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Zenor v. State, Dep't of Transp., 134 Nev. Adv. Op. 14 (Mar. 1, 2018)¹

ADMINISTRATIVE LAW: ATTORNEY FEES

Summary

The Court held that NRS 233B.130 prohibits attorney fees in petitions for judicial review of agency determinations.

Background

Chad Zenor was employed by the Nevada Department of Transportation (NDOT) when he injured his wrist on the job. Eleven months after the injury, his physician, Dr. Huene, determined that Zenor was not yet capable of performing his job duties before the injury. Two months later, Dr. Huene determined Zenor could fully use his wrist with a brace as needed. After another month, Dr. Huene released Zenor “without limitations.” Zenor and his wife delivered the release to NDOT that day. Dr. Huene fully released Zenor 14 months after his accident.

Despite the release, NDOT separated Zenor from employment for medical reasons. Zenor appealed, and an administrative hearing officer reversed the separation during the administrative hearing. NDOT petitioned for judicial review, and the district court affirmed. Zenor filed a motion for attorney fees pursuant to NRS 18.010(2)(b) claiming that NDOT unreasonably filed its petition to harass him. The district court denied the motion, and Zenor appealed to the Nevada Supreme Court.

Discussion

Standard of review

The Nevada Supreme Court usually reviews an award of attorney fees under NRS 18.010(2)(b) for an abuse of discretion.² The district court “may not award attorney’s fees unless authorized by statute, rule or contract.”³ And issues of statutory interpretation are questions of law reviewed de novo.⁴

NRS 233B.130 prohibits attorney fees in petitions for judicial review of agency determinations

The Nevada law that governs this decision is NRS 233B, which allows the Court judicial review of an agency determination. NRS 233B.130(6) states that the provisions of NRS Chapter 233B “are the exclusive means of judicial review of, or judicial action concerning, a final decision in a contested case involving an agency to which this chapter applies.”⁵ In *State, Dep't of Human Resources v. Fowler*, the Court noted that “NRS 233B.130 does not contain any specific language authorizing the award of attorney’s fees in actions involving petitions for judicial review of agency

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² *Mack-Manley v. Manley*, 122 Nev. 849, 860, 138 P.3d 525, 532–33 (2006).

³ *State, Dep't of Human Resources v. Fowler*, 109 Nev. 782, 784, 585 P.2d 375, 376 (1993).

⁴ *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1028 (2008).

⁵ Nev. Rev. Stat. § 233B.130(6).

action.”⁶ The district court correctly held that NRS 233B.130 precluded attorney fees in a judicial review of an agency action.

The Court emphasized the importance of following a legislative scheme.⁷ In *State Indus. Ins. Sys. v. Wrenn*, this Court declined to award attorney fees because the legislature did not expressly authorize it in workers compensation cases.⁸ This is because “it is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done.”⁹

In the instant case, the legislature expressly stated that when courts review agency determinations, the provisions of NRS Chapter 232B “are the exclusive means of judicial review of, or judicial action.”¹⁰ The Court held the legislature intentionally omitted attorney fees from NRS Chapter 233B because the legislature expressly authorized fees in other similar statutes.¹¹ Thus, it is now a rule that NRS 233B.130 prohibits attorney fees in petitions for judicial review of agency determinations.

Conclusion

The Court affirmed the district court and held that Zenor is not entitled to an award of attorney fees under NRS 1810(2)(b) because NRS 233B.130, which allows the Court judicial review, prohibits attorney fees in petitions for judicial review of agency determinations.

⁶ *Fowler*, 109 Nev. at 785, 858 P.2d at 377.

⁷ *State Indus. Ins. Sys. v. Wrenn*, 104 Nev. 536, 539, 762 P.2d 884, 886 (1998) (The Court has “repeatedly refused to imply provisions not expressly included in the legislative scheme.”)

⁸ *Id.*

⁹ *McKay v. Bd. Of Cty. Comm’rs of Douglas Cty.*, 103 Nev. 490, 492, 746 P.2d 124, 125 (1987).

¹⁰ Nev. Rev. Stat. § 233B.130(6).

¹¹ See Nev. Rev. Stat. § 616C.385.