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Highroller Transportation, LLC v. Nevada Transportation Authority, 139 Nev. Adv. Op. 51 (Nov. 30, 2023)

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ADMINISTRATIVE PROCEEDINGS

Summary

There is now clarification on the application of the waiver rule in the context of administrative law, specifically in cases before the Nevada Transportation Authority (hereinafter “NTA”). The Court held that arguments not raised during administrative proceedings are generally considered waived and cannot be introduced in later judicial reviews. This decision emphasizes the importance of presenting all relevant arguments and issues at the earliest stage of administrative proceedings.

Background

Highroller Transportation, LLC (hereinafter "Highroller"), authorized by NTA to operate charter buses in Nevada, faced fines for violating its operational certificate by improperly staging vehicles. In NTA administrative hearings, Highroller conceded to the violations and agreed to pay \$10,000 in fines, waiving formal findings of fact and conclusions of law. Highroller later contested the NTA’s authority, arguing federal preemption for the first time at an NTA general session. The NTA dismissed this late argument. After a district court sided with the NTA, affirming the fines and rejecting Highroller's preemption claim, Highroller appealed.

Discussion

Arguments not raised to a hearing officer in a contested case before the NTA are generally waived.

The initial issue is that Highroller did not present its federal preemption argument during the administrative hearings, but for the first time at NTA’s general session. Highroller asserted that introducing the argument at this stage was sufficient for judicial review. However, the NTA disagreed, citing the principle that arguments not made at the initial stages of administrative proceedings are generally considered waived.

The Court clarified that arguments not presented before an administrative agency are generally waived in judicial review.² The waiver rule is extended to administrative decisions, particularly in cases before the NTA.

The Court examined the Nevada Administrative Procedure Act (APA) and the Nevada Administrative Code (NAC), which provide the procedural framework for administrative hearings before the NTA. Nevada Administrative Procedure Act (APA), codified in NRS Chapter 233B.032 emphasizes that in a "contested case," which includes any agency proceedings

¹ By Ciara Clark.

² State ex rel. State Bd. of Equalization v. Barta, 124 Nev. 612, 621, 188 P.3d 1092, 1098 (2008).

that could result in an administrative penalty, all parties must be given an opportunity for a hearing.³

The Court stressed that the purpose of the waiver rule in quasi-judicial proceedings allows for arguments to be made in a manner where the opposing party can respond, and the adjudicator can make an informed decision.⁴ Permitting the introduction of arguments to be raised for the first time on appeal goes against the waiver rule as it denies the agency and the hearing officer the opportunity to fully consider the arguments.

The Court highlights the importance of maintaining a comprehensive record for appellate review.⁵ The NTA's hearing officer functions are similar to a magistrate judge, and principles of waiver apply to issues that should have been resolved at the initial hearing stage.⁶ The Court opined that allowing new arguments to be raised at the NTA general session, which were not presented during the administrative hearing, would lead to inefficiencies and would not be consistent with the purpose of the waiver rule. The Court recognizes that subject matter jurisdiction can be raised at any time, but it questioned whether Highroller's brief statement at the NTA general session was sufficient to demonstrate that the NTA lacked subject matter jurisdiction over the citations due to federal preemption.

Highroller did not establish that 4.9 § 14501(a)(1)(C) divested the NTA of subject matter jurisdiction in this case

The issue was whether Highroller successfully demonstrated that federal preemption under 49 U.S.C. § 14501(a) removed the Nevada Transportation Authority's (NTA) jurisdiction over its case. Highroller's assertion was that the NTA lacked authority due to federal preemption. Highroller did not clearly articulate its argument as a jurisdictional issue that could remove the NTA's authority to adjudicate the case.

The Court examined whether federal preemption under 49 U.S.C. § 14501(a) constituted an issue of subject matter jurisdiction. The Court noted that federal preemption as an affirmative defense can be waived unless it implicates subject matter jurisdiction exclusively in one forum.⁷

The Court stated that Highroller did not present a compelling argument that 49 U.S.C. § 14501(a) vested exclusive jurisdiction in a single forum, thereby removing jurisdiction from the NTA. 49 U.S.C. § 14501(a) does not explicitly require transportation carrier citations to be adjudicated in a specific forum.⁸

Highroller did not provide sufficient evidence at the administrative level to support its preemption claim. The Court stressed the importance of establishing a claim with evidence, as

³ See also *State, Dep't of Health & Human Servs., Div. of Pub. & Behav. Health Med. Marijuana Establishment Program v. Samantha Inc.* 133 Nev. 809, 813, 407 P.3d 327, 330 (2017).

⁴ See *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 1344-45, 905 P.2d 168, 172 (1995).

⁵ *Young v. State*, 139 Nev., Adv. Op. 20, 534 P.3d 158, 164 (Ct. App. 2023).

⁶ See *Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167, 173, 252 P.3d 676, 679 (2011).

⁷ See *Int'l Longshoremen's Ass'n, AFL-CIO v. Davis*, 476 U.S. 380, 381-82 (1986); see also *Wiener v. AXA Equitable Life Ins. Co.*, 58 F.4th 774, 779-80 (4th Cir. 2023).

⁸ *Davis*, 476 U.S. at 393 nn.9 & 11.

mandated in *Davis and Davidson v. Velsicol Chemical Corp.* The Court also emphasized the need for a fully developed record at the agency level for proper judicial review.

The Court recognized that the district court addressed Highroller's preemption claim on the merits based on the briefs and arguments, but this approach was erroneous as it did not rely on the administrative agency record, as required by NRS 233B.135(1)(b). The absence of factual findings in the administrative record regarding the safety-related nature of the certificate restriction meant the district court could not conclusively determine if the restriction was federally preempted.

The district court's decision to deny judicial review, albeit on different grounds, was affirmed. The Court applied the principle that a correct judgment, even if based on incorrect reasons, will be upheld on appeal.⁹

Highroller also waived its federal preemption argument by stipulating to informal disposition of its contested cases

The Court found that Highroller waived its right to challenge the Nevada Transportation Authority's (NTA) decisions on the basis of federal preemption. This waiver occurred when Highroller entered into a stipulation during the administrative proceedings, agreeing to an informal disposition of its case without the need for further findings of fact and conclusions of law. Such stipulations are binding and enforceable.¹⁰

Highroller's attempt to later invoke federal preemption as a ground for judicial review was deemed inconsistent with the stipulations it had previously agreed to. The Court noted that Highroller could not claim errors on issues it had willingly waived.¹¹ Additionally, the Court dismissed NTA's argument regarding Highroller's failure to timely serve the Nevada Attorney General, as the district court had found good cause to extend the service time.

Ultimately, the Court upheld the lower court's decision to deny Highroller's petition for judicial review, affirming that Highroller's stipulation effectively waived its right to challenge the NTA's decisions based on federal preemption.

Conclusion

The court affirmed three key aspects of the lower court's decision. First, the Court affirmed that Highroller had waived its right to present the federal preemption argument in the judicial review process. This was due to Highroller not raising the argument during the initial administrative hearings, but rather introducing it for the first time at the NTA's general session. Second, the Court affirmed that Highroller's claim of federal preemption did not sufficiently establish that the NTA lacked subject matter jurisdiction, primarily due to a lack of substantial

⁹ See *Wyatt v. State*, 86 Nev. 294, 298 468 P.2d 338, 341 (1970).

¹⁰ *Taylor v. State Indus. Ins. System*, 107 Nev. 595, 598, 816 P.2d 1086, 1088 (1991); *Redrock Valley Ranch, LLC v. Washoe County*, 127 Nev. 451, 460, 254 P.3d 641, 647 (2011); See *Casentini v. Hines*, 97 Nev. 186, 187, 652 P.2d 1174, 1175 (1981).

¹¹ See *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994).

evidence in the agency record to support this claim. Third, the Court affirmed that by stipulating to an informal disposition of its contested cases, Highroller had waived its right to challenge the NTA's decisions on federal preemption grounds during judicial review.

The Court denied the part of Highroller's petition that challenged the NTA's authority and decisions based on the federal preemption claim. This was because Highroller's argument was not properly preserved during the administrative proceedings and was inadequately supported by evidence in the agency record.

The Court's decision upheld the lower court's ruling that supported the NTA's actions while highlighting procedural lapses by Highroller in the administrative process. The Court emphasized the importance of presenting all relevant arguments at the earliest possible stage of administrative proceedings.