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Heat & Frost Insulators & Allied Workers Loc. 16 v. Lab. Comm'r; Univ. of Nev., Reno; & CORE Constr., 134 Nev. Adv. Op. 1 (Jan. 4, 2018)

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ADMINISTRATIVE LAW: PETITIONS FOR JUDICIAL REVIEW

Summary

NRS 233B.130(2)(c)(1)'s service requirement is mandatory and jurisdictional. Further, under NRS 233B.130(5), the district court has jurisdiction to extend time for service for good cause, either before or after the 45-day service period has run.

Background

Respondent, the University of Nevada, Reno, had a construction contract with respondent CORE Construction for the University's West Stadium Utility Trench project (project). CORE subcontracted Reno-Tahoe Construction, Inc. (RTC) for the project.²

Appellant Heat & Frost Insulators and Allied Workers Local 16 filed a wage complaint with respondent Office of the Labor Commissioner alleging that RTC had underpaid its employees working in the project. The University investigated and determined that the RTC had not violated Nevada law. Appellant objected, but the Labor Commissioner affirmed.

Appellant then filed a petition for judicial review under NRS 233B.130(1) challenging the Labor Commissioner's determination. The petition met all the requirements under NRS 233B.130(2)(a), (b), (d), and NRS 233B.130(5).³ But, the appellant did not serve the petition on the Attorney General, as NRS 233B.130(2)(c)(1) requires. Accordingly, the Labor Commissioner moved to dismiss the petition for judicial review.

After the Labor Commissioner's motion, the appellant served the petition on the Attorney General and moved to extend the time for service under NRS 233B.130(5). The district court declined to consider the motion to extend time for service, concluding that the failure to serve the petition on the Attorney General within 45 days of filing the petition deemed the petition "jurisdictionally defective, such that dismissal was mandatory."

Discussion

The Court considered an appeal of a dismissal of a petition for judicial review. The Nevada Supreme Court reviewed *de novo* whether NRS 233B.130(2)(c)(1)'s requirement to serve the petition for judicial review upon the Attorney General is mandatory and jurisdictional, and whether untimely service of a petition for judicial review on the Attorney General mandates dismissal of the petition.

Nevada's Administrative Procedure Act (APA) is codified in NRS Chapter 233B, which governs judicial review of administrative decisions.⁴ NRS 233B.130 sets forth the procedural

¹ By Alma Orozco.

² RTC was removed from the appeal by the court's August 1, 2017 Order.

³ NEV. REV. STAT. § 233B.130(2).

⁴ NEV. REV. STAT. § 233.130(1); *Liberty Mut. v. Thomasson*, 130 Nev. 27, 30, 317 P.3d 831, 833 (2014).

requirements for petitions of judicial review of final administrative decisions.⁵ In 2015, NRS 233B.130 was amended to include that a petition must be served on the Attorney General.⁶

The Nevada Supreme Court had not previously addressed whether the NRS 233B.130(2)(c)(1) establishes a jurisdictional requirement for petitions of judicial review. Yet, the court had determined that NRS 233B.130(2)(a), (b), and (d) requirements are mandatory and jurisdictional.⁷ In *Otto*, the court concluded that naming requirement is mandatory and jurisdictional because the language of NRS 233.130(2) does not suggest that “its requirements are anything but mandatory and jurisdictional.”⁸ That reasoning was further affirmed in *Thomasson*.⁹ Thus, the court held that NRS 233.130(2)(c)(1) is mandatory and jurisdictional. As such, the court must dismiss a petition for judicial review if NRS 233.130(2)(c)(1) is not met, absent a showing of good cause pursuant to NRS 233.130(5).

Under NRS 233.130(5) an extension of time for service is permitted when good cause is shown.¹⁰ Here, the district court dismissed the petition for judicial review before considering whether good cause existed. In *Scrimmer*, the court had previously determined when NRPC 4 service is untimely, a good cause determination is within the district court’s determination.¹¹ Further, in *Zugel*, the court determined that such fact-finding function is best left for the district courts.¹² Accordingly, the court concluded the district court did have jurisdiction to consider the motion to extend service time, and to make a good cause determination.

Lastly, under NRS 233B.130(5) a party is not required to move for an extension of service for a petition for judicial review before the 45-day period. NRS 233B.130(5) allows a district court to extend the time for service for a petition “upon a showing of good cause.”¹³ The language of NRS 233B.130(5) does not limit when a party can move to extend time for service of a petition.¹⁴ Accordingly, the court concluded that NRS 233B.130(5) does not prohibit extending the time for service after the 45-day period.

Conclusion

The Court reversed the district court’s dismissal, and remanded the matter to the district court for a determination of whether good cause existed to extend time for service on the Attorney General. The Court held that NRS 233B.130(2)(c)(1)’s service requirement is mandatory and jurisdictional. Further, the court held that the Attorney General must be served within 45 days of the petition’s filing under NRS 233B.130(2)(c)(1), unless the time for service is extended pursuant to NRS 233B.130(5). Finally, the court held that the district court can extend the time for service under NRS 233B.130(5), either before or after the 45-day period.

⁵ *Id.* at 30, 317 P.3d at 834.

⁶ 2015 NEV. STAT., CH. 160 § 9, 709.

⁷ See *Washoe Cty. v. Otto*, 128 Nev. 424, 282 P.3d 719 (2012) (construing paragraph (a)); *Thomasson*, 130 Nev. 27, 317 P.3d 831 (construing paragraph (b)); *Civil Serv. Comm’n v. Second Judicial Dist. Court*, 118 Nev. 186, 42 P.3d 268 (2002) (construing paragraph (d), overruled on other grounds by *Otto*).

⁸ *Otto*, 128 Nev. at 432, 282 P.3d at 725.

⁹ *Thomasson*, 130 Nev. at 31, 317 P.3d at 834.

¹⁰ NEV. REV. STAT. § 233.130(5).

¹¹ *Scrimmer v. Eighth Jud. Dist. Ct.*, 116 Nev. 507, 513, 998 P.2d 1190, 1193–94 (2000).

¹² *Zugel v. Miller*, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983).

¹³ NEV. REV. STAT. § 233.130(5).

¹⁴ NEV. REV. STAT. § 233.130(5).