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Rural Tel. Co. v. Pub. Util. Comm'n of Nev., 133 Nev. Adv. Op. 53 (Aug. 3, 2017)

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CIVIL APPEAL: ADMINISTRATIVE AGENCIES

Summary

The Nevada Supreme Court found that the district court acted within its discretion in dismissing Rural Telephone Company's (Rural Telephone) petition for judicial review against the Public Utilities Commission of Nevada (PUCN) because the district court did not have authority to grant Rural Telephone's request for an extension of time to file its opening memorandum of points and authorities, through statute or through its inherent authority.

Background

Rural Telephone applied for changes in its telephone service rates and charges with the PUCN. The PUCN denied Rural Telephone's application, and Rural Telephone petitioned the district court for judicial review of PUCN's decision. NRS 703.373(1) provides that any party can petition for judicial review of the PUCN's final decision.² However, per 703.373(6), the petitioner must serve and file its memorandum of points and authorities with the court within 30 days after PUCN gives notice that the proceeding is under review.³

In this case, the filing deadline was October 19, 2015. On October 16, Rural Telephone moved the court for a 30-day extension, which PUCN opposed. PUCN also filed to dismiss Rural Telephone's petition because it would be filing its opening memorandum of points and authorities after the October 19th deadline. Rural telephone subsequently filed its memorandum on November 18, within the requested deadline extension. However, on December 18th, the court denied Rural Telephone's request for an extension, striking its memorandum and dismissing its petition. Rural Telephone appealed.

Discussion

The district court lacked the authority to grant Rural Telephone an extension of time to file its opening memorandum of points and authorities

Rural Telephone argued that the district court read the statutory language and legislative history of NRS 703.373 too narrowly and therefore deprived Rural Telephone of judicial review. Rural Telephone also argued that the district court's actions violated policy and the separation of powers doctrine.

The Court disagreed. Following the statutory construction principle that the "mention of one thing implies the exclusion of another,"⁴ the Court found that when reading NRS 703.373 as a whole, the statute clearly provides for both mandatory and discretionary action. Specifically, NRS 703.373(5) gives the district court power to vary timelines for certain filings,⁵ whereas NRS

¹ By Marco Luna.

² NEV. REV. STAT. § 703.373(1) (2017).

³ NEV. REV. STAT. § 703.373(6) (2017).

⁴ *Sonia F. v. Eighth Judicial Dist. Court*, 125 Nev. 495, 499, 215 P.3d 705, 708 (2009).

⁵ NEV. REV. STAT. § 703.373(5) (2017).

703.373(3), (6), and (7) have mandatory language for other filings, such as the memorandum for points and authorities.⁶

Further, the Court also found that the legislative intent was clear when comparing NRS 703.373 to other administrative statutes such as NRS 233B.133, which shares the same language. Unlike NRS 703.373, NRS 233B.133 provides a clause that allows the timeline extension for good cause.⁷ Further, NRS 233B.133 expressly does not apply to judicial review of the PUCN.⁸ Thus, legislatures could have included the same clause, but did not.

Thus, the Court agreed with the district court: statutory construction and the legislative history shows that the district court did not have the authority to extend the timeline for Rural Telephone's memorandum of points and authorities because NRS 703.373 expressly forbids it.

Conclusion

The Term "must" in NRS 703.373(6), combined with the legislative history and the Legislature's omission to include any language authorizing the court to extend time filed for briefs, shows that the district court did not have the authority to extend the deadline for filing an opening memorandum of points and authorities when seeking judicial review of PUCN decisions. Therefore, the Court affirmed the district court's order dismissing Rural Telephone's petition for judicial review.

⁶ NEV. REV. STAT. § 703.373(3), (6)–(7) (2017).

⁷ NEV. REV. STAT. § 233B.133(6) (2017).

⁸ NEV. REV. STAT. § 233B.133(5)(d) (2017).