Nevada thus held that NRCP 6(d)'s three-day mailing rule does not influence the timeframe set by NRS 612.530(1).

Background

Appellant Helen Jorrin was denied unemployment benefits and sought relief from the Nevada Employment Security Division's (NESD) Board of Review. The decision, mailed on August 27, 2021, denied the request, and stated it would become final on September 7, 2021. Jorrin had until September 20, 2021, to appeal. Jorrin filed her appeal on September 21, 2021. The district court dismissed the petition as untimely. Jorrin appealed to the Supreme Court of Nevada.

Discussion

I. NRCP 6(d) only applies when service triggers the time for a party to act.

Jorrin claims the application of NRCP 6(d) made her petition timely as it allowed an extra three days for filing. She argues the district court wrongly dismissed her petition since she should have had until September 23. NESD argued that NRCP 6(d) does not apply, and they support the district court's dismissal due to lack of jurisdiction. The Court applied *de novo* review because interpreting a statute presents a legal question.

NRCP 6(d) states that "[w]hen a party may or must act within a specified time after being served and service is made [by mail], 3 days are added after the period would otherwise expire under Rule 6(a)."³ The Court highlighted the rule's applicability only when the service sets off the action time. The previous version of this rule, NRCP 6(e), similarly grounded its application on service.⁴ The Court highlighted various cases where NRCP 6(d) was used to extend deadlines in statutes that centered on service as the starting point for those deadlines.

In this case, the critical statute NRS 612.530(1) allows a party "11 days after the decision of the [NESD] Board of Review has become final" to file a petition.⁵ Given the statute's

¹ By Aika Dietz.

² See *Kame v. Emp't Sec. Dep't*, 105 Nev. 22, 23 n.1, 769 P.2d, 21, 67 n.1 (Nev. 1989).

³ NEV. R. CIV. P. 6(d).

⁴ NRCP 6(e) (1953), amended by ADKT 522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, Dec. 31, 2018) ("[w]henever a party has the right or is required to do some act within a proscribed period after service of a notice . . . upon him and the notice . . . is served upon him by mail, 3 days shall be added to the prescribed period").

⁵ NEV. REV STAT. 612.530(1) (2023).

emphasis on the final decision date over the service date, the Court found that NRCP 6(d) does not apply by its plain language.⁶

II. We overrule Kame v. Employment Security Department to the extent that it holds that NRCP 6(d)'s three-day mailing period can extend the deadline to file a petition for judicial review under NRS 612.530(1).

The Court acknowledged its prior application of NRCP 6(d) to extend filing time for a judicial review of an NESD Board of Review decision in *Kame*. Yet the Court declared this application as "badly reasoned." The *Kame* decision had invoked the three-day mailing rule without thoroughly assessing its compatibility with NRS 612.530(1). The difference in language found in the current case was critical. Given this oversight, the Court ruled that *Kame* does not warrant a "position of permanence in this court's jurisprudence"⁷ and overruled the portion asserting that NRCP 6(d) extends the deadline for NRS 612.530(1).

Conclusion

The Court reaffirmed the district court's ruling, stressing that NRCP 6(d) did not cover Jorin's appeal under NRS 612.530(1), making it untimely.

⁶ See *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007) ("[W]hen a statute's language is plain and its meaning clear, the courts will apply that plain language").

⁷ See *Miller v. Burk*, 124 Nev. 579, 597-97, 188 P.3d 1112, 1224 (Nev. 2008).